BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Jay Larry Moyer, Complainant

V. Docket No. C-2017-2629683

PPL Electric Utilities Corporation, Respondent

Complainant's Post-Hearing Brief

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I. STATEMENT OF THE CASE

In March, 2009, PPL Electric made interconnection of my renewable generating system under terms of virtual meter aggregation as provided in the Alternative Energy Portfolio Standards (AEPS) Act. PPL's approval of my renewable system occurred four years after passage of the Act.

The conduct of PPL which, in the intervening years prompted this complaint, is a failure of three types. One type is the company's failure to comply with the intent and the terms of the AEPS Act. The second type of conduct is the company's failure to comply with the Public Utility Code. The third type includes PPL's failure to comply with explicit, but non-regulatory directives of the Commission.

At the time of that approval, PPL had not yet devised or implemented billing procedures for the complex process of aggregating separate meters (i.e. "virtual meter aggregation"). In that vacuum, an arbitrary and inchoate billing process evolved.

For PPL, to this day, "virtual metering is manual", as explained by Ms. Tammy Nalesnik in conversations with me. (Transcript, Moyer Exhibit 8, line 35)

PPL's lack of preparation in 2009 was evident in the erratic bills and the missing credit, even as the Company claimed to be "learning how to implement virtual meter aggregation". PPL Post-Hearing Brief, June 29, 2015, at 26.

PPL's lack of readiness, and its indifference or resistance to virtual metering, was evident in a variety of egregious conduct. Three early examples are part of the record in prior litigation.

First, for fourteen months, PPL did not compensate me in any way for my solar generation. When PPL did begin to apply credit to my bills, it did so only in sporadic, unexplained "lump sums". These "lump sums" appeared three times on my house bills: 1) May 12, 2010; 2) September 9, 2011; and 3) December 9, 2011 (See Moyer Exhibit 51) These sums had no supporting data, and they could not be verified. The bills simply referred to these sums as "Excess Credit".

In June, 2010, soon after the first "lump sum" appeared, the company, without notice of any kind, reversed its initial approval of my system and unilaterally terminated all further credit. That arbitrary determination by PPL was reversed only after PennFuture agreed to represent me and filed the first formal complaint (C-2011-2273645).

Further egregious action occurred in 2012 when PPL altered my original two-page application form. My installer, Heat Shed, requested a copy of the form in preparation for a formal hearing on August 15, 2012. When I received the form

from PPL, my installer's original date (3/10/09) had been crossed out, and a new date (3/7/12) had been entered on page 1. The signature of a PPL employee, "Keith A. Erney", was added on page 2 and was dated "3/8/12". This signature, delayed by three years, indicated "Final Acceptance to Interconnect",[1] but there can be no justification for altering the application.

PPL's repeated attempts to "amend" its procedures rendered my bills ever more opaque, and made verification of the billing data effectively impossible.

Instead of upgrading its billing software to achieve meter aggregation, PPL continued to pursue its arbitrary "manual" billing process. PPL's "lapse in the payments" in June, 2017, (Moyer Exhibit 8, transcript, line 40) demonstrates again the Company's lack of credible support, this time even for its own manual billing system. According to Ms. Nalesnik, the erratic bills from June to December resulted from the departure of one "representative that did the virtual metering". (Transcript, Moyer Exhibit 8, line 40) Apparently, no one was trained and available to provide continuity in performing the manual procedures.

The PUC has been well aware of this history, and in 2014, the Commission intervened. In an effort to assure more complete data as well as to provide more transparency, the Commission ordered PPL to provide me with additional data. Regrettably, that effort by the Commission did not achieve its purpose. The clear

[1] The altered application was presented in a Formal Hearing on April 21, 2015, as Exhibits JLM 19 and JLM 20.

aim of the Commission was to assure that I would have full and transparent access to the data which PPL collects and uses to calculate generation credit from my renewable generating system.

Time and again, PPL argued before the Commission that the problems and grievances were "resolved". (e.g. Tr. 34-35) It is clear from the evidence, however, that PPL's non-compliance continues unabated. The spate of errors in recent bills is perhaps the most egregious to date. PPL's claim that my grievances have been "resolved" by previous litigation are simply incorrect. The bills reviewed in the recent hearing are clear evidence of ongoing disarray and turmoil. These recent bills are no more transparent or reliable than those issued in 2014 or earlier.

Among other requests, the present Complaint asks the Commission to order full compliance with the AEPS Act and with the Public Utility Code. This Complaint also asks the Commission to overturn PPL's current manual billing process and order PPL to issue a transparent monthly bill with complete, current, and verifiable data showing how virtual meter aggregation was completed.

II. SUMMARY OF THE CASE

In 2014, the Public Utility Commission acknowledged the dilemma posed by PPL's manual billing process. The Commission concluded then that

> *"PPL's billing system is unable to associate two separate accounts that are read and billed independently on the monthly bills of customers with virtually aggregated meters. Therefore, it may be difficult for customers with virtually aggregated meters to determine the impact of the net generation from a host account on a satellite account from the*

individual monthly bills for each account." C-2011-2273645, Opinion and Order, January 9, 2014, at 13-14

The two separate bills issued to me each month do not in any way reflect "meter aggregation" and do not indicate how credit is determined. The small shred of data which appears on my house bill ("Excess Credit") is incomplete, unreliable, and unverifiable.

Recognizing that my monthly bills were inadequate, the Commission intervened and ordered PPL to provide me with specific, itemized data in a separate "tabulation". PUC Opinion and Order, January 9, 2014, at 16 (C-2011-2273645) Though well-intentioned, the "tabulation" ordered by the Commission did nothing to correct the billing process itself. The tabulation or "spreadsheet" was (and is) merely a side document assembled after-the-fact to "adjust" misinformation in the actual bills. The resulting spreadsheet is nothing more than an ex post facto reconstruction. It does not reflect what actually happens on a monthly basis, nor does it correspond to the data on my bills.[2]

PPL's "tabulation" or "spreadsheet" (Moyer Exhibit 51) does not provide the transparency or the verification that the Commission intended. First, the spreadsheet does not include "any payments made by Mr. Moyer" as required by item 6f of the Commission's order. Opinion and Order, January 9, 2014 at 22

[2] Every solar bill (Acct. #67277-97002) is identified, furthermore, as an "adjusted" bill, as noted on each bill at the top of page 1.

Second, the "tabulation" does not fulfill the requirement that the information "directly associate" with the data on my bills. This "direct" association is precisely what the Commission specified in its 2014 order:

> *"This information should be presented in a format that enables the Parties to directly associate the monthly bills with the credits and cash-out payments."* PUC Opinion and Order, January 9, 2014, at 16 (C-2011-2273645)

It is impossible to "directly associate" the monthly bills with the credits because data is scattered across multiple documents, and those documents offer disparate information. In order to explain my bills to me, the company itself is "required to refer to a number of other documents". (Tr 184)

As one example, the bill dated August 9, 2017, reports an "Excess Credit" of $28.77, but that figure does not appear on the spreadsheet.

Meanwhile, the spreadsheet claims "Credits applied to Satellite" in June and July, 2017, but those figures, $66.43 and $88.61, respectively, do not appear on any monthly bill.

Furthermore, "host meter readings" which appear on the spreadsheet do not match those on the solar bills.[3]

[3] The solar bills for May 12, 2009, and March 14, 2011, show meter replacements and indicate that there have been a total of three different meters at that site. For that period, it is impossible to reconcile the readings on the spreadsheet (Moyer Exhibit 51) with the readings on the monthly bills. These discrepancies were presented at length in my Direct Written Testimony, February 2, 2015, (pp 34-36) in anticipation of the Formal Hearing in 2015, but the evidence was either dismissed or overlooked.

Like the absent meter readings, kilowatt hours of generation from the solar panels are also missing from the bills. When they appear on the spreadsheet as "host excess kWh", they are entered well after the fact.

Finally, each "Satellite Account Balance" on the spreadsheet (Moyer Exhibit 51, far right column) is merely replicated from the monthly bill (or vice versa!). That "Satellite Account Balance" is never explained by the other data on the spreadsheet. Hence, as an example, the various columns on the spreadsheet do nothing to explain the "Satellite Account Balance" for September, 2017 ($150.40).

These disparities refute any claim that the spreadsheet "reconciles" with the bills,[4] and the Commission's long-running deference to PPL Electric is not warranted.

In his questioning of Ms. Nalesnik, Mr. Ryan emphasized the "internal" documents (PPL Exhibits 1, 2, 5, and 10) and stressed the agreement among them. (Tr. 119-129) In the process, however, he avoided the many disagreements between those exhibits and the actual bills, as noted above.

The relief which this complaint seeks is a monthly statement which includes all of the pertinent information necessary to verify the generation, the meter

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[4] In 2016, the Commission deferred to PPL and asserted that [PPL's] "tabulation of the Complainant's actual data for the two accounts since 2009 reconciles with the Complainant's bills." Opinion and Order, May 19, 2016, at 29

aggregation, the calculations, and the resulting credit from my virtual meter aggregation system.

In addition, the present Complaint asks that the Commission enforce its own requirements, practices, and standards, which are summarized in this brief.

III. FINDINGS OF FACT

1. Virtual meter aggregation, which, under the AEPS Act, is eligible for net metering "within two miles of the boundaries of the customer-generator's property", extends the option of solar power to countless residential customers who cannot avail themselves of "rooftop solar" or physical meter aggregation.
2. The AEPS Act declares, unequivocally and without limitation, that "virtual meter aggregation . . . shall be eligible for net metering" (Section 2, definition of "net metering").
3. The fundamental intent of the AEPS Act, as established by the PUC, is to expand the use of renewable systems like mine. [5]
4. PPL has approved physical meter aggregation for thousands of residential customers.
5. PPL Electric has approved virtual meter aggregation for a mere total of 110 customers, and only a small fraction of these have been approved for residential customers[6].
6. In 2009, before PPL made interconnection to the grid, and before it imposed the "dwelling" requirement, PPL approved my system as a "residential" facility under the provision of virtual meter aggregation. (Moyer Exhibit 6)

[5] "The fundamental intent of Act is the expansion and increased use of alternative energy systems and energy efficiency practices." (Final Rulemaking Order, L-00050174, June 22, 2006, at 76, as cited in the Amended Final Rulemaking Order, June 9, 2016, at 76).

[6] In testimony on August 15, 2012, when 86 VM systems had been approved, Aloysius Cannon testified that "The majority of these customers are mid-size commercial and up." (Hearing, August 15, 2012, Transcript at 182).

7. Although I installed solar panels exclusively to power my single house, PPL now requires that I establish a separate "dwelling" at the generating site in order to qualify for "residential service". (PPL Rebuttal of Aloysius P. Cannon, March 6, 2015, at 36) (See also discussion of "tariff" in Section IV.D, below)

8. In spite of the explicit "residential" designation shown in the inspection document (Moyer Exhibit 6), PPL Electric arbitrarily imposes a commercial (GS-1) customer charge on my solar panels every month.

9. As defined in the Public Utility Code, <u>virtual</u> meter aggregation is "the combination of readings and billing for all meters . . . by means of the EDC's billing process." (75.12: "virtual meter aggregation")

10. PPL acknowledges, and the Commission affirms, that "PPL's billing system currently is unable to transfer and aggregate data from two separately-metered accounts." (PUC Opinion and Order, May 19, 2016, at 23)

11. As a company policy for my renewable generating system, PPL issues two separate and independent monthly bills, each associated with a different meter.

12. The two separate bills issued to me each month give no indication of any "combination" or "aggregation" of data from the two separate meters.

13. The monthly bills issued to me by PPL Electric do not comply with "fair business practice" as described by ALJ Jeffrey A. Watson on September 23, 2013, and affirmed by Final Order of the Commission on November 13, 2013. Docket No. C-2013-2359146

14. The generation credit which I should receive from my renewable facility cannot be accurately determined or verified from the incomplete, sporadic and inconsistent information on the monthly bills.

15. The line item of "Excess Credit" is omitted entirely from my house bills dated September 11, 2017; October 10, 2017; and November 8, 2017.

16. The account established for the "solar panels" (67277-97002) is a moot record which offers no evidence of generation activity; no evidence of generation credit; and no evidence of "aggregation" with another meter.

17. PPL's billing process makes no distinction between the credit (or value) of "electricity used . . . during the billing period" [per 75,13(d)] and the credit (or value) of "excess kilowatt hours . . . carried forward and credited in subsequent billing periods" [per 75.13(d)], and, for both, PPL uses the same nomenclature, "Excess Credit". (See the house bills dated June 9, 2017 and August 9, 2017)

18. The bills issued for my house (06476-21001), where generation credit must be applied, a) do not specify the number of kilowatt hours which "offset" usage, per the code in 75.13(d); b) do not specify the "excess kilowatt hours" carried forward, per the code in 75.13(d); c) do not specify the "full retail kilowatt hour rate", per the code in 75.13(d); and d) do not specify the basis for determining whatever "Excess Credit" may appear on the bill.

19. Distribution credits are not "zeroed out" at the end of the year (May 31) as required by Regulation 75.13(f). (See house bills for May 10, 2017 and June 9, 2017)

20. PPL ignores the directive in 75.13(f) which says "Distribution credits are <u>not</u> carried forward into the next year." *Note:* $65.91 on the spreadsheet for May, 2017 (Moyer Exhibit 51). That amount is transferred to the house bill dated June 9, 2017, and shows that credits <u>are</u> (improperly) "carried forward into the next year".

21. In violation of section 75.13(d), PPL imposes a one-month lag, so all (100%) of the generation "in a given billing period" is "carried forward", and none of the current generation is applied "during the billing period", as required by that section.

22. PPL claims, without basis, that it "provides a detailed, twelve-month worksheet to each virtual net metering customer at the end of the PJM Planning Year". (Opinion and Order, January 9, 2014, at 13; Moyer Exhibit 11, page 6 of 8) PPL has not, at any time, provided such a worksheet to me.[7]

23. PPL does not utilize the "True-up Period" during which the "unused kilowatt hour distribution credits shall be zeroed out". 75.13(f)

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[7] In her testimony, Ms. Tammy Nalesnik addressed the issue of a "twelve-month worksheet", saying, "We don't have such a document." (Tr. at 190)

24. The Commission, in 2014, identified specific, itemized data that PPL must provide to me, including, inter alia, "Any payments made by Mr. Moyer". (Opinion and Order, January 9, 2014, ordering item #6.)

25. PPL does not include the "payments made by Mr. Moyer" on any of the various tabulations or "spreadsheets" which it has created (Moyer Exhibit 10; Moyer Exhibit 43; Moyer Exhibit 51; et al).

26. The various spreadsheets issued by PPL (Moyer Exhibit 51, et al) are detached and independent documents unrelated to its "procedures for monthly VM customer calculations" (PPL Exhibit 5). (See also Tr. 105)

27. The tabulations and "spreadsheets" created by PPL are not part of the Company's "billing process" (Tr. 105).

28. The various tabulations or "spreadsheets" (PPL Exhibit 10; Moyer Exhibit 43; Moyer Exhibit 51; et al) make retroactive adjustments to data and report transactions that were omitted (or withheld) from the actual bills.

29. Data on the various tabulations or "spreadsheets" do not align with, or correspond to, the data provided on the monthly bills.

30. Manual errors are not corrected on subsequent bills, but require a separate spreadsheet (i.e. PPL Exhibit No. 10) which serves, inter alia, to "correct the amount of the credit" (See PPL Exhibit 10 for Sep-17 and Nov-17)

31. In its billing procedures for virtual meter aggregation, PPL does not implement the "credit mechanism" required by the Commission. Final Rulemaking Order, entered June 23, 2006, at 17; Moyer Exhibit 18

32. In its billing procedures for virtual meter aggregation, PPL does not apply credit on the "kilowatt-hour" basis described in the Regulations. 75.13(d); 75.13(e); and 75.13(f)

33. PPL's assertion that automating the billing process for virtual meter aggregation would not be "a prudent expense" is unsubstantiated.

34. PPL's claim that its manual billing process is "inexpensive" is not supported by any data.

35. PPL's practice of requiring "independent load"; of imposing commercial charges on a residential customer; and of pursuing a haphazard manual

billing process are all impediments to the expansion of virtual meter aggregation and thus violate the intent of the AEPS Act.

36. The Commission's own intent "to permit a limited amount of virtual meter aggregation"[8] (Amended Final Rulemaking Order, June 9, 2016, at 76) echoes PPL's practices and contravenes the intent of the AEPS Act.

37. The Commission's intent "to permit a limited amount of virtual meter aggregation" is unsupported by the Pennsylvania Courts.

38. The scope, reach, and availability of virtual meter aggregation are statutory issues over which the Commission has no authority, and any effort by PPL or by the Commission to limit virtual metering directly or indirectly, is without basis.

39. The mission of the Public Utility Commission includes a commitment "to balance the interests of consumers and utilities".

IV. ARGUMENT

A. THE STATUTORY BASIS AND THE REGULATIONS FOR VIRTUAL METER AGGREGATION ARE CLEAR AND UNDISPUTED

The AEPS Act explicitly affirms virtual meter aggregation and introduces its basic parameters.

> *"Virtual meter aggregation on properties owned or leased and operated by a customer-generator and located within two miles of the boundaries of the customer-generator's property and within a single electric distribution company's service territory shall be eligible for net metering."* (Emphasis added) AEPS Act, Section 2: "net metering"

The AEPS Act (Alternative Portfolio Standards Act) enacted in 2004, guarantees Pennsylvania's electric customers the option of virtual meter

[8] The Amended Final Rulemaking Order cites *Larry Moyer v. PPL electric* (C-2011-2273645) in the context of setting limits on virtual meter aggregation. (Amended Final Rulemaking Order, June 9, 2016, at 76) To that end, the Commission avers that the changes were "to clarify when [virtual metering] is available".

aggregation as a means of obtaining generation credit on their monthly electric bills.

According to the Act, a customer-generator may receive net metering "when any portion of the electricity generated by the alternative energy generating system is used to offset part or all of the customer-generator's requirements for electricity." (AEPS Act, Section 2, "net metering")

Virtual meter aggregation always involves multiple meters and multiple meter readings. These several meters may be installed in a variety of configurations, but they must be "within two miles of the boundaries of the customer-generator's property". (AEPS Act, Section 2, "Net metering")

These requirements for electricity may occur at the point of generation; at some other meter; or at both locations. In my case, nearly all of the requirements for electricity are at my house, several hundred yards from the solar panels.

The AEPS Act also distinguishes between "residential service" and "other service locations" on the basis of "nameplate capacity" or system size.

B. THE REQUIREMENTS FOR IMPLEMENTING VIRTUAL METER AGGREGATION ARE CLEARLY DELINEATED IN THE REGULATIONS.

The understanding of virtual meter aggregation is further elaborated in Pennsylvania's Public Utility Code. The process of aggregating the separate meters is clearly described in the definition of virtual meter aggregation:

> "Virtual meter aggregation—*The combination of readings and billing for all meters regardless of rate class on properties owned or leased and operated by a customer-generator by means of the EDC's billing process, rather than through physical rewiring of the customer-generator's property for a physical, single point of contact.*" 52 Pa. Code§ 75.12

The central thrust of the definition is unmistakable, and the requirement is two-fold: 1) virtual meter aggregation must be completed "by means of the billing process", and 2) there must be a "combination of readings and billing". The only credible reading of the definition is that this aggregation or "combination" should be reflected in the monthly bills, and in a transparent manner.

This "combination" or "aggregation" simply does not occur in PPL's billing process, a fact acknowledged by the Commission in 2016 and still earlier in 2014.

> *"The record affirms that PPL's billing system currently is unable to transfer and aggregate data from two separately-metered accounts."* (Opinion and Order on Remand; Docket #C-2011-2273645; May 19, 2016, at 23)

> *"PPL's billing system is unable to associate two separate accounts that are read and billed independently on the monthly bills of customers with virtually aggregated meters . . ."* Opinion and Order; Docket #C-2011-2273645; January 9, 2014, at 13-14

The bills do not show any evidence of "meter aggregation", which is the most fundamental requirement of virtual meter aggregation. There is no transparent "combination of readings and billing". The solar "readings" are available only on a separate "spreadsheet" (Moyer Exhibit 51), and the billing calculations do not appear on any bill. The monthly calculations are done through an arcane set of

hidden manual "procedures" (PPL Exhibit 5). The only viable remedy is a new, transparent billing system that complies with the Act and with the Regulations.

For most ordinary residential customers with "rooftop" solar generation, there is a single, self-contained bill. For me, as a residential customer, however, PPL requires and issues two separate bills. Nothing in the AEPS Act or in the Alternative Energy Portfolio Standards (Chapter 75) requires (or even suggests) two separate bills for a residential customer who elects virtual meter aggregation. What is required is "the combination of readings and billing . . . by means of the billing process" or, as specified in 52 Pa Code § 75.14(e), by "processing his account on a virtual meter aggregation basis". (Emphasis added)

In the past, PPL has resisted aggregation, saying that the cost of compliance was "not a prudent expense". (PPL Reply Brief, June 29, 2015, at 17) More recently, PPL seems to have modified its stance. In my phone conversation with Ms. Tammy Nalesnik on October 23, 2017, we discussed the current billing problems, and Ms. Nalesnik responded, saying,

> *"if the PUC comes back with a decision that we're required to do that [i.e. provide detailed, verifiable data on a monthly basis], . . . if they, if they say that we're required to do that, then -- then, we may be required to do that."* Moyer Exhibit 8, lines 133-135

C. THE EXPLICIT PROCEDURES FOR APPLYING CREDIT ARE CLEARLY DELINEATED IN THE REGULATIONS.

The Regulations specify clearly how generation credit is to be applied. The procedures involve three different modes or stages. The first stage is to apply credit

immediately to the current billing period, but only "up to the total amount of electricity used by that customer during the billing period".

"An EDC and DSP shall credit a customer-generator at the full retail kilowatt-hour rate, which shall include generation, transmission and distribution charges, for each kilowatt-hour produced by a Tier I or Tier II resource installed on the customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that customer during the billing period." 52 Pa. Code § 75.13(d)

This immediate credit is to be applied on a monthly basis.

The second stage is what happens to any surplus or "left over" kilowatt hours that are generated in a given month.

"the excess kilowatt hours shall be carried forward and credited against the customer-generator's kilowatt-hour usage in subsequent billing periods at the full retail rate." 52 Pa. Code § 75.13(d)

The third stage is what happens to "any remaining excess kilowatt hours" at the end of the Reporting Year (May 31).

"At the end of each year, the DSP shall compensate the customer-generator for any remaining excess kilowatt hours generated by the customer-generator that were not previously credited against the customer-generator's usage in prior billing periods at the DSP's price to compare rate." 52 Pa. Code § 75.13(e)

The regulation extends its directive still further, saying, in 75.13(f)

"the excess kilowatt hours shall be carried forward . . . until the end of the year when all remaining unused kilowatt-hour distribution credits shall be zeroed-out. Distribution credits are not carried forward into the next year." 52 Pa. Code § 75.13(f)

The regulations clearly distinguish between 1) the immediate, monthly credit that is applied to "usage"; 2) the "leftover" or "excess" credit that must be "carried forward"; and 3) the "remaining, unused credits" at the end of the year.

In disregard for these explicit directives, PPL has superimposed an arbitrary and incoherent process consisting of a "one-month lag"; obscure calculations; dollar amounts of unexplained "Excess Credit"; and two inscrutable monthly bills.

D. MY PV GENERATING SYSTEM GENERATES ELECTRICITY FOR "RESIDENTIAL SERVICE".

On March 10, 2009, as shown in Moyer Exhibit 6, my renewable system was inspected and approved by PPL as a residential system. ("Inspection and Approval by PP&L") The "structure classification" explicitly identifies the system as "residential".

In spite of this initial classification, PPL now regards my system as a "commercial" installation and imposes the corresponding GS-1 customer charge. PPL thus contradicts its own initial approval.

PPL invokes its "Commission-approved tariff" as the basis for designating my system as "commercial".

> *"Whether an account qualifies as residential or commercial is controlled by PPL Electric's Commission-approved tariff."* PPL Rebuttal Testimony, March 6, 2015, at 27

PPL's appeal to its "Commission-approved tariff" is erroneous and is misplaced.[9] The "standards" for a customer-generator are established by the AEPS Act in Section 2, and those "standards" include the definition of a "customer-

[9] The role of PPL's "Commission-approved tariff" is further discussed in Section "L", below.

generator'. That definition distinguishes a "residential service" from "other service locations" and does so on the basis of the system's size or capacity. As a system "not greater than 50 kilowatts", my PV generating system, both in size and in purpose, meets the "standard" of a "residential service" as delineated in the Act.

Those "standards", furthermore, must be verified by the DEP. Article 7 of the AEPS Act states explicitly that the department [of Environmental Protection] "shall verify that an alternative energy source meets the standards set forth in section 2."

PPL may not invoke its "commission-approved tariff" as a way of overriding the Act or its "standards". PPL inexplicably changed its own initial designation and did so without seeking authorization or clarification from of the DEP.

Ultimately, whether my installation meets the "standard" for "residential service" is a question beyond the purview of PPL and the PUC. The Commission should enforce the original "residential" status of my PV system or, alternatively, seek a determination from the DEP as the Act requires.

E. PPL REFUSES TO COMPLY WITH THE BILLING FRAMEWORK AND REQUIREMENTS THAT ALREADY EXIST.

1. The PUC standard for "fair business practice" requires "a clear billing statement".

Transparency in a customer's bills has been affirmed by the Commission in unequivocal language. In 2013, ALJ Jeffrey A. Watson described a billing standard

which he refers to as "fair business practice", and this standard has been affirmed by the Commission. This is Judge Watson's statement. Moyer Exhibit 9

> *"It is a basic matter of fair business practice that a consumer should be provided a clear billing statement in order to explain charges and adjustments on a bill and learn the basis for the charge or adjustment in order to determine if they were correctly calculated."* [10] Docket No. C-2013-2359146, Initial Decision at 9

A central issue in the present Complaint is transparency, accuracy, and full disclosure. What is new in the present complaint is additional evidence of failure in PPL's methodology. Once again, monthly statements from PPL Electric have proven inconsistent, disordered, and inaccurate. In the present arrangement, PPL deliberately withholds crucial data from my monthly bills. In numerous statements, credit is not identified at all. (See house bills for September-November, 2017).

PPL's current billing practice does not comply with the Commission's own standard. When PPL's head of billing was asked if the monthly bills should enable me to verify the calculations and credit, Ms. Oehler demurred, saying "I can't answer that." (Tr. at 100)

ALJ Watson's (and the Commission's) definition of a "fair business practice" is unequivocal. The standard for "fair business practice" is transparency, accuracy, and full disclosure.

The flawed monthly statements must be seen as symptoms of a systematic failure. The central issue in this Complaint is whether PPL's methodology for

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[10] Docket No. C-2013-2359146, Initial Decision at 9, affirmed by the PUC in its Final Order, November 13, 2013.

implementing virtual meter aggregation is lawful, transparent, coherent, and accurate. A central question is also whether the methodology is "fair". The issue is whether my monthly bills will disclose, in real time, what PPL is doing with my data from my generating system.

ALJ Watson did not say that a customer should be provided with a supplement, an insert, or a spreadsheet. He said that a customer should be provided with "a clear billing statement".

This is a crucial element of the relief that I seek. Until that is achieved, PPL will continue to subvert the intent of the AEPS Act and undermine the Commission's own standards of "fair billing practice".

2. PPL's PPL's monthly bills do not provide the specific, itemized data that the commission identified as necessary.

In its Opinion and Order, January 9, 2014, the Commission identified a critical flaw in PPL's billing process. The problem with PPL's system, as stated by the Commission, is that,

> *"PPL's billing system is unable to associate two separate accounts that are read and billed independently on the monthly bills of customers with virtually aggregated meters. Therefore, it may be difficult for customers with virtually aggregated meters to determine the impact of the net generation from a host account on a satellite account from the individual monthly bills for each account.* C-2011-2273645, Opinion and Order, January 9, 2014, at 13-14

The Commission then proffered a remedy. The PUC ordered PPL to provide me with the following specific and itemized data. (PUC Ordered Item # 6, Opinion and Order, January 9, 2014, C-2011-2273645; Moyer Exhibit 11 (pp. 1 & 2 of 8)

> 6. That within sixty (60) days of the entry of this Opinion and Order, PPL Electric Utilities Corporation shall file with the Office of Administrative Law Judge, the Commission Secretary and Mr. Larry Moyer, a tabulation that reflects the following *actual* information on a monthly basis between March 2009 and the last full monthly billing periods for the two accounts at issue in this proceeding that ended prior to the entry date of this Opinion and Order [January 9, 2014].
>
> a) the meter readings at the host and satellite locations;
> b) the excess generation from the host account that was applied to the satellite account;
> c) the rate that was used to place a value on the excess generation from the host account that was applied to the satellite account;
> d) the usage at the satellite account;
> e) any net usage that was billed to Complainant for the satellite account;
> f) any payments made by Mr. Moyer;
> g) any excess energy that was banked at the satellite account;
> h) the total energy banked; and
> i) any cash-out payments made to Complainant and the price to compare used to calculate those cash-out payments.

There is no doubt that the intent of the Commission was to assure that I (and by extension, all virtual metering customers) would have full and transparent access to our own generation and credit data and would be able to decipher the data.[11] Because it was retroactive, the effect of the ordered data was also limited.

In several respects, regrettably, the "separate tabulation" did not fulfill the Commission's intent.

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[11] A category which the Commission apparently omitted inadvertently is the critical monthly "charges".

First, the selective data did not achieve the Commission's goal of transparency. Thus, the monthly data on the spreadsheet does not and cannot explain the "Satellite Account Balance" that appears in the far right column.

Even when judged by its content alone, the tabulation (i.e. spreadsheet) does not comply with the Commission's explicit directive. PPL, for example, refuses to include on the spreadsheet "Any payments made by Mr. Moyer" (ordered item #6f) The spreadsheet makes no reference to those payments. Those payments, which do appear on the internal "Account Statements" (PPL Exhibit No. 1; PPL Exhibit No. 2) through June, 2017, do not transfer to the spreadsheet.

What the present complaint seeks is a monthly statement with complete, transparent, itemized, accurate, and verifiable data that demonstrates how virtual meter aggregation has been completed in compliance with the statute and the regulations.

3. **The data provided on PPL's tabulation do not "directly associate" with the credits, as required by the Commission.**

In addition to the specific details, the Commission specified further that the itemized data should "directly associate the monthly bills with the credits". PUC Opinion and Order, C-2011-2273645, January 9, 2014, at 16 The "separate tabulation" (or "spreadsheet") created by PPL does not comply with this requirement. Comprehensive information about aggregation, generation and credit

is scattered across several documents, as affirmed by Ms. Nalesnik (Tr. 184) and is not available on the spreadsheet or in any consolidated form.

As noted above, the monthly data on the spreadsheet does not "directly associate" with the bills. The data entered in the various columns do not and cannot explain the "Satellite Account Balance" in the far right column. That isolated number ("Account balance") is simply replicated from the monthly house bill (06476-21001), as in August, 2017, when the spreadsheet reports an "Account balance" of $80.83.

Still more significant, the spreadsheet is not part of the billing process.

From the testimony of Ms. Cheryl Oehler, it is clear that the spreadsheet is created separately and is not part of the "billing process". Ms. Oehler testified that the "procedures" for monthly calculations (PPL Electric Exhibit 5) are not used to prepare the spreadsheet. (Tr. 105) The spreadsheet is merely an ancillary document created after the fact to "adjust" the bills and account for the "one-month lag".

Virtual meter aggregation requires the "combination of readings and billing . . . by means of the billing process" (Emphasis added) (75.12: "virtual meter aggregation"). The spreadsheet is not part of that process. PPL, in its response to the Commission's order, turned the spreadsheet into window dressing, and it became little more than a decoy or camouflage.

The Commission identified the specific data that must be provided. The Commission also stated that this information must "directly associate" with the bills. The spreadsheet created by PPL gives the "appearance" of complying with the Commission's format, but it is not complete and it does not "directly associate" with my bills, as ordered by the Commission. The Commission should require comprehensive and verifiable data in the bills themselves.

4. PPL's billing process for virtual meter aggregation does not complete the "combination of readings and billing" as required by the Code.

A central requirement for virtual meter aggregation is "the combination of readings and billing". ("virtual meter aggregation" - 52 Pa. Code § 75.12) Notably, PPL concedes, and the PUC affirms, that PPL's current, manual process does not comply with that fundamental requirement.

> *"The record affirms that PPL's billing system currently is unable to transfer and aggregate data from two separately-metered accounts. Additionally, PPL's billing system is unable to accommodate negative meter readings that result when a generation facility produces more electricity than it uses."* (Opinion and Order, May 19, 2016 at 23)

The deficiencies in PPL's billing procedures have been evident for many years, and the PUC conceded as much in 2014. At that time, the Commission acknowledged that

> *". . . it may be difficult for customers with virtually aggregated meters to determine the impact of the net generation from a host account on a satellite account from the individual monthly bills for each account.* (Opinion and Order, January 9, 2014, at 14)

The Commission also concluded that it could not determine the accuracy of the credit from the monthly bills.

> *"in our January 2014 Order, we concluded that we were unable to determine whether the Complainant was properly credited for his solar generation because there was not sufficient information in the record to tie the Complainant's monthly bills to the amounts credited on his satellite account and the cash-out payments made to the Complainant."* (Opinion and Order, May 19, 2016 at 28)

The regulations are clear and require the "combination of readings and billing". PPL's failure to comply is equally clear. The Commission's deference to PPL's non-compliance should not be repeated now.

5. PPL does not utilize the "credit mechanism" which the commission established for applying generation credit.

In 2006, in its first Rulemaking Order after the 2004 AEPS Act was passed, the Commission established what it called the "credit mechanism". The Commission makes two unequivocal statements about this credit mechanism. (Moyer Exhibit 18)

> *"the credit mechanism remains a kWh credit per kWh produced for the billing cycle."* (Final Rulemaking Order, entered June 23, 2006, at 17)

> *"The Regulations specifically state that the credit mechanism is a kWh-for-kWh credit."* (Final Rulemaking Order, entered June 23, 2006, at 17)

This "credit mechanism" explicitly refers to kilowatt hours. There is no mention of credit as a dollar value, either in the rulemaking order or in the regulations. Under this "credit mechanism", the number of kilowatt hours

generated (or "produced") would simply be offset by an equal number of kilowatt hours that are used in the billing cycle.

In PPL's manual procedures, the Company simply bypasses the Commission's "kWh for kWh" mechanism and substitutes an unexplained dollar amount.

6. **PPL refuses to express credit in kilowatt hours in disregard of the Code's language.**

The language of the regulations is consistent in every way with the Commission's kWh-for-kWh "credit mechanism" described above.

The relevant sections of the Code, 75.13(d); 75.13(e); and 75.13(f), speak repeatedly of credit in terms of kilowatt hours. These are the sections that specifically address the method of issuing credit.

Five times in Section 75.13(d), the Code associates credit with kilowatt hours, referring to "kilowatt hour rate"; "each kilowatt hour produced"; "excess kilowatt hours . . . carried forward"; "kilowatt hour usage"; "excess kilowatt hours that are not offset".

"An EDC and DSP shall credit a customer-generator at the full retail kilowatt-hour rate, which shall include generation, transmission and distribution charges, for each kilowatt-hour produced by a Tier I or Tier II resource installed on the customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that customer during the billing period.
If a customer-generator supplies more electricity to the electric distribution system than the EDC and DSP deliver to the customer-generator in a given billing period, the excess kilowatt hours shall be carried forward and credited against the customer-generator's kilowatt-hour usage in subsequent billing periods at the full retail rate".
Any excess kilowatt hours that are not offset by electricity used by the customer in subsequent billing periods shall continue to accumulate until the end of the year. (Emphasis added)

The same section is unequivocal about the utilization of kilowatt hours, saying that "the excess kilowatt hours shall be carried forward" and "excess kilowatt hours . . . shall continue to accumulate".

Section 13(e) continues to associate credits with kilowatt hours.

"At the end of each year, the DSP shall compensate the customer-generator for any remaining excess kilowatt hours generated by the customer-generator that were not previously credited against the customer-generator's usage in prior billing periods at the DSP's price to compare rate." (Emphasis added)

Section 75.13(f) is equally emphatic:

"excess kilowatt hours shall be carried forward and credited against the customer-generator's unbundled kilowatt-hour distribution usage in subsequent billing periods until the end of the year when all remaining unused kilowatt-hour distribution credits shall be zeroed-out." (Emphasis added)

By contrast, in PPL's "mechanism", credit appears only in dollars, and the kilowatt hours are completely hidden in the process. In the bills that I receive, the link between credit and kilowatt hours is completely severed. In my bills,

1. There are no current meter readings to show the kWh (the meter reading of 68584 is repeated every month.)
2. There are no Generation totals (in KWh)
3. There are no kWh brought forward from previous months ("leftover" or "banked" kWh).
4. There are no Kwh-for-kWh of offset credit (or credit "applied" in current month).
5. There is no report of true "excess kWh" (kWh "carried forward" to subsequent months).
6. There are no data showing aggregation of the two meters ("or meter readings")
7. The price per kWh, which changes frequently, is obscured. (Note the fluctuations of per-unit values on Moyer Exhibit 51)
8. There is no evidence of any calculation on the bills (kWh times price per kWh is concealed). (Moyer Exhibit 20),

7. **PPL disregards the principle of "immediate positive feedback" which the Commission identified as a priority.**

In addition to the kWh-for-kWh "credit mechanism", the Commission also established the priority of "immediate positive feedback". Moyer Exhibit 18 (immediate impact and administrative cost)

In its Rulemaking Order on June 23, 2006, the PUC included an unequivocal priority which it called "an immediate impact on the customer's bill".

> *"Bi-directional meters provide an immediate impact on the customer's bill while reducing administrative costs, an important factor in the successful implementation of net metering. The intent of the Act is to encourage the increased use of alternative energy and provide an immediate positive feedback to the customer-generator."* (Emphasis added) (Final Rulemaking Order, entered June 23, 2006, at 17)

My generating system is monitored by a bi-directional meter[12], but I do not receive the "immediate positive feedback" which the Act intends, and which is affirmed by the Commission.

For customers with rooftop solar, who also use a single, bi-directional meter, the credit is immediate ("up to the amount used") and appears on the bill at the end of each billing period. This is a benefit to the overwhelming majority of solar generating customers. For virtual metering customers, however, PPL denies this "immediate impact".

[12] ". . . on January 6, 2011, PPL Electric changed the meter at the host account to a single bidirectional meter. Since that time, Mr. Moyer has had the same meter at his host account." PPL Rebuttal Testimony, March 6, 2015, at 54

Instead of this "immediate impact", PPL imposes what it calls a "one-month lag". This is a distinct disadvantage for virtual metering customers like me. It is also the opposite of "immediate positive feedback" that the Commission advocates.

F. PPL ELECTRIC's BILLING PROCESS FOR VIRTUAL METER AGGREGATION DISREGARDS THE COMMISSION'S DIRECTIVES AND FLOUTS THE REGULATIONS.

1. The one-month lag adopted by PPL, and referenced above, ignores the explicit credit process established by the Regulations.

It is clear from Sections 75.13(d) and 75.13(e) and 75.13(f) that credit is applied in three ways: 1) kilowatt hours of credit are first applied in the current billing period "up to the amount used"; 2) "excess kilowatt hours" are banked and "carried forward" to subsequent months; and 3) "at the end of each year", "remaining excess kilowatt hours" are compensated at the price to compare.

PPL ignores the explicit language of these sections.

Through its one-month lag, PPL forces virtual metering customers, every month, to forego credit that has been duly earned. Every VM customer is forced to accommodate PPL's manual billing process and forego benefit. The Commission itself attests that the purpose for this delay is solely to accommodate PPL and its employees. Moyer Exhibit 16 (page 3 of 4)

This is the Commission's description of the one-month lag:

PPL acknowledged the Complainant's argument that there is a one-month lag between when credits are earned and when they are applied to virtual meter aggregation customer-generators' accounts. However, PPL asserted that this is solely the result of

the time it takes PPL's employees to input the data into the spreadsheet for it to perform the necessary calculations regarding the credits to be applied. (Emphasis added) Opinion and Order, May 19, 2016, at 16

This one-month lag is forced on virtual metering customers solely to enable the manual "input" of data. Were it not for PPL's arbitrary manual procedures and the "one-month lag", I could realize the same "immediate impact" that other net metering customers experience.

2. PPL argues for "prudent expense" while slighting virtual meter aggregation and ignoring "fair business practice".

In the past, the PUC has pointed to the small number of virtual metering customers[13] and embraced PPL's argument that automation is not a "prudent expense". The limited adoption of virtual metering is no accident, and the near total absence of residential customers is easily explained by PPL's active disregard for virtual meter aggregation. There is no detailed information on PPL's website about virtual meter aggregation, and a search of critical terms ("virtual", "virtual metering", "virtual meter aggregation", etc.) yields "no results". In the lone online reference to "virtual meter aggregation", PPL erroneously refers to "more than one meter/account at an address" ("Renewable Generation: Making the Connection", p. 10)

[13] While physical meter aggregation has expanded to some 8,000 PPL customers, expansion of virtual meter aggregation has shown only the slightest increase: 81 in 2012; 98 in 2016, and 110 today.

The only telephone number available is PPL's general customer service number (1-800-342-5775), and callers are routinely asked to leave a number. Return calls involve days or weeks of delay. There is not even an extension number to reach a representative and pose questions or concerns.

In a conversation with Ms. Nalesnik, I asked about such an extension number or a "more direct number" for assistance. In her reply, Ms. Nalesnik said, "I wish there was. We don't even have internal extensions, and that's what's become very frustrating". (Moyer Exhibit 15, audio clip 14:20-14:48)

Again and again, customer service representatives prove uninformed and unable to answer the most basic questions about the virtual metering option. Inquiries are directed to random agents who have no acquaintance with virtual metering.

The PUC has deferred to PPL's claim about the "small number" of virtual metering customers.

> *"we find PPL's argument persuasive that given the small number of its customers that are enrolled in virtual meter aggregation and the cost that would be necessary to upgrade its billing system, automating its billing process would not be a prudent expense at this time."* (Opinion and Order, May 19, 2016, at 24)

Considerations of cost may not override the regulations or limit access to this lawful provision. Furthermore, the cost of automation must be weighed against the considerable, and mounting, cost of maintaining the current manual process. Failure to provide transparent, verifiable bills may not be excused on the basis of

"expense". The company may not pursue its own business interests at the expense of customers, and, as noted earlier by ALJ Watson, it may not disregard the critical importance of "fair business practice".

3. PPL's transgressive billing practices continue to produce "difficulties" and "inconsistencies".

The recent difficulties with PPL's billing process represent a pattern of transgression. Some of PPL's early "difficulties" were associated with the choice of meters. In the beginning, PPL reported that it "experimented" with meters and with the manual process. (PPL rebuttal, March 6, 2015; C-2011-2273645)

This is from the testimony of Aloysius P. Cannon, PPL's head of billing, in 2015.

> *"As I discussed previously, there were some initial difficulties when implementing the virtual net meter aggregation program. Consequently, the Company experimented with different types of meters to settle on the meter that performed best for virtual net meter aggregation using the manual process."* (Emphasis added) PPL Rebuttal of Aloysius P. Cannon, March 6, 2015, at 40

The Company also referred to inconsistencies while it was "learning" how to implement virtual metering.

> *"Although there were inconsistencies in the early years of the virtual meter aggregation program, it is important to recall that the Complainant began participating in the program when the Company was learning how to implement virtual meter aggregation and overcome the hurdle of its billing system's inability to aggregate virtual meter aggregation customer generators' accounts on an automated basis. (PPL St. No. 1, p. 10; Tr. 208) Consequently, PPL Electric and its personnel experienced difficulties in trying to find the best way to process the billing for those customer-generators, which led to some inconsistencies in the billing process for virtual meter aggregation customer-generators."* PPL Post-Hearing Brief, June 29, 2015, at 26.

Bills issued to me in 2017 are evidence that difficulties and inconsistencies persist. The bills submitted with this complaint are evidence of the continuing disarray in PPL's billing methodology.

4. PPL continues to impose double-billing without justification.

Virtual meter aggregation, as prescribed in the AEPS Act and in the regulations, does not specify separate bills or separate charges; it specifies a combination of readings and billing.

Some virtual metering customers have three or more meters that must be aggregated. In 2006, the Commission cited a survey of "farm operations" and reported an average of seven meters per farm.[14] That survey was cited specifically in connection with virtual meter aggregation.[15]

My facility, by contrast, is a simple virtual metering system with two meters, one at the solar panels and another at my house.

Nothing in the net metering standards suggests two monthly charges for a residential customer, but PPL continues to impose on me two separate customer charges every month. The current charges which PPL imposes on me are $17.11

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[14] The survey was conducted by the Pennsylvania Department of Agriculture. (Final Rulemaking Order, L-00050174, entered June 23, 2006, at 21)

[15] PPL has not disclosed its method for aggregating three or more meters, and this Complaint does not represent those customers. This Complaint, however, has important relevance to their circumstances. (Note 75.13(d) which directs the method of applying credit "through the remaining meters".)

and $22.00, and they are not justified by anything in the Alternative Energy Portfolio Standards (Chapter 75 of the Public Utility Code).

Most appalling is the fact that, in spite of the double billing and the double charges, there is no evidence of "net metering" on either bill. The complete absence of meter aggregation is a fundamental transgression and is ample reason to overturn the second, commercial charge.

A further reason to forbid a second charge is the explicit language of the Code, which limits the charge to "processing his account". The provision in the Regulations is unequivocal.

> *"The customer-generator shall be responsible only for any incremental expense entailed in processing his account on a virtual meter aggregation basis."* (Emphasis added) 52 Pa. Code § 75.14(e)

It is clear that the Commission itself envisioned a single account, even as it acknowledged the added complexity in billing and made provision for an "incremental expense", as seen above.

PPL misconstrues the language of the Code for its own advantage and defies the restraints which the regulations impose. No "monthly charges" and no "fee or other type of charge" may be imposed on me as a residential customer-generator – "unless those charges would apply to other [residential] customers "that are not customer-generators". 75.13(j); 75.13(k)

The double accounts and the double charges are discriminatory and have no basis in the Regulations.

5. PPL continues to issue <u>solar</u> bills without generation data or current meter readings.

The bills for the "solar panels" offer no data whatsoever regarding the generating system. Even the most fundamental data, current and accurate meter readings, are omitted entirely from the solar bill.

In addition to the meter readings, the credit process involves a variety of other crucial data, but this crucial data is not included in the solar bill (67277-97002), as indicated below:

> The bill does not report current, updated meter readings. (Both the previous and present readings are identical on every bill --- 68584 and 68584).
> The bill does not report any kWh of data in the graph (page 1).
> The bill does not report kWh's of electric use.
> The bill does not report kWh generation produced in the billing period
> The bill does not report kWh of credit that were applied in the billing period.
> The bill does not report kWh's of credit that have been banked.
> The bill does not report any association with a second meter.
> The bill does not report meter aggregation (the "combination of readings and billing")

6. The only data posted on the <u>house</u> bill is a single, sporadic, and unexplained line item.

On many house bills, there is a line item called "Excess Credit", but that number is unexplained and unverifiable. The phrase "Excess Credit' also has several meanings. It may refer to generation from the previous month, as on June

9, 2017, or it may refer to "leftover" credit to be applied to the next month, as on August 9, 2017. The phrase is also not limited to virtual metering credit, but is used to identify other forms of credit, as indicated by Ms. Nalesnik. (Tr. at 165)

In some months, there is no "Excess Credit" shown at all, as in the bills for September, October, and November, 2017. Whatever occurred with generation credit in those months cannot be determined from the bills. From the data given, for example, on the bill for November 8, it is impossible to know what role credit played in the Account Balance of $124.27. Furthermore, without explanation, that November Account Balance of $124.27 appears on December 8 as $124.30.[16]

The discrepancies and lack of data result in house bills that are indecipherable and balances that are unverifiable.[17] The following is a list of the critical information that is routinely omitted from the house bills:

> evidence of a connection to another, associated meter
> evidence of a link to the solar panels
> evidence of generation by the solar panels
> kilowatt hours of applied credit
> kilowatt hours of "banked" credit
> evidence of meter aggregation (the "combination of readings and billing")

7. PPL disregards directives for the "Reporting Year" and for the "True-up Period".

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[16] In a similar discrepancy, the Account Balance of $171.14 on October 10 appears, on November 8, as a "Previous Balance" of $171.03. These discrepancies represent errors that are acknowledged in PPL Exhibit 10, which was prepared in response to the present complaint.

[17] On bills from September to December, 2017, numbers in the lower left corner of page 2 are inconsistent, unexplained, and indecipherable.

In 2014, the Commission reported the following claim by PPL Electric:

"PPL notes that it provides a detailed, twelve-month worksheet to each virtual net metering customer at the end of the PJM Planning Year. Opinion and Order, January 9, 2014, at 13

PPL's claim is disingenuous. PPL did not provide me with any such worksheet in 2014 or in any year since then. The Commission's claim was based on PPL's dubious testimony in 2012. (Moyer Exhibit 11, 6 of 9, footnote 5)

Again in 2016, the Commission reported a similar claim:

- *"PPL made efforts to modify internal practices by offering year-end worksheets to its virtual meter aggregation customer-generators, including the Complainant, to enable them to better verify PPL's calculation and application of credits to their accounts."* Opinion and Order, May 19, 2016, at 45

The existence of such a "worksheet" or of such "efforts" was refuted by Ms. Tammy Nalesnik, who testified in the recent hearing, "We don't have such a document." (Tr. at 190)

The "Reporting Year", of course, is a critical element in net metering. Any review of the credit process must recognize the Reporting Year which begins on June 1 and ends on May 31. 52 Pa. Code § 75.12. At the specified "end of the Reporting Year", all "remaining excess kilowatt hours" are paid at the price to compare [75.13(e)], and "all remaining unused kilowatt-hour distribution credits shall be zeroed-out." [75.13(f)] This process must occur during the "True-up Period".

The Regulations are emphatic: "Distribution credits are not carried forward into the next year." 75.13(f)

PPL does not observe this "true-up" process for my system, and did not do so in 2017. Instead, using its "manual" process and its arbitrary "one-month-lag", PPL carried forward the "full retail" of $65.91 from May of the previous Reporting Year. The house bill dated June 9, 2017, distorts the credit process and begins the new year with distribution credits that are "carried forward", in explicit violation of the Code.

Those distribution credits ($65.91), moreover, appear on the June 9 bill without any supporting data about actual generation. It is impossible, from that bill, to determine the meter readings, the number of kilowatt hours, or the per-unit price on which the $65.91 was based.

8. Flaws, lapses, and errors in PPL's billing process create an adverse "domino effect".

The "one-month lag" and the failure to complete a "True-up" produce distortions that are further compounded by ongoing manual errors. Together, these practices trigger an adverse "domino effect". The house bill for July, 2017, is a conspicuous example which triggered such an effect.

The house bill dated July 11, 2017, failed to report any credit at all and is clearly incorrect. PPL explains that this omission was due to a personnel change

and the lack of a qualified person who could perform the manual billing procedures. (Moyer Exhibit 8, lines 34-46).

Based on PPL's explanation, it seems likely that this lapse in July was repeated for other virtual metering customers, without their awareness.

The subsequent bill, dated August 9, does not report the July error, nor does it indicate if or how the error is being corrected. Neither does that August 9 bill indicate a credit of $66.43 or a credit of $88.61, both of which Ms. Nalesnik cited in the telephone conversation on September 15, 2017. (Moyer Exhibit 8, lines 62-71ff)

That August 9 bill <u>does</u> register an "Excess Credit" of $28.77, but that figure was unexplained. Ms. Nalesnik referred to that $28.77 as a "remaining credit". (Moyer Exhibit 8, lines 92-104 and line 123) Ms. Nalesnik further stated that this "left over" amount ($28.77) would be "applied to the next bill". (Moyer Exhibit 15, audio clip 12:30-12:40).

The following bill, dated September 11, shows no record of the $28.77, nor does it include any new generation credit for the intervening month. In fact, the line item of "Excess Credit" is omitted entirely. Consequently, without evidence of new credit, the "balance due" ($150.40) is suspect and cannot be verified.

The bill dated October 10 again omits the line item for "Excess Credit", and makes no reference at all to generation credit. Without evidence of new credit, the "balance due" on October 31, cannot be verified, and is undoubtedly inaccurate.

The bill dated November 8 compounds the confusion and once again omits the line item called "Excess Credit". Consequently, the "balance due" on November 29 cannot be verified and, again, is certainly incorrect.

In December, a line item of "Excess Credit" re-appears, but the manual entry ($45.85) is itself incorrect, apparently due to a typing error. To correct this manual error, PPL created still another "repair spreadsheet" (PPL Exhibit 10) which corrects that three-cent typing error. The intended figure, $45.82, represents the "one-month lag" from the November generation, as reported on Moyer Exhibit 51.

In the meantime, nothing in the bills specifies how the unreported amounts of "Excess Credit" in September, October, and November were corrected, if at all.

The house bills from June to December, 2017, reflect the "domino effect" and the complete disarray in billing. These bills, moreover, are completely detached from the source of the credit, the "solar panels", where generation occurs. There is no link between the house bills and the solar bills. There is no "combination of readings and billing" as required by the regulations. There is no "net metering" or reliable "meter aggregation". It is impossible to discern what

[hidden] calculations PPL may have performed in preparation of these bills. It is also impossible to track and verify the data which does appear on those bills.

PPL's current billing system is so opaque; the data is so dispersed; the manual procedures are so cumbersome; and the errors are so prevalent, that PPL's current manual billing process for virtual meter aggregation must be deemed a failure.

For many years, the PUC has deferred to PPL's arbitrary procedures. For many years, the PUC has defended PPL's arcane manual system for reporting generation and credit. For many years, the PUC has permitted PPL to continue practices that do not comport with virtual meter aggregation.

The Commission should order PPL to discontinue its present manual billing process for virtual meter aggregation and order the Company to institute a new, reliable billing process that will reflect a transparent "combination of readings and billing", as the Regulations demand.

9. PPL has demonstrated a pattern of failing to prepare for virtual meter aggregation.

The ongoing confusion and disarray in my bills can be traced to the installation of my PV renewable generating system in 2009. For fourteen months, I received no credit at all for my generation in spite of the Commission's explicit, 2008, declaration about "monthly credits".

"the clear intent of the Act 35 amendment was to facilitate the research, development and deployment of small alternative energy resources by providing monthly credits . . ." (Emphasis added) Final Rulemaking Order, July 2, 2008 - L-00050174 at 14

The most recent errors and omissions must be seen in this context.

The AEPS Act became law in 2004. Five years later, when PPL completed interconnection of my generation facility, the Company still had not developed any viable billing procedures or a billing methodology for virtual meter aggregation. By its own admission, the Company "was learning how to implement virtual meter aggregation". *(PPL Reply Brief, June 29, 2015, at 26)*

When credit did begin to appear in an occasional bill, it appeared only sporadically and in what PPL called "lump sum payments" (See Moyer Exhibit 51 for May, 2010; September, 2011; and December, 2011).

The irregularities in the bills were further complicated by PPL's decision, in June 2010, to terminate all credit to my facility, arguing that my system did not have "non-generational load".[18]

In 2013, PPL reprimanded an employee when credit went missing entirely due to "human error". (Opinion and Order, May 19, 2016, at 30)

The monthly bills associated with my generating system are not reliable today, and as a record of generation and credit, they are of no meaningful use. It is apparent, from recent bills, that, still today, PPL Electric is unable or unwilling to

[18] The issue of "independent load" and eligibility for net metering is now before the Court of Common Pleas in Washington County, PA. (*Sunrise v. First Energy*)

provide monthly bills that show meter aggregation in consistent, accurate, complete, and transparent form.

PPL's arbitrary methodology is an inscrutable manual system of cumbersome and unwieldy data entry; complicated record-keeping; haphazard reporting; and scattered documents.

Crucial data associated with my PV generating system is dispersed across various documents in the following manner: 1) PPL, using its manual "procedures for monthly VM customer calculations" (PPL Exhibit 5), enters, records, and calculates generation data on a side (stand-alone?) computer; 2) PPL reports charges, payments, and unexplained "Excess Credit" on my monthly statements (Moyer Exhibit 101-116); 3) PPL, after the fact, makes adjustments to the monthly statements and assembles generation and credit data on a customized "spreadsheet" (Moyer Exhibit 51, et al); and 4) PPL records "Account activity" in two other, separate locations (PPL Exhibit No. 1; PPL Exhibit No. 2).[19] There is no location where the customer-generator can review the comprehensive billing and credit data, or verify the multiple calculations.

In the past, the PUC has overlooked the lack of preparation and the ill-conceived methodology. New evidence shows PPL's failure to support its own manual billing procedures and to anticipate personnel changes in its own billing

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[19] PPL also maintains a separate "Account Contact History" for the house (PPL Exhibit #3) as well as one for the solar panels (PPL Exhibit #4)

staff. PPL did not anticipate the departure of a key staff member who performed the "manual" billing procedures. This failure adds still more evidence that PPL's system is untenable and subject to repeated and indefensible lapses, omissions, and irregularities. It is, in short, a system that has failed.

G. PPL'S CLAIM OF AN "INEXPENSIVE" MANUAL BILLING PROCESS IS NOT SUPPORTED BY THE RECORD.

PPL Electric has argued that, in contrast to automation, its manual billing process is "inexpensive". (PPL Reply Brief, June 29, 2015, at 10) The record of this case refutes PPL's claims. As just one item, the claim ignores the expense of re-training Ms. Nalesnik, a process which continued for many months in 2017.

In addition, the lengthy and tedious manual procedures (Moyer Exhibit 35) which are completed every month[20] for each virtual metering customer represent extensive and ever-growing labor cost.

With its dozens of manual steps, PPL's current process lends itself to repeated lapses and errors that must be reversed or unraveled. A major such lapse occurred in July, 2017, after the departure of one critical, skilled employee (Moyer Exhibit 8, lines 34 to 46).

The circumstances suggest a likelihood that the manual "lapse" in July, 2017 (Moyer Exhibit 8, Transcript, line 40), affected every virtual metering customer.

[20] Ms. Oehler described the monthly procedures as "a complex project". (Tr. 104)

Furthermore, the repercussions of that "lapse" continued for months, as evident in the gaps which occurred in bills from August to December, 2017. Ms. Nalesnik conceded that flawed entries continued throughout those months.

Such a consequential error, even when it involves only 110 virtual metering customers, represents enormous expenditure for detecting errors, backtracking, and undoing the ripple effects of accumulated mistakes. PPL claims that automation is not a "prudent expense", but, the Company must also answer for the considerable, ongoing, "imprudent" costs that its manual system imposes on ratepayers month after month.

Considering the labor-intensive procedures, the repeated errors, and the protracted litigation, the PUC should investigate PPL's claim that its manual billing process is "inexpensive".

H. THE RECORD DOES NOT SUPPORT PPL'S CLAIM THAT THE ALTERNATIVE, AUTOMATION, WOULD NOT BE A "PRUDENT EXPENSE".

In 2015, PPL's witness, Mr. Aloysius P. Cannon testified, "If we were fully automated in an ideal world, then as the accounts billed it would associate the one to many satellites and do a real-time [aggregation], and count the net [result] accordingly." (Transcript of Hearing on April 22, 2015, p.153)

PPL has stubbornly resisted this "ideal" solution.

PPL has acknowledged that, with automation, it is possible to provide complete and current aggregation data on the monthly bills. In his Rebuttal Testimony in advance of the 2015 hearing cited above, Mr. Cannon indeed provided an estimate of the cost, saying, "The Company's order of magnitude estimate was $150,000". PPL Rebuttal Testimony, March 6, 2015, at 50

As early as 2012, Mr. Cannon testified explicitly, saying "We've looked at it . . . We could do it . . ." (Transcript of Hearing, August 15, 2012, p. 218). Later in that same discussion, he asserted, "We know what [automation] would cost . . . It's just --- it's very low on our priorities". (Tr. 235) The Company declined to automate, he said, because "automating the billing process . . . would not be a reasonably prudent expense at this time. (Tr. 218)" (Intervenor's Brief, No. 882 C.D. 2016 October 31, 2016, at 44)

2018 is a different time.

By Mr. Cannon's estimate (above), the one-time cost to PPL, with 1.4 million customers in its service area, would be eleven cents ($.11) per customer. That minuscule cost would assure transparent and reliable bills to current customers and to the (potentially) expanding pool of future virtual metering customers.

I. THE AUTHORITY OF THE PUC TO ENFORCE THE REGULATIONS IS UNDISPUTED.

Among the explicit powers of the Commission is the power to enforce the Public Utility Code.

> *". . . the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, . . ."* 66 Pa. Code § 501(a)

The Public Utility Code says explicitly that virtual meter aggregation must be completed "by means of the EDC's billing process" (52 Pa. Code § 75.12: "virtual meter aggregation").

The Commission has stated emphatically that PPL's current billing process does not perform meter aggregation.

> *"The record affirms that PPL's billing system currently is unable to transfer and aggregate data from two separately-metered accounts."* (Opinion and Order at 23)

Regrettably, even as the Commission concedes this failure, it has declined to enforce the clear requirement of virtual meter aggregation and has permitted PPL to pursue its own, arbitrary billing methods.

The regulations for virtual meter aggregation are not in dispute. What is in dispute is the arbitrary and indefensible "billing process" devised by PPL Electric. In the past, the Commission has deferred to PPL, and granted the Company great lenience. Instead of producing compliance with the regulations, however, that lenience has served to perpetuate PPL's opaque and indefensible billing practices.

Based on a clear preponderance of the evidence, PPL's manual billing process does not comply either with the intent of the law, or with the regulations.

The Commission should now exercise its clear enforcement authority and order PPL to issue a monthly bill with complete, transparent, current, accurate, and verifiable data showing how virtual meter aggregation was completed.

J. THE AUTHORITY OF THE PUC TO MODIFY ITS PREVIOUS ORDERS IS UNDISPUTED.

Along with its power to enforce the regulations, the Commission has authority to modify its own previous orders.

> [The Public Utility Commission] *"shall have the power to rescind or modify any such regulations or orders."* 66 Pa. Code § 501(a)

The Commission's 2014 Opinion and Order was intended to provide me with comprehensive, transparent, and accurate information regarding generation and credit from my PV system. Regrettably, those objectives were not realized.

In the face of PPL's persistent non-compliance, the PUC should modify its previous actions and order PPL to discontinue the present billing process for virtual meter aggregation. It should also order PPL to institute a billing methodology that achieves the "combination of readings and billing . . . by means of the billing process", as the regulations require.

It should order PPL to provide me with accurate, comprehensive data on a monthly basis that enables me to verify the calculations and the resulting credit from my renewable generating system.

K. THE STATUS OF A CUSTOMER-GENERATOR IS DETERMINED BY THE DEP, NOT BY PPL OR BY THE PUC.

Article 7 of the AEPS Act states explicitly that the department [of Environmental Protection] "shall verify that an alternative energy source meets the standards set forth in section 2." The "standards" established in Section 2 consist of definitions including the definition of a "customer-generator'. That definition in the Act distinguishes a "residential service" from "other service locations" and does so on the basis of the system's size. My PV generating system was installed exclusively to provide electricity for my house and meets the Act's standard for "residential service".

PPL's initial designation of my system was, in fact, as a "residential" facility, as noted earlier. Subsequently, however, PPL changed that designation and did so without seeking authorization or clarification from of the DEP.

In this instance, the question is whether my generating system meets the standards for "residential service".

The Commission should enforce the original "residential" status of my PV system or, alternatively, seek a determination from the DEP as the Act requires.

L. PPL'S "COMMISSION-APPROVED TARIFF" HAS NO AUTHORITY OVER THE PROCESS OF ISSUING GENERATION CREDIT.

PPL repeatedly cites its "commission-approved tariff" to support its methodology for calculating and applying credit. (Opinion and Order, May 19, 2016, at 16)

> *"the Company's billing practices for virtual net meter aggregation have comported with . . . the Company's Commission-approved tariff."* PPL Rebuttal Testimony, March 6, 2015, at 15

> *"The Company has always calculated the cash-out in accordance with the tariff provisions in effect at that time."* PPL Rebuttal Testimony, March 6, 2015, Footnote 3 at 25

> *"However, the Complainant simply refused to acknowledge that the Company's tariff prior to January 1, 2011, did not prescribe monthly crediting of excess generation."* PPL Main Brief, June 29, 2015, at 32

The Commission, in turn, echoes PPL and attempts to link PPL's method of applying credit to the Company's "commission-approved tariff".

> *"Moreover, PPL asserted that this one-month lag does not violate any of our Regulations because its manual billing process still banks the net excess generation in kWh, carries it forward, and uses it to offset the customer-generator's usage in the subsequent billing cycle, <u>in accordance with the terms of its Commission-approved tariff</u> and the requirements of Section 75.13(c) of our Regulations." Id. at 34-37.* (Emphasis added) Opinion and Order, May 19, 2016, at 16

The Commonwealth Court, in the case of *Sunrise v. West Penn*, (1282 C.D. 2015), has rendered these appeals moot. In the Opinion of President Judge Mary Hannah Leavitt, on October 14, 2016, a question relating to compensation for generation under net metering is not a tariff question. Citing West Penn's "rider language", President Judge Leavitt states,

"this so-called net metering tariff is the obverse of a true tariff. A tariff sets what the *utility will collect* for its service. PPL Electric Utilities Corporation v. Pennsylvania Public Utility Commission, 912 A.2d 386, 402 (Pa. Cmwlth. 2006)" (1282 C.D. 2015, Memorandum Opinion at 19)

The Commonwealth Court decision in *Sunrise* renders moot any appeal which PPL Electric makes to the Company's "Commission-approved tariff". The Commonwealth Court concluded that the Tariff is superfluous and contributes nothing to the issue of compensation.

"Although the PUC requires the utility to file a net energy metering rider with the PUC, this filing requirement is redundant of the statute and unnecessary." (Opinion, 1282 CD 2015, footnote 17 at 20)

The instant case, like the *Sunrise* case, is not a tariff or rate case. This Complaint involves the question of status and the question of how credit is to be calculated and applied to my account. This case involves a dispute about the method of providing and reporting compensation for generation as implemented by PPL, and, in this matter, the "Commission-approved Tariff' has no authority.

The Commission also cannot authorize any reduction in compensation that a customer-generator receives. The second customer charge (for the 'solar panels") imposes an arbitrary penalty and reduces the compensation that I should receive. Mine is a tiny generating system, and that punitive "commercial" customer charge is an indirect means of denying me the "full-retail value" that the Act guarantees.[21] The Commonwealth Court was explicit about the limits of PUC authority, saying

[21] In 2014, the commercial customer charge reduced my total generation credit by 50%.

"The PUC does not enjoy a roving mandate to adjudicate on the construction of the Alternative Energy Act." (Opinion, 1282 CD 2015, footnote 17 at 20) In the words of the Court, "To the extent the PUC has adjudicatory authority, it is, at most, authority to clarify the technicalities of those rules." (Opinion, 1282 CD 2015, footnote 17 at 21) Except for the "incremental expense" described in 75.14(e), neither PPL nor the Commission has authority, by indirect means, to reduce the "full retail" compensation that a customer-generator must receive.

Furthermore, even without the Court's determination, PPL's tariff does nothing to explain "how" the billing process is to occur or how compensation is to be applied. Even when accepted, PPL's tariff does nothing to justify the company's disordered and fragmented billing procedures.

The PUC can no longer validate PPL's appeal to the Tariff, as it has done in the past[22]. PPL's "Commission-approved tariff" has no bearing on the method for applying generation credit under virtual meter aggregation.

The PUC should disregard the tariff and exercise its independent enforcement authority. The Commission should order PPL to institute a monthly bill with complete, transparent, current, accurate, and verifiable data showing, each month, how virtual meter aggregation was completed.

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[22] *"[PPL] has consistently applied credits on a monthly basis since 2012 in accordance with the present terms of its tariff."* (Emphasis added) (PUC Opinion and Order, May 19, 2016, at 30)

M. THE PUC HAS EXCEEDED ITS AUTHORITY IN ITS ATTEMPTS TO ADJUDICATE THIS COMPLAINT.

A specific contention of this Complaint is that PPL has flouted the intent of the AEPs Act and has violated its terms. The authority of the PUC to adjudicate matters arising from the AEPS Act is circumscribed, as determined by the Commonwealth Court.

> *"The Alternative Energy Act authorizes the PUC to establish "technical and net metering interconnection rules," but it does not give the PUC power to act beyond this narrow authorization."* (1282 CD 2015 *Sunrise v. First Energy Corp.*, Opinion, October 14, 2016, at 10)

The Court elaborated further, saying

> *"The statute does not authorize the PUC to conduct hearings to resolve disputes between two private parties engaged in a net metering arrangement. It is silent on these matters."*

The dispute which prompted this and prior complaints is, in part, a dispute between me and PPL Electric, two private parties engaged in a net metering arrangement. Statutory questions specific to that arrangement are 1) whether or not my renewable system was installed for "residential service"; 2) whether PPL may impose a "commercial" customer charge on my PV system; and 3) whether PPL's practices frustrate the intent of the AEPS Act. On these questions, the hearings conducted by the PUC are themselves of doubtful validity.

V. CONCLUSION

By a preponderance of evidence adduced in this brief, PPL has clearly failed to comply with the terms and intent of the AEPS Act and with explicit regulations of the Public Utility Code.

Although my PV system meets the explicit criteria for "residential service" as delineated in the AEPS Act, PPL insists that it is a "commercial" facility. Although eligibility for net metering is a statutory question, PPL regards my renewable system as "unqualified" for net metering and issues provisional generation credit only through an exceptional "waiver".

For eight years, PPL has refused to complete virtual meter aggregation "by means of the billing process" as stipulated in the Code. PPL's billing process, moreover, is disordered and defies the standard of "fair business practice" established by the Commission. The billing process is an unlawful, unreliable, and cumbersome patchwork of disparate and disjointed data. Monthly bills issued to me are incomplete, inaccurate, and unverifiable. They are prepared by an arbitrary, unwieldy, and opaque process that involves tedious and cumbersome manual procedures. Finally, the monthly bills omit the most critical information of all, generation data.

PPL has shown disregard for multiple directives associated with virtual meter aggregation as delineated in Chapter 75 of the Public Utility Code. PPL's

neglect of its own system, and the departure of a single employee, compounded the errors, resulting in further lapses, omissions and irregularities in 2017.

PPL has also been engaged in a protracted campaign of misrepresentation. In the years since approving my renewable system in 2009, PPL has made unsubstantiated claims, has altered documents, and has published spurious meter readings.

PPL has blatantly abused the deference extended to it by the Commission.

PPL has mis-led this Complainant; has mis-led the Commission; and has mis-led rate-paying customers. I, Larry Moyer, as Complainant, am asking the PUC to exercise its legitimate authority and halt the injustice which for years has been visited on me as a consequence of electing virtual meter aggregation. The Company has evaded Commission orders; has defied regulations; has suppressed the potential for virtual metering; and has flouted the explicit intent of the AEPS Act. PPL has created obstacles to lawful implementation of virtual meter aggregation. As remedy against these multiple infractions, I'm requesting that the PUC order the following relief:

VI. PROPOSED ORDERING PARAGRAPHS

It is hereby ordered:

1. That PPL shall restore the original "residential" status of Larry Moyer's renewable generating facility.

2. That PPL Electric shall discontinue its current billing practices for virtual meter aggregation.

3. That PPL Electric shall refrain from issuing any further monthly statements to Larry Moyer pending the development of a comprehensive, transparent, and verifiable billing process which has been approved by the PUC for virtual meter aggregation.

4. That PPL shall be censured and fined for establishing a moot and indigent account labeled "solar panels" (#67277-97002) for which Mr. Moyer was charged every month, but which provided no information about his electric generation or the generation credit from his solar panels.

5. That PPL Electric shall reimburse Mr. Moyer for all overcharges (in the form of customer service payments) that he made toward the moot and inefficacious Account (#67277-97002: "solar panels").

6. That PPL Electric shall be censured and fined for pursuing a billing process that failed to complete virtual meter aggregation, even as it continued to issue two separate bills and impose two separate customer charges.

7. That within six months, PPL shall begin to issue to Larry Moyer, on a monthly basis, a billing statement which includes all of the information specified by the Commission in Ordering Item 6 of its Opinion and Order dated January 9, 2014.

8. That, in the monthly billing statement issued to Larry Moyer, PPL shall include the following details as well as any other information that the Commission shall deem necessary.

   a. The total amount of electricity, in kilowatt hours, that was generated in the most recent billing period.
   b. Data showing how the two meter readings were aggregated (with resulting net usage or net credit)

9. That PPL shall be required to issue monthly bills that comply with "fair business practice" as described by ALJ Jeffrey A. Watson on September 23,

2013, and affirmed by Final Order of the Commission on November 13, 2013. Docket No. C-2013-2359146.

10. That PPL's billing process shall distinguish between the credit (or value) of credit for "electricity used . . . during the billing period", and the credit (or value) of "excess kilowatt hours . . . carried forward", as clearly expressed in 52 Pa. Code § 75.13(d).

11. That PPL's billing process shall demonstrate that distribution credits have been "zeroed out" at the end of the year (May 31) as required by Regulation 75.13(f), and shall demonstrate that "distribution credits are not carried forward into the next year", per 75.13(f).

12. That PPL Electric shall, in its billing procedures for virtual meter aggregation, implement the kWh-for-kWh "credit mechanism" established by the Commission in its Final Rulemaking Order, entered June 23, 2006, at 17.

13. That PPL Electric, in its month-to-month billing procedures for virtual meter aggregation, shall discontinue use of the ambiguous phrase, "Excess Credit".

14. That PPL Electric, in its month-to-month billing procedures for virtual meter aggregation, shall discontinue the practice of applying generation credit in dollars and cents.

15. That PPL Electric, in its month-to-month billing procedures for virtual meter aggregation, shall report generation credit in "kilowatt-hour" units as prescribed in the Regulations, 75.13(d); 75.13(e); and 75.13(f), instead of in dollar amounts.

16. That, as part of its billing process before the end of the "True-up Period", PPL Electric shall show, in a monthly statement, the status and quantity of "any remaining excess kilowatt hours generated by the customer-generator that were not previously credited against the customer-generator's usage in prior billing periods". 52 Pa. Code § 75.13(e).

17. That billing protocols for virtual meter aggregation shall be developed for statewide application in order to assure consistent implementation of this provision of the AEPS Act.

Respectfully submitted,

Jay Larry Moyer
370 W. Johnson St. (C-1)
Philadelphia, PA 19144
May 2, 2018

APPENDIX A

Opinion by President Judge Mary Hannah Leavitt

October 14, 2016

Sunrise Energy, LLC

v.

FirstEnergy Corp. and West Penn Power Company

Docket No. 1282 C.D. 2015

Argued June 8, 2016

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sunrise Energy, LLC	:	
	:	
v.	:	No. 1282 C.D. 2015
	:	Argued: June 8, 2016
FirstEnergy Corp. and West Penn Power Company,	:	
Appellants	:	

BEFORE: HONORABLE MARY HANNAH LEAVITT, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge

OPINION
BY PRESIDENT JUDGE LEAVITT FILED: October 14, 2016

FirstEnergy Corporation and West Penn Power[1] (collectively, West Penn) appeal an order of the Washington County Court of Common Pleas (trial court) overruling their preliminary objections to a complaint filed by Sunrise Energy, LLC (Sunrise Energy). Sunrise Energy, *inter alia*, seeks declaratory relief and damages for breach of contract. West Penn filed a motion to dismiss asserting that the matter should be transferred to the Pennsylvania Public Utility Commission (PUC) because the dispute requires the construction of the Alternative Energy Portfolio Standards Act (Alternative Energy Act).[2] The trial court concluded, however, that a court of common pleas was competent to construe the terms of the Alternative Energy Act. Because the legislature did not authorize the

[1] West Penn Power is a wholly owned subsidiary of FirstEnergy Corporation.

[2] Act of November 30, 2004, P.L. 1672, 73 P.S. §§1648.1 – 1648.8.

PUC, or any other state agency with responsibilities in the area of alternative energy, to adjudicate a dispute arising from the Alternative Energy Act, we affirm the order of the trial court.

Background

Sunrise Energy operates a 950 kilowatt solar power facility in Washington County, Pennsylvania; West Penn is an electric distribution company.[3] Amended Complaint, ¶8. On October 21, 2010, Sunrise Energy and West Penn entered into an "Electric Service Agreement" that designated Sunrise Energy as the "customer." Amended Complaint, Exhibit 2; Reproduced Record (R.R.__) at 27a-29a. In accordance with this contract, West Penn agreed to purchase the excess electricity generated by Sunrise Energy. Amended Complaint, Exhibit 6; R.R. 40a. Sunrise Energy measures the electricity it generates and the electricity it consumes through the use of a bidirectional electricity meter. This measurement is known as "net metering."

As a condition to its agreement to purchase electricity from Sunrise Energy, West Penn required Sunrise Energy to pay for certain infrastructure improvements. Sunrise Energy did so in two payments: the first payment was in the amount of $29,804.40 and the second was in the amount of $39,147.66.

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[3] Section 2 of the Alternative Energy Act states that the term electric distribution company "shall have the same meaning given to it in 66 Pa. C.S. Ch. 28 (relating to restructuring of electric utility industry)." 73 P.S. §1648.2. That meaning follows:

> "Electric distribution company." The public utility providing facilities for the jurisdictional transmission and distribution of electricity to retail customers, except building or facility owners/operators that manage the internal distribution system serving such building or facility and that supply electric power and other related electric power services to occupants of the building or facility.

66 Pa. C.S. §2803.

Amended Complaint, ¶30. Both parties to the Electric Service Agreement believed that Sunrise Energy was a customer-generator within the meaning of the Alternative Energy Act and, as such, eligible to sell the electricity it generated in excess of what it consumed. Amended Complaint, ¶97 and Exhibit 2; R.R. 27a-32a.

On May 22, 2014, West Penn terminated its Electric Service Agreement with Sunrise Energy for the stated reason that Sunrise Energy did not qualify for net metering. Amended Complaint, ¶38. Stated otherwise, Sunrise Energy lacked a sufficient "native retail load." Amended Complaint, ¶41. West Penn asserted that Sunrise Energy was not a consumer-generator but, in actuality, an electric generation supplier.[4] West Penn notified Sunrise Energy that it intended to compensate Sunrise Energy at a rate other than that set forth in its Net

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[4] Section 2 of the Alternative Energy Act states that the term electric generation supplier "shall have the same meaning given to it in 66 Pa. C.S. Ch. 28 (relating to restructuring of electric utility industry)." 73 P.S. §1648.2. That meaning follows:

> "Electric generation supplier" or "electricity supplier." A person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter, brokers and marketers, aggregators or any other entities, that sells to end-use customers electricity or related services utilizing the jurisdictional transmission or distribution facilities of an electric distribution company or that purchases, brokers, arranges or markets electricity or related services for sale to end-use customers utilizing the jurisdictional transmission and distribution facilities of an electric distribution company. The term excludes building or facility owner/operators that manage the internal distribution system serving such building or facility and that supply electric power and other related power services to occupants of the building or facility. The term excludes electric cooperative corporations except as provided in 15 Pa. C.S. Ch. 74 (relating to generation choice for customers of electric cooperatives).

66 Pa. C.S. §2803. The amended complaint does not support West Penn's contention that Sunrise Energy is an electric generation supplier because there is no allegation that Sunrise Energy sells electricity "to end use customers."

Energy Metering Rider and to recover its prior overpayments. Amended Complaint, ¶43.

On February 20, 2014, two months before West Penn terminated its Electric Service Agreement with Sunrise Energy, the PUC published a proposed amendment to its net metering regulation in the *Pennsylvania Bulletin*. The amendment proposed to require customer-generators to maintain "an independent retail load" in addition to meeting the other requirements for customer-generators set forth in the Alternative Energy Act. The PUC explained its proposed amendment as follows:

> Currently, Section 75.13(a) requires EDCs [Electric Distribution Companies] to offer net metering to customer-generators and provides that EGSs [Electric Generation Suppliers] may offer net metering to customer-generators under the terms and conditions set forth in agreements between the EGS and the customer-generator taking service from the EGS. *The current regulation is silent as to which customer-generators can net meter, other than that they must be using Tier I or Tier II alternative energy sources.*
>
> We have added a provision for DSPs [Default Service Provider] and have moved the EGS net metering role to subsection 75.13(b) and re-lettered the remaining subsections. In our proposed new section (a), we require EDCs and DSPs to offer net metering to customer-generators that generate electricity on the customer-generator's side of the meter using Tier I or Tier II alternative energy sources, on a first come, first served basis, provided they meet certain conditions.
>
> *The first condition requires the customer-generator to have load, independent of the alternative energy system, behind the meter and point of interconnection of the alternative energy system. To be independent, the electric load must have a purpose other than to support the operation, maintenance or administration of the alternative energy system.* This provision

> makes explicit what was previously implied in the [Alternative Energy] Act and the regulations.
>
> This requirement is implied in the [Alternative Energy] Act definition of net metering where it states that net metering is the means of measuring the difference between the electricity supplied by an electric utility and the electricity generated by the customer-generator when any portion of the electricity generated by the alternative energy generating system is used to offset part or all of the customer-generator's requirements for electricity. If there is no independent load behind the meter and point of interconnection for the alternative energy system, by definition, the customer-generator has no requirement for electricity to offset. In addition, this requirement is implied in the current regulations, where it states that EDCs shall offer net metering to customer-generators that generate electricity on the customer-generator's side of the meter. Again, there would be no need for a customer's electric meter if there was no independent demand for electricity. Furthermore, we note that both alternative and traditional electric generation facilities require electric service to start, operate and maintain those facilities. Thus, *to preclude utilities, such as merchant generators, from qualifying for net metering, we require load independent of the generation facility*. To do otherwise would be contrary to the definition of a customer-generator that only includes nonutility owners and operators of alternative energy systems.

44 Pa. B. 4181-4182 (2014) (emphasis added); R.R. 71a-72a. On May 19, 2016, the Independent Regulatory Review Commission disapproved the PUC's proposed regulation for the stated reason that it exceeded the PUC's authority under the Alternative Energy Act.[5] 46 Pa. B. 2919 (2016).

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[5] The final regulation was originally submitted on March 22, 2016, and was disapproved on May 19, 2016. The order was delivered to the PUC on July 2, 2016.

On August 20, 2014, Sunrise Energy initiated an action against West Penn for refusing to pay for the electricity it received from Sunrise Energy and for terminating the Electric Service Agreement one year before the expiration of the five-year term of the agreement. In its amended complaint, Sunrise Energy asserted the following five counts: Declaratory Judgment (Count I), Breach of Contract (Count II), Quasi-Contract (Count III), Promissory Estoppel (Count IV), and Direct Cause of Action for Alternative Energy Act Violations (Count V). Sunrise Energy sought monetary damages for West Penn's breach of contract or, if the contract was void or voidable, equitable relief because West Penn induced Sunrise Energy to pay for West Penn's infrastructure improvements and because West Penn was being unjustly enriched. It was using Sunrise Energy's excess electricity but not paying for it.

On December 15, 2014, West Penn filed preliminary objections asserting that jurisdiction over the subject matter of the amended complaint rested exclusively with the PUC. The trial court disagreed because the controversy did not arise from, nor was it governed by, the Public Utility Code. The trial court reasoned as follows:

> Under the Public Utility Code, [66 Pa. C.S. §§101-3316,] the PUC is vested with supervisory and regulatory power over all public utilities doing business in the Commonwealth, 66 Pa. C.S. §501(b). While [the trial court] acknowledges that "initial jurisdiction over matters involving the reasonableness, adequacy or sufficiency of a public utility's service, facilities or rates is vested in the PUC," the controversy before the court is not of that kind; it is whether West Penn's net metering termination, and refusal to pay Sunrise [Energy] net metering proceeds, violates [the Alternative Energy Act]. *Resolution of this question depends on, and appears to be wholly dependent on, whether Sunrise [Energy] is a customer-generator, as defined under the [Alternative Energy] Act.*

Trial Court op. at 5 (citations and footnote omitted and emphasis in original); R.R. 250a. The trial court concluded that it was competent to decide whether Sunrise Energy was a customer-generator within the meaning of the Alternative Energy Act and overruled West Penn's preliminary objections. West Penn appealed to this Court.[6]

Issues

On appeal,[7] West Penn contends that the trial court erred. Specifically, it argues that the PUC is vested with exclusive jurisdiction over Count I, which seeks a declaratory judgment that Sunrise Energy is a customer-generator within the meaning of the Alternative Energy Act. Alternatively, West Penn argues that the PUC has primary jurisdiction over the remaining Counts, which means that the trial court should refer the statutory construction question to the PUC and hold the matter in abeyance until the PUC issues its ruling. The PUC has filed an *amicus curiae* brief in support of West Penn's position.

The Alternative Energy Portfolio Standards Act

Although Pennsylvania is rich in natural gas, coal and oil resources, our General Assembly has made the policy decision to promote the development of

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[6] The trial court's order overruling West Penn's preliminary objection is interlocutory and, as such, not appealable as of right. However, the trial court certified its order as one that "involves a controlling question of law as to which there is substantial ground for difference of opinion[.]" 42 Pa. C.S. §702(b). *See also* PA. R.A.P. §1311(a) (stating "[a]n appeal may be taken by permission under 42 Pa. C.S. §702(b) (interlocutory appeals by permission) from any interlocutory order of a lower court or other governmental unit.").

[7] This Court's review of a trial court's order overruling preliminary objections to a complaint determines whether the trial court erred as a matter of law. *Pettko v. Pennsylvania American Water Co.*, 39 A.3d 473, 477 n.7 (Pa. Cmwlth. 2012). Because it involves a pure question of law, our standard of review is *de novo* and our scope of review is plenary. *Thierfelder v. Wolfert*, 52 A.3d 1251, 1261 (Pa. 2012).

alternative energy sources, such as solar, solar thermal, hydropower and geothermal reserves. *See* Section 2 of the Alternative Energy Act, 73 P.S. §1648.2 (listing sources for the production of electricity that constitute "alternative energy sources").[8] To that end, Section 3(a)(1) of the Alternative Energy Act mandates that

> *electric energy sold* by an electric distribution company or electric generation supplier *to retail electric customers in this Commonwealth shall be comprised of electricity generated from alternative energy sources* and in the percentage amounts as described under subsections (b) and (c).

73 P.S. §1648.3(a)(1) (emphasis added).

To kick-start the development of alternative energy in Pennsylvania, the legislature tasked the PUC to "establish an alternative energy credits program as needed to implement this act."[9] Section 3(e)(1) of the Alternative Energy Act, 72 P.S. §1648.3(e)(1). The legislature also tasked the PUC "to develop technical and net metering interconnection rules for customer-generators ...." Section 5 of the Alternative Energy Act, 73 P.S. §1648.5.[10] Finally, the legislature tasked the Department of Environmental Protection to establish, in cooperation with the Department of Labor and Industry, "reasonable health and safety standards" for

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[8] This Court has explained that the "purpose of the Alternative Energy Act is to encourage growth and investment in renewable sources of energy." *Dauphin County Industrial Development Authority v. Pennsylvania Public Utility Commission*, 123 A.3d 1124, 1131 (Pa. Cmwlth. 2015), *appeal denied*, 140 A.3d 14 (Pa. 2016).

[9] Section 3(e)(2) of the Alternative Energy Act states that the PUC will approve an independent entity to serve as "alternative energy credits program administrator," with the "powers and duties assigned by [PUC] regulations." 73 P.S. §1648.3(e)(2).

[10] The legislature did not specify that these "rules" were to be produced in the form of a regulation, as it did specify for the alternative energy credits program, at least indirectly. 73 P.S. §1648.3(e)(2).

alternative energy facilities. Section 6 of the Alternative Energy Act, 73 P.S. §1648.6.

Section 2 of the Alternative Energy Act defines a customer-generator as:

> *A nonutility owner or operator of a net metered distributed generation system with a nameplate capacity of not greater than 50 kilowatts if installed at a residential service or not larger than 3,000 kilowatts at other customer service locations*, except for customers whose systems are above three megawatts and up to five megawatts who make their systems available to operate in parallel with the electric utility during grid emergencies as defined by the regional transmission organization or where a microgrid is in place for the primary or secondary purpose of maintaining critical infrastructure, such as homeland security assignments, emergency services facilities, hospitals, traffic signals, wastewater treatment plants or telecommunications facilities, provided that technical rules for operating generators interconnected with facilities of an electric distribution company, electric cooperative or municipal electric system have been promulgated by the Institute of Electrical and Electronic Engineers and the Pennsylvania Public Utility Commission.

73 P.S. §1648.2 (emphasis added). Section 5 of the Alternative Energy Act requires utilities to purchase the electricity generated by a customer-generator at the full retail price. It states in full:

> *Excess generation from net-metered customer-generators shall receive full retail value for all energy produced on an annual basis. The [PUC] shall develop technical and net metering interconnection rules for customer-generators intending to operate renewable onsite generators in parallel with the electric utility grid*, consistent with rules defined in other states within the service region of the regional transmission organization that manages the transmission system in any part of this Commonwealth. The [PUC] shall convene a stakeholder

> process to develop Statewide technical and net metering rules for customer-generators. The [PUC] shall develop these rules within nine months of the effective date of this act.

73 P.S. §1648.5 (emphasis added). The PUC has promulgated a regulation on "technical and net metering interconnection rules" for customer-generators that "operate renewable onsite generators" that is set forth in Title 52 of the Pennsylvania Code, Chapter 75, Subchapter B "Net Metering." *See* 52 Pa. Code §§75.11 – 75.15. The regulation states, in relevant part, as follows:

> (a) EDCs [Electric Distribution Companies] shall offer net metering to customer-generators that generate electricity on the customer-generator's side of the meter using Tier I or Tier II alternative energy sources, on a first come, first served basis. EGSs [Electric Generation Suppliers] may offer net metering to customer-generators, on a first come, first served basis, under the terms and conditions as are set forth in agreements between EGSs and customer-generators taking service from EGSs.

52 Pa. Code §75.13(a).[11]

Absent from the Alternative Energy Act is an enforcement provision. The legislature did not create a statutory remedy, for example, for the customer-generator who is rebuffed by an EDC or EGS. The legislature did not authorize the PUC to impose sanctions upon utilities that refuse to comply with the terms of the statute. The Alternative Energy Act authorizes the PUC to establish "technical and net metering interconnection rules," but it does not give the PUC power to act beyond this narrow authorization. *See* Section 5 of the Alternative Energy Act, 73 P.S. §1648.5. The statute does not authorize the PUC to conduct hearings to

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[11] *See* n.3, 4, *supra*, for definitions of an electric distribution company and electric generation supplier.

resolve disputes between two private parties engaged in a net metering arrangement. It is silent on these matters.

Definition of Customer-Generator

The amended complaint asserts that Sunrise Energy conforms precisely to the statutory definition of customer-generator set forth in Section 2 of the Alternative Energy Act. 73 P.S. §1648.2.[12] Sunrise Energy's "net metered distributed generation system" has "a nameplate capacity ... not larger than 3,000 kilowatts." Amended Complaint, ¶15. Sunrise Energy observes that the only statutory limitation upon a non-residential service consumer seeking to qualify as a "customer-generator" is upon its capacity to generate electricity. *Id.*

West Penn responds that Sunrise Energy has taken the word "net" out of "net metering." It argues that unless a customer-generator purchases electricity for purposes beyond what is needed to generate alternative electricity, it is not a true customer-generator under the Alternative Energy Act. To this, Sunrise Energy responds that West Penn's legal argument depends upon facts not pled in the amended complaint. It also responds that West Penn's understanding of what constitutes a true customer-generator adds language to the existing statutory definition. Section 2 of the Alternative Energy Act limits the amount of electricity

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[12] The PUC's proposal to amend this regulation will require the customer-generator to use electricity for "a purpose other than to support the organization, maintenance or administration of the alternative energy." *See* 44 Pa. B. 4182 (2014). The amendment does not specify the minimum amount that must be used for this other purpose.

Sunrise Energy consumes a relatively small amount of electricity compared to the amount it generates. *See* Amended Complaint, Ex. 4; R.R. 38a. West Penn argues that Sunrise Energy is consuming electricity only for maintaining and administering the net-metering system. West Penn Brief at 30. However, this factual averment does not appear in the Amended Complaint. In considering West Penn's preliminary objections, we are bound by the facts as pled.

a customer-generator may produce for sale, but it does not require the customer-generator to purchase a minimum amount of electricity. Likewise, the statute does not specify how the customer-generator must use the electricity that it purchases from the EDC or EGS.

We need not decide the merits of these arguments. The only question is whether these statutory construction arguments must, in the first instance, be heard by the PUC.

Jurisdiction

Our Supreme Court has instructed that where the General Assembly has

> seen fit to enact a pervasive regulatory scheme and to establish a governmental agency possessing expertise and broad regulatory and remedial powers to administer that statutory scheme, a court should be reluctant to interfere in those matters and disputes which were intended by the Legislature to be considered, at least initially, by the administrative agency. Full utilization of the expertise derived from the development of various administrative bodies would be frustrated by indiscriminate judicial intrusions into matters within the various agencies' respective domains.

Feingold v. Bell of Pennsylvania, 383 A.2d 791, 793 (Pa. 1977). Our Supreme Court also noted that "[a]s with all legal rules," this one is not inflexible. *Id.* A court may exercise jurisdiction where the administrative remedy is not adequate. *Id.* "The mere existence of a remedy does not dispose of the question of its adequacy; the administrative remedy must be 'adequate and complete.'" *Id.* at 794 (citation omitted). Where a statutory procedure would be of "little, if any, utility," it may be bypassed. *Borough of Green Tree v. Board of Property Assessments*, 328 A.2d 819, 825 (Pa. 1974). Accordingly, a challenge to the constitutionality of

a taxing statute may be initiated in equity, notwithstanding the statutory remedy for challenging a tax assessment. *Id.* This is because where the validity of the statute is concerned, "less need exists for the agency involved to throw light on the issue through exercise of its specialized fact-finding function or application of its administrative expertise." *Id.*

In *Feingold*, the Supreme Court considered the question of whether a civil action seeking breach of contract damages and equitable relief could proceed in a court of common pleas or, rather, should be heard by the PUC. In considering this question, the Supreme Court explained as follows:

> It is relevant to the case now before us that the statutory array of PUC remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. Nor can we find an express grant of power from which the power to award such damages can be fairly implied. Thus, it can be concluded that the Legislature did not intend for the PUC to have such a power.

Feingold, 383 A.2d at 794. The Supreme Court noted that had the plaintiff "sought only equitable relief, in the form of an injunction, the lower court's dismissal would have found more support in prior case law." *Id.* at 795, n.5.

In sum, an administrative agency has exclusive jurisdiction where the legislature has given it the power to adjudicate on a particular subject matter. Stated otherwise, a statutory remedy "must be strictly pursued and such remedy is exclusive" ... "unless the jurisdiction of the courts is preserved thereby." *Lashe v. Northern York County School District*, 417 A.2d 260, 263-64 (Pa. Cmwlth 1980). The doctrine of exclusive jurisdiction requires that

> [i]n all cases where a remedy is provided, or duty enjoined, or anything directed to be done by an act or acts of assembly of

> this commonwealth, [t]he directions of the said acts shall be strictly pursued.

Borough of Green Tree, 328 A.2d at 823. Where a court concludes that an agency has exclusive jurisdiction, it will dismiss the action.

Sometimes a statutory remedy does not involve a state or local agency but, rather, a court; sometimes the statutory remedy is not exclusive. *See, e.g., Hoover v. Bucks County Tax Claim Bureau*, 405 A.2d 562 (Pa. Cmwlth. 1979) (holding that the statutory procedure for challenging the adequacy of a tax sale notice before a court of common pleas is not exclusive of an equitable remedy). More typically, however, the statutory remedy does involve an administrative agency, as in *Feingold.* Where a court concludes that it has "*concurrent statutory jurisdiction over a dispute* but that an issue ... is within the primary jurisdiction of an agency, *the court will defer any decision* in the dispute ... until the agency has addressed the issue that is within its primary jurisdiction." 2 Richard J. Pierce, Jr., ADMINISTRATIVE LAW TREATISE §14.1 at 1161 (5th ed. 2010) (emphasis added). The doctrine of primary jurisdiction is comparable to exhaustion of administrative remedies; both doctrines allocate adjudicatory responsibility between courts and agencies. *Id.* at 1162. In *Pettko v. Pennsylvania American Water Co.*, 39 A.3d 473, 479 (Pa. Cmwlth. 2012), we explained as follows:

> [T]he doctrine of primary jurisdiction permits the bifurcation of a plaintiff's claim, whereby a trial court, faced with a claim requiring the resolution of an issue that is within the expertise of an administrative agency, will first cede the analysis of the issue or issues to that agency. Once the agency resolves the particular issue or issues over which it has primary jurisdiction, the trial court may proceed, if necessary, to apply the agency's decision to the dispute remaining before the trial court.

Id.

Whether a matter lies within the exclusive jurisdiction or the primary jurisdiction of an agency is for the legislature to direct by statute. *Borough of Green Tree*, 328 A.2d at 823. The overarching principle of either doctrine is deference to the will of the legislature in its establishment of a statutory remedy.

I.

West Penn contends that the PUC has exclusive jurisdiction over the question of whether Sunrise Energy is a customer-generator within the meaning of the Alternative Energy Act. The trial court held that statutory construction is a matter for the courts. Further, unlike the pervasive regulatory scheme set up in the Public Utility Code, 66 Pa. C.S. §§101-3316, the Alternative Energy Act confers no authority upon the PUC to adjudicate matters arising under the Alternative Energy Act. We agree with the trial court.

Even where a statute provides a remedy for its enforcement, as the Public Utility Code does on matters relating to the reasonableness of a utility's service and rates, *Feingold* teaches that the statutory remedy must be adequate and complete. In *Feingold*, the statutory remedy in the Public Utility Code was held not to be adequate because the plaintiff sought damages for breach of contract, and contract damages cannot be awarded by an administrative agency. *Feingold*, 383 A.2d at 794. Nor is the statutory remedy adequate where the constitutionality of the governing statute is the issue. *Borough of Green Tree*, 328 A.2d at 825.

Here, there is no statutory remedy in the Alternative Energy Act whose "adequacy" is in doubt and, accordingly, this is not a close case. The Alternative Energy Act does not vest the PUC with "an array of [ ] remedial and enforcement powers." *Feingold*, 383 A.2d at 794. The PUC does not have the power to adjudicate the subject matter of the amended complaint, *i.e.*, whether

Sunrise Energy meets the statutory definition of "customer-generator." Accordingly, we reject West Penn's claim that the PUC has exclusive jurisdiction to decide the merits of Count I of the amended complaint. Simply, there is no statutory remedy provided in the Alternative Energy Act for resolving disputes arising thereunder. The trial court correctly rejected West Penn's contention that the PUC has exclusive jurisdiction to decide whether Sunrise Energy is a customer-generator as defined in Section 2 of the Alternative Energy Act.

II.

Alternatively, West Penn argues that the PUC has primary jurisdiction over the remaining Counts in the amended complaint. It argues that the trial court should allow the PUC, in the first instance, to decide the statutory construction question. After it does so, the trial court may then, if necessary, conduct a hearing on Sunrise Energy's breach of contract and quasi-contract claims.[13] The PUC, which has filed an *amicus curiae* brief, contends that allowing a court of common pleas to construe the meaning of "customer-generator" will lead to different results in different counties and thereby balkanize the electric service industry in Pennsylvania. In support of the argument that the PUC should decide whether Sunrise Energy is a customer-generator, West Penn and the PUC direct the Court to *Morrow v. Bell Telephone Company of Pennsylvania*, 479 A.2d 548 (Pa. Super. 1984).

In *Morrow*, a customer of Bell Telephone of Pennsylvania filed a civil action in a court of common pleas alleging that it was being overcharged for

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[13] Should West Penn prevail on the statutory construction issue, this may make the Electric Service Agreement void or voidable. This would leave Sunrise Energy's quasi-contract claims and promissory estoppel claims for disposition.

certain services, such as fees for restoring suspended service. Bell Telephone filed preliminary objections, asserting that the trial court lacked subject matter jurisdiction because all of the charges challenged by the plaintiff had been approved by the PUC and set forth in Bell Telephone's tariff.[14] Indeed, it was mandatory that Bell Telephone impose the specific charges on the plaintiff unless and until the PUC approved a new tariff.

The trial court agreed and dismissed the action. On appeal, the Superior Court affirmed. It explained:

> [*The customer's*] *equity action was a challenge to* [*the telephone company's*] *rates and to its service practices. Rates and practices regarding deposits are peculiarly and exclusively within the jurisdiction and expertise of the* [*PUC*]. Therefore, they must be addressed by that body. Although [the customer's] complaint contains averments of breach of contract, these averments are but a cover disguising the real thrust of his complaint, which is to challenge the adequacy and propriety of [the telephone company's] rates and service practices.

Morrow, 479 A.2d at 551 (footnote omitted) (emphasis added).

Morrow is inapposite. It involved a subject, *i.e.*, the utility's schedule of approval rates, or "tariff," on which the legislature has expressly conferred jurisdiction in the PUC. *See* Section 1308(b) of the Public Utility Code

[14] A utility tariff has been defined by this Court as follows:

> A tariff is a set of operating rules imposed by the State that a public utility must follow if it wishes to provide services to customers. *It is a public document which sets forth the schedule of rates and services and rules, regulations and practices regarding those services.*

PPL Electric Utilities Corporation v. Pennsylvania Public Utility Commission, 912 A.2d 386, 402 (Pa. Cmwlth. 2006) (emphasis added).

(establishing a statutory remedy for challenging an approved tariff or rate).[15] This is not a utility rate case.

West Penn tries to make Sunrise Energy's action a rate case by noting that the Net Energy Metering Rider is incorporated into the Electric Service Agreement as part of West Penn's retail electric Tariff No. 39 on file with the PUC. R.R. 167a (West Penn Brief in support of Preliminary Objections at 4, n.3). The key "billing program" term that is set forth in the Net Energy Metering Rider states as follows:

> The customer-generator will receive a credit for each kilowatt-hour received by [West Penn] up to the total amount of electricity delivered to the Customer during the billing period at the full retail rate, consistent with [PUC] regulations. On an annual basis, [West Penn] will compensate the customer-generator for kilowatt-hours received from the customer-generator in excess of the kilowatt hours delivered by [West

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[15] It states, in relevant part, as follows:

> Hearing and suspension of rate change.--Whenever there is filed with *the [PUC] by any public utility any tariff stating a new rate, the [PUC] may, either upon complaint or upon its own motion, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate*, and pending such hearing and the decision thereon, the [PUC], upon filing with such tariff and delivering to the public utility affected thereby a statement in writing of its reasons therefor, may, at any time before it becomes effective, suspend the operation of such rate for a period not longer than six months from the time such rate would otherwise become effective, and an additional period of not more than three months pending such decision. The rate in force when the tariff stating the new rate was filed shall continue in force during the period of suspension, unless the [PUC] shall establish a temporary rate as authorized in section 1310 (relating to temporary rates).

66 Pa. C.S. §1308(b) (emphasis added). Section 1308(b) of the Public Utility Code confers exclusive jurisdiction in the PUC to conduct hearings on a utility's new rate upon the filing of a complaint by a customer of the utility. There is no analog to Section 1308(b) in the Alternative Energy Act, which is silent on where, or how, a person claiming a violation of the Alternative Energy Act should proceed.

> Penn] to the customer-generator during the preceding year at the full retail value for all energy produced consistent with [PUC] regulations. The customer-generator is responsible for the customer charge, demand charge and other applicable charges under the applicable Rate Schedule.

R.R. 41a.[16] That this rider language is part of West Penn's tariff does not make this a rate case.

The word "tariff" does not appear in the Alternative Energy Act. Nevertheless, the PUC's regulation provides that "[a]n EDC shall file a tariff with the [PUC] that provides for net metering consistent with this chapter." 52 Pa. Code §75.13(b). However, this so-called net metering tariff is the obverse of a true tariff. A tariff sets what the *utility will collect* for its service. *PPL Electric Utilities Corporation v. Pennsylvania Public Utility Commission*, 912 A.2d 386, 402 (Pa. Cmwlth. 2006). The net metering tariff sets forth what the *utility will pay* for electricity. Further, the amount that the utility will pay for the customer-generator's excess electricity has been established by the legislature in Section 5 of the Alternative Energy Act, *i.e.*, the "full retail value." 73 P.S. §1648.5.

A true tariff was at issue in *Morrow*, *i.e.*, a schedule of the charges the utility collected in exchange for providing service. The PUC approved those

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[16] The Electric Service Agreement also states in relevant part:

> [West Penn] and [Sunrise Energy] mutually agree, with the intent to be legally bound, as follows:
>
> > 1. [West Penn's] tariff rules and regulations ("Rules and Regulations") as they now exist, or may be amended from time to time, are incorporated into and made part of this Agreement. The Rules and Regulations are in addition to and supplement this Agreement. Therefore, they shall be interpreted and read to be consistent with the paragraphs of this Agreement.

R.R. 27a.

charges after determining that they met the standards in the Public Utility Code. 66 Pa. C.S. §1301 (stating that every "rate made, demanded, *or received* by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission.") (emphasis added). To make this determination, the PUC had to bring its expertise to bear on the matter and exercise discretion.

By contrast, West Penn's Net Energy Metering Rider, on file with the PUC, simply recites what is stated in Section 5 of the Alternative Energy Act. The PUC did not have to exercise any discretion with respect to this "tariff." Indeed, instead of calling it a "tariff," the PUC could have just as easily called it a "rule," which is the term actually used by the legislature in the Alternative Energy Act.[17] Regardless, West Penn's "tariff" is outside the scope of this litigation, which will determine, simply, whether Sunrise Energy is a customer-generator eligible for net metering. Whatever the litigation's outcome, it will not require a change to a single word in West Penn's tariff or its "net energy metering rider."

The PUC claims authority to adjudicate the meaning of "customer-generator" by reason of the General Rules of Administrative Practice and Procedure (GRAPP), which authorizes agencies to hear petitions for declaratory orders. The pertinent rule states:

> §35.19. Petitions for declaratory orders.
>
> Petitions for the issuance, in the discretion of an agency, of a declaratory order to terminate a controversy or remove uncertainty, shall state clearly and concisely the controversy or

[17] The legislature has established the amount the utility must pay to compensate customer-generators for their excess electricity. Although the PUC requires the utility to file a net energy metering rider with the PUC, this filing requirement is redundant of the statute and unnecessary.

> uncertainty which is the subject of the petition, shall cite the statutory provision or other authority involved, shall include a complete statement of the facts and grounds prompting the petition, together with a full disclosure of the interest of the petitioner.

1 Pa. Code §35.19. The PUC argues that if it is not allowed to issue a declaratory order in this case, and in other similar cases, the electric service industry in Pennsylvania will be beset by inconsistencies. The PUC further argues that it will not be able to offer its point of view in such cases because it cannot participate as an *amicus curiae*. The PUC explains that, as the putative adjudicator of disputes arising from the Alternative Energy Act, it must be neutral on the statutory construction question.

First, an agency cannot confer authority upon itself by regulation. Any power exercised by an agency must be conferred by the legislature in express terms. *Aetna Casualty and Surety Company v. Commonwealth of Pennsylvania, Insurance Department*, 638 A.2d 194, 200 (Pa. 1994) (stating that an agency can only exercise powers "conferred upon it by the Legislature in clear and unmistakable language") (citation omitted). The petition for declaratory order authorized by GRAPP assumes an underlying statutory basis for the agency's exercise of an adjudicatory function. The Alternative Energy Act directed the PUC to set technical net metering interconnection rules. To the extent the PUC has adjudicatory authority, it is, at most, authority to clarify the technicalities of those rules. *Cf. ARIPPA v. Pennsylvania Public Utility Commission*, 966 A.2d 1204 (Pa.

Cmwlth. 2009). The PUC does not enjoy a roving mandate to adjudicate on the construction of the Alternative Energy Act.[18]

Second, we reject the PUC's argument that it may not participate in a common pleas court proceeding as *amicus curiae* because, as an adjudicator, it must remain neutral on the meaning of customer-generator. This is disingenuous. The PUC has already gone on record as stating that it believes the Alternative Energy Act implicitly requires customer-generators to have a native retail load. 44 Pa. B. 4179 (2014); R.R. 62a-91a.

The PUC argues that allowing the Court of Common Pleas of Washington County to construe the definition of customer-generator in the Alternative Energy Act will balkanize our electric service industry. This assumes that Pennsylvania's courts of common pleas will be unpersuaded by the ruling from the Court of Common Pleas of Washington County. It also assumes that neither party will appeal. An appeal will establish a single ruling of statewide effect. Development in the law, whether in common law, constitutional law or statutory law, often begins with a single holding by a court with original jurisdiction. *See, e.g., Mayle v. Pennsylvania Department of Highways*, 388 A.2d 709 (Pa. 1978) (abolishing sovereign immunity in a case that began with a

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[18] As noted, the PUC has a duty to set "technical interconnection rules," but the legislature did not specify that these "rules" be established by a regulation as it did with respect to the alternative energy credits program. *Compare* Section 3(e)(2) and Section 5 of the Alternative Energy Act, 73 P.S. §§1648.3(e)(2), 1648.5.

The PUC's existing regulation defines "customer-generator" in language that is identical to that used by the legislature in the Alternative Energy Act. *Compare* 52 Pa. Code §75.1 and Section 2 of the Alternative Energy Act, 73 P.S. §1648.2. The PUC's proposed amendment will add the words "retail electric customer" to the regulation's definition of "customer-generator." 44 Pa. B. 4179 (2014), Annex A. The PUC describes generators without a sufficient retail load as "merchant generators," which is a term that does not appear in the Alternative Energy Act.

complaint in trespass filed in Commonwealth Court's original jurisdiction). In short, the PUC's posited parade of horribles to follow from having a judge, commissioned pursuant to Article V of the Pennsylvania Constitution, decide the present statutory construction question is not very persuasive.

In any case, the PUC's proffered policy arguments and bleak predictions are best addressed to the General Assembly, which has the power to amend the Alternative Energy Act to include a statutory remedy. The General Assembly may also, if it deems it appropriate, amend the definition of customer-generator. Indeed, Section 7 of the Alternative Energy Act contemplates that the PUC and the Department of Environmental Protection will file an annual report with "the chairman and minority chairman of the Environmental Resources and Energy Committee of the Senate" and their counterparts in the House of Representatives. 73 P.S. §1648.7(c). That report "shall include at a minimum ... [r]ecommendations for program improvements." *Id.*

The Alternative Energy Act is not part of the Public Utility Code. The legislature has authorized the PUC to develop "technical and net metering interconnection rules." *See* Section 5 of the Alternative Energy Act, 73 P.S. §1648.5. This limited authority does not give the PUC jurisdiction to decide eligibility for net metering.[19] Eligibility has been fully established by the legislature in the Alternative Energy Act.

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[19] In *ARIPPA v. Pennsylvania Public Utility Commission*, 966 A.2d 1204, 1207 (Pa. Cmwlth. 2009), two electric distribution companies requested a declaratory order from the PUC that "the electric distribution company owned the alternative energy credits." The intervenor, ARIPPA, appealed the PUC's adjudication asserting, *inter alia*, that the PUC lacked subject matter jurisdiction. This Court rejected this argument, noting, *inter alia*, that ARIPPA did not raise this argument until its appeal to this Court. This Court also held that the question at issue in *ARIPPA* dealt with the ownership and transfer of energy credits as set forth in the PUC's regulation. It
(Footnote continued on the next page . . .)

Not every case that involves a public utility must be presented, first, to the PUC. Such a rule would be contrary to our Supreme Court's directive in *DeFrancesco v. Western Pennsylvania Water Company*, 453 A.2d 595 (Pa. 1982).

In *DeFrancesco*, two property owners brought negligence claims against a water company for not supplying water pressure sufficient to allow firefighters to put out the fire that destroyed their properties. The water company asserted that the claim belonged before the PUC, and the Superior Court agreed. Our Supreme Court reversed, explaining:

> The controversy now before us, however, is not one in which the general reasonableness, adequacy or sufficiency of a public utility's service is drawn into question. *Resolution of appellant's claims depended upon no rule or regulation predicated on the peculiar expertise of the PUC*, no agency policy, no question of service or facilities owed the general public, and no particular standard of safety or convenience articulated by the PUC.
>
> * * *
>
> *Resolving the essential question of whether the utility failed to perform its mandated duties requires no recondite knowledge or experience and falls within the scope of the ordinary business of our courts.*

Id. at 597 (footnote omitted) (emphasis added). The Supreme Court concluded that the PUC's regulatory powers did not strip a trial court of jurisdiction simply because the common law action may involve a regulated public utility.

(continued . . .)

required construction of the PUC's regulation on energy credits, not a construction of the Alternative Energy Act. The instant case has nothing to do with the PUC's alternative energy credit program. Likewise, the PUC's technical interconnection rules for customer-generators are not relevant to West Penn's defense.

Whether Sunrise Energy is a customer-generator must be resolved by construing the language of the Alternative Energy Act, which expressly defines "customer-generator." Our courts of common pleas construe statutes every day. Accordingly, we have explained that:

> [C]ourts should not develop a "dependency" on "agencies whenever a controversy remotely involves some issue falling arguably within the domain of the agency's 'expertise,'" because *expertise is not a talisman dissolving a court's jurisdiction, nor should accommodation to the administrative function be an abdication of judicial responsibility.*

County of Erie v. Verizon North, Inc., 879 A.2d 357, 363 (Pa. Cmwlth. 2005) (quoting *Elkin v. Bell Telephone Company*, 420 A.2d 371, 377 (Pa. 1980)) (emphasis added).[20] A party to a civil action cannot compel a trial court to relinquish its jurisdiction to an administrative agency just because one litigant prefers the agency to decide the issue.

Conclusion

The trial court did not err by refusing to cede jurisdiction to the PUC. Statutory construction is a responsibility of the judiciary, not the executive branch. West Penn's argument that the PUC has exclusive or primary jurisdiction over the Amended Complaint lacks a foundation in the Alternative Energy Act, which does

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[20] In *Elkin*, after conducting an evidentiary hearing, the PUC dismissed Elkin's complaint that Bell Telephone had failed to furnish "reasonable, rapid and efficient service." 420 A.2d at 373. Elkin did not appeal this adjudication but filed a tort claim in common pleas court. Bell Telephone argued that Elkin's tort claim constituted a collateral attack on the PUC's adjudication, and the Supreme Court agreed. Nevertheless, our Supreme Court reiterated that administrative expertise is "no talisman dissolving a court's jurisdiction." *Id.* at 376. *Elkin* is inapposite to this case. *Elkin* arose under the Public Utility Code, and it concerned adequacy of utility service, which, as acknowledged here by the trial court, is a subject matter committed to the PUC.

does not confer enforcement powers upon any state agency. For these reasons, the order of the trial court is affirmed and the matter is remanded for further proceedings consistent with this opinion.

MARY HANNAH LEAVITT, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sunrise Energy, LLC	:	
	:	
v.	:	No. 1282 C.D. 2015
	:	
FirstEnergy Corp. and West Penn Power Company, Appellants	:	

ORDER

AND NOW, this 14th day of October, 2016, the order of the Washington County Court of Common Pleas dated June 1, 2015, in the above-captioned matter is AFFIRMED. Accordingly, the matter is REMANDED for further proceedings in accordance with the attached opinion.

Jurisdiction relinquished.

MARY HANNAH LEAVITT, President Judge

Certificate of Service

Post-Hearing Brief

RE: Docket No. C-2017-2629683

I hereby certify that I have this day served a true copy of the foregoing Post-hearing brief upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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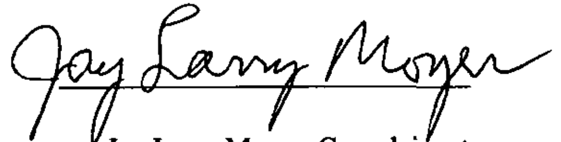

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