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February 12, 2014

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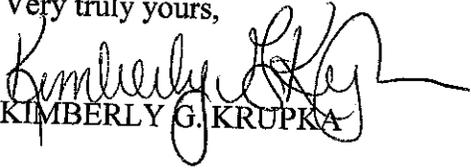
RE: Jere Lefever v PPL Electric Utilities Corporation
Docket No: C-2013-2367314

Dear Ms. Chiavetta:

Enclosed for eFiling in the above-captioned matter is an original of the Exceptions of PPL Electric Utilities Corporation to the Initial Decision, along with the attached Certificate of Service.

Pursuant to 52 Pa. Code §1.11, the enclosed document is to be deemed eFiled on the date as indicated above.

Thank you for your cooperation in this matter.

Very truly yours,

KIMBERLY G. KRUPKA

KGK/ejm
Enclosure

cc: Jere Lefever (w/ enc.)
Administrative Law Judge Susan D. Colwell (w/ enc.); via email and U.S. Mail
Kimberly R. Safford (w/ enc.); via email only
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PENNSYLVANIA PUBLIC UTILITY COMMISSION

JERE LEFEVER,

Complainant,

vs.

PPL ELECTRIC UTILITIES CORPORATION,

Respondent.

COMPLAINT DOCKET

NO. C-2013-2367314

**EXCEPTIONS OF PPL ELECTRIC UTILITIES CORPORATION TO
THE INITIAL DECISION**

PPL Electric Utilities Corporation ("PPL Electric") herein files these Exceptions pursuant to the Secretarial Letter dated January 23, 2014, and Section 5.535 of the Pennsylvania Public Utility Commission's ("Commission") regulations, 52 Pa. Code § 5.535. In an Initial Decision dated January 13, 2014, Administrative Law Judge Susan D. Colwell ("ALJ") concluded that the Complainant Jere Lefever ("Complainant") failed to meet his burden to demonstrate that PPL Electric violated Act 54 of the Public Utility Code, 66 Pa.C.S. § 1529.1. However, the Initial Decision found that PPL Electric provided incorrect information to the Complaint, which the Initial Decision concluded was inadequate service in violation of 66 Pa.C.S. § 1501. The Initial Decision therefore ordered PPL Electric to pay a civil penalty. PPL Electric herein takes exception to certain limited portions of the Initial Decision. In support thereof, PPL Electric states as follows:

I. INTRODUCTION AND BACKGROUND

On May 31, 2013, the Complainant filed a formal Complaint against PPL Electric alleging a violation of Act 54, 66 Pa.C.S. § 1529.1. Specifically, the Complainant

alleged that he should not be responsible for the arrearage accrued by his tenant prior to the tenant's account being transferred to Complainant following service termination for nonpayment and discovery of foreign load on the tenant's meter. On June 27, 2013, PPL filed its Answer admitting the allegations and stating further that the Company actions were in accordance with applicable law.

An evidentiary hearing was held on November 25, 2013. At the hearing, the parties presented testimony and moved their respective exhibits into the record. The record closed on December 19, 2013.

The Initial Decision was issued by Secretarial Letter dated January 23, 2014. Therein, the Initial Decision concluded that the Complainant failed to meet his burden to demonstrate that PPL Electric acted in any way that violated Act 54 and, therefore, found in favor of PPL Electric on the merits. (Initial Decision, Conclusion of Law Nos. 7-9) However, the Initial Decision found that a PPL Electric representative gave the Complainant incorrect information about the arrearage and the landlord/tenant accounts and, therefore, concluded that PPL Electric provided inadequate service in violation of Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501. (Initial Decision, Conclusions of Law No. 10) Finding a violation of the Public Utility Code, the Initial Decision applied the standards developed in *Joseph A. Rosi v. Bell-Atlantic, et al.*, Docket No. C-009924409, 2000 Pa. PUC LEXIS 5 (March 16, 2000), and adopted by the Commission's Policy Statement at 66 Pa.C.S. § 69.1201 (hereinafter, "Rosi factors"), and imposed a civil penalty of \$1,000. (Initial Decision, pp. 7-12)

PPL Electric herein takes exception to certain, limited portions of the Initial Decision. PPL Electric does not except to any of the Initial Decision's Findings of Fact

or Conclusions of Law. Similarly, PPL Electric does not except to the finding that a PPL Electric representative gave the Complainant incorrect information, nor does PPL Electric except to the amount of the civil penalty. Rather, PPL Electric's exceptions are limited to the discussion of the Rosi factors. Specifically, certain of the Initial Decision's findings set forth in the discussion of the Rosi factors are without record support and should not be adopted by the Commission as part of its final Order in this proceeding.

II. EXCEPTIONS

The Commission has promulgated a Policy Statement that has adopted the ten Rosi factors. *See* 52 Pa. Code § 69.1201. The Commission may consider these factors in evaluating whether a civil penalty should be imposed for violating a Commission order, regulation, or statute. These factors are: (i) whether the conduct at issue was of a serious nature; (ii) whether the resulting consequences of the conduct at issue were of a serious nature; (iii) whether the conduct at issue was deemed intentional or negligent; (iv) whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) the number of customers affected and the duration of the violation; (vi) the compliance history of the regulated entity that committed the violation; (vii) whether the regulated entity cooperated with the Commission's investigation; (viii) the amount of the civil penalty or fine necessary to deter future violations; (ix) past Commission decisions in similar situations; and (x) Other relevant factors. 52 Pa. Code § 69.1201(c).

In this case, the Initial Decision concluded that PPL Electric provided inadequate service in violation of Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501. Without any notice to the parties and without any opportunity to introduce or respond to

any evidence, the Initial Decision found that certain of the Rosi factors applied and warranted a higher civil penalty on PPL Electric for violating Section 1501 of the Public Utility Code. Although PPL Electric does not take any exception to the finding of a violation or to the imposition of the civil penalty, the Initial Decision's determinations for certain of the Rosi factors are not supported by the record in this case and should not be adopted by the Commission in its final Order in this proceeding.

A. Exception No. 1 – The record fails to support a finding that the PPL Electric representative *intentionally* provided incorrect information to the Complainant.

The third Rosi Standard provides as follows:

- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

66 Pa.C.S. § 69.1201(c)(3). Here, the Initial Decision found that “[a]s customer service representatives are highly trained to provide only information that they are certain is correct, the only conclusion possible is that the dissemination of misinformation was intentional, which supports a higher penalty.” (Initial Decision, p. 9) The Initial Decision's finding under the third Rosi Standard is not supported by evidence of record.

There is no evidence of record to establish that the one-time communication of incorrect information by a PPL Electric customer service representative was *intentional*. Merely because a piece of erroneous information was communicated by a PPL Electric customer service representative to the Complainant does not, either under the facts of record in this case, or the law of the Commonwealth, mean that the “only possible conclusion” is that the misstatement was “intentional.” In fact, that conclusion does not, and cannot, be drawn from the facts of record in this case.

Although Complainant was unfortunately given incorrect information by a customer service representative on one occasion, the evidence of record clearly establishes that this was an isolated mistake, and that other customer service representatives did, in fact, provide the correct information. (Tr. 31) At most, the record evidence suggests that the incorrect information was simply a mistake. This evidence cannot support a finding of *intentional* conduct.

B. EXCEPTION No. 2 - The record fails to support a finding that this was *not* an isolated incident

The sixth Rosi Standard provides as follows:

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

66 Pa.C.S. § 69.1201(c). Applying the sixth Rosi Standard, the Initial Decision found as follows:

This utility has 1.4 million distribution customers, and there are always service complaints pending against it. In addition, there are the occasional investigations instituted by Commission staff. *See e.g. Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, M-2011-2196342 (Order entered October 4, 2011); M-2009-2059414 (Order entered November 19, 2009); M-2009-2058182 (order entered September 10, 2009); and M-2008-2057562 (Order entered March 29, 2009). Th[e case at issue] is not an isolated incident.

(Initial Decision, p. 10) The Initial Decision's finding under the sixth Rosi Standard is not supported by evidence of record for several reasons.

First, the only evidence of record suggests that the mistake made by the customer service representative was in fact limited to one isolated incident. There is nothing in the record that suggests that other customer service representatives have misinformed this or

any other customer about arrearages on accounts in foreign load landlord/tenant situations.

Second, the Initial Decision erred in relying on the fact that PPL Electric has 1.4 million distribution customers and that PPL Electric has “service complaints pending against it.” There is nothing in the record to indicate whether these other service complaints were dismissed, settled, or resulted in any finding that PPL Electric violated the Public Utility Code. Simply because a case is filed against a utility does not mean that the allegations have merit. Further, although the Commission may take administrative notice of other cases, the principles of due process require that parties be given notice that the adjudicating body is considering specified information where the fact finder relies on officially noticed facts for its determination. *Pennsylvania Bankers Association v. Pa. Department of Banking*, 981 A.2d 975, 995 (Pa. Cmwlth. 2009). The Commonwealth Court has explained that:

Before an administrative agency in adjudication can base its findings on information contained in the records of other cases decided by itself, it must appear on the record that notice was given to the parties of record that the adjudicating body is considering specified information..... Only in this way can a party’s fundamental due process rights of notice and opportunity to be heard be protected.

West Penn Power Co. v. Pa. P.U.C., 412 A.2d 903, 906 (Pa. Cmwlth. 1980) (quoting *City of Erie v. Pa. P.U.C.*, 398 A.2d 1084, 1086 (Pa. Cmwlth. 1979)).

Third, the Initial Decision overlooks that the staff initiated informal investigations in *Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, M-2011-2196342 (Order entered October 4, 2011); M-2009-2059414 (Order entered November 19, 2009); M-2009-2058182 (order entered September 10, 2009); and M-2008-2057562 (Order entered March 29, 2009), all resulted in *settlements*. Each of these settlements were

approved by the Commission without any finding of any liability, fault, wrongdoing or violation of the Public Utility Code, Commission regulations, or Commission orders. These settled staff-initiated investigations cannot be considered evidence of a history of non-compliance.

In short, there is no factual or legal support for the conclusion that a one-time misstatement by a customer service representative should be “connected” to: the reality that PPL Electric has many customers; the fact that like every utility in the Commonwealth, PPL Electric has service complaints filed by customers pending against it; or the fact that PPL Electric has entered into settlements of staff-initiated informal investigations. All of the facts of record, and the law, dictate that a single misstatement made by a customer service representative is “an isolated incident.”

C. EXCEPTION No. 3 – The record fails to support a finding of a lack of cooperation on the part of PPL Electric.

The seventh Rosi Standard provide as follows:

(7) Whether the regulated entity cooperated with the Commission’s investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

66 Pa.C.S. § 69.1201(c)(7). The Initial Decision applied the seventh Rosi Standard and found, among other things, that (1) PPL Electric failed to provide a witness who could credibly sponsor the very exhibits submitted in advance of the hearing, and (2) PPL Electric failed to attempt to resolve the Complaint prior to the hearing. (Initial Decision, pp. 10-11) The conclusions reached by the Initial Decision are not supported by the record.

As a preliminary matter, the seventh Rosi Standard does not appear to apply to customer complaints. Rather, the plain language of 69.1201(c)(7) indicates that this

factor is applicable to Commission-initiated investigations. It is clear that the purpose of this provision of the Commission's Policy Statement is to encourage utilities to cooperate with informal and formal investigations undertaken by the Commission. There is no indication that this factor is applicable to formal customer complaints.

As the Initial Decision noted, utility respondents routinely submit a statement of customer contacts and a statement of account prior to the hearing. In fact, many prehearing orders require that such information be served on the ALJ and the complainant in advance of the hearing. However, PPL Electric is unaware of any requirement that the utility rely on and/or move this information into the record if it is not used by any of the parties in support of their positions.

In this case, the prehearing order did not direct the parties to pre-file any specific exhibits. Although PPL Electric served the statement of customer contacts and a statement of account in advance of the evidentiary hearing, neither PPL Electric nor the Complainant relied upon these documents in support of their respective cases. Therefore, PPL Electric did not move them into the record. Further, although PPL Electric did not move these documents into the record, PPL Electric's witness did attempt to respond to questions concerning these documents. (Tr. 25-27) Under these circumstances, the record fails to support a finding that PPL Electric was uncooperative with respect to documents that neither PPL Electric nor the Complainant intended to use and introduce into the record in support of their respective positions.

Further, the record fails to support a finding that PPL Electric did not attempt to resolve the Complaint prior to the hearing. In this case, the record demonstrates that a resolution conference took place in this case between Complainant and PPL Electric. (Tr.

4) Clearly, that conference did not resolve the case as the matter proceeding to hearings. The record also demonstrates that PPL Electric made additional efforts to resolve the case immediately prior to the hearing. (Tr. 4-5) The evidence fails to demonstrate that PPL Electric had a “lack of communication” with Complainant about resolving the case, or was unwilling to attempt to resolve this matter with Complainant.

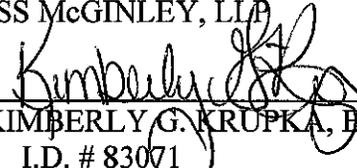
III. CONCLUSION

Based on the foregoing, certain of the findings set forth in the Initial Decision’s discussion of the Rossi factors are without record support. Notwithstanding, PPL Electric does not take any exception to the finding of a violation, to the imposition of the civil penalty, or to the penalty amount.

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Public Utility Commission grant these Exceptions and not adopt the Initial Decision’s discussion of the Rossi Standards in its final Order in this proceeding.

Respectfully submitted,

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By: 

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*Attorney for PPL Electric Utilities
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Dated: February 12, 2014
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JERE LEFEVER,

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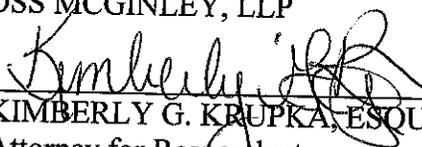
CERTIFICATE OF SERVICE

KIMBERLY G. KRUPKA, ESQUIRE, hereby certifies under penalty of perjury that she served a true and correct copy of the EXCEPTIONS OF PPL ELECTRIC UTILITIES CORPORATION TO THE INITIAL DECISION, via Electronic Mail and United States Postal Service, first class mail, postage pre-paid on the 12th day of February, 2014, upon the following:

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