



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

April 10, 2003

JOHN F GROSS ESQUIRE
WILLIAM J FRIES ESQUIRE
GROSS MCGINLEY LABARRE & EATON
33 SOUTH SEVENTH STREET
ALLENTOWN PA 18101

DOCKETED
APR 23 2003

Re: Frank and Judi Viola v. PPL Electric Utilities Corp.
Z-01107626

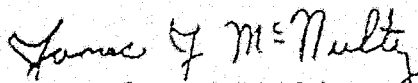
Dear Mr. Gross::

DOCUMENT

On April 1, 2003, Frank and Judi Viola filed Exceptions to the Initial Decision of Administrative Law Judge Debra Paist in the above captioned matter. Our review of the Exceptions revealed that no certificate of service or other indications of service accompanied that filing. Accordingly, we have enclosed a copy of the Exceptions for your use. This shall constitute service of the Exceptions for purposes of 52 Pa. Code §5.533.

Pursuant to 52 Pa. Code §5.535, you shall have ten (10) days from the date of service of the enclosed Exceptions to reply. The Exceptions were filed April 1, 2003. Although the Exceptions were timely filed, due to the failure of Frank and Judi Viola to note service on PPL Electric Utilities Corp., and in order to avoid prejudice to either party, we shall deem the filing date to be the date of this letter for purposes of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), relating to the time for Commission consideration of Exceptions.

Sincerely,


James J. McNulty
Secretary

Enclosure

cc: Frank and Judi Viola
130 Living Water Road
Lake Ariel PA 18436
Office of Special Assistants
Document Folder

MALCOLM J GROSS
PAUL A MCGINLEY
DONALD LABARRE JR
J JACKSON EATON III
MICHAEL A HENRY
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ORIGINAL

April 23, 2003

VIA FEDERAL EXPRESS

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

APR 25 2003
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

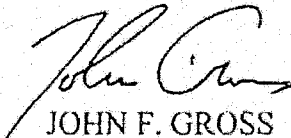
RE: Frank and Judi Viola v. PPL Electric Utilities Corporation
No. Z-01107626

Dear Mr. McNulty:

Enclosed for filing please find nine (9) copies of Replies of PPL Electric Utilities Corporation to Complainants' Exceptions to Initial Decision of Administrative Law Judge Debra Paist in connection with the above matter. Kindly return a time-stamped copy for me in the enclosed stamped, self-addressed envelope.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,


JOHN F. GROSS

RECEIVED

MAY 28 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

JFG/af

Enclosures

cc: The Honorable Debra Paist (w/ encs.)
Frank and Judi Viola (w/ encs.)
Diedre Bilger (w/ encs.)

87

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

FRANK and JUDI VIOLA,

Complainant

vs.

PPL ELECTRIC UTILITIES CORPORATION,

Respondent,

COMPLAINT DOCKET
NO. Z-01107626

JUN 05 2003
PPL ELECTRIC UTILITIES CORPORATION

DOCKETED

JUN 05 2003

REPLIES OF PPL ELECTRIC UTILITIES CORPORATION
TO COMPLAINANTS' EXCEPTIONS TO INITIAL DECISION
OF ADMINISTRATIVE LAW JUDGE DEBRA PAIST

DOCUMENT

JOHN F. GROSS, ESQUIRE
GROSS, MCGINLEY, LABARRE & EATON, LLP
Attorney for PPL Electric Utilities Corporation
33 South 7th Street
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Allentown, PA 18105-4060
Phone: (610) 820-5450
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ID#82079

I. INTRODUCTION

PPL Electric Utilities Corporation ("PPL") files the within Replies to the Exceptions of Complainants, Frank and Judi Viola, to the Initial Decision of Administrative Law Judge Debra Paist, issued February 27, 2002. PPL respectfully submits that Administrative Law Judge Debra Paist correctly found that Complainants failed to carry their burden, that PPL did not violate any provision of the Public Utility Code, and the Complainants are responsible for paying for service provided under the utility account.

For the reasons explained below, the Exceptions¹ of Complainants should be denied.

II. REPLIES TO COMPLAINANTS' EXCEPTIONS

1. Complainants' Exception 1: Complainants disagree with the requirement that they pay the lump sum amount described in Section 3 of Judge Paist's Order for all amounts owed under the Bureau of Consumer Services July 3, 2002 Decision.

PPL's Reply to Exception 1: On July 3, 2002, the BCS ordered the Complainants, beginning July 26, 2002, to pay their monthly utility budget bill amount plus \$100.00 each month on their overdue balance. At the time of the hearing, Complainants owed \$1,722.00 in missed payments under the BCS's Decision. The ALJ correctly found that Complainants should be required to pay that "catch-up" amount.

2. Complainants' Exception 2: Complainants disagree with Judge Paist's findings regarding their income and expenses and include evidence not offered at the time of the hearing in support of their Exception.

¹ On March 30, 2003, Complainants apparently send a letter to the Public Utility Commission with respect to Judge Paist's Initial Decision. The Commission accepted that letter as Exceptions to Judge Paist's Order. That letter was not forwarded to PPL or its attorney of record as required by 52 Pa. Code § 5.533. The Commission then forwarded a copy of the letter to the undersigned as service under Section 5.533. The Exceptions were received by the undersigned on April 14, 2003. These Reply Exceptions are, therefore, filed in compliance with 52 Pa. Code § 5.535.

PPL's Reply to Exception 2: The ALJ's Decision was based upon the ALJ's review of the evidence and testimony presented at the hearing. The parties were permitted to offer any relevant evidence at the time of the hearing to support their position. Complainants cannot now offer additional evidence or exhibits since the record is closed. Further, the ALJ made appropriate findings regarding the Complainants' income and expenses.

III. ARGUMENT

1. Complainants' challenge the imposition of a "catch-up" amount from the time of BCS Decision of July 3, 2002 to the hearing date. The ALJ correctly found that Complainants must pay an amount equal to the payments ordered by the BCS from the time of the BCS Order until the time of the hearing.

PPL submits that the ALJ properly determined that the BCS's Decision on the Complainants' informal Complaint was the starting point for establishing a "catch-up" amount. Claypoll v T.W. Phillips Gas and Oil Company, Docket No. Z-00248730 (Order entered December 22, 1995). The ALJ also properly held that a BCS payment determination is not to be changed unless there is sufficient evidence of a change in circumstances during the interim. Heard v Equitable Gas Company, Docket No. C-00957262 (Order entered June 21, 1996).

Here, the ALJ properly found that there was no sufficient change in circumstances during the interim and therefore ordered Complainant to pay a "catch-up" amount. Such a catch-up amount is supported by PUC Regulations that specifically require the Complainant to pay "current bills not at issue" pending review. 52 Pa. Code § 56.174(3).

Based on the above, the ALJ appropriately ordered the Complainant to pay PPL a lump sum catch-up amount within sixty (60) days of the date of the Initial Decision.

2. The ALJ made a decision based upon the evidence and testimony presented at the time of the Initial Hearing of the matter. All parties had an opportunity to present such evidence and testimony as they wished at the time of the hearing and the record was properly closed at the conclusions of the hearing. Documents submitted in support of Complainants' case should not be considered by the Commission.

Complainants' second Exception claims that the ALJ failed to consider relevant facts regarding their income and expenses. In support of this Exception, Complainants now offer additional documents for review. Those documents were not offered by Complainants at the time of the hearing. Therefore, PPI. had no opportunity to examine the documents, object to their admission, or cross-examine the Complainants regarding them. As such, they should not be considered by the Commission now.

Additionally, the Complainants had ample opportunity to present any evidence and testimony they wished at the time of the hearing. This new evidence was not offered at the time of the hearing and the record was then appropriate closed. Evidence offered after the record is closed in a case should not be considered by an ALJ in making her determination. See, 52 Pa. Code § 5.431. Therefore, none of the new evidence may be considered when reviewing the ALJ's Initial Decision.

Nevertheless, even if the Commission were to review the Complainants' documents, no new decision on this Complaint should be made without PPI. having the opportunity to object to the admissibility of those documents and/or cross-examine the Complainants with respect to the information contained. Further, nothing contained in those documents would change the factual conclusions reached by the ALJ that there has been no sufficient change in circumstances since the time of the BCS's Decision to warrant the change in

that decision. Therefore, notwithstanding the documents now submitted, Complainants should still be required to pay a lump sum catch-up amount and then their budget bill plus \$100.00 until their overdue balance is paid in full.

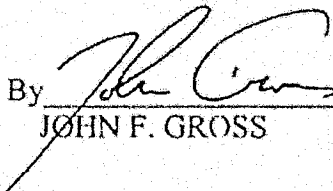
IV. CONCLUSION

WHEREFORE, for all the foregoing reasons, the Initial Decision of Administrative Law Judge Debra Paist should be affirmed.

Respectfully submitted,

PPL Electric Utilities Corporation

By



JOHN F. GROSS

Dated: April 23, 2003
at Allentown, Pennsylvania

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

FRANK and JUDI VIOLA,

Complainant

vs.

PPL ELECTRIC UTILITIES CORPORATION,

Respondent

COMPLAINT DOCKET
NO. Z-01107626

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true copy of the foregoing document upon the participant(s), listed below, in accordance with the requirements of Section 1.54 (relating to service by a participant):

The Honorable Debra Paist
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
P.O. Box 3265
Harrisburg, PA 17105-3265

Frank and Judi Viola
130 Living Water Road
Lake Ariel, PA 18436

GROSS, MCGINLEY, LABARRE & EATON, LLP

By 

JOHN F. GROSS, ESQUIRE
Attorney for PPL Electric Utilities Corporation
33 South 7th Street
P.O. Box 4060
Allentown, PA 18105-4060
Phone: (610) 820-5450
Fax: (610) 820-6006
ID#82079

DATE: April 25, 2003

SUBJECT: Z-01107626

TO: Cheryl W. Davis, Director
Office of Special Assistants

FROM: James J. McNulty
Secretary
nvl

FRANK AND JUDI VIOLA
VS
PPL ELECTRIC UTILITIES CORP.

Copies of the Initial Decision have been served upon all parties of interest.

Exceptions have been filed by:

FRANK AND JUDI VIOLA

Reply Exceptions have been received from:

SRB

cc: Susan Hoffner

DOCUMENT
FOLDER

REGISTERED
APR 23 2003



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

May 1, 2003

Z-01107626

John F. Gross, Esquire
33 South 7th Street
P.O. Box 4060
Zelienople Pa 16063

DOCKETED

MAY 02 2003

DOCUMENT
FOLDER

Frank and Judi Viola
v.
PPL Electric Utilities Corporation

Dear Mr. Gross:

The Commission on April 24, 2003 received your Replies to Exceptions in the above referenced proceeding. This was not within 10 days of the date Exceptions were due as prescribed in the cover letter to you, transmitting the Initial Decision of the Administrative Law Judge.

Accordingly, your Replies to Exceptions were not timely filed and will not be considered by the Commission.

Very truly yours,

James J. McNulty
Secretary

nvl

cc: All Parties of Record
Susan Hoffner, ALJ
Office Special Assistants
Office of Trial Staff
Law Bureau
Chairman
Commissioners

MALCOLM I. GROSS
PAUL A. MCGINLEY
DONALD LABARRE, JR.
J. JACKSON EATON, III
MICHAEL A. HENRY
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ORIGINAL

RECEIVED

MAY 28 2003

May 28, 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA FACSIMILE @ 717-787-0974
and FEDERAL EXPRESS

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT

RE: Frank and Judi Viola v. PPL Electric Utilities Corporation
No. Z-01107626

BTL

Dear Secretary McNulty:

I received a letter from you today dated May 1, 2003 with respect to the above-referenced matter. I have enclosed a copy of the letter for your reference. Please note that your letter was mailed to me at an address in Zelienople, Pennsylvania, not my correct address in Allentown, Pennsylvania.

I am also enclosing my original letter and nine (9) copies of the Replies of PPL Electric Utilities Corporation to Complainants' Exceptions to Initial Decision of Administrative Law Judge Debra Paist in connection with the above matter. You returned these to me noting that they were not filed within ten (10) days of the date the Exceptions were due as prescribed in the letter transmitting the Initial Decision of Judge Paist.

Judge Paist's Initial Decision was mailed to all parties on March 13, 2003. Therefore, the Complainants had until April 2, 2003 to file Exceptions. And, any Replies by PPL were due on or before April 12, 2003.

On March 30, 2003, I believe the Complainants sent a letter to the Public Utility Commission with respect to Judge Paist's Decision. The Commission apparently accepted that letter as Exceptions to Judge Paist's Order, despite the fact that it did not comply with PUC regulations. Specifically, the letter was not forwarded to PPL or me, its attorney of record, as required by 52

Pa. Code § 5.533. The Commission did, however, forward a copy of the letter to me which I received on April 14, 2003.

Based on the March 13, 2003 letter enclosing the Initial Decision, PPL would have been required to file Replies on or before April 12, 2003. Since I did not receive notice of the actual filing of Complainants' Exceptions until April 14, 2003, such a requirement is certainly unreasonable. The enclosed Exceptions were filed and received by you less than ten (10) days from the date that I received notice from the Commission of the Complainants' Exceptions. Therefore, they were filed in compliance with PUC regulations and should be considered by the Commission.

If the Commission decides not to consider PPL's Replies, it should also not consider the Exceptions filed by the Complainants since they were not filed in accordance with 52 Pa. Code § 5.533. The Complainants' failure was the clear cause of PPL's delay and therefore the delay should not prejudice PPL's rights.

Should you wish to discuss this matter and if I can be of any additional assistance, please feel free to call me

Very truly yours,



JOHN F. GROSS

JFG/afv

Enclosures

cc: The Honorable Debra Paist (w/ encs.)
Frank and Judi Viola (w/ encs.)
Diedre Bilger (w/ encs.)