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File #: 140074

September 26, 2014

***VIA ELECTRONIC FILING***

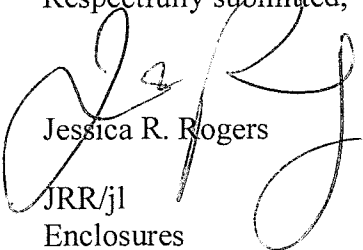
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Alan Haulman, d.b.a. AJH Pizza Inc. v.  
PPL Electric Utilities Corporation  
Docket No. C-2014-2415273**

Dear Secretary Chiavetta:

Enclosed for filing is the Request for Relief of PPL Electric Utilities Corporation in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Jessica R. Rogers  
JRR/jl  
Enclosures

cc: Honorable Dennis J. Buckley  
Certificate of Service

## CERTIFICATE OF SERVICE

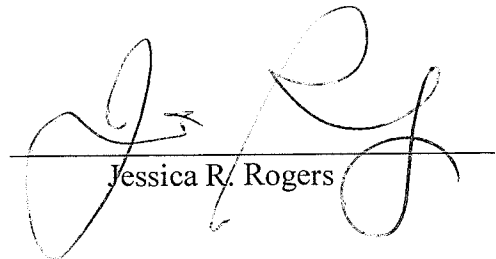
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

### VIA E-MAIL & FIRST CLASS MAIL

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Date: September 26, 2014



Jessica R. Rogers

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alan Haulman, d.b.a. AJH Pizza Inc.,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2014-2415273
	:	
PPL Electric Utilities Corporation	:	
	:	
Respondent.	:	

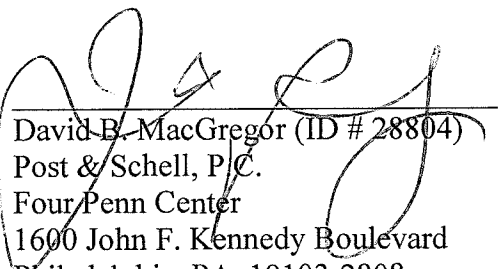
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**NOTICE TO PLEAD**

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YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE §§ 5.103(c), YOU MAY ANSWER THE ENCLOSED MOTION WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. YOUR ANSWER SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

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Of Counsel:

Post & Schell, P.C.

Date: September 26, 2014

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alan Haulman, d.b.a. AJH Pizza Inc.,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2014-2415273
	:	
PPL Electric Utilities Corporation	:	
	:	
Respondent.	:	

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**REQUEST FOR RELIEF OF  
PPL ELECTRIC UTILITIES CORPORATION**

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TO ADMINISTRATIVE LAW JUDGE DENNIS J. BUCKLEY:

AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric” or the “Company”), by and through its attorneys, Post & Schell, P.C., and files this Request for Relief pursuant to Section 5.103 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.103. PPL Electric requests that the parties be directed to file written testimony in this proceeding. As explained herein, granting this Request for Relief is consistent with the Commission’s regulations, will increase the ability of the parties to expeditiously litigate this proceeding, will greatly reduce the cost and time associated with the litigation of this case, and will make a more effective use of administrative resources. Blue Pilot Energy (“Blue Pilot”), co-respondent in this case, has indicated to PPL Electric that it supports PPL Electric’s Request for Relief.<sup>1</sup> In support of this Request for Relief, PPL Electric states as follows:

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<sup>1</sup> Counsel for Complainant indicated that they have no objection to opposing parties using written testimony, but objected to the use of written testimony for Complainant. Counsel for Complainant, however, overlooks the impracticality of not having the party with the burden of proof in this proceeding, *i.e.*, the Complainant, file its direct case first. Further, while noting that the Commission encourages the use of written testimony, counsel for the

## **I. INTRODUCTION AND BACKGROUND**

1. PPL Electric furnishes electric service to approximately 1.4 million customers throughout its certificated service territory, which includes all or portions of twenty-nine counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania. PPL Electric is a “public utility” and an “electric distribution company” as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 102, 2803. PPL Electric provides electric service pursuant to its Commission-approved tariff.

2. Complainant Alan Haulman is the current owner of AJH Pizza. AJH Pizza is a small commercial customer of PPL Electric, taking service pursuant to Rate Schedule GS-3, with a billing address of 6581 Carlisle Pike, Mechanicsburg, Pennsylvania 17050.

3. On November 21, 2012, PPL Electric received an enrollment request for the AJH Pizza account, effective January 3, 2013, to transfer the business from default service to competitive electric generation supplied by Blue Pilot, an electric generation supplier (“EGS”) in PPL Electric’s service territory. Pursuant to its standard practice regarding a customer’s selection of competitive generation supply in effect at the time, on November 22, 2012, PPL Electric sent a notification letter to AJH Pizza at the billing address on the account, which is identified in Paragraph 2, *supra*. The letter informed AJH Pizza of the selected EGS, and the date the selection would become effective. The letter also stated that if AJH Pizza did not select Blue Pilot, then PPL Electric should be contacted directly. The letter included a contact number for PPL Electric.

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Complainant stated that they would oppose this motion because written testimony was unnecessarily complex and expensive. PPL Electric addresses and disproves these two claims herein.

4. PPL Electric does not have any record indicating that anyone associated with the AJH Pizza account contacted PPL Electric regarding the contents of the letter or disputing the selection of Blue Pilot as the EGS.

5. Consistent with the information received from Blue Pilot on November 21, 2012, AJH Pizza began receiving competitive electric generation supply from Blue Pilot effective January 3, 2013. Every bill issued after January 3, 2013 clearly indicated that Blue Pilot was the EGS for AJH Pizza.

6. On or about April 2, 2014, Complainant filed the above-captioned Complaint with the Commission. In addition to the allegations included in Paragraph 4 of the Commission's Formal Complaint form, Complainant attached copies of the first page of the AJH Pizza bill for the months January, February, and March of 2014. These bills have the same billing address identified in Paragraph 2, *supra*, which has been the billing address on the account since prior to the switch from default service to the EGS.

7. PPL Electric was served with the Complaint by a Secretarial Letter dated April 10, 2014.

8. The entirety of the factual allegations in the complaint state as follows:

At some point the electric company for the property located at 6581 Carlisle Pike, Mechanicsburg, PA 17050 was switched from PPL Electric to Blue Pilot Energy. The account was in the name of AJH Pizza Inc. and no one with any authority to act on behalf of the corporation authorized the change to Blue Pilot Energy. Further, no written contract exists between Blue Pilot Energy and AJH Pizza Inc. AJH Pizza Inc. was never made aware of the switch from PPL Electric to Blue Pilot Energy, and did not notice the switch on their PPL Electric bills, since the rate was largely similar until January 2014.

As of January 6, 2014, Blue Pilot Energy was charging \$0.1090 per Kilowatt-hour, and AJH Pizza Inc. had an electric bill in the amount of \$2,859.66, \$2,525.81 of which came from Blue Pilot Energy. As of February 10, 2014, Blue Pilot Energy increased their charges to \$0.4490 per Kilowatt-hour, and AJH Pizza Inc. saw their electric bill increase to

\$12,801.91, \$12,441.00 of which came from Blue Pilot Energy. On March 6, 2014, AJH Pizza Inc. received additional charges from Blue Pilot Energy in the amount of \$12,057.89. AJH Pizza Inc. now owes PPL Electric a total of \$25,415.48.

9. In Paragraph 5 of the Commission's Formal Complaint form, Complainant requested that the Commission find that AJH Pizza was billed incorrectly as a result of an unauthorized switch from PPL Electric to Blue Pilot, and that AJH Pizza be given a credit in the amount of the difference between Blue Pilot's bill for February and March and the default service price which would have been charged by PPL Electric during those months.

10. On April 30, 2014, PPL Electric filed an Answer to the Complaint.

11. By Initial Telephonic Hearing Notice dated July 7, 2014, the Commission scheduled an initial hearing in this matter for August 27, 2014, before the Honorable Administrative Law Judge Dennis J. Buckley ("ALJ").

12. On July 10, 2014, Complainant requested a continuance of the hearing date.

13. On July 17, 2014, the ALJ issued an Order continuing the initial hearing scheduled for August 27, 2014.

14. On July 22, 2014, PPL Electric served its Interrogatories and Requests for Production of Documents Propounded by PPL Electric Utilities Corporation on Alan Haulman, d.b.a. AJH Pizza, Inc. – Set I ("PPL Electric Interrogatories Set I").

15. Complainant provided responses to PPL Electric Interrogatories Set I on August 18, 2014.

16. The allegations and claims in the Complaint arise from the relationships and associated obligations between the customer, the EGS, and PPL Electric. (*See* Complaint, Paragraph 4.) Numerous witnesses will be required in order to thoroughly describe the obligations associated with each party.

17. Further, Complainant has claimed that there is a question of corporate authority, which is a novel subject before the Commission. Unless the parameters of this claim are thoroughly fleshed out in direct testimony, PPL Electric will need to conduct additional discovery, including depositions of individuals associated with AJH Pizza.

18. Therefore, for the reasons more fully explained below, PPL Electric is herein requesting that the ALJ require the parties to file written testimony, or in the alternative extend the hearing date so that PPL Electric can depose all relevant parties and conduct thorough discovery prior to the evidentiary hearing.

## **II. ARGUMENT**

### **A. The Commission Generally Favors Written Testimony.**

19. The Commission encourages the use of written testimony. 52 Pa. Code § 5.412. This is particularly true where experts are involved. *Id.* Written testimony allows parties to present a clear and concise statement of their case, without the flaws associated with oral testimony. Those flaws include innocent erroneous statements, transcription errors, and mistaken or incomplete references to associated documents and calculations.

20. Written testimony is no more complex in its presentation than oral testimony, particularly when a party has counsel to provide guidance in the process of preparing that testimony. All parties to this proceeding are represented by counsel, and are therefore capable of preparing written testimony.

21. Further, oral testimony requires preparation of witnesses in many of the same ways that written testimony requires attorney participation. As a result, oral testimony is substantially similar to written testimony in cost, time investment, and complexity.

22. In addition, the use of written testimony may reduce the scope of this proceeding and limit the number of witnesses that PPL Electric and Blue Pilot present. This has a clear cost

and efficiency benefit to all parties, because Complainant will not need to conduct discovery, depositions, or cross-examination of those witnesses who would no longer be needed.

23. PPL Electric currently plans to present expert witnesses which may not be needed after a review of the direct testimony of the Complainant. However, if these experts are needed, they will provide testimony on the relationship between electric distribution companies and electric generation suppliers, including detailed discussion of the Company's tariff and supplier rules, as well as prior Commission approvals, rule makings, and policy. Such testimony will likely be long and fairly complex, and would be more efficiently presented in written form.

24. Further, Complainant appears to have raised a novel issue before the Commission as part of its intended case. Complainant asserts that there is a question of whether an employee had corporate authority to authorize the switch from default service to an EGS. Based upon the initial discovery conducted by PPL Electric in this proceeding, the evidence required to address this issue will involve numerous lengthy corporate documents associated with the operation of AJH Pizza.

25. Given that the Commission encourages the use of written testimony, that there is a likelihood that the evidence in this case will be complex and novel, and that no party will be disadvantaged by the use of written testimony because all parties have competent counsel to assist in the preparation and review of said written testimony, PPL Electric submits that written testimony is appropriate and reasonable for this proceeding.

26. As noted above, Complainant does not object to opposing parties filing written testimony, but does object to any requirement that it also file written testimony. However, such a bifurcated approach could not possibly work. Complainant has the burden of proof and must present its case first. PPL Electric and Blue Pilot could not prepare their testimony until after

they have reviewed Complainant's testimony. For this reason, PPL Electric submits that, if written testimony is to be used in this case, all parties should be required to follow that procedure.

**B. The Use of Written Testimony Will Minimize the Need for Additional Discovery.**

27. One significant benefit of the use of written testimony is that such testimony may minimize the need for parties to conduct additional discovery. In the instant proceeding, and at a minimum, written testimony will obviate the need for PPL Electric to depose four witnesses identified by the Complainant in response to discovery. Depositions have a significant cost impact on all parties, which should be avoided where it is possible to do so without impacting the ability of all parties to present their case. Unfortunately, without written testimony, the depositions may be necessary in order to establish the facts surrounding the management of AJH Pizza in order to determine whether or not corporate authority existed.

28. In addition to avoiding depositions that otherwise may be necessary, written testimony will limit the scope of any additional written discovery that is conducted. At this point, PPL Electric has served only one set of interrogatories upon the Complainant. PPL Electric believes that it would be in the best interest of all parties to limit the amount of discovery that is required in this proceeding. However, if this motion is not granted, then PPL Electric will be forced to conduct additional discovery to establish the basic facts associated with the claims regarding corporate authority.

**C. The Use of Written Testimony Will Conserve Administrative Resources.**

29. The use of written testimony in this proceeding will conserve administrative resources.

30. Currently, the Complainant has identified four witnesses it intends to call for the evidentiary hearing. PPL Electric was not able to ascertain the scope of the Complainant's direct case against PPL Electric through interrogatories, because Complainant merely restated Paragraph 4 of his complaint in its entirety in response to PPL Electric Interrogatories Set I-3. Further, PPL Electric is unaware of the relief sought by the Complainant as to PPL Electric, because Complainant restated Paragraph 5 of his complaint in its entirety in response to PPL Electric Interrogatories Set I-8.

31. As a result, PPL Electric is currently planning to present the testimony of three witnesses, including two expert witnesses on issues associated with rates, purchase of receivables, and supplier issues. In addition, PPL Electric will present a witness to discuss the specific account history of AJH Pizza. Blue Pilot has indicated that they currently plan to present at least one witness at the hearing, in addition to the witnesses presented by PPL Electric.

32. The number of witnesses involved will require lengthy direct and cross-examination. All witnesses will potentially be subject to cross-examination by two different parties. As noted previously in this motion, there will be large documents that will be presented as exhibits.

33. It would be far more expedient to prepare written testimony, and to limit the hearing to cross-examination. The use of written testimony would reduce the administrative burden of this proceeding.

34. Preparation of written testimony may also result in parties needing to present fewer witnesses if certain topics are not covered in the direct case of the Complainant. At this

point, however, PPL Electric must prepare for all possible topics because the Complainant has failed to provide specific facts and allegations as to the actions of PPL Electric.

35. It is readily apparent that written testimony would conserve the limited administrative resources of the Commission, in addition to reducing the cost of litigating this proceeding for the parties.

**D. PPL Electric Requests an Extension of the Procedural Schedule.**

36. As indicated previously in this Request for Relief, if written testimony is not ordered in this proceeding, PPL Electric will be required to conduct additional discovery, including depositions.

37. PPL Electric would need approximately two additional months to conduct thorough discovery and depositions of the necessary parties to this proceeding.

38. Therefore, if PPL Electric's Request for Relief as to written testimony is denied, PPL Electric requests in the alternative that the hearing date be moved back until early 2015, in order to give the parties adequate time to investigate the facts underlying the Complainant's claims.

**III. CONCLUSION**

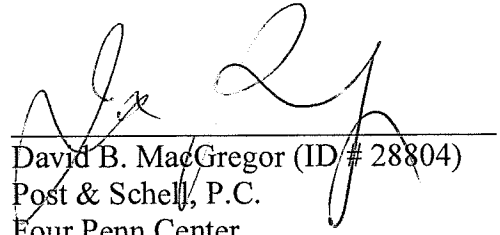
39. PPL Electric incorporates by reference Paragraphs 1 through 38, *supra*, as though set forth fully herein.

40. Written testimony is appropriate in this proceeding, because it facilitates the prudent use of the parties' and the Commission's resources, and would be a more effective method for presenting the potentially complicated and novel issues being raised in this proceeding.

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Honorable Administrative Law Judge Dennis J. Buckley enter an order granting this Request for Relief and scheduling a prehearing conference to establish a litigation schedule which includes the submission of written testimony.

Respectfully submitted,

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Date: September 26, 2014

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