

**EXCEPTIONS OF BEATRIZ MALLORY  
PPL CUSTOMER ACCOUNT # 96871-26006  
TO  
INITIAL DECISION  
BEFORE EMBER S. JANDEBEUR  
ADMINISTRATIVE LAW JUDGE  
C-2014-2442906**

**TO:**

Secretary  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
Attention: Rosemary Chiavetta

**COPIES TO:**

PPL Electric Utilities  
2 North 9th Street CPC-GENNI  
Allentown, PA 18101-1175  
Attention: Brandi Martson

Gross MGINLEY LLP  
23 South Seventh Street  
Allentown, PA 18101  
Attention: Graig Schultz

**RECEIVED**  
FEB 21 2015  
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**EXCEPTIONS OF BEATRIZ MALLORY  
PPL CUSTOMER ACCOUNT # 96871-26006  
TO  
INITIAL DECISION  
BEFORE EMBER S. JANDEBEUR  
ADMINISTRATIVE LAW JUDGE  
C-2014-2442906**

**Please note the following:**

**(1) In this Exception Initial Decision ("C-2014-2442906) Appellant is without counsel and only able to cite information from the seven page Initial Decision document. Appellant was not provided the companion transcript referenced throughout the Initial Decision and was not able to obtain a copy via direct requests of the PUC, PPL and PPL's counsel, Gross McGinley LLC.**

**(2) Consequently, this Exception follows the chronological order to the seven page Initial Decision.**

**RECEIVED**

FEB 21 2015

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

## **PART - I**

### **Page 1: "HISTORY OF THE PROCEEDINGS"**

Appellant appealed the July 23, 2014 BCS decision at Case No. 325517 in a manner meeting all requirements for appeal and requesting a five year payment arrangement that lowered monthly payments by means of a fifth year balloon payment.

## **PART - II**

### **Pages 2 & 3: "FINDINGS OF FACT"**

Pt. #10 incorrectly states the amount owed is \$5,136.74. At the time of the December 4th Hearing it was \$4,994.93

Pt. #11 notation of four (4) payments for 2014 is an incorrect statement of fact, which was made known by Appellant during cross-examination of PPL's representative.

Per PPL's records, six (6) payments were made in 2014, five (5) were made as of the December 4th, 2014 Hearing.

Pt. #13 "Tr. at 17; PPL Exh.3" payment agreements were not terminated for non-payment, but for late payment.

Late payment triggers an automatic termination of payment agreement systematically.

Further (1) the payment agreements were automatically renewed upon receipt of late payment; and (2) each agreement was subject to penalty fees, which were paid, so PPL received monetary compensation for any delay and, indeed, profited from each termination/renewal.

None of the defaulted agreements were PUC or BCS-issued payment agreements.

The Initial Decision incorrectly states the opposite, repeatedly declaring a "PUC issued" / "BCS issued" payment agreement as being in default (Initial Decision p.2, "Findings of Fact" pt. #13; p.4 "Ability to Pay", p.6 "Conclusion:") when no such default has occurred.

Finally, in regards to late payment in general, and Appellant's status in particular, the July 14, 2014 "Report on the Economic Well-Being of U.S. Households in 2013" by the Board of Governors of the Federal Reserve System is apropos, stating:

*"Many households in the United States have been tested by the Great Recession. Large-scale financial strain at the household level ultimately fed into broader economic challenges for the country, and the completion of the national recovery will ultimately be, in part, a reflection of the well-being of households and consumers. Because households' finances can change at a rapid pace and new opportunities and risks may emerge, such recovery can be complex to monitor."* [<http://www.federalreserve.gov/econresdata/2013-report-economic-well-being-us-households-201407.pdf>]

Pt. #14 - It is not axiomatic that because PPL has not "entertained" a balloon payment that it cannot do so. Indeed the PPL's assertion ("Tr. at 19,24") that it "has in the past" taken such payments upfront clearly implies that it does indeed accept balloon payments.

Appellant's request does not ask PPL to extend the 5 year period.

Appellant simply asks PPL to reverse the order of its lump sum payment practice.

The request is both logical and obvious as Appellant's income falls below the legal standard cited on page 5 of the Initial Decision (p.5

"Legal Standards" §1405) and thus prohibits making the payment up-front.

## **PART - III**

### **Page 4: DISCUSSION**

#### **"Burden of Proof"**

Appellant asserts that, as outlined in PART IV below, the September 11, 2013 Formal Complaint adjudicated at the December 4th, 2014 Hearing is narrow and specific in scope, and limited to considerations specific to the BCS July 23rd, 2014 payment arrangement and no prior arrangement(s), and, as such, it meets all Initial Decision case law cited under the "Burden of Proof", as follows:

(a) 66 Pa.C.S. § 332 (a) - "*As the party seeking the affirmative relief from the commission, the Complainant bears the burden of proof.*": The entirety of this appeal herein of the Initial Decision PARTS I -VI demonstrates that Appellant has done so, and with specificity to (b), (c), (d), (e) and (f) below, and Appellant raises compelling issues of fairness and inclusion in PART V and PART IV, respectively, which must be redressed.

(b) Patterson v. | Feinstein v. - "*... the Complainant must show that the Respondent public utility is responsible or accountable for the problem described in the Complaint*": The problem referenced in the Formal Complaint is the Respondent's refusal to modify a five year payment agreement with a balloon end payment, even though no express statutory prohibition against balloon payments is cited.

(c) Samual J. Lansberry, Inc. v. - "*Such a showing must be by a preponderance of the evidence*": As the complaint is specific to the

refusal, and as only PPL provides the service and, thus, only PPL make the refusal, the act of doing so in itself is preponderant evidence.

(d) Se-Ling Hosiery v. - "*... a party must present evidence more convincing, by even the smallest amount, than that presented by the other party.*": Appellant has less than Federal Poverty Level income which clearly prohibits servicing an unmodified PPL payment arrangement and no statute expressly prohibits a balloon payment arrangement.

(e) Mill v. | Edan Trans. v. | 2 Pa.C.S. § 704 - "*Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.*": As outlined in PART II above, and below in PART III "Ability to Pay", PART IV "Legal Standards", PART IV "Egregious Error", and PART VI "Conclusions", Appellant asserts the Initial Decision lacks "substantial evidence" to support its adjudication.

(f) Norfolk and Western Ry. v. | Erie Resistor Corp. v. | Murphy v. - "*More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.*": The September 11th, 2014 Formal Complaint evidences the fact of a BCS payment arrangement that requires 48% of Appellant's gross income to service; factually, neither PPL nor the Initial Decision cite any statute specifically prohibiting balloon payments as part of a five year payment arrangement.

### **"Ability to Pay:"**

The Ability to Pay summary misstates the appellant's request of PPL and PUC by referencing the request incompletely.

Appellant's request is not to only "make regular payments and then

make a balloon payment at the end of five years."

Indicative of good faith intent, Appellant has also requested to make a monthly payment toward arrears, albeit one smaller than that proffered by PPL and determined by the BCS decision ("Case No. 3255117").

The difference between the monthly arrears payment requested by PPL and determined by BCS and requested by Appellant would be reconciled via the fifth year balloon payment requested by Appellant.

## **PART - IV**

### **Page 5: Legal Standards:**

The Initial Decision cites ("66 Pa.CSA § 1405") "§ 1405. Payment agreements."

The Initial Decision then delineating points (a) through (f) and highlights in bold print points (b)1 and (d).

Appellant qualifies under (b)1.

The Initial Decision overlooks the fact that Appellant also qualifies under point (d) Number of payment agreements, "... to establish a second or subsequent payment agreement" as at the December 4th, 2014 Initial hearing appellant cited a change in income, dropping to \$10,000 annually.

The Initial Hearing transcript will reflect this Appellant's statement in this regard and, further, it will show Appellant challenged the PUC representative's statement of Appellant's income in cross examination.

Appellant is unsure of the purpose of the Initial Decision's reference to point (f) "Failure to comply with a payment agreement ..."

However, Appellant draws attention to the fact that the only payment agreement cited in the September 11, 2014 Formal Complaint, and the one up for adjudication before the Administrative Law Judge in the December 4th, 2014 Hearing, is the BCS determined payment plan of July 23rd, 2014.

The July 23rd, 2014 BCS payment agreement is *not* in default.

In fact, it was modified by PPL itself with an agreement to eliminate Budget Billing, but paying in full the monthly usage billed, and to stay the fixed arrears amount pending the appeals process.

If the Initial Decision's purpose in referencing point (f) is to imply that "PPL Exh.3" establishes "grounds to terminate" or to acclaim, per point (d), that "the commission shall not establish or order ... a second or subsequent payment" then the Initial Decision is incorrect.

The December 4th, 2014 Hearing was convened to solely adjudicate Appellant's September 11th, 2014 Formal Complaint, which is specific to the July 23rd, 2014 BCS payment agreement, and no other(s).

"PPL Exh.3" is therefore extraneous to the December 4th Hearing specific to the September 11th, 2014 Formal Complaint and it irrelevant to it and entering it into the record was an error.

PPL had multiple opportunities to bring any of the payment agreements cited in "PPL Exh.3" before the PUC, or to terminate

unilaterally, and it did not do so.

Certainly PPL could have earlier submitted "PPL Exh.3" to the Bureau of Consumer Services for its investigation of Appellants informal complaint, which determined the BCS payment agreement which constituted the September 11th, 2014 Formal Complaint being adjudicated in the December 4th, 2014 Hearing.

PPL did not do so.

Had PPL done so "PPL Exh.3" payment agreements would have been a constituent part of the September 11th, 2014 Formal Complaint up for adjudication in the December 4th Hearing.

By not doing so PPL forfeited the opportunity to incorporate it into the September 11th, 2014 Formal Complaint, and the Initial Decision cannot do so ex post facto.

"PPL Exh.3" therefore cannot be grounds for the Initial Decision.

Clearly the inclusion of "PPL Exh.3" in the record is an error. 66 Pa.C.S. § 332 (b) Admissibility of Evidence : "*Any oral or documentary evidence may be received, but the commission shall as a matter of policy provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence.*"

## **PART - V**

### **An Egregious Error Which Makes Prejudiced The Initial Decision.**

The impact of the erroneous inclusion of "PPL Exh.3" is not slight, it is egregious.

A reading of the December 4th Hearing transcript will affirm that after defendant PPL introduced "PPL Exh.3" and subsequent elaborated upon it, the Administrative Law Judge, referencing the Plaintiff's request for a subsequent modified agreement, declared from the bench directly to the Plaintiff, "If I were PPL I would not grant you one."

That declaration was not a point of Administrative Law, but a personal opinion, from the bench and for the record, and directly reactive to "PPL Exh.3"; which, per PART IV above, is extraneous to the Hearing.

The December 4th Hearing transcript will confirm that the articulated personal opinion was made **before** "PPL Exh.3" was formally entered into the record, which was the very last action prior to adjourning, and, therefore, articulated before the Administrative Law Judge even had the opportunity to review "PPL Exh.3."

The declaration is a biased opinion inherently prejudicial to the Plaintiff and, thus, cannot help but negatively color the Initial Decision specific to the Plaintiff.

Appellant asserts that, because of the prejudicial nature of the declaration on the record personal opinion of the Administrative Law Judge, it is grounds for voiding the Initial Opinion and vacating the December 4th, 2014 Initial Hearing itself.

Appellant formally requests that that be done, and that another Initial Hearing be scheduled to impartially adjudicate the merits of the September 11th, 2014 Formal Complaint.

## **PART - VI**

### **Pages 6 & 7: "conclusion:"**

The Initial Decision's declaration that "Complainant defaulted on the BCS issued payment agreement" is wrong, and the record cannot support it as it is that very July 23rd, 2014 BCS payment arrangement that is being appealed in the Formal Complaint.

The Initial Decision's declaration that Complainant "has not had a change in income or a significant change in circumstances" is wrong, and the record does not support it, as evidenced by PPL representative's statement of Complainant income and the income attested to by Complainant.

The Initial Decision's declaration that in the 66 Pa.C.S. § 1405 (d) statutory language "there is no provision for a balloon payment at the end" is specious in relation to Appellant's September 11th, 2014 Formal Complaint as the standard should be not whether there is a provision for a balloon payment but, rather, whether there is a prohibition against it, and indeed there is no such prohibition in the statute.

Furthermore, 66 Pa.C.S. § 1405 (d) in fact contains statutory language not referenced in the Initial Decision which indeed makes a provision for allowing a public utility to "*enter into a second or subsequent payment agreement with a customer*", i.e., considering the Appellants impecunious stature, there is no compelling reason for PPL not to enter into a subsequent payment inclusive of an end balloon payment.

Moreover, 66 Pa. C.S. § 1405 (e) Extension of payment agreements clearly states, "*If the customer defaults on a payment agreement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may*

*reinstate the payment agreement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown."*

These double extensions provide for something akin to the purpose of a balloon payment, which is to reduce preceding payments, and confirm Appellant's request for a balloon inclusive payment arrangement, though novel, is not extraordinary or far outside the bounds of statutory intent.

## **CONCLUSIONS OF LAW**

Point #1. As evidenced in all PARTS above, Complainant has met the burden of proof. 66 Pa.C.S. § 332(a)

Point #2. The Initial Decision is demonstrably wrong concluding otherwise.

Point #3. Appellant is 66 Pa. C.S. § 1405 (e)66 Pa.C.S. § 1405(b)(1) compliant, but the Initial Decision's conclusion that "*a customer shall not extend beyond five years for customers with a gross monthly household income level not exceeding 150% of the federal poverty level*" is erroneous. 66 Pa. C.S. § 1405 (e)

Point #4. Consistent with 66 Pa. C.S. § 1405 (d) Appellant has demonstrated "change in income"; further 66 Pa. C.S. § 1405 (e) makes provision for adapting a five year payment arrangements, which is kindred with Appellant's requested five year payment arrangement.

## **“ORDER”**

The Initial Decision's Order has been wrongly concluded, based on point #1 of PART VII below.

## **PART - VII**

### **EXCEPTION CONCLUSIONS**

1. Appellant's Exception demonstrates that the Initial Decision is factually incorrect, is in error on applicable points of statutory law and omits statutory law advantageous to Appellant.
2. Therefore, Appellant asks the Order of the Initial Decision be overruled.
2. Appellant's Exception cites declaration unrelated to statutory law that is prejudicial and deprecatory to Appellant's Formal Complaint and negatively inflects the conclusion of the Initial Decision.
3. Appellant, in PART V, above, cites reasons and makes request that the Initial Hearing from which the Initial Decision C-2014-2442906 be vacated and that the Initial Decision itself be made void and that another Initial Hearing be scheduled.
4. Should that request be denied, Appellant asks that this Exception be granted and that it be ordered that PPL comply with the five year balloon end-payment payment arrangement requested by Appellant.

§ 1.58. **Form of certificate of service.**

**I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).**

**TO:**

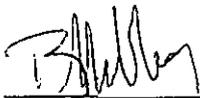
Secretary  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
Attention: Rosemary Chiavetta

**COPIES TO:**

PPL Electric Utilities  
2 North 9th Street CPC-GENN1  
Allentown, PA 18101-1175  
Attention: Brandi Martson

Gross MGINLEY LLP  
23 South Seventh Street  
Allentown, PA 18101  
Attention: Graig Schultz

**Dated this 21st day of February, 2015**



---

Beatriz Mallory  
PPL Customer Account 96671-26006

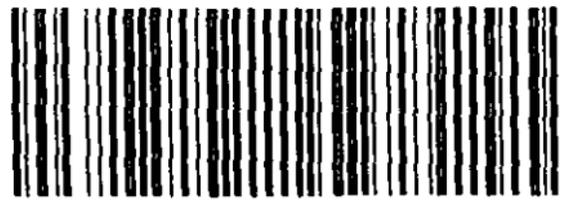
**RECEIVED**

FEB 21 2015

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

MALLOY  
P.O. Box 650  
Newfoundland, PA  
18445

**CERTIFIED MAIL**



7014 2120 0002 4957 0615



1000



17105

U.S. POSTAGE  
PAID  
NEW FOUNDLAND, PA  
18445  
FEB 21, 15  
AMOUNT

**\$4.21**  
00086554-01

SECRETARY  
PA Public Utility Commission  
P.O. Box 3265  
HARRISBURG, PA 17105-3265  
ATTN. Rosemary Chiavetta

171053265

