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March 26, 2012

VIA FEDERAL EXPRESS

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P O Box 3265, 400 North St
Harrisburg PA 17105-3265

RECEIVED

MAR 26 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**RE: Thom Greco d/b/a Phoenix Estates v. PPL Electric Utilities Corporation
No. C-2011-2229033**

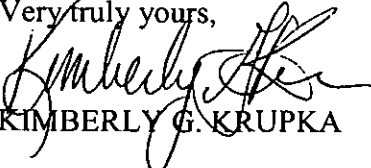
Dear Ms. Chiavetta:

Enclosed for filing in the above-captioned matter are an original and nine (9) copies of the Reply of PPL Electric Utilities Corporation to Complainant, Thom Greco d/b/a Phoenix Estates Exceptions, along with the attached Certificate of Service.

Pursuant to 52 Pa. Code §1.11, the enclosed document is to be deemed filed on or before March 26, 2012.

I am also enclosing an extra copy of PPL's Reply. Please time-stamp this copy and return it to my office in the envelope provided.

Thank you for your cooperation in this matter.

Very truly yours,

KIMBERLY G. KRUPKA

KGK/dm
Enclosures

cc: Thom Greco d/b/a Phoenix Estates (w/enclosure)
Administrative Law Judge Ember S. Jandebour (w/enclosure-via FedEx)
Ms. Kimberly A Galligani (w/encl); *via email only*

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

THOM GRECO d/b/a PHOENIX ESTATES,

COMPLAINANT,

VS.

PPL ELECTRIC UTILITIES CORPORATION,

RESPONDENT.

COMPLAINT DOCKET

NO. C-2011-2229033

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**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. Complainant's Exception is based on a complete misstatement of the Stipulation the Parties placed on the record relative to the testimony Ms. Tencza would provide, if called as a witness. As correctly stated in Footnote 2, page 8, of ALJ Jandebeur's decision, "the parties stipulated that Ms. Tencza would testify she made the call to PPL on February 11, 2011 to notify PPL of a payment made at United Check that same date." PPL never stipulated that Ms. Tencza in fact made the call. Rather, at all times PPL disputed that Ms. Tencza placed such a call to PPL, but acknowledged that she would testify that she made such call.

In reviewing Complainant's Exception, a brief reiteration of the procedural history is appropriate. On September 7, 2010 and March 3, 2011, Thomas Greco, d/b/a Phoenix Estates filed two Formal Complaints with the Pennsylvania Public Utility Commission against PPL. Both complaints related to the termination of electric service

for the same business, at the same business address. While the cases were heard at the same time, they were never consolidated. Therefore, it is important to note that Complainant has filed exceptions to case number C-2011-222903, only.

The Complaint, at docket number C-2011-222903, pertains to Service Account Number 42238-28577, which serviced property located at 189 E. Market Street, Wilkes Barre, PA 18702, in the name of Phoenix Estates. Service at this account was commenced in August 2007. (PPL Exhibit 1B). The Account had a history of late and missed payments. (PPL Exhibit 1B). When the January 17, 2011 bill was not paid by its due date of February 2, 2011, the Account had an outstanding balance of \$1397.89, for which PPL issued a notice on February 7, 2011 of its intent to terminate service. (PPL Exhibits 1B, 2B, and 3). The Termination Notice clearly provided that if payment was made at a bill payment center, “[p]ay the full amount past due and contact one of our service representatives with the confirmation number.” (PPL Hearing Exhibit 3). Moreover, the payment receipt provided by the bill payment centers, and the receipt received by Complainant’s agent, states “If you are going to avoid termination call 1-800-358-6623.” (Complainant’s Exhibit 2). At issue in this case is whether Complainant ever contacted PPL to advise of the payment made on February 11, 2011.

Complainant contended that no employee of Ms. Tencza made the \$1397.89 payment on February 11, 2011 at a bill payment center, and contacted PPL on the same date to inform PPL of the payment. PPL contended that while such payment was made at a bill payment center, no one contacted PPL on behalf of Complainant to inform PPL that such payment was made. Therefore, PPL was not aware of such payment¹, and

¹ The independent bill payment centers do not provide immediate notification of payment to PPL. Accordingly, the termination notices provide customer with notice of the need to contact PPL if a payment

terminated electric service to the account on Monday, February 14, 2011. After receiving a call from Ms. Tencza on February 14, 2011 with the payment confirmation number, PPL restored power to the account on the same date. (PPL Exhibit 2B).

Complainant contends that the Commission should overrule the decision of ALJ Jandebeur because the testimony of Mary Tencza, a former employee of Phoenix Estates, was necessary in order to prosecute its Complainant and the ALJ failed to grant a continuance in order to permit Complainant to secure such testimony. More specifically, Complainant alleges that Ms. Tencza was not available for the hearing due to her employment duties for another employer, and therefore a continuance should have been granted. However, Complainant provided no affidavit of Ms. Tencza as to her unavailability, never contended that Ms. Tencza was out of town, and never requested a subpoena which would have judicially mandated Ms. Tencza's appearance at the hearing. As it appears that Ms. Tencza's then current regular job duties were to attend to hospice patients, there is no reason to suggest one date for the hearing would be preferable over another. Nonetheless, in an effort to reach a resolution on the issue of Ms. Tencza's appearance, the Parties reached a stipulation wherein PPL agreed that *if* Ms. Tencza was called to testify, she *would* testify that she called PPL on February 11, 2011 to report a payment she made on account 42238-28577 to avoid termination. The Parties stipulated only that such statement would be the testimony of Ms. Tencza, not in fact that such call was made. In fact, at all times, PPL made it clear that PPL disagreed that such call was ever placed, and that PPL had evidence to contradict any testimony by Ms. Tencza that such call was made.

to stop termination is made. Similarly, the payment receipts provided by the bill payment centers also provide such notice. As the ALJ correctly found, Complainant's employees knew of this procedure, and in fact did contact PPL on prior occasions when the account was noticed for termination.

In reaching the conclusion that Ms. Tencza did not contact PPL on February 11, 2011, the ALJ relied upon substantial evidence of record. The ALJ acknowledged that if called to testify, Ms. Tencza would state that she contacted PPL on February 11, 2011 and informed PPL that she had made the payment on account number 42238-28577. However, the ALJ balanced such stipulation against the objective evidence of record. First, the ALJ correctly found that the Complainant, Thomas Greco, never called PPL to report a payment. (Finding of Fact 16 and 17, Tr. 60, 63). Second, the Court recognized that Ms. Tencza would testify that she made a call to PPL on February 11, 2011, but that “there is no record of the call being received and no record of a confirmation number or receipt number being provided to PPL.” (Decision at pg. 8). (See also PPL Exhibit 2B, which is a record of all contacts on the account, and shows no contact for February 11, 2011). Third, the ALJ found that PPL did have records of Ms. Tencza’s eleven other calls to PPL on the account, and accordingly there was no reason not to document a call from Ms. Tencza if placed. Fourth, PPL testified that when it learned of Ms. Tencza’s allegation of making a call to PPL on February 11, 2011, PPL performed an electronic review of all telephone calls received that date from the number provided by Ms. Tencza, and verified that no calls were placed to PPL from the number provided by Ms. Tencza. Based on such objection information, the ALJ was within her discretion in finding that although Ms. Tencza would testify that she contacted PPL on February 11, 2011, that the weight of the evidence was that no such call was actually placed.

In so much as Complainant cannot dispute that ALJ Jandebour acted within her sound discretion, Complainant now attempts to mischaracterize the stipulation reached by

the Parties. As PPL never stipulated that the call of February 11, 2011 was actually placed, the ALJ did not improperly admit or rely on evidence of PPL to the contrary.

2. Denied. PPL specifically denies that Finding of Fact 19 is not supported by the evidence of record or is otherwise improper. Finding of Fact 19 states, “The Complainant did not choose to pay PPL directly which would have confirmed payment and foreclosed termination.” There is no dispute that Complainant made his payment at United Check Cashing, as Complainant himself introduced the receipt of payment. (Complainant Exhibit 2). Complainant never even alleged he paid PPL directly. Moreover, PPL presented evidence of the ability of customers to pay PPL online or over the telephone via check by phone. Direct payments made to PPL by calling PPL or making online payments provide immediate notification to PPL of payments. The ALJ correctly found that Complainant did not avail himself of either of these options.

3. Denied. PPL specifically denies that Finding of Fact 20 is not supported by the evidence of record or is otherwise improper. Finding of Fact 20 states, “[t]he Complainant provided no reason for choosing to pay at United Check Cashing rather than PPL.” Complainant provides no reference to the Court record that such finding is inconsistent with any evidence of record. Moreover, a review of the ALJ’s opinion reviews that such Finding of Fact was not the basis for her finding of no violation by PPL of law or of the Commission’s regulations or orders. Therefore, while it is contended that such finding is supported by the record and proper, should the Commission disagree, the Finding of Fact does not provide a basis for reversal.

4. Denied. PPL specifically denies that Finding of Fact 22 is not supported by the evidence of record or is otherwise improper. Finding of Fact 22 states,

“Complainant has a cash flow problem.” Complainant himself testified that the reason for his troubled payment history on the account is due to lack of income from the property. (Tr. 50). Accordingly, the Finding of Fact is amply supported by the record evidence. Moreover, the ALJ did not use such finding as the basis of her decision that Complainant failed to prove that PPL violated the law or a Commission regulation or order.

5. Denied. PPL specifically denies that Finding of Fact 23 is not supported by the evidence of record or is otherwise improper. Finding of Fact 23 states, “the Complainant’s account history revealed chronic late payments.” A review of the Account Statement (PPL Exhibit 1B) clearly reviews that since 2007 Complainant has consistently carried an overdue balance on the account. In fact, in the 2010 calendar year, the Account Statement reveals that Complainant failed to timely pay eleven (11) out of twelve (12) bills. (PPL Exhibit 1B). The ALJ’s finding was completely supported by the evidence. Moreover, the ALJ did not use such finding as the basis of her decision that that Complainant failed to prove that PPL violated the law or a Commission regulation or order.

6. Denied. PPL denies that ALJ Jandebour abused her discretion in denying Complainant’s request for a continuance in order to secure the testimony of Mary Tencza. First, it is important to note that although the notice of hearing for this case at Docket Number C-2011-2229033 was issued on October 6, 2011, Complainant was provided with notice of the hearing on a far earlier occasion. Complainant had also filed a Complaint at Docket Number C-2010-2198079, which asserted a Complaint regarding the same service address. The Complaint at Docket Number C-2010-2198079 was

verified by Mary Tencza. Moreover, the basis of the Complaint was PPL's treatment of Ms. Tencza on one or more telephone calls with PPL representatives. On August 8, 2011, the PUC provided notice of the hearing in such case, to occur on October 18, 2011. As the Complaint at Docket Number C-2010-2198079 pertained to the alleged treatment of Ms. Tencza, Complainant clearly knew of the need to secure the testimony of Ms. Tencza for the October 18, 2011 hearing as early as August 8, 2011. Nonetheless, Complainant never requested a subpoena from the PUC to secure the attendance of Ms. Tencza and never notified the ALJ in August or September that Ms. Tencza would be unavailable for the hearing. In fact, Complainant admitted that he never notified Ms. Tencza in either August or September 2011 of the hearing date. Finally, there was no testimony that Ms. Tencza was outside of the jurisdiction of the PUC and could not be subpoenaed to attend if such was necessary. Rather, Complainant alleged that due to the current employment of Ms. Tencza, in that she works with hospice patients, she was unable to attend. Had she been subpoenaed, an employer would have been required to permit her to attend the hearing. Alternatively, Complainant never even sought permission to have Ms. Tencza testify via telephone. Rather, this was an account which had once again accumulated an outstanding balance (PPL Exhibit 1B), and Complainant was seeking to delay the hearing to prevent a decision which would require payment be made.

7. Denied. PPL denies that the ALJ somehow erred in not specifically making a finding of fact that "PPL checked only one telephone number provided by Ms. Tencza, in Complainant's attempt to corroborate the February 11, 2011 pre-termination telephone call Ms. Tencza made to PPL to corroborate the payment Complainant made

that day, as Ms. Tencza was uncertain which telephone number she had called from, when making the aforesaid call.” As background, when on February 14, 2011, Ms. Tencza alleged she contacted PPL on February 11, 2011 to report the payment made at United Check Cashing, PPL asked Ms. Tencza to provide PPL with the telephone number from where the call was placed so that PPL could perform an electronic search of all calls received by PPL on February 11, 2011 to determine whether in fact PPL had received any calls from the number provided by Ms. Tencza. It is important to note that Ms. Tencza contends that she made the call to PPL on Friday, February 11, 2011, and it was on Monday, February 14, 2011 that PPL asked Ms. Tencza to provide this telephone number. The delay in time from the alleged call until the time Ms. Tencza provided the telephone number was only from a Friday to a Monday. When Ms. Tencza provided the number requested, PPL performed the electronic search and determined that PPL received no telephone call from the number provided by Ms. Tencza. Once PPL was able to verify that in fact Ms. Tencza was incorrect about making such a call, Complainant then asked PPL if they would run a multitude of possible numbers.

It is important to note that no rule or regulation requires PPL to perform the initial electronic search that it voluntarily provided. Moreover, the absence of any finding concerning the electronic telephone record search is actually beneficial to Complainant, when the evidence of record supports PPL’s contention that Complainant made no calls to PPL on February 11, 2011.

8. Denied. PPL denies that Conclusion of Law 4 is not supported by ample evidence of record. Conclusion of Law number 4 provides "The Complainant failed to prove that PPL is responsible for the complaints in both Docket No. C-2010-2198079 and Docket No. C-2011-2229033. The ALJ made twenty-seven (27) detailed Findings of Fact which clearly support her holding of no violation.

Respectfully submitted,

GROSS MCGINLEY, LLP

By: _____


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Attorneys for PPL Electric Utilities Corporation

Date: March 26, 2012

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

THOM GRECO d/b/a PHOENIX ESTATES,	COMPLAINT DOCKET
COMPLAINANT,	NO. C-2011-2229033
VS.	
PPL ELECTRIC UTILITIES CORPORATION,	
RESPONDENT.	

RECEIVED

MAR 26 2012

CERTIFICATE OF SERVICE

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

This is to certify that REPLIES TO EXCEPTIONS OF COMPLAINANT of PPL ELECTRIC UTILITIES CORPORATION TO THE COMPLAINT OF THOM GRECO D/B/A PHOENIX ESTATES, was mailed to counsel/complainant of record on behalf of Complainant by first class United States mail, postage on this the 26th day of March 2012.

VIA U.S. MAIL

THOM GRECO D/B/A PHOENIX ESTATES
P O BOX 2
WILKES-BARRE PA 18703

VIA FEDERAL EXPRESS

ADMINISTRATIVE LAW JUDGE EMBER S. JANDEBEUR
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGE
SCRANTON STATE OFFICE BUILDING
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By: 

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