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File #: 140074

May 25, 2018

***VIA ELECTRONIC FILING***


Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Jay Larry Moyer v. PPL Electric Utilities Corporation**  
**Docket No. C-2015-2511904**

Dear Secretary Chiavetta:

Enclosed please find the Replies of PPL Electric Utilities Corporation to the Exceptions of Jay Larry Moyer for filing in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DTR/jl  
Enclosures

cc: Honorable Joel H. Cheskis  
Certificate of Service

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing have been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA E-MAIL &  
REGULAR MAIL**

Jay Larry Moyer  
370 West Johnson Street  
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Philadelphia, PA 19144  
E-mail:[gtown73@hotmail.com](mailto:gtown73@hotmail.com)

Date: May 25, 2018

A handwritten signature in black ink, appearing to read "D. Ryan", is written over a horizontal line.

Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jay Larry Moyer,	:	
	:	
Complainant,	:	
	:	
v.	:	
	:	Docket No. C-2015-2511904
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	
	:	

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**REPLIES OF PPL ELECTRIC UTILITIES CORPORATION TO THE  
EXCEPTIONS OF JAY LARRY MOYER**

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PPL Electric Utilities Corporation (“PPL Electric” or the “Company”), pursuant to 52 Pa. Code § 5.535, hereby respectfully submits these Replies to the Exceptions of Jay Larry Moyer (“Complainant”). In his Exceptions, the Complainant has disputed Administrative Law Judge Joel H. Cheskis’s (“ALJ”) Initial Decision dismissing his above-captioned Formal Complaint (“Third Complaint”).<sup>1</sup>

For the reasons explained below, PPL Electric respectfully requests that the Pennsylvania Public Utility Commission’s (“Commission”) deny the Complainant’s Exceptions and adopt the well-reasoned Initial Decision without modification.

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<sup>1</sup> The First and Second Complaints were filed at Docket Nos. C-2011-2273645 and C-2014-2444864. Both the Commission and the Commonwealth Court denied the Complainant’s claims made in the First and Second Complaints about PPL Electric’s virtual meter aggregation program and billing processes, and the Pennsylvania Supreme Court denied the Complainant’s Petition for Allowance of Appeal. *See Moyer v. PPL Elec. Utils. Corp.*, Docket Nos. C-2011-2273645, C-2014-2444864 (Order Entered May 19, 2016) (“*Moyer*”); *Moyer v. Pa. PUC*, Docket No. 882 C.D. 2016 (Pa. Cmwlth. 2016) (“*Moyer Appeal*”); *Moyer v. Pa. PUC*, Docket No. 235 MAL 2017 (Pa. 2017) (denying Petition for Allowance of Appeal). Moreover, still pending before the Commission is the Complainant’s Fourth Complaint at Docket No. C-2017-2629683, which concerns, among other things, PPL Electric’s bills and billing processes for the Complainant’s virtual meter aggregation accounts.

**I. INTRODUCTION**

On November 6, 2015, PPL Electric was served with the Third Complaint. Therein, Complainant raised issues again regarding PPL Electric's virtual meter aggregation program and billing processes. As conceded in the Complaint, the issues presented in the Third Complaint are directly related to the allegations and claims asserted in his fully litigated First and Second Complaints at Docket Nos. C-2011-2273645 and C-2014-2444864. The Third Complaint also implied that Commission staff and PPL Electric engaged in impermissible ex parte communications regarding the Initial Decision dismissing his First and Second Complaints. Finally, the Third Complaint alleged that PPL Electric violated the Complainant's rights when the Company issued termination notices on October 5 and 15, 2015, for non-payment of his electric bills that were in arrears and overdue.

On November 24, 2015, PPL Electric filed an Answer and Preliminary Objections to the Third Complaint. In its Preliminary Objections, the Company argued that the Complainant's issues regarding its virtual meter aggregation program and billing processes were barred by *res judicata* and collateral estoppel, that the Complainant's ex parte allegations were legally insufficient and failed to state a claim upon which relief could be granted, and that the termination allegations were legally insufficient and failed to state a claim upon which relief could be granted.

The Complainant never filed an Answer to the Company's Preliminary Objections to the Third Complaint.

On December 22, 2015, PPL Electric filed a Motion to Stay Discovery during the pendency of its Preliminary Objections.

On December 23, 2015, the Complainant filed an Answer to PPL Electric's Motion to Stay Discovery.

On January 13, 2016, ALJ Buckley issued an Interim Order granting the Company's Motion to Stay Discovery.

On February 10, 2017, PPL Electric filed a Motion to Stay the instant proceeding pending the Commonwealth Court's final resolution of the Complainant's appeal of the Commission's May 19, 2016 Order (*Moyer*) adjudicating his First and Second Complaints.

On May 1, 2017, ALJ Buckley issued an Order in this proceeding that granted the Company the opportunity to amend its Preliminary Objections in light of the Commonwealth Court's March 13, 2017 Order (*Moyer Appeal*) affirming the Commission's denial of the Complainant's First and Second Complaints. *See* note 1, *supra*.

On May 22, 2017, PPL Electric filed a Motion for Summary Judgment, which requested that the Third Complaint be dismissed in its entirety because: (1) the Commission's and Commonwealth Court's decisions fully and finally adjudicated the virtual meter aggregation program and billing process allegations re-raised in the Third Complaint; (2) the Complainant's allegations and claims regarding the amount to be credited to his account were moot; (3) the Complainant's ex parte allegation failed to state a claim upon which relief can be granted; and (4) the Complainant's termination allegation was moot and failed to state a claim upon which relief can be granted.

On June 2, 2017, the Complainant filed a "letter of application and protest," arguing that the Motion for Summary Judgment should be denied.

On June 8, 2017, the Complainant filed an Answer to PPL Electric's Motion for Summary Judgment.

On July 27, 2017, the Complainant filed a document with six attachments, which was treated as additionally responding to PPL Electric's Motion for Summary Judgment.

On October 23, 2017, the Complainant filed with the Commonwealth Court a “pro se appeal of inaction” concerning his Third Complaint.

On November 6, 2017, the Complainant, consistent with the Chief Clerk of the Commonwealth Court’s letter, filed a Petition for Review at Docket No. 1636 C.D. 2017, which sought review of the Third Complaint even though there was no appealable Commission decision yet.

On November 9, 2017, a Notice was issued stating that the Third Complaint had change from ALJ Buckley to the ALJ and scheduling an evidentiary hearing for December 11, 2017.

On November 20, 2017, the ALJ issued an Order granting in part and denying in part PPL Electric’s Motion for Summary Judgment. Specifically, the Order granted the Motion with respect to the Complainant’s ex parte allegations and struck them from the Third Complaint.

On November 28, 2017, the Complainant requested a continuance of the evidentiary hearing.

On November 30, 2017, PPL Electric filed a letter opposing any continuance beyond 30 days of the scheduled hearing date.

On December 5, 2017, the ALJ issued an Order granting the Complainant’s request for continuance and rescheduling the evidentiary hearing for January 8, 2018.

Between November 30 and December 8, 2017, the Complainant filed several documents with the Commonwealth Court at Docket No. 1636 C.D. 2017 about his Third Complaint.

On December 19, 2017, the Commission filed a Praecipe for Appearance and Motion to Quash the Complainant’s Petition for Review at Docket No. 1636 C.D. 2017.

On January 8, 2018, the telephonic evidentiary hearing was held as scheduled.

On January 17, 2018, the Commission granted the Commission's Motion to Quash the Complainant's Petition for Review at Docket No. 1636 C.D. 2017.

On April 25, 2018, the ALJ issued his Initial Decision ("ID") dismissing the Third Complaint.

On May 14, 2018, the Complainant filed his Exceptions to the ID.<sup>2</sup>

For the reasons explained in more detail below, the Complainant's Exceptions are without merit, and the Commission should adopt the ALJ's well-reasoned ID without modification.

## **II. REPLIES TO EXCEPTIONS**

### **A. REPLIES TO EXCEPTIONS NOS. 1 THROUGH 3 – THE ID'S FINDINGS OF FACT ARE CLEAR AND SUPPORTED BY THE RECORD**

The Complainant alleges that the ID contains certain "errors" and "inaccuracies" concerning virtual meter aggregation and the Complainant's virtual meter aggregation accounts and billing history. (Complainant's Exceptions, pp. 2-3) Specifically, the Complainant takes issue with Findings of Fact 16 (Exception No. 1), Findings of Fact 21 and 22 (Exception No. 2), and Findings of Fact 36-38 and 43 (Exception No. 3). (Complainant's Exceptions, pp. 2-3) As explained below, the ID's Findings of Fact are clear and supported by the record.

First, the ID accurately defines "meter aggregation" in Finding of Fact 16 as "the process by which the eligible renewable customer generator is able to aggregate the properties that he or she owns and operates within two miles of each other for the purposes of net metering." (ID, p. 7) The Complainant appears to believe that the two-mile limitation only applies to virtual meter aggregation in PPL Electric's service territory, not physical meter aggregation. (Complainant's Exceptions, p. 1) In actuality, the net metering provisions of PPL Electric's Commission-

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<sup>2</sup> The Complainant deposited his Exceptions in the United States mail on May 14, 2018. His Exceptions were posted to the Commission's docket on May 16, 2018.

approved tariff explicitly state that “[m]eter aggregation shall be limited to meters located on properties within two (2) miles of the boundaries of the customer-generator’s property.” (PPL Electric Exhibit No. 6) It is well-established that public utilities’ tariffs have the force and effect of law and are binding on the utilities and their customers. *See PPL Elec. Utils. Corp. v. Pa. PUC*, 912 A.2d 386, 402 (Pa. Cmwlth. 2006) (citing 66 Pa. C.S. § 1303 and *Pa. Elec. Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Cmwlth. 1995)).

Moreover, even under the Complainant’s incorrect analysis, the Commission’s regulations specifically state that virtual meter aggregation is limited to “properties owned or leased and operated by the same customer-generator” that are “within 2 miles of the boundaries of the customer-generator’s property and within a single EDC’s service territory.” 52 Pa. Code §§ 75.12, 75.14(e). The Complainant is a virtual meter aggregation customer-generator, not a physical meter aggregation customer-generator. (ID at 6) Therefore, it is undisputed that the two-mile limitation applies to his accounts. Thus, the Complainant’s issue with Finding of Fact 16 is inconsequential.<sup>3</sup>

Second, contrary to the Complainant’s allegations, the record is clear that a credit of \$783.61 was applied to his residential account. (ID at 8; PPL Electric Exhibit Nos. 1 and 11) Although Finding of Fact 21 states that a credit of “\$738.61” was posted, this is a minor typographical error. (ID at 8) Finding of Fact 22 correctly provides the credit amount of “\$783.61” (ID at 8), which is supported by the testimony of PPL Electric witness Cheryl Oehler (Tr. 28-31), the Complainant’s residential account statement (PPL Electric Exhibit No. 1), and

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<sup>3</sup> To the extent the Complainant seeks to challenge, for the first time in his Exceptions, the Company’s application of a two-mile limitation to physical meter aggregation, he lacks standing to pursue that claim because he is a virtual meter aggregation customer-generator and, therefore, has no substantial, direct, or immediate interest. *See Stilp v. Commonwealth*, 940 A.2d 1227, 1233 (Pa. 2007); *Fumo v. City of Phila.*, 972 A.2d 487, 496 (Pa. 2009) (citing *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 280-81 (Pa. 1975)); *Del-Aware Unlimited. v. Commonwealth*, 551 A.2d 1117, 1121 (Pa. Cmwlth. 1988) (citation omitted); *1000 Grandview Ass’n v. Mt. Washington Assocs.*, 434 A.2d 796, 797 (Pa. Super. 1981) (citation omitted); *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003); *City of Phila. v. Commonwealth*, 838 A.2d 566, 577 (Pa. 2003).

PPL Electric's letter filed in the First and Second Complaint proceeding informing the Commission that it applied the \$783.61 credit to his account on May 24, 2016, in compliance with the Commission's May 19, 2016 Order (PPL Electric Exhibit No. 11). Accordingly, there is no issue with this credit applied to the Complainant's residential account.

Third, the Complainant's issues with Findings of Fact 36-38 and 43 are without merit. In Findings of Fact 36 and 38, the ID states that "[a] net metering customer usually will have a single bidirectional meter" and that "[w]ith virtual metering aggregation customers . . . two meters are considered instead of one." (ID at 9) Specifically, the Complainant misinterprets these passages as declaring that all net metering customers have one meter and all virtual meter aggregation customers have two meters. (Complainant's Exceptions, p. 3) However, the ID simply is describing the typical number of meters used for net metering and virtual meter aggregation. (ID at 9) Indeed, the Complainant overlooks that the ID states "[a] net metering customer usually will have a single bidirectional meter." (ID at 9) (emphasis added) Moreover, for purposes of the Complainant's virtual meter aggregation accounts, it is undisputed that he has two meters. (ID at 6, 10) Therefore, the Complainant's issues with Findings of Fact 36 and 38 are immaterial.<sup>4</sup>

Further, in Finding of Fact 37, the ID provides that "[i]f the customer has excess generation carrying into the next billing series[,] the excess is banked to offset future usage." (ID at 9) The Complainant erroneously asserts that PPL Electric "carries 100% of generation

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<sup>4</sup> PPL Electric also observes that in support of his challenge to Finding of Fact 36, the Complainant cites and quotes the rebuttal testimony of PPL Electric witness Aloysius Cannon from the First and Second Complaint proceeding. (Complainant's Exceptions, p. 3 n.1) This testimony is not in the record in this proceeding. The record closed on February 6, 2018 (ID at 5), and evidence cannot be introduced for the first time at the exceptions stage. See *Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS 45, at \*13-14 (Order Entered Feb. 10, 1994); *Application of PPL Electric Utilities Corporation Under 15 Pa. C.S. § 1511(c)*, Docket Nos. A-2011-2267349, *et al.*, 2013 Pa. PUC LEXIS 413, at \*38-40 (Order Entered July 16, 2013), *affirmed*, *Hess v. Pa. PUC*, 2014 Pa. Commw. LEXIS 587, at \*49-50 (Pa. Cmwlth. 2014) (finding that the Commission did not abuse its discretion in granting the motion to strike). Therefore, such extra-record evidence should be disregarded by the Commission.

into the next billing series, not only the ‘excess generation’” and that “[t]his anomaly is a function of PPL’s ‘one-month lag.’” (Complainant’s Exceptions, p. 3) The Complainant fails to recognize that in Finding of Fact 37, the ID is describing a traditional net metering customer, not a virtual meter aggregation customer-generator such as the Complainant. (ID at 9) For a traditional net metering customer, a single bidirectional meter is used and the electricity from the customer-generator’s generating facilities is netted against the customer-generator’s usage. (ID at 9; Tr. 48) If there is any remaining excess generation, it is banked and applied in future billing cycles. (ID at 9; Tr. 48) This process is precisely what the ID has described.

Moreover, for the Complainant’s virtual meter aggregation accounts, the Company first calculates the “excess generation” produced by the Complainant’s solar array, meaning that the kilowatt hours of electricity generated by the facilities are netted against their electric usage. (Tr. 25, 50-51, 54, 57-58; PPL Electric Exhibit Nos. 5 and 10) Then, PPL Electric applies that excess generation to the usage at his residential account on a one-to-one kilowatt hour basis at the full retail rate. (Tr. 50-52, 55, 57-58; PPL Electric Exhibit Nos. 5 and 10) The application of this excess generation occurs on a one-month delay due to the manual billing process used by the Company for virtual meter aggregation, which the Commission found to be lawful in the First and Second Complaint proceeding. *Moyer*, pp. 11, 16, 18, 22-24. Any remaining “excess generation” is then banked and applied to future billing cycles. (Tr. 52, 58) Therefore, the Company never “carries 100% of generation into the next billing series,” as alleged by the Complainant, because it always calculates and applies the “excess generation” produced by his solar array.

Finally, in Finding of Fact 43, the ID states that “[c]ustomers such as Mr. Moyer remain responsible for paying customer charges and possibly a demand charge because a non-residential

meter is being used.” (ID at 10) The Complainant disputes that he has a “non-residential meter.” (Complainant’s Exceptions, p. 3) In actuality, this issue was fully and finally resolved in the First and Second Complaint proceeding. *See Moyer*, pp. 31-38. In that proceeding, the Complainant argued that his solar account should be under residential rate schedule (Rate Schedule RS) instead of a small commercial rate schedule (Rate Schedule GS-1). *Id.*, pp. 31-33. The Commission held that the Complainant’s solar account is properly classified as Rate Schedule GS-1 because, among other things, it did not meet the qualifications to be considered a “dwelling” to fall under Rate Schedule RS. *Id.*, pp. 35-37. As a result, all of the applicable charges under Rate Schedule GS-1 are to be applied to the Complainant’s solar account. *Id.*, p. 38; *see also* 52 Pa. Code §§ 75.13(j) (stating that an EDC “shall provide net metering at nondiscriminatory rates identical with respect to rate structure, retail rate components and any monthly charges to the rates charged to other customers that are not customer-generators on the same default service rate.”) 75.13(k) (stating that an EDC “may not charge a customer-generator a fee or other type of charge unless the fee or charge would apply to other customers that are not customer-generators”) (emphasis added). Thus, Finding of Fact 43 accurately describes the Complainant’s metered account as non-residential as well as the demand charge that applies.

For these reasons, the Complainant’s Exceptions Nos. 1 through 3 should be rejected.

**B. REPLY TO EXCEPTION NO. 4 – THE ID PROPERLY DOES NOT RULE ON THE COMPLAINANT’S ALLEGATIONS ABOUT EX PARTE COMMUNICATIONS BECAUSE THEY WERE ALREADY STRICKEN FROM HIS COMPLAINT**

The Complainant also attempts to fault the ID for not ruling on his allegations that the Commission and PPL Electric engaged in ex parte communications about when the Initial Decision in his First and Second Complaint proceeding was to be issued. (Complainant’s Exceptions, pp. 4-5) The Complainant’s argument is without merit.

The ID does not rule on the Complainant's allegations of ex parte communications because those allegations were already stricken from the Third Complaint. In the ALJ's November 20, 2017 Order, the ALJ found "Mr. Moyer's ex parte allegations in his complaint fail to state a claim upon which relief can be granted, even when accepting as true all of the well-pleaded arguments raised by Mr. Moyer and only considering those facts admitted by him against him." November 20, 2017 Order, p. 12. Indeed, the Complainant "stated in his complaint that the [Office of Special Assistants] staff person said that he found no evidence of any recent communication from the Commission to the company regarding the status of the complainant's case." *Id.*, p. 11. Nevertheless, even if such communications occurred as alleged by the Complainant, "no ex parte communication occurs if only procedural matters of a case are discussed." *Id.* (citing 66 Pa. C.S. § 334(c)). Accordingly, the ALJ struck these allegations from his Third Complaint. *Id.* Thus, the ID properly does not rule on the Complainant's allegations of ex parte communications because the issue was already adjudicated.

Based on the foregoing, the Complainant's Exception No. 4 should be denied.

**III. CONCLUSION**

WHEREFORE, for all the foregoing reasons, as well as those more fully explained in the Initial Decision of Administrative Law Judge Joel H. Cheskis, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission: (1) deny the Exceptions filed by Jay Larry Moyer; (2) adopt the Initial Decision without modification; and (3) dismiss the Formal Complaint at Docket No. C-2015-2511904 with prejudice.

Respectfully submitted,



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Dated: May 25, 2018

*Attorneys for PPL Electric Utilities Corporation*