BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Jay Larry Moyer, Complainant

V. Docket No. C-2017-2629683

PPL Electric Utilities Corporation, Respondent

Complainant's Reply Brief

May 22, 2018

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This Reply Brief addresses claims and/or statements which PPL Electric presents in its Main Brief.

A. PPL reinvigorates a contention that is not pertinent to the present Complaint. There is no contention in the Formal Complaint, or in my Initial Brief, that PPL must automate its billing process. The contention is that, by whatever method, the bills must be complete, accurate and transparent. Instead of embracing transparency, PPL creates a diversion, invokes the spectre of "automation" and defends its "manual" process. (PPL Initial Brief at 8, 11, 13, 27, 28, et al)

B. PPL also misstates the central allegation regarding accuracy in the billing process. In PPL's version, the complaint is that "[Moyer] does not know whether the Company applied the correct dollar amounts of credits". (PPL Initial Brief at 7, 16) The actual complaint is that, from data which PPL provides in the bills, it is impossible to determine and verify the accuracy of credit.

C. When the recent errors were discovered, PPL attempted to "issue corrected bills", but "this was not successful" (PPL Finding of Fact #83, at 11). PPL refuses to acknowledge my bills as the definitive record, and clearly regards them as superfluous to its "billing process". Instead of correcting my bills, PPL created still another supplemental "repair" spreadsheet (PPL

Exhibit 10), which "shows how the manual billing process has been used". (PPL Initial Brief at 13) Not only is PPL unable to show monthly aggregation in my bills (PPL Initial Brief at 12). When errors occur, PPL is also unable to show corrections in my bills.

PPL "catalogs all of the relevant information" in PPL Exhibit 10 (id. 13-15). This spreadsheet, like APC-5, its predecessor in prior litigation, is, purportedly, the "corrected" record which my monthly bills could not provide.

The legally-established monthly bills are documents of record, and the billing process must be evident and traceable in those bills. PPL should not be permitted to delegitimize the bills and supplant them with alternate and obscure "internal" documents.

D. PPL attempts to avoid civil penalties by making selective and misleading claims about its conduct. The recent aberrations, which PPL calls "technical oversights" (PPL Initial Brief at 23) must be viewed as part of a pattern of irregularities.

1. PPL says there was "no willful fraud or misrepresentation" (IB at 23), but carefully overlooks the inaccurate meter readings in 2009-2011 (see Moyer Initial Brief, Footnote 3 at 6) and the deliberate falsification of my initial Application in 2012 (See Moyer Initial Brief at 2-3)

2. PPL claims that its conduct "was not intentional" and dismisses the fact that new procedures in its convoluted billing methodology have been introduced deliberately year after year to overcome "inconsistencies". Indeed, several such "new procedures" are announced in its Initial Brief. (IB at 24; IB, "Finding of Fact #81, at 10)
3. The recent, faulty bills were never corrected, but PPL seeks exoneration because it "tried", albeit without success. (IB at 24)
4. PPL portrays its conduct in this Complaint as an "isolated incident" but does not refute the past irregularities. PPL also does not deny other cases involving billing complaints. Of two witnesses who testified, one testified of billing complaints which led to an undisclosed settlement and another testified of continuing grievance about the lack of meter readings on his bills.

E. My previous cases established a *prima facie* case for a single bill. (PUC Opinion and Order, May 19, 2016, at 17) Presumably with that in mind, the Company discusses the implications of a *prima facie* case (PPL IB at 5). The discussion, however, is severed from the history and the facts of my case. The evidence supporting my *prima facie* case was based squarely on the net metering regulations which "make a finding of fact permissible". (PPL IB at5). The Commission, however, made no reference to the AEPS Act or to

net metering regulations when it denied the *prima facie* case. Instead, the Commission deferred to PPL's inadequate billing system, saying that "its billing system is not able to process the readings of two separate meters on the same bill" (C-2011-2273645; Opinion and Order, May 19, 2015, at 17) An issue of this consequence should not be based on the frail billing capabilities that happen to exist. The Code, in the context of virtual metering, makes explicit reference to the customer-generator's "account" in the singular, but makes no suggestion of multiple accounts or multiple bills for a residential customer-generator.

F. PPL's uses of terminology diverge sharply from the definitions offered in the Public Utility Code.

Definitions in the Public Utility Code are clear and unambiguous. "Meter aggregation" is but one of four separate terms that are defined explicitly in the Code: "meter aggregation"; "net metering"; "physical meter aggregation"; and "virtual meter aggregation". 52 Pa. Code § 75.12

PPL, unfortunately, distorts and scrambles these definitions.

1. PPL's reference to "traditional net metering" (PPL IB at 10) has no definition or context and adds unnecessary confusion.[1] It is apparent that, until passage of the AEPS act, all net metering was, in fact "physical

[1] The sources cited by PPL, 52 Pa. Code § 75.12; PPL Exhibit No. 6, p. 2 (Initial Brief at 10 (PPL IB at 10), make no reference or allusion of "traditional net metering".

meter aggregation", although that phrase was not yet employed. PPL clouds the picture by referring to "traditional net metering" without clarifying its purpose or significance.

2. PPL incorrectly associates "net metering" with a "single bidirectional meter". (PPL Initial Brief at 9). There is no such association in the Public Utility Code. The Code defines "Net Metering" as "The means of measuring . . ." (75.12). It is an "umbrella" term that applies to every renewable system and to all customer-generators. It is not associated with any specific meter arrangement.

3. PPL's description of "meter aggregation" is factually incorrect. PPL describes it as "the process by which an eligible renewable customer-generator is able to aggregate multiple properties". (PPL Main Brief at 10) PPL identifies "multiple properties" where it should have identified "multiple meters". It is only virtual meter aggregation that typically involves multiple properties. "Meter aggregation" (75.12) is a general term that applies to all net metered systems, without regard to the number of properties.

   The definition says nothing about being "able to aggregate multiple properties". What it stipulates is the "combination of readings from and

billing for all meters". These meters, of course, operate "on properties" and "for properties", as the definition makes clear.

In addition, where "properties" are mentioned in the definition section (75.12), the reference is to parcels of "real estate" where a meter or meters may be located.[2] Some references to "properties" cite the relationship of a customer-generator to the real estate itself (as owner or lessee), and other references cite the parcels in relation to an EDC (being within its service area).[3]

All net metering systems participate in "meter aggregation", whether through a single meter or through multiple meters. In physical metering, the "meter aggregation" (or "combination") involves periodic readings from a single meter. In virtual metering, the aggregation (or "combination") involves periodic readings from multiple meters.

PPL confuses the issues, misconstrues the definition, and conflates "meter aggregation" with "virtual meter aggregation".[4]

PPL then extends the error by associating meter aggregation with the two mile provision. Again, referring to "meter aggregation" (PPL Main Brief

[2] In my own specific case, there is only one "property" (or parcel) involved: 73 Woods Road, Klingerstown, PA 17941.

[3] These two conditions are cited again in the subsequent and separate definition for "virtual meter aggregation". 52 Pa. Code § 75.12

[4] The same blurring of definitions occurs in PPL's net metering rider. It is apparent that PPL is relying on the flawed language of that Rider instead of relying the definitive language of the Public Utility Code. (PPL Exhibit 6; "Metering Provisions", item 3)

at 10), PPL asserts that "these [multiple] properties must be located within two miles of the boundaries of the renewable customer-generator's property". The definition of "meter aggregation" in the Code makes no reference to a "two-mile" limitation. That prerequisite, again, is specific to virtual meter aggregation 52 Pa. Code § 75.14(e) (See also AEPS Act, Section 2, "net metering" and 52 Pa. Code § 75.12, "virtual meter aggregation") There is no mention of the "two-mile" provision in the definition of "meter aggregation".

The direct association of "meter aggregation" with "multiple properties" and with the "two-mile" limit is incorrect.

4. PPL, in its discussion, further misconstrues the meaning of physical meter aggregation. The company creates a false distinction between the "generating facilities" and a fictitious "other property" (PPL Main Brief at 10). For systems with a typical physical metering arrangement, there is no "other property". In ordinary physical metering, there is only a "single meter"; a "single point of contact"; and a single location. "Readings" are taken from that single meter at the beginning and end of the "billing month" (52 Pa Code § 75.12; 52 Pa Code § 56.2). These two "readings" from that single meter are then aggregated and produce a "net" result. Indeed, the most common application in physical metering is

"rooftop solar", in which the "generating facility" is mounted on the building where the "single meter" is located.[5]

"Other property" does not pertain, and as before, PPL misconstrues the meaning of "properties". The Commission should adhere strictly to the definitions provided in the Public Utility Code and may not permit PPL to override the unambiguous language of the Code.

G. Contrary to insinuations by PPL, the present Complaint raises issues that were not previously adjudicated or resolved.

1. Contrary to PPL's insinuations about res adjudicata and collateral estoppel, the question of PPL's non-compliance with "fair business practice" has not been adjudicated.
2. Contrary to PPL's insinuations about res adjudicata and collateral estoppel, PPL's failure to comply fully with the Commission's 2014 Order has not been adjudicated. See Moyer Main Brief at 22
3. Contrary to PPL's insinuations about res adjudicata and collateral estoppel, the argument that PPL's billing practices frustrate the intent of the AEPs Act has not been adjudicated.
4. Contrary to PPL's insinuations about res adjudicata and collateral estoppel, the Commission has not adjudicated "the combination of

[5] The "basic example" which PPL cites (page 9) is an example of "physical meter aggregation".

readings and billing" and its meaning as applied to virtual meter aggregation, nor has the Commission finally adjudicated the question of how that "combination of readings and billing" must be implemented to be in full compliance.

5. Contrary to PPL's insinuations about res adjudicata and collateral estoppel, PPL's failure to implement the Commission's "credit mechanism" has not been adjudicated.
6. Contrary to PPL's insinuations about res adjudicata and collateral estoppel, PPL's failure to utilize the "true-up Period" has not been adjudicated.
7. Contrary to PPL's insinuations about res adjudicata and collateral estoppel, there has been no adjudication of PPL's failure to implement the "immediate benefit" and "immediate positive feedback" that were affirmed by the Commission as priorities for applying generation credit.
8. What constitutes an "inexpensive" billing process has not been adjudicated.
9. The definition of a "prudent expense" and the actual costs of achieving full compliance with the AEPS Act and with the Public Utility Code have not been adjudicated.

10. The role of the DEP, as specified in the AEPS Act, in determining my status and that of my facility with regards to the current "commercial" designation of my facility, has not been determined or adjudicated. See Moyer Main Brief at 18

11. The persistent aberrations, new procedures, and continuing evolution of PPL's billing process for virtual meter aggregation have not been fully adjudicated.

12. The Order of the Commonwealth Court which is cited in PPL's Main Brief (p. 28) does not resolve the present Complaint. Even in its original Opinion, The Court made no determination on the substance of my two prior, consolidated complaints. The Court made no review of the claims, facts or evidence presented in the PUC's Opinion and Order of May 19, 2016. The Order of the Commonwealth Court, instead, deferred entirely to the PUC which accepted PPL's exhibit, APC-5, as authoritative, in lieu of the disordered monthly bills. Specifically, the Court said, "we conclude that the evidence that the PUC relied upon constituted substantial evidence to support its determination." (No. 882 C.D. 2016, November 23, 2016, at 12) The recent aberrations, and PPL's efforts to explain them by creating still more supplemental spreadsheets (PPL Exhibit #10; Moyer

Exhibit 51) are not resolved by APC-5, or by any prior action of The Commonwealth Court.

H. It is urgent, and entirely appropriate, that the PUC should examine PPL's compliance with the Order of January 9, 2014, and that it should assess the effectiveness or ineffectiveness of that Order which required PPL to provide additional information to me.

I. PPL attempts to insinuate (PPL Main Brief at 26-29) that all of the issues in the present Complaint have been "fully and finally adjudicated" by the Commission (PPL Main Brief at 4, 8, et al). PPL fails to acknowledge that litigation in prior complaints involved other bills, other evidence, and other time periods. Statements in a previous decision by ALJ Judge Joel H. Cheskis are also applicable here:

> ***[a prior resolution] "does not preclude the fact that other violations of the Public Utility Code, the Commission regulations or orders or a Commission-approved tariff of the company may have occurred" (C-2015-2511904; Order on PPL's Motion for Summary Judgment, at 8)***
>
> ***"to the extent that Mr. Moyer believes that PPL is not complying with the Commission's determinations in his prior complaints, it is reasonable for him to file a third complaint to seek redress" (C-2015-2511904; Order on PPL's Motion for Summary Judgment, at 7-8)***

Contrary to PPL's assertions about res adjudicata and collateral estoppel, the violations, errors and irregularities submitted with the 2017 complaint have not been "fully and finally adjudicated" and are not exempt from litigation.

This Complaint involves new violations; new and more recent bills; and a new and specific time period. PPL's more recent conduct, and these new violations, merit adjudication and compel an examination of PPL's erratic billing practices.

J. Proceedings in the present Complaint are subject to conclusions of the Commonwealth Court in *Sunrise v. West Penn* (1282 C.D. 2015). PPL, in its Initial Brief, does not acknowledge the *Sunrise* case or its significance when it insinuates that the issues in the present Complaint were "fully and finally resolved" by The Commonwealth Court.

1. The Commonwealth Court's determination in *Sunrise v. West Penn* alters prior assumptions about the Commission's own authority in matters of net metering.

> ***"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) See also Moyer Main Brief, Section M at 53

2. The Commonwealth Court's determination in *Sunrise v. West Penn* alters the Commission's prior assumptions about the role of a utility's "tariff" in determining and applying generation credit.

> ***"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) See discussion in Moyer Brief, Section L, at 50

3. The Court also determined that

> ***"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." (1282 CD 2015 at 10-11)***

K. PPL defends its opaque billing process, even as it enumerates aberrations in the bills and appeals at length to its repair document, PPL Exhibit 10. (PPL Main Brief at 16-19) PPL asks the Commission to ignore the aberrations and omissions from the bills, still claiming in vague terms that "The exhibit ties out to the Complainant's own bills" (PPL Main Brief at 19) Ignoring the many examples of a troubled billing process, PPL brushes aside the anomalies, saying that I have been "appropriately billed". (PPL IB at 19) The company's "trust-us" approach to billing is indefensible because credit data and credit calculations are withheld from the bills and cannot be verified.

L. Essential transactions and critical, fundamental data described by PPL in #12 to #23 of its "Findings of Fact", are not reported on my monthly bills, and are available only on PPL's internal documents. The examples below demonstrate the hidden nature of PPL's calculations.

1. Finding of Fact # 16 claims that "one kWh generated at the generation facility account is applied as one kWh at the other account", but the actual data and transaction are not disclosed in the bills.
2. Finding of Fact #18 claims that "the dollar amount equals the value of the excess generation being applied times the other account's full retail rate", but the actual data and transaction is not disclosed on the bills.
3. Finding of Fact #19 claims that "Any unused excess generation that remains after applying the excess credit is then banked in kWhs and carried forward", but no such information is provided in the monthly bills. The bills show no evidence of banked kilowatt hours.

M. Various transactions cited in the Findings of Fact do not correspond to actual data as it appears in the monthly bills. The figures provided in the Findings of Fact clearly rely on an internal PPL source. In each of the following cases, the Findings of Fact cite critical dollar amounts that are not found on any corresponding bill:

#33 ($66.43)
#37 ($155.04)
#38 ($88.61)
#48 ($72.02)
#51 ($77.02)
#54 ($77.02)
#57 ($71.07)
#59 ($.11)

#62 ($71.07)
#76 (#155.04)

Because of these and other omissions, the "Balances" on my bills were indecipherable and could not be explained by the data provided. These inscrutable bills prompted my decision to withhold payments in July, 2017.

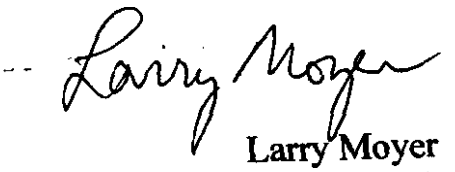
N. The Commission should exercise its own authority to modify faulty conclusions that the PUC may have reached in its earlier decisions.

O. PPL's insistence that "PPL Electric calculated the credits correctly" (PPL Main Brief at 7) cannot obviate the fact that it is impossible, from the information on my monthly bills, to verify the calculations or to determine the accuracy of the credits. The lack of transparency cannot be defended.

P. PPL continues to shift its billing practices, resulting in further disarray and detriment. Starting in July, 2017, the Company, by its own admission, "applied the credits to the Complainant's past due balances first instead of his current charges" (PPL Main Brief at 21). Then, reversing its procedure, it "began applying the credit to the current charges instead of the previous account balance" (Id.), resuming a pattern it had used "before July 2017" (Finding of Fact #82).

Respectfully Submitted

May 22, 2018



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Reply Brief

RE: Docket No. C-2017-2629683

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

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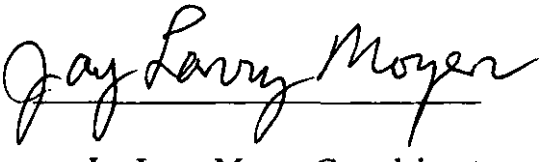

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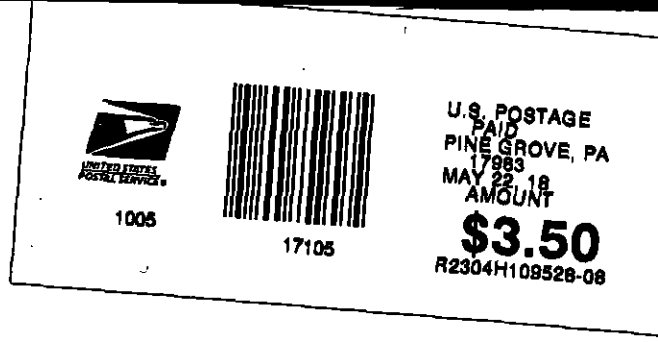

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