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January 17, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
2nd Floor
400 North Street
Harrisburg, PA 17120

Via: Federal Express

RECEIVED
JAN 17 2012
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: 1-A Realty v. PPL Electric Utilities Corporation - # F 2010-2166554
1-A Realty v. PPL Electric Utilities Corporation - # F-2010-2166976

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned matter please find an original and nine (9) copies of PPL Electric Utilities Corporation's Replies to Exceptions of Complainant to the initial decision of Administrative Law Judge Dennis J. Buckley, along with an attached Certificate of Service.

Pursuant to 52 Pa. Code Section 1.11, the enclosed document is to be deemed filed on January 17, 2012, which is the date it was deposited with an overnight express mail service as shown on the delivery receipt attached to the mailing envelope.

I am also enclosing an extra copy of the face sheet of these Exceptions. Please time-stamp this copy and return it to my office in the enclosed self-addressed stamped envelope.

Thank you for your cooperation.

Very truly yours,

ANDREW H. RALSTON, JR.

AHR,Jr:cjc-m
Enclosures
cc: Office of Special Assistants (w/enc. and CD-ROM) ***Via Federal Express***
The Honorable Dennis J. Buckley (w/enc).
Mark Malkames Esquire (w/enc)
Kimberly A. Galligani, Paralegal (w/enc)
00429054.DOCX

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

1-A REALTY,	:	
Complainant,	:	COMPLAINT DOCKET
vs.	:	No. F-2010-2166554
PPL ELECTRIC UTILITIES CORP.	:	
Respondent	:	

1-A REALTY,	:	
Complainant,	:	COMPLAINT DOCKET
vs.	:	No. F-2010-2166976
PPL ELECTRIC UTILITIES CORP.	:	
Respondent	:	

PPL ELECTRIC UTILITIES CORPORATION'S REPLIES TO EXCEPTIONS OF COMPLAINANT

AND NOW comes the Respondent, PPL Electric Utilities Corporation ("PPL"), by and through its attorneys of record, Gross McGinley, LLP, and files the within Replies to Exceptions, alleging in support thereof as follows:

1. Denied. The letter which was designated as Exhibit C-8 is a letter from Complainant's counsel to Respondent. The contents of Exhibit C-8 constitute an out of court statement made by a declarant (Attorney Malkames) that Complainant sought to have repeated in Court by having it introduced as substantive evidence through PPL's witness. Complainant sought to offer Exhibit C-8 for the truth of the matters asserted by Attorney Malkames therein. Therefore, Exhibit C-8 is hearsay under Pa.R.E. 801 and

802. At the Hearing, and in its Exceptions, Complainant offered no law or rule of evidence which would except Exhibit C-8 from evidentiary exclusion under the Hearsay Rule. However, Exhibit C-8 was admitted for the non-hearsay purpose of refreshing the recollection of PPL's witness. Admitting Exhibit C-8 for that limited purpose was appropriate.

2. Denied. The Honorable Dennis J. Buckley's Finding of Fact 13 is well-supported by the evidence of record. In her deposition testimony, which was admitted into evidence at the Hearing by stipulation of the parties as Exhibit PPL-1, Phyllis Ruth testified as follows:

a. ". . . my father had built a trailer court and he found out it was illegal to put a streetlight onto a tenant's property. . . . When I put a streetlight on my property years ago, the pole, I had to pay $22 a month. I didn't think $10 [that Complainant "credited" Ruth on her monthly rent] was equal to that in this day and age. So this is what really started setting me off. . ." N.T., Ruth, August 16, 2011, page 6;

b. "But then I found out that I had a breaker on my trailer that had to be connected for that reason [connecting the Streetlight], I believe. And if it was - - I thought they should have had a separate little meter for the streetlight so it would furnish all the other trailers and I wouldn't be charged for it. That was my - -

Q. Did you want to be charged for that streetlight on your meter?

A. Not really. Who would?

Q. Do you want to be charged for it now?

A. Not really.

A. This could have all been stopped the first month along the road. When we knew about all of this, he could have had called – Mr. Mayo could have called PP&L, had the wire pulled out and I wouldn't have the streetlight on it anymore, I my meter.

A. I want what's legal. It is not legal having it – my electricity in somebody else's name. I won't pay electricity for somebody else either.

Q. If you had a choice between having the streetlight attached to your meter or the streetlight not attached to your meter, which would you choose?

A. Not attached.

Q. You believe that the charge for electricity for a streetlight is more than the $10 that you were being reimbursed [by Complainant]?

A. Correct, right. That my main principal thought on the whole thing. And I also believe that [the Streetlight on her meter] is illegal.

See N.T., Ruth, pages 8 - 27. Tellingly, Complainant does not actually cite to any portion of Ruth's testimony in its attempt to take exception to Finding of Fact 13. It merely claims that "Ruth 2" stands for the proposition that Ruth "did not lodge a complaint" with PPL over foreign wiring. As set forth above, it is patent that Ms. Ruth lodged a "foreign load complaint" with PPL when she called PPL to "ask a question about Act 54," as Complainant itself admits.

3. Denied. Judge Buckley's Finding of Fact 15 is well-supported by the evidence of record. In her deposition testimony, which was admitted into evidence at the Hearing by stipulation of the parties as Exhibit PPL-2, Karen Thompson testified as follows:

a. The Streetlight was placed on her meter in the Summer of 2009. N.T., Thompson, July 25, 2011, page 7;

b. Prior to it happening, she was never told that Complainant was going to dig up her yard and connect the Streetlight to her meter. N.T., Thompson, page 8;

c. The Streetlight was placed on to her meter "unknowingly . . . I didn't read that and I did, I wouldn't have known what they [Complainant] were talking about and so I signed that and sent it back." N.T., Thompson, page 8;

d. Two months after the connection had been made, she "called Mr. Mayo and I talked to Sherwood, and he explained to me that – what they had actually done, and I didn't understand it. I was kind of floored. . . .

Because I didn't understand why they would make me pay for that light. And I wasn't – I'm a widow. I'm by myself. Every penny counts. I retired two years ago. . . .

I was concerned because I just hung up the phone thinking what – I don't know why they did that, you know." N.T., Thompson, page 10;

e. "Well, I got a few letters [from Complainant] saying that if I didn't pay my bill that I would . . . That I could be evicted . . ." N.T., Thompson, page 11;

f. Q: Do you want the street light on your meter?

A.: No, I do not.

Q: Do you want a street light at all ever connected to your account.?

A. No, I do not.

A. The light is off at this moment, but it's still connected to the meter.

Q: Do you want it connected to the meter?

A. No. I don't want it connected to the meter. I do not. I want it corrected the way it was when I moved there. Right now there's no light on. It's pitch black. There's a 101-year-old lady who lives right across the way who has no light. None of us have any light.

A. [She typed a letter to PPL asking to have the account put back in her name] [b]ecause I didn't want to be evicted. I felt threatened [by Complainant]."

See N.T., Thompson, pages 14 -18. Complainant's claim that Ms. Thompson's "testimony stands in direct contradiction" to Findings of Fact 15 is, in light of the above, patently meritless.

4. Denied. Judge Buckley's Finding of Fact 19 is well-supported by the evidence of record. Initially, Judge Buckley did not find that the two (2) Street Lights attached to the Ruth and Thompson meters were switched off "at some point approximate to January 27, 2011," as Complainant claims. Instead, Judge Buckley found that those Street Lights were switched off at "some point proximate to January, 2011". Judge Buckley did not determine that the switch off occurred "around" January, 2011, as Complainant's mischaracterization of Finding of Fact 19 would imply. Instead, by using the word "proximate" in characterizing when the switch offs occurred, a word which is used in our law to describe an "order of time especially in a chain of causes and effects," Judge Buckley merely found that the switch offs took place "prior to January of 2011." Based upon the facts of record, that conclusion is uncontested by either party. PPL will discuss, below, why the date of the switch offs is completely irrelevant to this case because, in fact, Complainant's act of switching off the streetlights from Ruth and Thompson's breaker boxes is itself irrelevant.

5. Denied. Complainant's Exception to Finding of Fact 20 is meritless because Complainant's claim, as a general proposition, that a resident must "request that an account be taken out of their individual name in the first instance" before they can "request . . . to have the electric accounts placed back in their names" is fallacious. It is an uncontested fact in this case that PPL took the accounts for Ruth and Thompson out of their names and placed them into the name of Complainant after foreign loads were

discovered. As such, and as Judge Buckley very narrowly found in his Finding of Fact 20, Ruth and Thompson certainly could have "requested" PPL to "have the electric accounts placed back in their names," whether or not they had "requested that" their accounts "be taken out of their individual names in the first instance." Further, for the reasons set forth in PPL's Reply to Complainant's 2nd and 3rd Exceptions, supra., the record more than adequately supports the conclusion that neither Ruth nor Thompson ever actually requested PPL to place their electric accounts back into their names (for any reason other than having been forced by Complainant to do so in response to Complainant's threats to evict them because they had complained to PPL). Judge Buckley's Finding of Fact 20 is well-supported by the evidence of record.

6. Denied. Initially, it is difficult for Respondent to determine which portion of "Decision, page 8" Complainant is objecting to. However, it is clear that all of Judge Buckley's "decisions" on page 8 of the Initial Decision are either well-founded Findings of Fact or well-reasoned Conclusions of Law. Judge Buckley relied upon the following precedent in determining that the 21 electric meters in the Park are not "individually metered":

> The phrase 'not individually metered' as used in the statute means that the electric meter for the unit is registering foreign wiring". Ronald Shank v. PPL Electric Utilities Corporation, Pa. PUC Docket No. C-2009-2087300 (Order entered August 31, 2009).

Shank is controlling law in this Commonwealth, and Judge Buckley was correct in relying upon it in the case at bar. The Shank case, which was in fact litigated by the undersigned on behalf of PPL, was initially decided by the Honorable David A. Salapa and, following exceptions having been filed by the complainant in that case, was approved by the very Commission to whom Complainant presently files Exceptions on

August 31, 2009. Complainant apparently argues that either Judge Buckley should not have followed binding precedent from the Commission in the form of the Shank decision or, more broadly, that the Commission does not have the authority to interpret the phrase "not individually metered" set forth in (but not defined by) 66 Pa.C.S. §1529.1. In either case, Complainant's legal argument is meritless. The Commission, of course, has the authority and, in fact, the obligation to apply, and if need be interpret, the provisions of 66 Pa.C.S. §1529.1 in cases brought before it. The Commission did not "err" in undertaking an interpretation of the phrase "not individually metered" when it did so in Shank. Judge Buckley, likewise, did not err in following the Commission's Shank ruling in this case. Finally, Complainant's claim that Judge Buckley "rejected the interpretation of the statute as written" is fallacious. If a phrase used in a statute's meaning is plain upon its face "as written", then no "interpretation" of that phrase would be necessary, at all.

7. *Denied. Respondent does not understand what Complainant means by its* claim that Judge Buckley failed "to interpret individual metering as a matter of physical fact." Further, Complainant's claim that the PUC's interpretation of the phrase "not individually metered" has ever "changed" is both legally meritless and, tellingly, nothing more than boilerplate. Complainant does not cite a single way in which it alleges that the interpretation of "not individually metered" has been "a changing PUC interpretation." Further, Complainant, again tellingly, does not offer what it claims the "correct" interpretation, or "express meaning," of the phrase "not individually metered" should be. Complainant, instead, merely criticizes Judge Buckley, and the Commission generally,

for having always interpreted the phrase "not individually metered" in a way contrary to what Complainant wishes that phrase would mean.

8. Denied. The "policy statement proceeding at Docket No. L-980137" that Complainant relies upon, and which Judge Buckley astutely rejected on page 9 of the Initial Decision: (a) has been discontinued by the Commission and (b) more, importantly, does not afford Complainant any quarter in this case. First, it is clear, as a matter of fact, that neither Ruth nor Thompson has ever, or now does, wish to "accept financial responsibility" for the foreign loads unilaterally placed upon their meters by Complainants. See Reply to Exceptions 2 and 3, supra. As such, Complainant's reliance upon the cited "policy statement," under the facts of the case at bar, is inappropriate. Moreover, in making its argument that its tenants even theoretically could have "waived" the protections of 66 Pa.C.S. §1529.1 et. seq., Complainant fails to acknowledge the clear and unequivocal requirement of 66 Pa.C.S. §1530, which provides: "Any waiver of a tenant's rights under this subchapter **shall be void and unenforceable.**" (emphasis added).

9. Denied. See Reply to Exception #8, supra. By way of further answer, the "policy statement" at Docket No. L-980137 expressly deals with a tenant accepting financial responsibility for "an individually metered unit." However, as set forth above, the facts of our case establish that neither the Ruth nor the Thompson meters (nor the 19 other accounts in the Park at issue herein) were "individually metered". Instead, the 21 tenants in the Park at issue in this case all had meters which were "not individually metered" because of the common area Street Lights that were unilaterally placed upon

those meters by Complainant. As such, and for that additional reason, the "policy statement" at Docket No. L-980137 is inapplicable to our case.

10. Denied. While Respondent cannot clearly determine what portion of Judge Buckley Initial Decision that Complainant takes exception to in its Exception #10, it was irrelevant to Judge Buckley's determination what "proposed new rule making permits" under any circumstances. Further, Harman v. PPL Electric Utilities Corporation, C-20031793 (Final Order entered by Commission on September 8, 2004, acknowledging finality of Judge Wiesmandel's Initial Decision), which was decided well after the Ward case referenced in Complainant's Exceptions, settled the issue of whether there exists a *de minimus* exception to Act 54. As a matter of law, there is no *de minimus* exception. See Harman Decision, Page 7. Further, as set forth in the very "policy statement" that Complainant so adamantly relies upon:

> Although in some cases, the foreign load was characterized as *de minimis*, **the ultimate resolution was to place that account in the building owner's name.** Two reasons support this resolution: (1) the difficulty of developing a definition of *de minimis* foreign load that can be readily applicable to all situations; and (2) the adverse effect on one or more of the building's other tenants resulting from termination of service to the foreign load.

(emphasis added). Moreover, and perhaps most importantly, there was no evidence offered at our Hearing by Complainant to establish that a common area Street Light could, under the circumstances, even remotely constitute a "*de minimis*" foreign load.

11. Denied. First, 66 Pa.C.S. §1530 is explicit in its directive that a landlord cannot cure a "foreign load" problem on a tenant's meter by having the tenant "accept" the "foreign load." As such, any purported "private agreement" between Complainant and his tenants is, as a matter of public policy, "void and unenforceable". Section 1530

does not provide that such an attempted agreement to "accept foreign wiring" is voidable by the tenant, who could, on the other hand, agree to honor such an agreement. Pursuant to Section 1530, any attempt to contract away the applicability of Act 54 is, *per se*, void. Second, and more importantly, it is clear from the facts of our case that the 21 affected tenants in Complainant's Park did not agree to "accept" the foreign load that Complainant unilaterally placed upon their meters. To the contrary, the testimony of Ruth and Thompson, supra., is clear (and Complainant offered no testimony from any of the other 19 tenants) that they did not ever, and do not now, "accept" the foreign load in question. The only evidence in this case establishes that Complainant unilaterally placed foreign loads upon 21 of his tenants' meters and, then, attempted to have those tenants "accept" that imposed arrangement by, under apparent threat of eviction, including *boilerplate into each of those 21 tenants' land lease agreements. Complainant's attempt* to construe the facts of this case to mean that his tenant's "privately agreed" to "accept" the foreign loads on their meters, especially in light of Ruth and Thompson's unequivocal testimony that they do not "accept" that condition, is disingenuous.

12. Denied. The clear and uncontradicted evidence presented at the Hearing established that 21 electric meters in Complainant's Park had foreign wiring, and foreign loads, placed upon them solely as the result of a unilateral decision made by Complainant. There is nothing erroneous about Judge Buckley's decision that those 21 instances of foreign wiring, and foreign loads, meant that each of those 21 meters were "not individually metered." Complainant's boilerplate claim to the contrary is meritless.

13. Denied. Complainant continues to fail to acknowledge that its act of simply switching off two of the Street Lights (on the breaker boxes of Ruth and

Thompson) does not resolve this matter. The Ruth and Thompson breaker boxes still have foreign wiring attached to them. Further, 19 other tenants in Complainant's Park still have foreign wiring on their breakers, and foreign loads being delivered to their meters. At the Hearing, Complainant, further, refused to agree that it would not merely switch on the Street Lights on the Ruth and the Thompson breakers, again creating a foreign load upon their respective meters, upon resolution of this case.

14. Denied. Complainant refuses to acknowledge the full scope of the matter before the Commission. This case does not only concern the Ruth and the Thompson meters. It concerns all 21 affected meters in the Park. 19 of those meters continue to have foreign wiring, delivering foreign loads, upon them. The other 2 meters (the Ruth and Thompson meters) continue to have foreign wiring upon them and, but for the flick of a switch by Complainant (something it refused to acknowledge will not happen the moment this case is over), continue to have foreign loads delivered to them. As such, Judge Buckley did not err in making his decision that Complainant must remove the wiring for the common area Street Lights from each of the 21 meters, and completely, permanently, and separately meter the common areas, if Complainant wishes to have the 21 electric accounts for the 21 affected PPL customers kept in the tenants' names. Of course, if Complainant does not wish to do so, it can so choose (with the understanding that, in that case, all 21 of the affects electric accounts shall continue to remain in Complainant's name).

15. Denied. A "foreign load dispute" occurred in this case. See Response to Exceptions 2, 3, 5, 8 and 11. Administrative Law Judge Wayne L. Weismandel, in an Opinion dated July 22, 2004, in the case of James David Harman vs. PPL Electric

Utilities Corporation, C-20031793 (Final Order entered by Commission on September 8, 2004, acknowledging finality of Judge Weismandel's Initial Decision) on Page 7, wrote:

> ". . . the Commission clearly held that 'the utility must. . . place the account in the landlord's name **upon discovery of the foreign load** and collect unpaid bills only from the landlord.'"

(emphasis added) citing Elizabeth Santos vs. Metropolitan Edison Company, Docket No. C-00967757 (1997); Joseph L. Ward vs. PPL Electric Utilities Corporation, Docket No. C-00992784 (2000). As discussed by Judge Weismandel on Page 5 of the Harman decision:

> The Commission has clearly established that the presence of 'foreign load' prevents a dwelling unit from being deemed individually metered as that term is used in 66 Pa. C.S. Section 1529.1. . . . 'foreign load' exists where tenants have a meter and are direct utility customers and utility service for other tenants or for the landlord is being billed through their meter. In other words, 'foreign load' is utility service which is not related to serving a tenant, but for which the tenant is being billed. Section 1529.1 of the Public Utility Code, 66 Pa. C.S. Section 1529.1, **requires that an affected public utility 'shall forthwith list the account for the premises in question in the name of the owner' when a residential building contains one or more dwelling unites not individually metered**. . . .
>
> The presence of 'foreign load' prevented the leased dwelling units from being deemed individually metered. **Respondent, the affected utility company, upon discovering the presence of 'foreign load' was required by the statute to 'forthwith' list the account in question in the name of the owner, and did so.**

See Harman, emphasis added.

16. Denied. Despite Complainant's repeated contention, the other 19 instances of foreign loads in the Park known by PPL to exist (beyond the Ruth and Thompson meters) are, without question, "involved with these proceedings." "These proceedings" involved a dispute between Complainant 1-A Realty and PPL. "These proceedings" do not involve Ruth or Thompson as parties, or only the foreign loads upon the Ruth and Thompson meters. PPL, in its Answer to Complainant's Complaints,

averred: "Responding to a complaint by [Ruth and Thompson], PPL discovered that the common use street lights in this mobile home park are connected to **various tenant's electric meters**. This condition constitutes foreign wiring. The **several tenants who have a street light connected to their meter are not "individually metered"** for the purposes of 66 Pa. C.S. §1529.1." See Answers of PPL, ¶4 (emphasis added). Those averments regarding foreign loads affecting tenants beyond Ruth and Thompson were "specifically incorporates . . . as New Matter herein." See New Matter of PPL, 11. PPL attached a Notice to Plead to its New Matter to the Answers that it filed in each of the two 1-A Realty cases. At the Hearing, PPL elicited testimony from its witnesses that the other 19 instances of foreign wiring/loads were: (a) known to exist by PPL and (b) must be resolved because PPL has an obligation under Act 54 to transfer those affected accounts to Complainant. The "scope of the issues raised" in "these proceedings" includes all 21 instances of foreign wiring/loads in Complainant's Park.

17. Denied. Complainant is not, under any circumstances, being forced to "permanently, completely and safely correct all claimed foreign loads." To the contrary, as long as Complainant understands that those 21 electric accounts will remain in its name until the foreign loads are "permanently, completely, and safely" corrected, Complainant is not being Ordered to do anything. Further, it is absurd for Complainant to argue that it is incapable of "objectively complying" with the alternative directive to "permanently, completely and safely correct" the foreign wiring/loads on the 21 meters. Complainant itself testified at the Hearing that, prior to its unilateral decision to tie in the Street Lights to the 21 affected meters, it had those Street Lights wired on a separate

electric circuit that was read by a house meter. As such, Complainant is merely inventing a non-existent controversy.

18. Denied. All of the above Replies are incorporated herein.

19. Denied. All of the above Replies are incorporated herein.

20. Denied. All of the above Replies are incorporated herein.

Respectfully submitted,

GROSS McGINLEY, LLP

By: _____

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Attorneys for PPL Electric Utilities Corporation

Date: January 17, 2012

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

1-A REALTY,	:	
Complainant,	:	COMPLAINT DOCKET
vs.	:	No. F-2010-2166554
PPL ELECTRIC UTILITIES CORP.	:	
Respondent	:	

1-A REALTY,	:	
Complainant,	:	COMPLAINT DOCKET
vs.	:	No. F-2010-2166976
PPL ELECTRIC UTILITIES CORP.	:	
Respondent	:	

CERTIFICATION OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participant(s), listed below, in accordance with the requirements of §1.54 (relating to service by a participant):

Office of Special Assistants
3rd Floor
Keystone Building
400 North Street
Harrisburg, PA 17129

Mark Malkames, Esquire
509 W. Linden St.
Allentown, PA 18101

Dated this 17th day of January 2012.

GROSS MCGINLEY, LLP

BY: _____
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ATTORNEYS FOR PPL ELECTRIC UTILITIES CORPORATION

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