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Devin Ryan

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File #: 140074

July 8, 2016

***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 Answer of PPL Electric Utilities Corporation to Jay Larry Moyer's Motion to Stay in the above-referenced proceedings. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Devin Ryan

DTR/jl  
Enclosures

cc: Certificate of Service

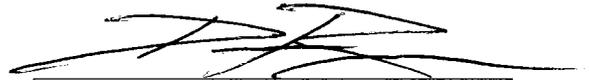
**CERTIFICATE OF SERVICE**

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 FIRST CLASS MAIL**

Jay Larry Moyer  
370 West Johnson Street  
Apartment C-1  
Philadelphia, PA 19144

Date: July 8, 2016



Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION  
TO JAY LARRY MOYER’S MOTION TO STAY**

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TO PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code § 5.61, PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby files this Answer to Jay Larry Moyer’s “Application for Relief” seeking a stay of the Opinion and Order entered May 19, 2016, herein referred to as the “Motion to Stay.”

In support of its Answer, PPL Electric states as follows:

**I. INTRODUCTION**

1. This proceeding involves two Formal Complaints filed by Mr. Moyer regarding PPL Electric’s manual billing process and payments for virtual meter aggregation electric service provided to Mr. Moyer’s residence and detached solar array, which are connected to the Company’s electric distribution system at two separate locations in Klingerstown, Pennsylvania. The proceeding was initiated on November 15, 2011, when Mr. Moyer filed the “First Complaint” at Docket No. C-2011-2273645. The First Complaint alleged that PPL Electric failed to properly aggregate Mr. Moyer’s accounts under the Company’s Net Metering for Renewable Customer-Generators Rider’s virtual meter aggregation provisions and that, as a

result, Mr. Moyer's account failed to be properly credited for the electricity that was generated by his solar panels. On October 23, 2014, PPL Electric was served with the "Second Complaint" at Docket No. C-2014-2444864. The Second Complaint alleged issues regarding the accuracy and content of PPL Electric's manual billing process for Mr. Moyer's virtual meter aggregation accounts. Mr. Moyer requested that the Company be directed to implement an automated billing process for virtual meter aggregation and that detailed information regarding usage, excess generation, credits, and cash outs be presented on a single bill.

2. On September 21, 2015, Administrative Law Judge Fordham ("ALJ") issued the Initial Decision ("ID"). The ID granted the First Complaint with respect to the compensation owed to Mr. Moyer for credits earned between May 2010 and December 2010 (*i.e.*, the period he was removed from virtual meter aggregation service) and dismissed the First Complaint in all other respects. The ID also dismissed the Second Complaint in its entirety. Further, the ID directed that PPL Electric continue to allow Mr. Moyer to participate in virtual meter aggregation, subject to changes in applicable laws or tariffs.

3. On May 19, 2016, the Pennsylvania Public Utility Commission ("Commission") entered an Opinion and Order that adopted the ID in its entirety with one modification – PPL Electric was directed to compensate Mr. Moyer for the amount agreed to on the record, adjusted for interest accrued from February 1, 2015, through May 19, 2016. *See Moyer v. PPL Electric Utils. Corp.*, Docket Nos. C-2011-2273645, C-2014-2444864, at pp. 47-48 (Order Entered May 19, 2016) ("*May 2016 Order*"). The Commission also directed the Company to continue allowing Mr. Moyer to participate in virtual meter aggregation, subject to changes in applicable laws or tariffs.

4. On May 31, 2016, Mr. Moyer filed a Petition for Review with the Commonwealth Court of Pennsylvania at Docket No. 882 CD 2016 challenging the *May 2016 Order*. In his Petition for Review, Mr. Moyer argues that the *May 2016 Order* should be reversed because: (1) PPL Electric's tariff rules for virtual meter aggregation are not listed in the Alternative Energy Portfolio Standards ("AEPS") Act or the Public Utility Code; (2) PPL Electric's tariff rules discriminate against virtual meter aggregation customers in favor of physical meter aggregation customers; (3) the Commission has failed to clarify or implement provisions in its regulations concerning virtual meter aggregation; and (4) the virtual meter aggregation rules enforced by the Commission will eliminate virtual meter aggregation service. A true and correct copy of the Petition for Review is attached hereto as **Appendix A**.

5. On June 15, 2016, Mr. Moyer filed a Motion to Stay in the above-captioned proceeding, requesting that the Commission's *May 2016 Order* be stayed pending the outcome of Mr. Moyer's appeal before the Commonwealth Court at Docket No. 882 CD 2016.

6. For the reasons stated below, PPL Electric respectfully requests that the Commission deny Mr. Moyer's Motion.

## **II. ANSWER TO MOTION TO STAY**

7. The Commission should deny the Motion to Stay because Mr. Moyer has failed to meet the high standard required for a stay pending appeal.

8. The Pennsylvania Supreme Court has stated that a stay is warranted if: (1) the petitioner makes a strong showing that he is likely to prevail on the merits; (2) the petitioner has shown that without the requested relief, he will suffer irreparable injury; (3) the issuance of a stay will not substantially harm other interested parties in the proceedings; and (4) the issuance of a stay will not adversely affect the public interest. *Pa. PUC v. Process Gas Consumers Grp.*,

467 A.2d 805, 808-09 (Pa. 1983). For a stay pending appeal, the Court found that the petitioner must make a “strong showing” under these criteria to justify the issuance of a stay. *Id.* at 809.

9. As explained below, the Motion to Stay should be denied because Mr. Moyer has failed to establish these four criteria.

**A. MR. MOYER HAS FAILED TO DEMONSTRATE A LIKELIHOOD OF SUCCESS ON APPEAL**

10. Mr. Moyer has failed to demonstrate a strong likelihood that he will prevail on the merits. In his Motion, Mr. Moyer reiterates many of the same arguments that he raised before the ALJ and the Commission about PPL Electric’s virtual meter aggregation billing process and practices, none of which are grounds for appeal.

11. The Commonwealth Court will not substitute its judgment for that of the Commission, nor will it reweigh the evidence or resolve conflicting testimony. *See Philadelphia Elec. Co. v. Pa. Pub. Util. Comm’n*, 433 A.2d 620, 624 (Pa. Cmwlth. 1981) (quotation omitted). Rather, the Commonwealth Court’s standard of review in an appeal from a state agency is limited to a determination of whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact are supported by substantial competent evidence. 2 Pa.C.S. § 704; *see Leung v. Pa. Pub. Util. Comm’n*, 582 A.2d 719, 721 (Pa. Cmwlth. 1990); *Teltron, Inc. v. Pa. Pub. Util. Comm’n*, 477 A.2d 599, 600 (Pa. Cmwlth. 1984) (citation omitted).

12. Here, Mr. Moyer fails to make a strong showing that the Commission violated his constitutional rights, committed an error of law, or made necessary findings of fact that are unsupported by substantial competent evidence. As the Commission properly found, nothing in the record suggests that PPL Electric violated the AEPS Act, the Pennsylvania Public Utility Code, the Commission’s regulations, or the Company’s Commission-approved tariff. *See May*

2016 Order, pp. 46-47. Further, at all times relevant to these Complaints, PPL Electric complied with the terms of its tariff, which has the force and effect of law and is binding on the utility and the customer. See *PPL Elec. Utils. Corp. v. Pa. PUC*, 912 A.2d 386, 402 (citing 66 Pa. C.S. § 1303 and *Pa. Elec. Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Cmwlth. 1995)).

13. Moreover, as seen in the Commission’s *May 2016 Order*, each of the Commission’s findings was supported by substantial evidence. In his Motion, Mr. Moyer quotes passages of PPL Electric’s testimony and alleges that the Commission accepted the Company’s claims “without evidence.” However, Mr. Moyer fails to recognize that the Company’s testimony that he is quoting is the evidence.

14. In addition, Mr. Moyer avers that the Commission should have disregarded PPL Electric’s evidence, considered extra-record evidence, and found his evidence more persuasive. It appears Mr. Moyer believes that the Commonwealth Court can substitute its judgment for the Commission and reweigh the evidence to find in his favor. Although Mr. Moyer may not like that the Commission found PPL Electric’s evidence to be more persuasive, the Commonwealth Court cannot reweigh the evidence. See *Philadelphia Elec. Co. v. Pa. Pub. Util. Comm’n*, 433 A.2d 620, 624 (Pa. Cmwlth. 1981) (quotation omitted).

15. Furthermore, Mr. Moyer alleges that the Commission has failed to adopt “adequate rules specific to virtual meter aggregation.” This is a new argument that was never presented before the Commission, and Mr. Moyer cannot raise it for the first time on appeal. See Pa.R.A.P. 1551(a).

16. For these reasons, Mr. Moyer does not have a strong likelihood of prevailing on appeal.

**B. MR. MOYER HAS FAILED TO MAKE THE REQUISITE SHOWING OF HARM**

17. Mr. Moyer has failed to demonstrate that he will suffer irreparable injury absent a stay. In fact, nothing in his Motion to Stay addresses this criterion.

18. Under the Commission's *May 2016 Order*, Mr. Moyer will remain enrolled in virtual meter aggregation despite not having independent load at his solar generating facility. *May 2016 Order*, p. 43.

19. Moreover, PPL Electric already applied the credit of \$739.98 to his residential account on May 24, 2016, pursuant to the *May 2016 Order*. If a stay is granted, the Company would be forced to remove that credit. In that respect, a stay would actually harm Mr. Moyer.

20. Mr. Moyer also has failed to show that a stay will not substantially harm other interested parties in this proceeding. Nothing in Mr. Moyer's Motion to Stay addresses this factor.

21. Mr. Moyer further failed to demonstrate that the issuance of a stay will not adversely affect the public interest. Nothing in Mr. Moyer's Motion to Stay addresses this criterion.

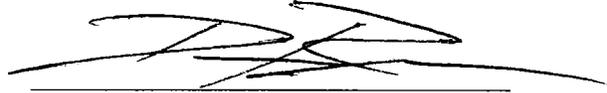
22. Thus, Mr. Moyer has failed to show that he will suffer irreparable harm absent a stay, that a stay will not substantially harm other interested parties, and that a stay will not adversely affect the public interest.

23. Based on the foregoing, Mr. Moyer has failed to meet the high standard required for the Commission to grant a stay pending appeal. Accordingly, his Motion to Stay should be denied.

**III. CONCLUSION**

For the reasons set forth above, PPL Electric Utilities Corporation requests that the Pennsylvania Public Utility Commission deny the Motion to Stay filed by Jay Larry Moyer.

Respectfully submitted,



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Of Counsel:

Post & Schell, P.C.

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Devin T. Ryan (ID # 316602)  
Post & Schell, P.C.  
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dryan@postschell.com

Date: July 8, 2016

Attorneys for PPL Electric Utilities Corporation

# Appendix A

JUN 02 2016

**J. Larry Moyer**  
**73 W. Johnson Street (C-1)**  
**Philadelphia, PA 19144**  
**267-693-2633**

May 31, 2016

Mr. Christopher T. Wright (ID #203412)  
Counsel for PPL Electric Utilities Corporation  
Post & Schell, P.C.  
12th Floor, 17 North Second Street  
Harrisburg, PA 17101-1601

Dear Mr. Wright:

Please find enclosed a copy of the Petition for Review which is being filed in the Commonwealth Court.

Sincerely Yours,



Larry Moyer

Encl. Petition for Review (Form provided by the Office of Chief Clerk) 4 pages

Certificate of Service

*Notice to Participate*

**MAILING ADDRESS OF COURT:**

Chief Clerk  
Commonwealth Court of Pennsylvania  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 2100  
P.O. Box 69185  
Harrisburg, PA 17106-9185

RE:

Jay Larry Meyer  
(Your Name - Petitioner)

Public Utility Commission

(Name of Government Agency/Board/Office/Department)

Dear Chief Clerk:

Enclosed are the original and one copy of the petition for review I am filing as Petitioner (pro se – proceeding without a lawyer) and a certificate of service showing I have sent copies of my petition for review to (1) the government agency/board/office/department that entered the order that I am appealing, (2) the Attorney General of Pennsylvania, and (3) any other party to the proceedings conducted by the government agency/board/office/department.

Also enclosed is the required filing fee, made payable to the Commonwealth Court of Pennsylvania OR a completed and signed Application for Leave to Proceed *In Forma Pauperis* (IFP) form.

Sincerely,

Jay Larry Meyer  
Petitioner Pro Se (proceeding without a lawyer)

**NOTE:** If the Petitioner is a corporation, it may NOT proceed *pro se*. A corporation MUST be represented by an attorney in court. See *Walacavage v. Excell 2000, Inc.*, 480 A.2d 281 (Pa. Super. 1984).

**NOTE:** You MUST file the original and one copy of the entire Petition for Review (pages 1-4) with the Chief Clerk of the Court at the mailing address on the top of this page, AND you MUST send copies of the entire Petition for Review (pages 1-4) to all other parties as indicated on Page 4.

COMMONWEALTH COURT OF PENNSYLVANIA

Jay Larry Moyer  
(Your Name)  
Petitioner

Consolidated Cases { C-2011-2273645  
C-2014-2444864

Docket No. C.D.

v.

Public Utility Commission  
(Name of Government Agency/Board/Office/Department)  
Respondent

Agency/Board/Office/Department  
Decision No.

PETITION FOR REVIEW  
(Appellate Jurisdiction)

1. This court has appellate jurisdiction over this matter by reason of Section 763(a)(1) of the Judicial Code, 42 Pa. C.S. §763(a)(1).

2. On May 19, 2016 the Public Utility Commission  
(date of decision) (Name of Government Agency/Board/Office/Department)  
entered an order at Decision No. C-2011-2273645 // C-2014-2444864

3. The order of the government agency/board/office/department should be reversed because:

(Use these lines and another piece of paper, if needed, to explain specifically why you believe the order is wrong)

See response to #3 attached

3. The order of the government agency (Public Utility Commission) should be reversed because:

In the Opinion and Order cited above, the PUC is enforcing against me, as requirements for virtual meter aggregation, an array of requirements and conditions that are nowhere delineated, either in the AEPS Act or in the Pennsylvania Utility Code. The irregularities, the disarray, and the haphazard manner in which these policies have been imposed on me result from the PUC's failure to promulgate rules that are clear, appropriate and specific to virtual meter aggregation.

I am a residential customer-generator with a small PV solar generating facility whose only purpose is to provide electricity to my house. In repeated Complaints before the Public Utility Commission, I have sought redress for various arbitrary requirements and conditions that have been imposed by PPL Electric on my renewable facility and on me as a virtual meter aggregation customer.

In every case, the conditions and requirements imposed on me were instituted by PPL Electric Utilities Corporation and only later supported and enforced by the PUC. In every case, they are imposed on me as a consequence of my electing virtual meter aggregation rather than physical meter aggregation. These conditions and requirements are arbitrary, onerous and punitive. One, for example, is a discriminatory rate "with regard to monthly charges" that is forbidden by 52 Pa. Code § 75.13(i). Together, these conditions and requirements reflect a preference given to residential customers who choose physical meter aggregation, while discriminating against me (and all residential customers like me) for having elected virtual meter aggregation.

Notably, the PUC, meanwhile, has failed to implement provisions in the Code that are specific to virtual meter aggregation: a) the cost for "necessary equipment" in 52 Pa. Code § 75.13(e) and b) the "incremental expense" for processing an account "on a virtual meter aggregation basis" - also in 52 Pa. Code § 75.13(e). Neither of these provisions has been clarified or implemented by the PUC. This failure to apply the existing provisions for virtual meter aggregation offers only more evidence of the PUC's disregard for virtual meter aggregation as an option.

Finally, the PUC has explicitly stated, in its recent Final Rulemaking Order (Docket No. L-2014-2404361), that it intends to limit virtual meter aggregation (Final Rulemaking Order at 81). The indefensible, onerous terms and conditions now enforced upon Larry Moyer will not only limit virtual metering; these harsh requirements will eliminate virtual meter aggregation entirely as an option for residential customers.

4. WHEREFORE, Petitioner prays that this Court review and set aside the order and grant relief as may be just and proper.

*Jay Larry Meyer*  
(Your signature)

Jay Larry Meyer  
(Your printed name)

370 W. Johnson St. C-1  
(Your street address)

Priso, PA 19144  
(City, State, and Zip Code)

267-693-2633  
(Your telephone number)

May 31, 2016  
(Today's date)

**NOTICE TO PARTICIPATE (Pa. R.A.P. 1513(d))**

[This notice is for any other party to the proceedings conducted by the government agency/board/office/department who is not named as a respondent.

You must send a copy of the entire Petition For Review (pages 1-4) to all such other parties.]

You have not been named as a respondent; however, you were a party before the government agency/board/office/department whose decision is sought to be reviewed.

If you intend to participate in this proceeding in the Commonwealth Court, you must serve and file a Notice of or Application for Intervention under Rule 1531 of the Pennsylvania Rules of Appellate Procedures within 30 days.

CERTIFICATE OF SERVICE

I certify that I sent by certified mail, return receipt requested, a true and correct copy of the Petition for Review (pages 1-4) to these parties:

- (1) Government Agency/Board/Office/Department (Name and address):

- See Certificate attached

- (2) Attorney General of Pennsylvania  
16<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

- (3) Other party, if any, to the proceedings conducted by the government agency/board/office/department who is not named as a respondent (Name and address):

- PPL Electric Utilities Corp.  
- (See Certificate attached to Petition)

(Attach additional pages as needed for additional parties.)

Jay Larry Moyer  
(Your signature)

Jay Larry Moyer  
(Your printed name)

370 W. Johnson St. (C-1)  
(Your street address)

Philadelphia, PA 19144  
(City, State, and Zip Code)

267-693-2633  
(Your telephone number)

May 31, 2016  
(Today's date)

NOTE: You MUST file the original and one copy of the entire Petition for Review (pages 1-4) with the Chief Clerk of the Court at the mailing address on Page 1 of this form, AND you MUST send copies of the entire Petition for Review (pages 1-4) to all other parties as indicated above.

# NOTICE TO PARTICIPATE

Mr. Christopher T. Wright (ID #203412)  
Counsel for PPL Electric Utilities Corporation  
Post & Schell, P.C.  
12th Floor, 17 North Second Street  
Harrisburg, PA 17101-1601

Mr. Wright:

If you intend to participate in this proceeding in the Commonwealth Court, you must serve and file a notice of intervention under Pa. R.A.P. 1531 of the Pennsylvania Rules of Appellate Procedure within 30 days.



J. Larry Moyer  
370 W. Johnson Street (C-1)  
Philadelphia, PA 19144  
267-693-2633

May 31, 2016

## Certification of Service

I hereby certify that I am this day serving the foregoing Petition for Review upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R. A. P.

121.

Kriss E. Brown  
Assistant Counsel  
Attorney ID #89036  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

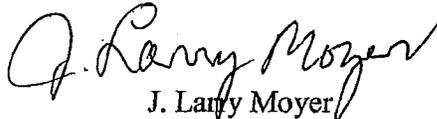
Via USPS Priority Mail

Mr. Christopher T. Wright (ID #203412)  
Counsel for PPL Electric Utilities Corporation  
Post & Schell, P.C.  
12th Floor, 17 North Second Street  
Harrisburg, PA 17101-1601

Via USPS Priority Mail

Attorney General of Pennsylvania  
16<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

Via USPS Priority mail

  
J. Larry Moyer

370 W. Johnson Street (C-1)

Philadelphia, PA 19144

267-693-2633

May 31, 2016