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March 24, 2017

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


RE: John F. Carmody v. PPL Electric Utilities Corporation
Docket No: C-2016-2559799

Dear Ms. Chiavetta:

Enclosed for eFiling in the above-captioned matter are the Replies on behalf of PPL Electric Utilities Corporation, to Complainant's Exceptions.

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: Administrative Law Judge Joel H. Cheskis (w/enc.) *via email only*
John F. Carmody (w/enc.)
Kimberly R. Hanson (w/enc.) *via email only*
Patricia L. Moore (w/enc.) *via email only*
Holly M. Groth (w/ enc.); *via email only*
Shelbie Frederick Bayda (w/ enc.); *via email only*

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOHN F. CARMODY,

Complainant,

v.

PPL ELECTRIC UTILITIES
CORPORATION,

Respondent.

No. C-2016-2559799

**RESPONDENT PPL ELECTRIC UTILITIES CORPORATION'S REPLIES TO
COMPLAINANT'S EXCEPTIONS TO THE INITIAL DECISION ISSUED BY
THE HONORABLE JOEL H. CHESKIS ON JANUARY 31, 2017**

AND NOW, comes Respondent PPL Electric Utilities Corporation ("Respondent PPL"), by and through its counsel, Gross McGinley, LLP, and replies to Complainant's Exceptions as follows:

Introduction

The Pennsylvania Administrative Code (the "Code") provides that exceptions may be filed by a party and served within twenty (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.*

Replies to Complainant's Exceptions

As an initial matter, the Exceptions filed by John F. Carmody (“Mr. Carmody” and/or “Complainant”) must be dismissed because they are untimely. As noted above, exceptions may be filed by a party and served within twenty (20) days after the initial, tentative or recommended decision is issued. 52 Pa. Code § 5.533(a). The Initial Decision rendered by Administrative Law Judge Joel H. Cheskis was issued on January 31, 2017. Additionally, the cover letter accompanying Judge Cheskis’ Initial Decision specifically states that Exceptions must be filed and mailed to each party of record “**within twenty (20) days of the date of this letter.**” See correspondence from Rosemary Chiavetta dated January 31, 2017, addressed to all parties of record (emphasis in original). Despite this, Mr. Carmody’s Exceptions were not received by the Public Utility Commission (the “Commission”) until March 13, 2017,¹ forty-one (41) days after Judge Cheskis’ Initial Decision was issued to the parties. Moreover, Mr. Carmody’s Exceptions were received by the Commission six (6) days after the Commission issued its Final Order. See Final Order which was entered on March 7, 2017. As such, not only were Mr. Carmody’s Exceptions untimely, but they were filed after this matter was marked closed by the Commission. For these reasons, Mr. Carmody’s Exceptions must be dismissed as untimely. See, e.g., *Scarnati v. Pennsylvania-American Water Company*, No. C-00015273, 2002 WL 963419 (Pa.P.U.C. Jan. 10, 2002) (“...we will dismiss the Complainant's Exceptions as untimely.”).

In addition to being untimely filed, the Exceptions filed by Mr. Carmody do not comply with the Code provisions cited above. The ten (10) page handwritten letter submitted by Mr. Carmody fails to identify the finding of fact or conclusion of law to which each exception is

¹ It is also worth noting that Mr. Carmody never served Respondent PPL with his untimely filed Exceptions. To the contrary, Respondent PPL was served with Mr. Carmody’s untimely Exceptions by Rosemary Chiavetta on March 20, 2017. See correspondence of Rosemary Chiavetta dated March 16, 2017, and addressed to all parties of record.

taken. Additionally, Mr. Carmody's Exceptions fail to cite to the relevant pages of the Administrative Law Judge's ("ALJ") decision to which each exception is taken. Further, Mr. Carmody's Exceptions fail to provide supporting reasons for each exception. In light of Mr. Carmody's failure to conform to the various Code provisions cited above, Respondent PPL respectfully requests that Mr. Carmody's Exceptions be dismissed due to his lack of compliance with the Code. *See, e.g., Forward Township Municipal Authority v. Western Pennsylvania Water Co.*, No. C-882171, 74 Pa. P.U.C. 421, 1991 WL 476309 (February 15, 1991) ("We note that the Complainant's Exception [] constitutes a bald assertion. Consonant with [Section 5.533(b)], we shall deny this Exception of the Complainant."); *Fulton v. PECO Energy Company*, No. C-2004-2502, 2005 WL 1838683, at *3 (Pa.P.U.C. June 29, 2005) ("We will deny the Complainant's Exceptions....Nor does the Complainant cite to any error of the ALJ based upon the record evidence before her.").

The Exceptions filed by Mr. Carmody must also be dismissed, notwithstanding the aforementioned request for dismissal based upon timeliness and nonconformity. More specifically, Mr. Carmody's Exceptions are nothing more than a regurgitation of the information used to support his Complaint. Insofar as Mr. Carmody disagrees with the ALJ's findings, Mr. Carmody fails to explain the reasons for his disagreement other than to state "**Judge, I don't see how I created a foreign load by what I did.**" *See* Exceptions at p. 6 (emphasis added). At no point does Mr. Carmody state that he disagrees with any of the ALJ's findings of fact or conclusions of law, or that the ALJ committed an error of law and/or otherwise abused his discretion in reaching any one of his findings of fact and/or conclusions of law.

It must be noted that, as the proponent of a rule or order, the complainant bears the burden at the time of the administrative hearing. *See* 66 Pa.C.S.A. § 332(a). To establish a

sufficient case and satisfy the burden of proof, the complainant must show that the respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, No. F-8966524, 72 Pa.P.U.C. 196, 1990 WL 10702674 (February 8, 1990). Further, such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the Respondent. *Wapensky v. PPL Electric Utilities Corp.*, No. C-2014-2450200, 2015 WL 3815035, at *3 (Pa.P.U.C. June 11, 2015) (citing *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950)). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Id.* (citing *Norfolk & Western Ry. Co. v. Pennsylvania Public Utility Commission*, 413 A.2d 1037 (Pa. 1980)).

In this instant case, the Judge Cheskis reviewed all evidence presented by the parties and concluded that Mr. Carmody failed to carry his burden of proof. More specifically, Judge Cheskis very succinctly noted:

The issue in this case is whether or not foreign load is present. As noted above, if there is foreign load present, Section 1529 requires the company to transfer the disputed amount to the landlord and resolve any issues of apportionment of the outstanding amount in a court of common pleas. **Record evidence in this case demonstrates that Mr. Carmody has not carried his burden to demonstrate that there is no foreign load present.**

* * *

As a result, substantial record evidence demonstrates that foreign load is present at the service address. Furthermore, substantial record evidence also demonstrates that PPL acted properly in transferring the account balance from the tenants to Mr. Carmody until the foreign load was corrected. Mr. Carmody has failed to rebut PPL's evidence by a preponderance of the

evidence and, therefore, has failed to satisfy his burden. *See, Milkie, supra.* The \$944.25 at issue in this proceeding is a matter that is between Mr. Carmody and his tenants and not appropriate for this Commission to resolve. *See, Ace, supra.* As in *Kopf*, the lighting to the detached shed is for a common area, especially the outside light.

The argument that Mr. Carmody depreciates half of the value of the detached shed in support of his position that the tenants have permission to use the shed does not impact on whether foreign load is present. As noted above, foreign load has been found in a detached storage shed located in the middle of a backyard of a duplex on the boundary between the two properties. *See, Chinniah, supra.* **Regardless of whether Mr. Carmody depreciates half the detached shed because the tenants have permission to use the area, the two wires that run from the tenants' circuit breaker to the detached shed create foreign load.**

Furthermore, it is noted that amount of electric usage that constitutes the foreign load is irrelevant. The Commission added in *Ace* that there is "no *de minimus* exception," noting that the reason for the change in policy was to incent the landlord to correct the foreign load situation. *Ace* at 8. **Therefore, Mr. Carmody's argument that the foreign load constituting only a small amount of the outstanding balance should not make him responsible for the entire \$944.25 is irrelevant.** Commission precedent requires that the entire balance, including arrearages, be transferred to the landlord. **The specific amount of the \$944.25 owed by Mr. Carmody and the specific amount owed by his tenants is a matter for a court of common pleas.** *Ace, supra.*

In conclusion, Mr. Carmody has failed to carry his burden to demonstrate that PPL in any way violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the Company. Record evidence demonstrates that foreign load was present at the service address. As a result, PPL acted properly in transferring the account balance from the tenants to Mr. Carmody until the foreign load was corrected. Once the foreign load was corrected, the tenants again assumed responsibility for their usage. Mr. Carmody's complaint will, therefore, be dismissed.

See Initial Decision at pp. 9-11 (emphasis added). As Mr. Carmody failed to sustain his burden of proof, the Judge Cheskis was correct to dismiss his Complaint with prejudice. Mr. Carmody has not challenged the merits of Judge Cheskis' Initial Decision in his Exceptions. Instead, Mr. Carmody has done nothing more than repeat the same information which he used in support of his Complaint and used at the time of his initial telephonic hearing, and claim that he doesn't

understand how his actions caused a foreign load. Regardless of this, the ALJ already determined that a foreign load existed, and that PPL did not violate the Code, a Commission Order or regulation, or a Commission-approved tariff. See generally Findings of Fact 1-22 and Conclusion of Law 14. Mr. Carmody's Exceptions are meritless, insofar as he has failed to include any arguments in his Exceptions which demonstrate that the ALJ erred in this regard.

In sum, Mr. Carmody's Exceptions must be dismissed because they were untimely filed, and in fact, filed after the Commission ordered that this matter be marked closed. Second, Mr. Carmody's Exceptions must be dismissed because they fail to conform to the requirements of the Code. Last, Mr. Carmody's Exceptions must be dismissed because they fail to allege that Judge Cheskis made an improper finding of fact, and/or improperly applied the law to the facts of this case, and/or reached an inappropriate conclusion of law. Rather, Mr. Carmody has simply reiterated information which he already presented to the ALJ in support of his flawed reasoning that a foreign load was not present on his property and/or that even if a foreign load was present, he should not be responsible for the resultant balance from his tenant's account. However, the ALJ already heard this evidence and rendered an appropriate decision. In light of this, Mr. Carmody's Exceptions are without merit.

Conclusion

Based upon the foregoing reasons, Respondent PPL respectfully requests that Mr. Carmody's Exceptions be denied in their entirety.

Dated: March 24, 2017

Respectfully submitted,

GROSS McGINLEY, LLP



By: _____

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PPL Electric Utilities Corporation

**BEFORE THE
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JOHN F. CARMODY,

Complainant,

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PPL ELECTRIC UTILITIES
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No. C-2016-2559799

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Respondent PPL Electric Utilities Corporation's Replies to Complainant's Exceptions to the Initial Decision Issued by the Honorable Joel H. Cheskis on January 31, 2017 was forwarded on the 24th day of March, 2017, to the following:


VIA EMAIL

Honorable Joel H. Cheskis
400 North Street
Harrisburg, PA 17120

VIA FIRST CLASS MAIL

John F. Carmody
306 Golden Road
Honesdale, PA 18431

GROSS McGINLEY, LLP

By: 

Graig M. Schultz (I.D. No. 207123)