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File #: 140074

November 21, 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: Jay Larry Moyer v. PPL Electric Utilities Corporation
Docket Nos. C-2011-2273645 & C-2014-2444864

Dear Secretary Chiavetta:

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

Respectfully submitted,

Christopher T. Wright

CTW/jl
Enclosure

cc: Honorable Cynthia Williams Fordham (*via E-mail & First Class Mail*)
Certificate of Service

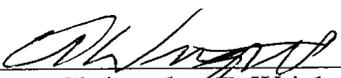
CERTIFICATE OF SERVICE

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
Apartment C-1
Philadelphia, PA 19144
E-mail: gtown73@hotmail.com

Date: November 21, 2014



Christopher T. Wright

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jay Larry Moyer,	:	
Complainant	:	Docket Nos. C-2011-2273645
v.	:	C-2014-2444864
	:	
PPL Electric Utilities Corporation	:	
Respondent	:	

**PREHEARING CONFERENCE MEMORANDUM OF
PPL ELECTRIC UTILITIES CORPORATION**

TO ADMINISTRATIVE LAW JUDGE
CYNTHIA WILLIAMS FORDHAM:

AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric”), by and through its attorneys, and files this Prehearing Conference Memorandum in the above-captioned matter pursuant to the Prehearing Order #2 on Remand issued on November 13, 2014, and states as follows:

I. PROCEDURAL HISTORY

On November 15, 2011, Jay Larry Moyer (“Complainant”), through counsel, filed a Formal Complaint at Docket No. C-2011-2273645 (“First Complaint”) against PPL Electric regarding the billing and payments for virtual net metering electric service provided to the Complainant’s house and solar panels connected to PPL Electric’s distribution system at two separate locations in Klingerstown, Pennsylvania.

In the First Complaint, the Complainant alleged that PPL failed to properly aggregate his accounts under the virtual net metering provisions of PPL Electric’s Net Metering for Renewable

Customer-Generators Rider (“Net Metering Rider”), and that consequently he did not receive proper credits or payments for the electricity that was generated by his solar panels. As relief, the First Complaint requested that the Commission order PPL Electric to apply virtual net metering to his two accounts, disclose all credits and/or payments that have been made to him, and, if necessary, fully reimburse him for the electricity generated.

An evidentiary hearing on the First Complaint was held on August 15, 2012, before Administrative Law Judge (“ALJ”) Cynthia Williams Fordham. By Initial Decision issued February 22, 2013, the ALJ dismissed the First Complaint.

On March 15, 2013, the Complainant filed Exceptions to the Initial Decision, with a Request for Oral Argument. In the Exceptions, the Complainant reiterated his concerns with PPL Electric’s billing, credits, and payments for virtual net metering. PPL Electric filed Reply Exceptions on March 29, 2013. Thereafter, the Complainant filed numerous requests to reopen the record and submit additional information in support of his First Complaint. PPL Electric filed responsive pleadings.

On January 9, 2014, the Commission issued an Opinion and Order, vacating the Initial Decision and remanding the First Complaint to the Office of Administrative Law Judge for further proceedings as may be required to address the accuracy of the bills and credits provided by PPL Electric for the Complainant’s virtually net metered accounts. *Larry Moyer v. PPL Electric Utilities Corporation*, Docket No. C-2011-2273645, pp. 20-21 (Opinion and Order entered Jan. 9, 2014) (“*January 2014 Order*”). The Commission also ordered: (i) PPL Electric to submit additional data; (ii) for the parties to attempt to resolve the Complainant’s issues related to billing, credits and payments; (iii) that the Complainant may request further hearings, but must it his request delineate specific errors in the bills, credits and payments rendered by

PPL Electric; and (iv) PPL Electric shall permit the Complainant to virtually aggregate his two existing metering accounts from March 2009 and prospectively, subject to changes in applicable laws or tariffs. *See January 2014 Order*, Order Paragraphs 6-9.

On January 17, 2014, the Complainant filed a Motion for Certification of Interlocutory Order for Immediate Appeal of the First Complaint. On January 30, 2014, PPL Electric filed an Answer in opposition to the Motion. On February 14, 2014, the Commission entered an Opinion and Order granting, in part, and denying, in part, the Motion filed by the Complainant on January 17, 2014. Specifically, the Commission concluded that an immediate appeal of the *January 2014 Order* would not advance the termination of this proceeding and, therefore, denied the Complainant's request to permit an immediate appeal from the *January 2014 Order*. The Commission, however, granted, in part, the Complainant's alternative request that the Commission establish a deadline for the Law Bureau to provide a status report to the Commission regarding whether the net metering regulations need to be clarified.¹

Subsequently, the Complainant filed two separate Petitions for Review with the Commonwealth Court at Docket Nos. 390 CD 2014 and 448 CD 2014. By Orders dated May 14, 2012, and July 21, 2014, the Commonwealth Court quashed the Complainant's two Petitions for Review.

By correspondence dated September 26 and October 7, 2014, the Complainant requested a further hearing on the First Complaint. Therein, the Complainant explained his intent to introduce evidence regarding PPL Electric's billing practices for virtual net metering. However,

¹ By Order entered February 20, 2014, the Commission requested comments on the Proposed Rulemaking Order amending Chapter 75 of the Commission's regulations, 52 Pa. Code §§ 75.1, *et seq.*, to further comply with the Alternative Energy Portfolio Standards Act of 2004, 73 P.S. §§ 1648.1 – 1648.8 and 66 Pa.C.S. § 2814. The Proposed Rulemaking Order was published in the *Pennsylvania Bulletin* on July 5, 2014. *See* 44 Pa.B. 4179. The stated purpose of the Proposed Rulemaking Order is to update the existing portfolio standards, interconnection, and net metering rules to provide guidance and clarify certain issues of law, administrative procedure, and policy in accordance with the intent of the AEPS Act. Comments have been filed to the proposed regulations, which remain pending before the Commission.

the Complainant's requests for further hearings on the First Complaint failed to "delineate *specific* errors in the bills, credits and payments rendered by PPL Electric" as required by the Commission's *January 2014 Order*. See *January 2014 Order*, Ordering Paragraph 8 (emphasis in original). Notwithstanding the foregoing, by correspondence dated October 14, 2014, PPL Electric agreed that further hearings should be scheduled and requested that a prehearing conference be held to establish a litigation and hearing schedule and to address any other matters that would facilitate resolution of the matter.

On October 23, 2014, the ALJ issued a Prehearing Order on Remand, scheduling a prehearing conference for the First Complaint on November 25, 2014. A Notice scheduling the November 25, 2014 prehearing conference for the First Complaint was issued on November 5, 2014.

On October 23, 2014, PPL Electric was served with a second Formal Complaint filed by the Complainant at Docket No. C-2014-2444864 ("Second Complaint"). In the Second Complaint, the Complainant alleges issues regarding the accuracy and content of PPL Electric's billing processes for the Complainant's virtual net metering accounts. As relief, the Second Complaint request that the Commission order PPL Electric to develop and implement new billing procedures and processes for virtual net metering accounts using a single bill for both accounts to be virtually aggregated.

On November 5, 2014, PPL Electric filed an Answer and Preliminary Objections to the Second Complaint. PPL Electric's Preliminary Objections request that the Second Complaint be dismissed pursuant to 52 Pa. Code § 5.101(a)(6), because the allegations, issues, and relief requested in the Second Complaint will be fully addressed by the Parties and the Commission

through the First Complaint Proceeding. In the alternative, the Preliminary Objections request that the Second Complaint be consolidated with the First Complaint.

On November 13, 2014, the ALJ issued Prehearing Order #2 on Remand, directing the parties to submit prehearing memorandum on or before November 21, 2014. Therein, the ALJ requested that the parties address the following items in their respective prehearing memoranda: (1) a proposed plan and schedule of discovery; (2) possibility of settlement; (3) issues; (4) amount of hearing time needed; (5) witnesses; (6) schedule for submission of testimony, hearings and briefs; (7) consolidation of the two proceedings; and (8) any other appropriate matter. PPL Electric herein submits this Prehearing Memorandum to, among other things, address the issues identified in the Prehearing Order #2 on Remand.

II. SERVICE OF DOCUMENTS

PPL Electric requests that all documents be served on:

Christopher T. Wright
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
Phone: 717-612-6013
Fax: 717-731-1985
E-mail: cwright@postschell.com

PPL Electric agrees to receive service of documents electronically in this proceeding. Further, to the extent that materials are available electronically, it is requested that copies be served upon Paul E. Russell at perussell@pplweb.com and David B. MacGregor at dmacgregor@postschell.com.

PPL Electric's attorneys are authorized to accept service on behalf of the Company in this proceeding. PPL Electric requests that the Commission and all parties of record serve copies of

all discovery requests and answers, correspondence, Commission Orders, and any other documents issued in this proceeding on its attorneys in Harrisburg, Pennsylvania.

III. DISCOVERY

The Parties have previously engaged in extensive discovery during the First Complaint proceeding. PPL Electric does not believe that any change or modification in the standard timelines for discovery set forth in the Commission's regulations is necessary or appropriate. Further, PPL Electric believes that the proposed litigation schedule set forth below will fully accommodate the Parties' discovery needs without modification of the timelines for discovery set forth in the Commission's regulations.

PPL Electric remains open and available to discuss the possibility of obtaining of admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.

IV. POSSIBILITY OF SETTLEMENT

PPL Electric has made repeated attempts to resolve the claims asserted by the Complainant. PPL Electric and its representatives have had multiple discussions with the Complainant, including informal settlement discussions and formal mediation before the Commission, in an effort to resolve the Complainant's concerns in a mutually acceptable manner that is consistent with PPL Electric's Commission-approved tariff, the Commission's regulations and orders, and would not have a material adverse effect on other ratepayers.

Further, PPL Electric previously agreed on the record during the First Complaint proceeding to settle the First Compliant by fully compensating Complainant for the value of the credits, plus interest, he would have received for excess generation as if his accounts were qualified for virtual metering the entire time. However, to date, the Complainant has not accepted any offer to settle claims regarding the amount allegedly owed to the Complainant for

the value of the credits he would have received for excess generation as if he were a qualified virtual metering customer since 2009.

PPL Electric remains willing to settle the Complainant's concerns in a mutually acceptable manner that is consistent with PPL Electric's Commission-approved tariff, the Commission's regulations and orders, and would not have a material adverse effect on other ratepayers. PPL Electric does not perceive any need to include specific dates for settlement conferences in the procedural schedule.

V. ISSUES

Initially, the First Complaint and PPL Electric's Answer thereto raised the issue of whether the Complainant's solar alternative energy system qualified for virtual metering if it did not have any non-generational load as required under PPL Electric's tariff. However, in an effort to settle the dispute, PPL Electric agreed to allow Complainant to participate in the virtual metering program. Further, in the *January 2014 Order*, the Commission explicitly ordered PPL Electric to "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." *January 2014 Order*, Ordering Paragraph 9. Accordingly, this issue has been fully resolved in the Complainant's favor and, therefore, is no longer an issue to be decided in this case.

PPL Electric submits that the remaining unresolved issues raised in both the First and Second Complaint consist of two discrete issues. The first issue to be decided is the value of the credits allegedly owed to Complainant for excess generation if his alternative energy system was qualified for virtual metering since 2009. The second issue is whether PPL Electric's existing billing processes and procedures for virtual metering violate the Public Utility Code, the

Commission regulations, or PPL Electric's tariff and, if so, what remedies, if any, are available to the Complainant.

As this proceeding develops, and Parties submit additional testimony or exhibits, and more information becomes available through discovery, PPL Electric may expand or modify its issues of interest. PPL Electric reserves the right to address additional issues that it identifies during the course of this proceeding.

VI. WITNESSES;

PPL Electric's final designation of witnesses and their areas of testimony will depend on the definitive list of issues that PPL Electric identifies, as well as the hearing dates scheduled in this proceeding. PPL Electric reserves the right to change its designation of witnesses and their areas of testimony as this proceeding develops, issues are identified, and hearing dates are scheduled. Subject to the foregoing, PPL Electric has tentatively identified the following witness to submit testimony relating to the issues identified to date:

Aloysius P. Cannon, Jr.,
Financial Planning Specialist
827 Hausman Road
Allentown, PA 18104

VII. LITIGATION SCHEDULE

PPL Electric submits that it is reasonable and appropriate to establish a litigation and hearing schedule that is mutually convenient to all Parties.

In order to facilitate the orderly and timely resolution of this proceeding, PPL Electric respectfully requests that the Parties be directed to submit written testimony in advance of any hearing. In a further effort to ensure the orderly and timely resolution of this matter, PPL Electric also respectfully requests that the Parties be directed to identify, reference, attach, and submit all exhibits with their respective written testimonies. The use of written testimony and

exhibits will ensure that the Parties have adequate time to fully develop their testimony, as well as have the opportunity to fully review and respond to the testimony and exhibits in advance of the hearing. The preparation of written testimony clearly will facilitate an orderly resolution of this matter and will reduce the need for lengthy on-the-record hearings.

PPL Electric submits that the Complainant will not be prejudiced by the use of written testimony in this proceeding. Although the Complainant is appearing *pro se*, this should not be and is not a bar to the use of written testimony in this proceeding.² The Complainant has submitted numerous and lengthy filings with both the Commission and the Commonwealth Court. Clearly, the Complainant's actions demonstrate that he has the capability, time, and resources to prepare and submit written testimony and exhibits in advance of the evidentiary hearing.

Further, PPL Electric respectfully requests that the Parties be directed to submit post-hearing briefs in support of their respective positions. A briefing schedule will benefit the Parties by allowing each party to succinctly formulate and explain their arguments based on the evidence introduced into the record. PPL Electric believes that post-hearing briefs will benefit the Parties, the ALJ, and the Commission in addressing the various arguments and positions advanced in this matter.

Based on the foregoing, and recognizing that the Complainant bears the burden of proof in this proceeding, PPL Electric proposes the following procedural schedule in the above-referenced matter:

² See, e.g., *Petition of UGI Penn Natural Gas Inc. for a Finding that Structures to Shelter Pipeline Facilities In Borough of West Wyoming, Luzerne County, To the Extent Considered to be Buildings under Local Zoning Rules, are Reasonably Necessary for The Convenience or Welfare of the Public*, Docket No. P-2013-2347105 (Initial Decision dated August 16, 2013) (numerous *pro se* intervenors were required to submit written testimony and exhibits in support of their respective positions). Although the Complainant currently is appearing *pro se*, it should be noted that the Complainant has used numerous legal counsels throughout this proceeding.

<u>Event</u>	<u>Proposed Date</u>
Prehearing Conference	Tuesday, November 25, 2014
Complainant Direct Testimony	Friday, January 9, 2015
PPL Electric Rebuttal Testimony	Friday, February 6, 2015
Complainant Surrebuttal Testimony	Friday, February 27, 2015
Evidentiary Hearings	March 11-12, 2012 ³
Close of the Record	Friday, April 10, 2015
Complainant Initial Brief	Friday, April 10, 2015
PPL Electric Response Brief	Monday, April 28, 2015
Complainant Reply Brief	Monday, May 11, 2015

PPL Electric submits that the above-proposed schedule recognizes the discrete issues to be decided, accounts for the fact that the complainant bears the burden of proof, accommodates the upcoming holiday season, and will allow the Parties time to fully develop the record while avoiding any unnecessary delay in the final resolution of this proceeding.

VIII. OTHER MATTERS THAT MAY AID IN EXPEDITING THIS PROCEEDING

As explained in PPL Electric's Preliminary Objections to the Second Complaint, the Complainant's allegations and request for relief in the Second Complaint are substantially similar to and the subject of the pending First Complaint. Therefore, PPL Electric respectfully requests that the Second Complaint should be dismissed in its entirety pursuant to 52 Pa. Code § 5.101(a)(6). Because the Initial Decision in the First Complaint has been vacated and remanded

³ If the ALJ grants the request for written testimony, PPL Electric believes it is likely that only one day of hearings will be required. However, out of an abundance of caution, PPL Electric recommends that the evidentiary hearing initially be scheduled for two days.

for further proceedings, the Complainant will not in any way be prejudiced or otherwise waive any rights, claims, or arguments if the duplicative Second Complaint is dismissed.

Alternatively, should the Second Complaint not be dismissed, PPL Electric respectfully requests that the Second Complaint be consolidated with the Complainant's First Complaint currently pending before the ALJ. Clearly, to permit the same issues to be litigated by the same Parties in two separate Commission proceedings would be duplicative and, moreover, a useless waste of the Parties' and the Commission's time and resources. Again, because the Initial Decision in the First Complaint has been vacated and remanded for further proceedings, the Complainant will not in any way be prejudiced or otherwise waive any rights, claims, or arguments if the duplicative Second Complaint is, in the alternative to a dismissal, consolidated with the First Complaint.

With respect to the exchange and acceptance of exhibits proposed to be offered into evidence, PPL Electric submits that it would facilitate the orderly resolution of this matter if the Parties are directed to submit any exhibits they intend to introduce into the record with their respective written testimonies submitted in advance of the hearing. In the event that the ALJ denies PPL Electric's request for advance written testimony explained above, PPL Electric recommends that the Parties be required to label and submit all exhibits two weeks prior to the date set for the evidentiary hearing.

PPL Electric also remains open and available to discuss the possibility of obtaining admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.

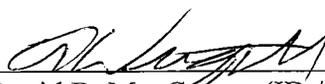
Respectfully submitted,

Paul E. Russell (ID # 21634)
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Of Counsel:

Post & Schell, P.C.

Date: November 21, 2014


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Attorneys for PPL Electric Utilities Corporation