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File #: 2507/140074

January 30, 2014

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Larry Moyer v. PPL Electric Utilities Corporation
Docket No. C-2011-2273645

Dear Secretary Chiavetta:

Attached please find the Answer of PPL Electric Utilities Corporation to the Motion of J. Larry Moyer for Certification of Interlocutory Order for Immediate Appeal in the above-referenced proceeding. Copies will be provided as indicated on the certificate of service.

Respectfully submitted,

David B. MacGregor

DBM/skr
Attachment

cc: Certificate of Service
Office of Special Assistants (*via email*)

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL:

Jay Larry Moyer
370 West Johnson Street
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Date: January 30, 2014



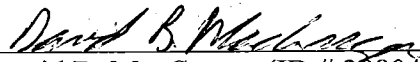
Christopher T. Wright

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Larry Moyer,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2011-2273645
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

**ANSWER OF
PPL ELECTRIC UTILITIES CORPORATION
TO THE MOTION OF LARRY MOYER
FOR CERTIFICATION OF AN INTERLOCUTORY ORDER
FOR IMMEDIATE APPEAL**

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Date: January 30, 2014

Attorneys for PPL Electric Utilities Corporation

Respondent PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) herein files this Answer to the Motion for Certification of an Interlocutory Order for Immediate Appeal (“Motion”) filed by Complainant Larry Moyer (“Mr. Moyer” or the “Complainant”). In the Motion, the Complainant requests that the Pennsylvania Public Utility Commission (1) amend its non-final Opinion and Order issued January 9, 2014, pursuant to 52 Pa. Code § 5.572(a), and (2) certify the Opinion and Order for immediate interlocutory appeal, pursuant to 52 Pa. Code § 5.633. For the reasons explained below, the Complainant’s Motion should be denied. PPL Electric responds to each of the separately-numbered paragraphs of the Motion as follows:

I. INTRODUCTION

1. Admitted in part and denied in part. It is admitted that the Complainant filed an informal complaint with the Commission’s Bureau of Consumer Services (“BCS”), and that the BCS denied the merits of the informal complaint. The BCS decision is a written document, the terms of which speak for themselves. Any interpretation or characterization thereof is denied.

By way of further response, this matter involves the virtual net metering of the electricity usage at a residential account (“satellite account”) with the excess, unused electric generation produced by a separately metered photovoltaic solar account (“host account”) under PPL Electric’s Commission-approved Net Metering for Renewable Customer-Generators tariff provisions. (PPL Electric Ex. Nos. 3, 4.) Under PPL Electric’s virtual net metering program, the Company will “virtually” aggregate the generation produced by a qualifying host account with the usage at a qualifying satellite account for billing purposes. The kilowatt hours (“kWh”) of an eligible host account are credited at the applicable full retail rate to the satellite account to offset usage at the satellite account, with the customer remaining responsible for any remaining net usage at the satellite account that exceeds the credited kWh from the host account. Any excess,

unused net credits are carried forward to subsequent billing periods and applied to offset future usage at the satellite account. The balance of any unused net credits that remain at the end of the PJM Planning Period are paid to the customer at the Price-to-Compare. (PPL Electric Ex. No. 4; Tr. 154-56.)

PPL Electric's Commission-approved tariff provides that net and virtual metering is "available to installations where any portion of the electricity generated by the renewable energy generating system offsets part or all of the customer-generator's requirements for electricity." (PPL Electric Exs. 3, 4.) In this case, it was undisputed that the only load on the Complainant's host account (solar panels) is a light that would not be there if the solar panels were not installed. (Tr. 61, 169.) Ultimately, PPL Electric determined that the Complainant's host account did not qualify for net or virtual metering because it did not have any non-generational load and, therefore, the Company discontinued virtual metering of Complainant's accounts in June 2010. (I.D. Findings of Fact Nos. 36, 46; Tr. 167-69, 172; PPL Electric Ex. No. 5.)

The Complainant thereafter filed an informal complaint with the BCS. (I.D. Findings of Fact No. 42.) On February 2, 2011, the BCS denied the merits of the informal complaint. However, in an effort to fully settle the dispute, PPL Electric agreed to allow Complainant to participate in the virtual metering program. (I.D. Findings of Fact Nos. 36, 44-45, 51.)

2. Admitted in part and denied in part. It is admitted that Administrative Law Judge Cynthia Williams Fordham ("ALJ") issued an Initial Decision on January 23, 2013. The Initial Decision is a written document, the terms of which speak for themselves. Any interpretation or characterization thereof is denied.

By way of further response, despite the fact that PPL Electric agreed to allow Complainant to participate in the virtual metering program, the Complainant's legal counsel filed a Formal Complaint on November 15, 2011. The Formal Complaint alleged that PPL Electric failed to properly aggregate the usage at Complainant's satellite account (residence) with the excess generation produced by Complainant's host account (solar panels), and failed to compensate Complainant for excess generation produced by Complainant's host account. (Complaint, ¶¶ 4.10, 4.15, 4.22-4.23.) The Parties engaged in mediation, exchanged discovery, and exchanged several settlement proposals. However, the Parties were unable to reach a resolution. Consequently, an evidentiary hearing was held on August 15, 2012. At the hearing, the Parties introduced testimony and exhibits in support of their respective positions. The record consists of a 254 page transcript and a total of nineteen exhibits. The record was closed on September 7, 2012.

The ALJ issued the Initial Decision following the close of the record. Therein, the ALJ found that, in an effort to settle the Complainant's concerns, PPL Electric agreed to allow Complainant to be a virtual metering customer and to fully compensate Complainant for the value of the credits he would have received for excess generation as if his accounts were eligible for virtual metering the entire time. (I.D. p. 15.)

3. Admitted in part and denied in part. It is admitted that the Commission issued an Opinion and Order on January 9, 2014. The Opinion and Order is a written document, the terms of which speak for themselves. Any interpretation or characterization thereof is denied.

By way of further response, despite the fact that the Initial Decision concluded that PPL Electric agreed to allow Complainant to be a virtual metering customer and to fully compensate Complainant for the value of the credits he would have received for excess

generation as if his accounts were eligible for virtual metering the entire time, the Complainant filed exceptions to the Initial Decision on March 13, 2013. On March 29, 2013, PPL Electric filed replies to the exceptions. Thereafter, the Complainant filed numerous requests for re-argument and to reopen the record to introduce the electric bills and usage/generation data that have been issued since the evidentiary hearing through the most current bill. PPL Electric timely filed a response to each of the Complainant's requests for re-argument and to reopen the record.

In an Opinion and Order issued January 9, 2014, the Commission vacated the Initial Decision, and granted the Complainant's request to reopen the record for the limited purpose of further developing the record with regard to the bills and credits received by the Complainant from PPL Electric. Because the Commission vacated the Initial Decision and remanded the matter for further proceedings, the Opinion and Order is a non-final, interlocutory order.

With respect to the Complainant's eligibility to participate in virtual or net metering, the Commission found as follows:

As noted, *supra*, PPL has agreed that it will waive its objections to Mr. Moyer's participation in its virtual metering program in an effort to settle the issues and concerns raised in his Complaint. R. Exc. at 10, 15-16. Considering this waiver, we find that it is not necessary for the Commission to address the issue of the prior eligibility of Mr. Moyer's 4.75 kW solar array and his residence for net metering or virtual meter aggregation in this proceeding. With respect to Mr. Moyer's prospective eligibility for net metering or virtual meter aggregation, consistent with the waiver discussed, *supra*, we shall order PPL to continue to permit Mr. Moyer to utilize net metering and virtual meter aggregation for his existing 4.75 kW solar array and residence in the future (subject to future changes in applicable laws or tariffs). Because we have determined that it is not necessary to address this issue in this proceeding and due to the fact that we are vacating the Initial Decision, we shall refer the legal issue raised by this proceeding to the Commission's Law Bureau to consider whether our regulations need to be clarified.

(Opinion and Order, p. 20.) Because the Commission explicitly directed that PPL Electric permit the Complainant to participate in net and virtual metering, the only remaining issue to be resolved is the proper amount of credits and cash-out payments Complainant should have received between April 2009 and the monthly billing periods ending prior to the entry date of the Opinion and Order.

On January 17, 2013, the Complainant filed the pending Motion requesting that the Commission's Opinion and Order be amended to find that this matter involves a "controlling question of law as to which there is a substantial ground for difference of opinion" and that an immediate appeal to the Commonwealth Court may "materially advance the ultimate termination of the matter." Specifically, the Complainant requests that the Commission certify for immediate appeal the issue of whether renewable generating systems must have non-generational load to be eligible to participate in net or virtual metering.

II. ARGUMENT

A. LEGAL STANDARDS

4. Admitted in part and denied in part. It is admitted that Paragraph 4 of the Motion accurately quotes Section 702(b) of the Judicial Code, 42 Pa.C.S. § 702(b). However, Section 702(b) of the Judicial Code is a statute, the terms of which speak for themselves. Any interpretation or characterization thereof is denied.

5. Admitted in part and denied in part. It is admitted that Paragraph 5 of the Motion accurately quotes portions of Section 5.633 of the Commission's regulations, 52 Pa. Code § 5.633, and Rule 1311(b) of the Pennsylvania Rules of Appellate Procedure. The terms of these regulations and appellate rules speak for themselves. Any interpretation or characterization thereof is denied.

By way of further response, the Complainant's Motion seeks to amend the Commission's Opinion and Order pursuant to 52 Pa. Code § 5.572. The Commission may, after notice and after opportunity to be heard, rescind or amend a prior order. 66 Pa.C.S. § 703(g). However, a party requesting amendment of a prior Commission order pursuant to Section 703(g), must demonstrate, among other things, that there are "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed. *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553, 1982 Pa. P.U.C. LEXIS 4 at *12-13 (Dec. 17, 1982). Here, the Complainant's Motion has failed to offer any change in law or fact that has occurred since the Commission issued the interlocutory Opinion and Order.

B. THE INTERLOCUTORY OPINION AND ORDER DOES NOT INVOLVE A CONTROLLING QUESTION OF LAW AS TO WHICH THERE IS A SUBSTANTIAL DIFFERENCE OF OPINION

6. Denied. It is specifically denied that the interlocutory Opinion and Order involves "controlling questions of law as to which there is a substantial difference of opinion." By way of further response, Paragraph 6 of the Motion asserts that the so-called "controlling question of law" involved in the interlocutory Opinion and Order is whether renewable generating systems must have non-generational load to be eligible to participate in net or virtual metering. However, this issue is no longer applicable to the Complainant and the underlying Complaint. The Commission unequivocally stated in the Opinion and Order that "PPL Electric Utilities Corporation shall permit Mr. Moyer to net meter his 4.75 kW solar array and virtually aggregate his two existing metering accounts from when Mr. Moyer's solar array was first connected to PPL Electric Utilities Corporation's system in March 2009, and prospectively, subject to changes in applicable laws or tariffs." (Opinion and Order, Ordering para. 9.) Thus, this issue of whether the Complainant's solar generating facilities qualify for net or virtual

metering has fully been resolved in the Complainant's favor, and is no longer an issue in this proceeding.

In further response, the Complainant has not been harmed by the interlocutory Opinion and Order. To the contrary, the Complainant has in fact benefited from the Opinion and Order by requiring PPL Electric to permit the Complainant to participate in net or virtual metering regardless of whether or not his solar generating facilities qualify under PPL Electric's net meter tariff provisions. In order for the Complaint to appeal this issue to the Commonwealth Court as requested, the Complainant must be aggrieved by the Opinion and Order. Pa. R.A.P. 501; 2 Pa. C.S. § 702; *Beers v. Unemployment Comp. Bd. of Review*, 534 Pa. 605, 633 A.2d 1158 (1993). The Complainant clearly is not "aggrieved" by the Commission's disposition of the issue of whether renewable generating systems must have non-generational load to be eligible to participate in net or virtual metering.

In further response, an immediate appeal of this issue to the Commonwealth Court would not materially advance the ultimate termination of the matter. Indeed, the Commonwealth Court's disposition of this issue would have absolutely no impact on Complainant or his eligibility to participate in net or virtual metering. For example, if the Commonwealth Court concluded that non-generational load *is* required to participate in net or virtual metering, this would not affect the outcome of the Complaint proceeding because PPL Electric has waived this requirement for the Complainant. Similarly, if the Commonwealth Court concluded that non-generational load *is not* required to participate in net or virtual metering, this also would not affect the outcome of the Complaint proceeding because the Commission already has directed PPL Electric to permit the Complainant to participate in net or

virtual metering. Simply stated, the so-called controlling issue that the Complainant seeks to certify for immediate appeal will have no impact on the outcome of this proceeding.

7. Denied. It is specifically denied that the issue of whether renewable generating systems must have non-generational load to be eligible to participate in net or virtual metering will impact the Complainant's prospective eligibility for net or virtual metering. The Commission explicitly directed that PPL Electric permit the Complainant to participate in net and virtual metering from when the solar generating system was first connected "in March 2009, and prospectively, subject to changes in applicable laws or tariffs." (Opinion and Order, Ordering para. 9 (emphasis added).) By way of further response, PPL Electric incorporates Paragraph 6, *supra*, as though fully set forth herein.

It also is denied certifying the Commission's interlocutory Opinion and Order for immediate appeal will impact *other customer generators'* eligibility for net or virtual metering. There are no other customer generators in this proceeding, and the issues raised in the pending Complaint pertain solely to the Complainant. The Complainant is an individual and is not authorized to represent the interests of any other customer generators. *See* 52 Pa. Code §§ 1.21, 1.23 (individuals are only authorized to represent themselves). The Complainant simply does not have standing to assert a request for immediate appeal on behalf of other, unknown customer generators. In any event, the Commission referred this issue to the Commission's Law Bureau to consider whether the net metering regulations need to be clarified. Therefore, any impact to *other customer generators* will be fully considered by the Law Bureau in determining whether it is necessary to clarify the existing regulations.

8. Denied. It is denied that a "substantial difference of opinion" exists as to whether renewable generating systems must have non-generational load to be eligible to participate in net

or virtual metering. This issue has been fully resolved by the Commission by directing PPL Electric to permit the Complainant to participate in virtual or net metering. The Complainant has not been harmed, and in fact has benefited, from the Opinion and Order, and PPL Electric agrees to permit the Complainant to participate in virtual or net metering. Thus, there is no “substantial difference of opinion” as it pertains to the Complainant. By way of further response, PPL Electric incorporates Paragraph 6, *supra*, as though fully set forth herein.

9. Denied. Paragraph 9 of the Motion references and selectively quotes a portion of PPL Electric’s net metering tariff provision. PPL Electric’s net metering tariff provision is a Commission-approved written document, the terms of which speak for themselves. Any interpretation or characterization thereof is denied.

In further response, in an effort to fully settle the dispute, PPL Electric agreed to allow Complainant to participate in the virtual metering program. Further, the Commission directed PPL Electric to continue to permit the Complainant to utilize net metering and virtual meter aggregation, subject to future changes in applicable laws or tariffs. Accordingly, there is no “substantial difference of opinion” as to whether the Complainant may participate in net or virtual metering. By way of further response, PPL Electric incorporates Paragraph 6, *supra*, as though fully set forth herein.

10. Denied. Net and virtual metering is available to any and all renewable generators that comply with the requirements of a customer generator under PPL Electric’s Commission-approved net metering tariff provisions. By way of further response, the Commission referred this issue to the Commission’s Law Bureau to consider whether the net metering regulations need to be clarified.

11. Denied. Paragraph 11 of the Motion references PPL Electric's net metering tariff provisions and the Alternative Energy Portfolio Standards Act ("AEPS Act"), 73 P.S. §§ 1648.1 – 1648.8 and 66 Pa.C.S. § 2814. PPL Electric's net metering tariff provision is a Commission-approved written document and the AEPS Act is a statute. The terms PPL Electric's tariff and the AEPS Act which speak for themselves. Any interpretation or characterization thereof is denied.

It also is denied that the Complainant's expert "emphatically affirmed that Complainant has load on his account. It was undisputed that the only load on the Complainant's host account (solar panels) is a light that would not be there if the solar panels were not installed. (Tr. 61, 169.)

12. Admitted in part and denied in part. It is admitted only that the Commission promotes alternative generating sources. The remainder of the averments of Paragraph 12 of the Motion are denied. Paragraph 12 of the Motion references the Commission's *Policy Statement in Support of Pennsylvania Solar Projects Final Policy Statement Order*, Docket No. M-2009-2140263, (Order entered September 16, 2010). This policy statement is a written order of the Commission, the terms of which speak for themselves. Any interpretation or characterization thereof is denied.

13. Denied. It is denied that an immediate appeal of the issue of whether renewable generating systems must have non-generational load to be eligible to participate in net or virtual metering "will set the future course of virtual metering in Pennsylvania," and that a "delay in addressing these critical questions of law will only result in missed opportunities for advancement in solar renewable energy." As explained above, this issue has been fully resolved as it pertains to the Complainant, and the Complainant is not authorized to represent other

customer generators in this proceeding. Simply stated, there is no outstanding issue to be appealed to the Commonwealth Court. By way further response, PPL Electric incorporates Paragraphs 6 and 7, *supra*.

C. THERE IS NO OUTSTANDING ISSUE TO BE APPEALED TO THE COMMONWEALTH COURT

14. Denied. It is denied that an immediate appeal from the Opinion and Order would materially advance the ultimate termination of this matter. As explained above, there is no outstanding issue to be appealed to the Commonwealth Court. By way further response, PPL Electric incorporates Paragraphs 6 and 7, *supra*.

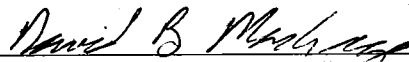
15. Denied. It is denied that an immediate appeal from the interlocutory Opinion and Order would provide guidance to the Commission and the industry going forward. As explained above, this issue has been fully resolved as it pertains to the Complainant, and the Complainant is not authorized to represent other customer generators in this proceeding. Simply stated, there is no outstanding issue to be appealed to the Commonwealth Court. By way further response, PPL Electric incorporates Paragraphs 6 and 7, *supra*.

III. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission deny the Motion for Certification of an Interlocutory Order for Immediate Appeal filed by Larry Moyer.

Respectfully submitted,

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