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March 24, 2015

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

RE: David Wapensky v PPL Electric Utilities Corporation
Docket No: C-2014-2450200

Dear Ms. Chiavetta:

Enclosed for eFiling in the above-captioned matter are the Replies on behalf of PPL Electric Utilities Corporation, to the Exceptions filed by Complainant, David Wapensky.

Please note that this filing was eFiled with the Commission on the date indicated above.

Very truly yours,

GRAIG M. SCHULTZ

GMS/cl
Enclosure
00713240.DOCX

cc: David Wapensky (w/ encl.)
Amy M. Bellizia (w/ encl.) via email only
Kim Safford (w/encl.) via email only

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DAVID WAPENSKY,
Complainant,

vs.

PPL ELECTRIC UTILITIES CORPORATION,
Respondent.

COMPLAINT DOCKET

NO. C-2014-2450200

**REPLIES OF PPL ELECTRIC UTILITIES CORPORATION TO THE
EXCEPTIONS FILED BY COMPLAINANT, DAVID WAPENSKY**

AND NOW, comes the Respondent, PPL Electric Utilities Corporation (“Respondent” and/or “PPL”), by and through its attorneys of record, Gross McGinley, LLP, and files the within Replies to Exceptions, alleging in support thereof as follows:

Introduction

The Pennsylvania Administrative Code (the “Code”) provides that exceptions may be filed by a party and served within 20 days after the initial, tentative or recommended decision is issued. 52 Pa. Code § 5.533(a). Exceptions must be “concise.” 52 Pa. Code § 5.533(c). Additionally, the Code provides that each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. 52 Pa. Code § 5.533(b). Further, supporting reasons for the exceptions shall follow each specific exception. *Id.*

As it pertains to the instant case, the Exceptions filed by David Wapensky (“Complainant” and/or “Mr. Wapensky”) do not comply with the Code provisions cited above. Specifically, Complainant’s Exceptions are not concise; nor are Complainant’s Exceptions numbered. Given this, Respondent respectfully requests that Complainant’s Exceptions be dismissed due to his lack of compliance with the Code. *See, e.g., Forward Twp. Mun. Auth. v. Western Pennsylvania Water Co.*, 74 Pa. P.U.C. 421 (Feb. 14, 1991) (“We note that the

Complainant's Exception No. 3 constitutes a bald assertion. Consonant with [Section 5.533(b)], we shall deny this Exception of the Complainant.”). Notwithstanding the aforementioned request for dismissal, PPL will hereinafter reply to Complainant’s Exceptions in a format similar to the manner in which the Exceptions were raised by Complainant in an effort to keep consistency of the pleadings.

Reply

The Exceptions filed by Complainant are yet another attempt to avoid this Commission entering a Final Order on his Complaint, and one of many efforts to avoid paying for his electric service. More specifically, Complainant has filed seven (7) formal complaints since April of 2009 – April 2, 2009, March 24, 2010, April 8, 2013, August 15, 2013, March 25, 2014, July 8, 2014, and most recently, October 30, 2014. Since April of 2012, Complainant has only made three (3) payments for his electric service – April 4, 2012, May 4, 2012, and July 2, 2012 – while at the same time presenting seven (7) checks to Respondent PPL, which were returned due to insufficient funds – June 8, 2012, July 20, 2012, August 3, 2012, April 9, 2013, July 18, 2013, July 23, 2013, and June 27, 2014. Even more egregious, Complainant has defaulted on a total of thirty-eight (38) payment arrangements since September 17, 2002. The total amount owed by Complainant to Respondent is rapidly approaching \$10,000.¹

As previously pointed out by the Honorable Judge Colwell, the party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S.A. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *See Patterson v. Bell Tel. Co. of PA*, 72 Pa. PUC 196 (1990) (citing *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976)). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub.*

¹ Complainant’s total account balance was \$8,857.28 at the time of the February 19, 2015 Initial Hearing.

Util. Comm'n, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992) (citing *North American Coal Corp. v. Air Pollution Commission*, 279 A.2d 356 (Pa. Cmwlth. 1971)). A preponderance of evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *See Se-Ling Hosiery v. Margulies*, 70 A.2d 854, 856 (Pa. 1950).

Additionally, the Commission is required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (citing *Township of Middleton v. The Institute District of The County of Delaware*, 293 A.2d 885 (Pa. Cmwlth. 1972), *aff'd*, 299 A.2d 599 (Pa. 1973)). In this regard, notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Indus. and Commercial Development Auth. v. Allegheny County Bd. of Property Assessment Appeals and Review*, 645 A.2d 944, 946 n.5 (Pa. Cmwlth. 1994), *appeal denied*, 653 A.2d 1234 (Pa. 1994) (citing *John Kenneth, Ltd. v. Unemployment Compensation Board of Review*, 444 A.2d 824 (Pa. Cmwlth. 1982)). In the present case, the Hearing Notice and Prehearing Order were sent to the address provided by the Complainant, and neither was returned as undeliverable. Therefore, Complainant is deemed to have received these documents and had sufficient notice of the date and time of the scheduled hearing.² Further, once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of

² Of note, Complainant does not contend that he did not receive notice of the February 19, 2015 Initial Telephonic Hearing. To the contrary, Complainant states that he "could not attend the phone hearing because [he] was called into work for 1 pm." *See* Exceptions at p. 1, ¶ 2. Despite this allegation, Complainant did nothing to alert counsel for Respondent, or the Administrative Law Judge that he would not appear at the Initial Hearing, even though he found time to file a letter with the Commission at 12:00 p.m. that afternoon, only one hour prior to the time of the Initial Hearing. *See* Initial Decision at p. 3, Finding of Fact No. 9. This conduct clearly demonstrates that Complainant was seeking to avoid a Final Order and or Commission-ordered payment arrangement on his Complaint, so that he could continue his pattern of filing formal complaints and defaulting on payment arrangements. *See* 66 Pa.C.S.A. § 1405(d).

the parties to appear and participate in the hearing. *Sentner v. Bell Tel. Co. of PA*, Opinion and Order entered October 25, 2003 at PUC Docket No. F-00161106.

More importantly, both the Hearing Notice and the Prehearing Order issued by Judge Colwell placed Complainant on notice that failure to participate could result in the dismissal of the case. In the present case, Complainant was clearly warned in two different documents that his failure to participate in the evidentiary hearing could result in the loss of his claim. In light of this, Complainant made a conscious and deliberate choice not to appear at the time of the Initial Telephonic Hearing, and did so at his own peril.³ As Complainant failed to sustain his burden of proof, the Honorable Judge Colwell was correct to dismiss his Complaint with prejudice.

WHEREFORE, based upon the foregoing, it is respectfully requested that the Commission deny Complainant's Exceptions.

Respectfully submitted,

GROSS MCGINLEY, LLP



BY: _____

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DATE: 03/24/15

³ The allegations included in Complainant's Exceptions regarding termination from his job, severance package, and unemployment compensation have no bearing on his failure to attend the Initial Hearing on February 19, 2015, and do not offer support for his Exceptions. *See* Pa. Code § 5.533(b).

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COMPLAINT DOCKET

NO. C-2014-2450200

CERTIFICATE OF SERVICE

This is to certify that the REPLIES TO EXCEPTIONS on behalf of PPL ELECTRIC UTILITIES CORPORATION was mailed to counsel/complainant of record on behalf of Respondents by first class United States mail, postage on this the 24th day of March 2015.

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BY: _____

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