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July 21, 2016

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

RE: George Mandeville v PPL Electric Utilities Corporation
Docket No: C-2015-2512838

Dear Ms. Chiavetta:

Enclosed for eFiling in the above-captioned matter is PPL Electric Utilities Corporation's Exceptions to the Initial Decision Issued by the Honorable Conrad A. Johnson on July 1, 2016.

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

Very truly yours,

GRAIG M. SCHULTZ

GMS/ejm
Enclosure

cc: George Mandeville (w/ enc.)
Administrative Law Judge Conrad A. Johnson (w/enc.); *via email only*
Amy M. Bellizia (w/enc.); *via email only*
Kimberly R. Hanson (w/enc.); *via email only*

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

GEORGE MANDEVILLE,

Mr. Mandeville,

v.

PPL ELECTRIC UTILITIES
CORPORATION,

Respondent.

No. C-2015-2512838

**PPL ELECTRIC UTILITIES CORPORATION'S EXCEPTIONS TO THE INITIAL
DECISION ISSUED BY THE HONORABLE CONRAD A. JOHNSON ON JULY 1, 2016**

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

INTRODUCTION

Respondent PPL hereby takes exception to the Initial Decision which was issued on July 1, 2016, by Administrative Law Judge ("ALJ") Conrad A. Johnson. For the reasons set forth in further detail herein, the Administrative Law Judge erred when he concluded that the Mr. Mandeville satisfied his burden of proving that he lived outside the Commonwealth of Pennsylvania for five (5) to six (6) years prior to establishing electrical service at Mr. Mandeville's current address. The ALJ also erred when he concluded that Respondent PPL transferred a balance to Mr. Mandeville's current account which had accrued more than four (4) years prior to the transfer. Finally, the ALJ conclusions -- even if accepted as true -- do not warrant the imposition of a civil penalty.

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.*

EXCEPTIONS

A. Exceptions pertaining to Mr. Mandeville's residency.

1. **PPL excepts to Finding of Fact No. 7, which reads:** Sometime between 2006 and 2007, Mr. Mandeville left the Poconos area. *See* Initial Decision at p. 5.

2. **PPL excepts to Finding of Fact No. 9, which reads:** Prior to his October 24, 2012 application for electric service, Mr. Mandeville had lived out-of-state for at least five to six years. *Id.*

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 Mr. Mandeville 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)). The Pennsylvania Supreme Court has held that the term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. *See Se-Ling Hosiery v. Marqilies*, 70 A.2d 858, 856 (Pa. 1950). The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the

smallest amount, than the evidence presented by the other party. *See Samuel J. Lansberry, Inc. v. Pa. Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992) (citing *North American Coal Corp. v. Air Pollution Commission*, 279 A.2d 356 (Pa. Cmwlth. 1971)). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Public Utility Commission*, 447 A.2d 1100, 1101 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Public Utility Commission*, 623 A.2d 6, 7 (Pa. Cmwlth. 1993).

As it pertains to the instant matter, Mr. Mandeville failed to carry his burden of proof regarding his residency in the years before establishing electric service at 1140 Ferris Avenue, Berwick, Pennsylvania on October 29, 2012. The ALJ found that Mr. Mandeville lived out of state for the five (5) to six (6) years prior to establishing electric service at the Ferris Avenue address, because he "testified credibly." *See* Initial Decision at p. 12. However, at the time of the hearing on January 27, 2016, Mr. Mandeville failed to introduce any evidence concerning his residency during this vague timeframe, other than to say that he lived out of state for the five (5) to six (6) years before establishing electric service at the Ferris Avenue address. *See id.* at p. 2 ("...Mr. Mandeville was self-represented. He testified on his own behalf, but he did not sponsor any exhibits.") More specifically, the ALJ did not make any findings with respect to what addresses Mr. Mandeville allegedly lived at during this five (5) to six (6) year period, what dates Mr. Mandeville allegedly lived at these unknown addresses, or even what states Mr. Mandeville allegedly lived in during this time frame. Moreover, Respondent PPL previously requested that Mr. Mandeville complete a fraud packet regarding these allegations, which Mr. Mandeville failed to complete. *See* PPL Exhibit 2B. As such, Mr. Mandeville did not

offer substantial evidence with respect to his residency, and therefore, did not sustain his burden of proof.¹

B. Exceptions pertaining to Mr. Mandeville's balance transfer.

1. **PPL excepts to Finding of Fact No. 13, which reads:** On October 29, 2012, PPL transferred to Mr. Mandeville's account 53 debits in varying amounts for a total of \$8,747.77. *See* Initial Decision at p. 5.

2. **PPL excepts to Finding of Fact No. 14, which reads:** On November 1, 2012, PPL billed Mr. Mandeville \$29.18 for his monthly service plus \$8,747.77 for the transferred amounts for a total bill of \$8,776.95 without listing the individual dates as to when the transferred charges accrued. *Id.*

3. **PPL excepts to Finding of Fact No. 15, which reads:** On November 1, 2012, PPL billed Mr. Mandeville \$29.18 for his monthly service plus \$8,747.77 for the transferred amounts for a total bill of \$8,776.95 without listing the specific address or addresses where the transferred charges accrued. *Id.* at p. 6.

A review of Mr. Mandeville's Complaint reveals that the reasons for the Complaint were twofold. First, Mr. Mandeville alleged that Respondent PPL had terminated his electricity service, and that Mr. Mandeville believed there were incorrect charges on his bill. *See* Complaint at p. 2, ¶ 4. In support of Mr. Mandeville's allegation that there were incorrect charges on his electric bill, Mr. Mandeville offered nothing more than "not my bill." *Id.* Additionally, when asked to state the relief requested, Mr. Mandeville offered nothing more than

¹ Not only did Mr. Mandeville fail to carry his burden of proof at the time of the hearing, but an Accurant search of Mr. Mandeville's prior residences indicates that Mr. Mandeville was living within the Commonwealth of Pennsylvania during this five to six year time frame.

to say “not my bill.” *Id.* at p. 3, ¶ 5. The account that Mr. Mandeville complains of in his Complaint is number 02830-63043. *Id.* at p. 1, ¶ 1.

A review of the evidentiary records reveals that Mr. Mandeville established electric service at the 1140 Ferris Avenue address on October 24, 2012, and was assigned account number 02830-63034. *See* PPL Exhibit 1A and 2B, respectively. Subsequently, on October 29, 2012, Respondent PPL transferred \$8,747.77 to his account -- this amount representing a balance transfer that had accrued from Mr. Mandeville’s prior account. *See* PPL Exhibit 1A. Mr. Mandeville’s electric service was subsequently terminated for nonpayment on May 1, 2014. *See* PPL Exhibit 2B. Mr. Mandeville’s electric service was later reconnected on December 5, 2014, and he was assigned account number 02830-63043. *See* PPL Exhibit 1B, and 2A, respectively. On December 22, 2014, PPL then transferred the balance from Account 02830-63034 to Account 02830-63043. It is this account number (02830-63043) and balance transfer that Mr. Mandeville complains of in his Complaint, when he alleges “not my bill.” *See* Complaint at p. 1. The evidentiary records clearly disclose that this balance transfer occurred within seven (7) months -- not more than four (4) years -- as suggested by the ALJ. *See generally* Initial Decision. Despite this, the ALJ mistakenly believed that Mr. Mandeville was complaining of a prior balance transfer that occurred in 2012 on Account Number 02830-63034, when in fact Mr. Mandeville never filed a complaint to challenge these charges on Account Number 02830-63034.²

The ALJ also improperly shifted the burden onto Respondent PPL to present evidence of Mr. Mandeville’s prior account balance transfers. *See, e.g.*, Initial Decision at p. 12 (“More importantly PPL did not present any evidence as to when the stale charges accrued or at what address.”). This was not Respondent PPL’s burden. To the contrary, Mr. Mandeville’s

² Mr. Mandeville’s Complaint was filed with the Commission on November 9, 2015.

Complaint put Respondent PPL on notice that he was complaining of the charges on his current account (02830-63043). See Complaint, pg. 1. Accordingly, at the time of the hearing, Respondent PPL offered into evidence -- consistent with its four-year record retention policy -- documents which demonstrated that the charges transferred to Mr. Mandeville's current account (02830-63043) were transferred from his prior account (02830-63034) within seven (7) months from of when the last of those charges was accrued, at the time that Mr. Mandeville's prior account was terminated for nonpayment. Accordingly, the ALJ's conclusion that Respondent PPL was seeking to hold Mr. Mandeville accountable for charges which accrued more than four (4) years prior to their transfer is incorrect. Mr. Mandeville's Complaint does not identify Account Number 02830-63034 as a contested account.

C. Exceptions to the civil fine imposed by the ALJ.

1. **PPL excepts to Conclusion of Law No. 8, which reads:** The violations of the Public Utility Code and the Commission's regulations that are of a serious nature warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). See Initial Decision at p. 19.

In the Initial Decision, the ALJ found that by billing Mr. Mandeville for charges that were more than four years old as a condition to receive service, Respondent PPL's actions were serious and warranted a civil penalty. (See Initial Decision at p. 14 and p. 19 at ¶ 8.) The Commission has promulgated a Policy Statement that has adopted the ten "*Rosi* factors" which were first articulated in the case of *Joseph A. Rosi v. Bell-Atlantic, et al.*, Docket No. C-009924409, 2000 Pa. PUC LEXIS 5 (March 16, 2000). See 52 Pa. Code § 69.1201.

Accordingly, the Commission may consider these *Rosi* factors in evaluating whether a civil penalty should be imposed for violating a Commission order, regulation, or

statute. These factors are: (i) whether the conduct at issue was of a serious nature; (ii) whether the resulting consequences of the conduct at issue were of a serious nature; (iii) whether the conduct at issue was deemed intentional or negligent; (iv) whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) the number of customers affected and the duration of the violation; (vi) the compliance history of the regulated entity that committed the violation; (vii) whether the regulated entity cooperated with the Commission's investigation; (viii) the amount of the civil penalty or fine necessary to deter future violations; (ix) past Commission decisions in similar situations; and (x) Other relevant factors. 52 Pa. Code § 69.1201(c).

In this case, the ALJ found that Respondent PPL's action were serious and warranted the imposition of a \$2,000 civil penalty. *See* Initial Decision at p. 18, ¶ (10). As a justification for this civil penalty, the ALJ argues that Respondent PPL conditioned Mr. Mandeville's electric service on payment of charges that were more than four (4) years old. However, as explained above, the charges complained of by Mr. Mandeville were not more than four (4) years old; rather, the charges were transferred to Mr. Mandeville's current account from his prior account within seven (7) months. The record evidence is clear that PPL Electric attempted to work with Complainant to regain service, through referrals to OnTrack, repeated offers for payment arrangements, and attempts to secure LiHeap funding, all during times when Complainant was making virtually no payments. (PPL Exhibit 2A). PPL Electric asserts no penalty is warranted.

CONCLUSION

WHEREFORE, Respondent PPL Electric Utilities Corporation respectfully requests that Findings of Fact Nos. 7, 9, 13, 14, 15, and Conclusion of Law No. 8 be rejected. In all other respects, the Initial Decision should be approved and the Commission should dismiss the instant action.

Dated: July 21, 2016

Respectfully submitted,

By: /s/Graig M. Schultz

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BEFORE THE
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GEORGE MANDEVILLE,

No. C-2015-2512838

Mr. Mandeville,

v.

PPL ELECTRIC UTILITIES
CORPORATION,

Respondent.

CERTIFICATE OF SERVICE

This is to certify that PPL ELECTRIC UTILITIES CORPORATION'S EXCEPTIONS TO THE INITIAL DECISION ISSUED BY THE HONORABLE CONRAD A. JOHNSON ON JULY 1, 2016 was mailed to counsel/complainant of record on behalf of Respondents by first class United States mail, postage on this the 21st day of July, 2016.

Administrative Law Judge Conrad A. Johnson

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Via Email Only cojohnson@pa.gov

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By: /s/Graig M. Schultz

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