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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-2017-2629683

Dear Secretary Chiavetta:

Enclosed for filing is the Reply Brief of PPL Electric Utilities Corporation 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 &
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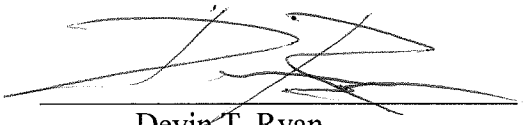
Date: May 25, 2018



Devin T. Ryan

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Jay Larry Moyer,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2017-2629683
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

REPLY BRIEF OF PPL ELECTRIC UTILITIES CORPORATION

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Date: May 25, 2018

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I. INTRODUCTION

On October 18, 2017, PPL Electric Utilities Corporation ("PPL Electric" or the "Company") was served with the above-captioned Formal Complaint filed by Jay Larry Moyer ("Complainant") with the Pennsylvania Public Utility Commission ("Commission"). As explained in PPL Electric's Main Brief, the Complainant is a participant in PPL Electric's virtual meter aggregation program, under which the excess generation produced by his solar generating facilities, if any, is used to offset the usage at his residence. This Formal Complaint is the Fourth Complaint[1] that the Complainant has filed against PPL Electric regarding the billing process and payments for virtual meter aggregation electric service provided to the Complainant's house and detached solar array. In this Fourth Complaint proceeding, the Complainant generally has alleged that PPL Electric failed to bill and apply credits for excess generation correctly. In particular, the Complainant has contended that his residential account bills for July through November 2017 do not show his credits for excess generation being applied and when the credit does appear, it may not have been in the correct amount.

On May 2, 2018, the Complainant filed his Main Brief. On May 4, 2018, the Company filed its Main Brief.[2]

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[1] 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*") (attached hereto as **Appendix A**); *Moyer v. Pa. PUC*, Docket No. 882 C.D. 2016 (Pa. Cmwlth. 2016) ("*Moyer Appeal*") (attached hereto as **Appendix B**); *Moyer v. Pa. PUC*, Docket No. 235 MAL 2017 (Pa. 2017) (denying Petition for Allowance of Appeal) (attached hereto as **Appendix C**). Moreover, still pending before the Commission is the Complainant's Third Complaint at Docket No. C-2015-2511904, which concerned, among other things, PPL Electric's bills and billing processes for the Complainant's virtual meter aggregation accounts. On April 25, 2018, Administrative Law Judge Joel H. Cheskis issued his Initial Decision dismissing the Third Complaint.

[2] The Briefing Order originally stated that Main Briefs were due on or before April 27, 2018, with Reply Briefs due on or before May 18, 2018. On April 20, 2018, PPL Electric filed an unopposed request for one-week extensions to the briefing deadlines. The ALJ granted this request the same day.

As explained in PPL Electric's Main Brief, the Fourth Complaint should be denied in its entirety and with prejudice because the Complainant has failed to sustain his burden of proof that the billing of his accounts for April 2017 through February 2018 violated the Public Utility Code, the AEPS Act, any Commission regulation or order, or the Company's Commission-approved tariff. PPL Electric's unrebutted evidence shows that the Complainant's credits were calculated properly and applied to his accounts, and any alleged inconsistencies in his bills were explained by the Company. Moreover, the Complainant is barred by the doctrines of *res judicata* and collateral estoppel from re-litigating claims, issues, and requests for relief that were fully and finally resolved by the Commission and Commonwealth Court in the First and Second Complaint proceeding about PPL Electric's bills and billing process for virtual meter aggregation.

Herein, PPL Electric submits its Reply Brief, which is focused on addressing any arguments or issues raised by the Complainant's Main Brief that were not previously addressed by the Company.

II. SUMMARY OF ARGUMENT

The Complainant's arguments in his Main Brief should be rejected. First, the Complainant's Main Brief firmly establishes that he is re-litigating claims, issues, and requests for relief that were previously adjudicated by the Commission and Commonwealth Court. The majority of the Complainant's Main Brief contests, among other things, the legality and reasonableness of the Company's manual billing process, his receipt of two separate bills for his virtual meter aggregation accounts, the assignment of his solar account to a small commercial rate schedule, the imposition of a customer charge on his solar account, information presented on his bills, and the one-month lag in the application of his credits for excess generation. All of

these claims, issues, and requests for relief were raised and adjudicated in the First and Second Complaint proceeding. Thus, all of these claims, issues, and requests for relief, as well as any that could have been raised in the previous proceeding, are barred by *res judicata* and collateral estoppel.

Second, the Complainant mischaracterizes multiple aspects of the January 9, 2014 Order in the First Complaint proceeding. That Order simply remanded the case for the development of a more complete record and ordered PPL Electric to file a tabulation within 60 days that presented certain information about the Complainant's accounts. Contrary to the Complainant's allegations, the January 9, 2014 Order did not require PPL Electric to continually provide this tabulation to the Complainant, present it on the record in future complaint proceedings, or include the various items of information on his bills. Notwithstanding, the spreadsheet presented by PPL Electric in this proceeding, *i.e.*, PPL Electric Exhibit No. 10, contains all of the information set forth in the January 9, 2014 Order, including the payments made by the Complainant and sufficient information to show how the spreadsheet correlates with the Complainant's bills and account statements.

Third, the Complainant erroneously claims that, based upon the Commonwealth Court's decision in *Sunrise Energy, LLC v. FirstEnergy Corp.*, 148 A.3d 894 (Pa. Cmwlth. 2016), the Commission lacks the authority to adjudicate the instant Fourth Complaint. The Commonwealth Court previously found in the *Moyer Appeal* decision that *Sunrise* did not strip the Commission of its jurisdiction over issues concerning PPL Electric's virtual meter aggregation program, bills, and billing process. Therefore, the Fourth Complaint falls squarely within the Commission's jurisdiction.

For these reasons, and as explained in more detail below, the arguments raised in the Complainant's Main Brief should be rejected.

III. REPLY ARGUMENT

A. THE COMPLAINANT'S MAIN BRIEF CONFIRMS THAT HE IS RE-LITIGATING CLAIMS, ISSUES, AND REQUESTS FOR RELIEF THAT WERE PREVIOUSLY ADJUDICATED BY THE COMMISSION AND COMMONWEALTH COURT

In its Main Brief, PPL Electric explained that the Complainant is barred by *res judicata*[3] and collateral estoppel[4] from re-litigating any claims, issues, and requests for relief that were fully and finally resolved by the Commission and Commonwealth Court[5] regarding the Company's bills and billing process for virtual meter aggregation. (PPL MB at 26-29) Consequently, the instant Fourth Complaint proceeding is limited to analyzing whether PPL Electric's billing of his virtual meter aggregation accounts for April 2017 through February 2018

[3] *Res judicata*, or claim preclusion, prevents a future suit between the same parties on the same cause of action after final judgment is entered on the merits of the action. *See PMA Ins. Grp. v. Workmen's Compensation Appeal Bd. (Kelley)*, 665 A.2d 538 (Pa. Cmwlth. 1995), *appeal denied*, 1996 Pa. LEXIS 619 (Pa. 1999). Here, the parties are the same (the Complainant and PPL Electric), the cause of action is the same (a Formal Complaint about the Company's virtual meter aggregation program and billing process), and the Commission entered a final judgment on the merits that was upheld by the Commonwealth Court (see Appendices A and B).

[4] Collateral estoppel, or issue preclusion, prevents re-litigation of an issue of fact or law between the same parties upon a different claim or demand. *See Fiore v. Commonwealth*, 508 A.2d 371, 374 (Pa. Cmwlth. 1986). Collateral estoppel prohibits the re-litigation of an "issue of law or fact in a subsequent action" when: "(1) the legal or factual issues are identical; (2) they were actually litigated; (3) they were essential to the judgment; and (4) they were material to the adjudication." *PMA Ins.*, 665 A.2d at 541 (citation omitted); *see Fiore*, 508 A.2d at 374 (citation omitted). Here, the parties are the same (the Complainant and PPL Electric), these legal issues are identical, the factual issues (except for the alleged billing inconsistencies from April 2017 through February 2018) are identical, and all of the issues were actually litigated, essential to the Commission's judgment, and material to the adjudication.

[5] As stated in note 1, *supra*, PPL Electric has attached copies of the Commission's May 19, 2016 Order, the Commonwealth Court's Order affirming the Commission's May 19, 2016 Order, and the Supreme Court's Order denying the Complainant's Petition for Allowance of Appeal from the Commonwealth Court's Order as Appendices A, B, and C, respectively. The Company notes that in its Main Brief, it cited these Orders as PPL Electric Exhibit Nos. 7 through 9. Although these Orders were provided to the ALJ and the Complainant marked with these exhibit numbers, the Orders were not formally admitted into the record. Accordingly, for sake of convenience, PPL Electric is providing copies of these Orders as Appendices A through C.

violated the Public Utility Code, the AEPS Act, any Commission regulation or order, or the Company's Commission-approved tariff. (PPL MB at 15-26)

As expected, however, the Complainant's Main Brief is replete with claims, issues, and requests for relief that were previously litigated and adjudicated in his First and Second Complaint proceeding. (*See, e.g.*, Complainant's MB at 5-7, 9-12, 14-20, 25-38, 40-41, 44-47, 49, 50-52, 55-58)

First, the Complainant criticizes PPL Electric's manual billing process and asserts that a new billing process should be implemented. (*See* Complainant's MB at 14-15, 55-56, 58) As the Complainant states in his Main Brief, "What is in dispute is the arbitrary and indefensible 'billing process' devised by PPL Electric." (Complainant's MB at 47) However, both the Commission and the Commonwealth Court previously considered and rejected the Complainant's argument that the manual billing process is unlawful and unreasonable and that a different billing process[6] should be implemented. (Appendix A, p. 24; Appendix B, p. 11)

Second, the Complainant disputes that the manual billing process is "inexpensive" and asserts that implementing an automated billing process would be a "prudent expense." (Complainant's MB at 15, 30-32, 44-46) Again, the Commission already addressed this claim in the First and Second Complaint proceeding, finding:

> Although the Complainant excepts to the ALJ's finding that PPL's manual billing process is accurate and inexpensive, we agree with PPL that he has not offered any credible evidence to rebut this finding.

[6] The Complainant primarily argued in the First and Second Complaint proceeding that an automated billing process should be implemented. (Appendix A, pp. 18-20) However, even if the Complainant has changed his position that some other kind of billing process should be implemented (whether automated or manual), the fact remains that he could have raised that argument in the previous proceeding but chose not to do so. *Tobias v. Halifax Twp.*, 28 A.3d 223, 227 (Pa. Cmwlth. 2011) (citation omitted) (emphasis in original); *accord Wilkes v. Phoenix Home Life Mut. Ins. Co.*, 902 A.2d 366, 376 (Pa. 2006) (citation omitted) (emphasis added). Therefore, his claim would still be barred by *res judicata*.

. . .

> The Complainant has not offered any evidence to rebut PPL's assertion that, at present, there are only ninety-eight participants[7] in its virtual metering program and that the Complainant is the only one of these customer-generators that has taken issue with PPL's manual billing process. Therefore, 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. Specifically, we concur with PPL that it would not be reasonable for it to shift the costs of developing and implementing an automated billing process for its virtual meter aggregation program, which would only benefit a small portion of its customer base, on to all of its ratepayers.

(Appendix A, p. 24) (emphasis added) The Commonwealth Court subsequently upheld the Commission's determination. (Appendix B, p. 11)

Third, the Complainant takes issue with his receipt of two separate bills, one for his residential account and one for his solar account. (Complainant's MB at 5, 15, 17, 33-35, 56) However, the Commission previously held that "it is reasonable for PPL to issue the Complainant a bill for each account" and "that PPL is not required under the Code, the *AEPS Act*, [the Commission's] regulations, or the terms of its tariff to issue the Complainant a single bill for his two accounts." (Appendix A, p. 25)

Fourth, the Complainant asserts that his solar facilities should be classified as "residential," not commercial. (Complainant's MB at 9, 17-18, 49, 55) Once again, both the Commission and Commonwealth Court found that the Complainant's solar account was properly assigned to a small commercial rate schedule (Rate Schedule GS-1). (Appendix A, pp. 35-38; Appendix B, pp. 13-14) Specifically, the Commission determined that "[t]he Complainant's

[7] Although there are now 110 participants in PPL Electric's virtual meter aggregation program (Tr. 188) as opposed to the 98 cited in the May 19, 2016 Order, the addition of only 12 customers does not suddenly undo the Commission's finding and transform the costly upgrade into a prudent expense today.

solar facility does not qualify for service under Rate Schedule RS" because it failed to meet the qualifications of a "dwelling." (Appendix A, pp. 36-37) Instead, because "PPL must perform one standard transformation to step down the distribution line's voltage from 240 volts to 120 volts at the point of delivery," the Complainant's solar facilities qualified for Rate Schedule GS-1 under PPL Electric's tariff. (Appendix A, pp. 37-38) On appeal, the Commonwealth Court "conclude[d] that the PUC did not err in determining that PPL properly assigned a commercial rate to Moyer's host account." (Appendix B, p. 14)

Fifth, the Complainant argues that his solar account should not be subject to a customer charge under Rate Schedule GS-1 and that he should be refunded all of his past payments of the customer charge. (Complainant's MB at 9, 33-35, 56) The Commission previously rejected this exact same argument, finding that "the Complainant is responsible for paying the customer charge on both his host and satellite accounts." (Appendix A, p. 38) "The record is clear that because the Complainant is a virtual meter aggregation customer-generator, his host account and his satellite account are each served at separate points of interconnection on PPL's system and on separate meters"; therefore, "these accounts are separate and will have separate customer charges associated with them." (Appendix A, p. 38) Moreover, under the Commission's regulations, PPL Electric "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." *See* 52 Pa. Code § 75.13(k) (emphasis added); *see also* 52 Pa. Code § 75.13(j) (requiring an EDC to "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") (emphasis added).[8] Therefore, because "[t]he customer charge

[8] At the time of the Commission's May 19, 2016 Order, these regulations could be found at 52 Pa. Code § 75.13(i)-(j).

is applicable to all customers regardless of whether they are enrolled in net metering," the Commission held that "the customer charge cannot be waived." (Appendix A, p. 38)

Sixth, the Complainant avers that PPL Electric should have to include several additional items of information on the Complainant's bills, including: (1) "[t]he total amount of electricity in kilowatt hours, that was generated in the most recent billing period"; (2) "[d]ata showing how the two meter readings were aggregated (with resulting net usage or net credit)"; and (3) the "generation credit in 'kilowatt-hour' units." (Complainant's MB at 56-57; *see* Complainant's MB at 6-7, 9-10, 14, 25-27, 35-36, 38, 40-41) In the First and Second Complaint proceeding, the Complainant made the same argument and demanded that the Company should be instructed to list on its bills: (1) a specified, common billing period with beginning and ending dates for all aggregated meters; (2) a specified, common meter read date for all aggregated meters; (3) the total kWh used at each meter during the billing cycle; (4) the total kWh generated for the billing cycle; (5) the full retail value in price per kWh that is used to calculate the generation credit; (6) the total value (in price per kWh) for electricity generated; (7) the total kWh of generation used to offset usage at each meter; (8) the total value (in price per kWh) of generation being credited during that billing cycle; (9) the total kWh of excess generation that are being banked; and (10) the total kWh of banked generation. (Appendix A, p. 12-13) Ultimately, the Commission denied the Complainant's request, reasoning that "PPL is not obligated under the Code, the *AEPS Act*, [the Commission's] regulations, or its tariff to list such information on his bills." (Appendix A, p. 25) Indeed, the Commission found that the Company's bills provide all of the information required by the Commission's regulations. (Appendix A, pp. 25-28)

Seventh, the Complainant makes several arguments against the "one-month lag" in credits for excess generation, whereby the credit generated in one billing period appears on the

following month's bill due to the Company's manual billing process. (Complainant's MB at 10, 15-17, 28-30, 37-38, 57) The Commission previously considered and rejected the Complainant's issue with the one-month lag. (*See* Appendix A, pp. 18, 30) As the Commission observed in the May 19, 2016 Order, "PPL demonstrated that the one-month delay in the application of credits was solely the result of the limitations of its manual billing process and ultimately had no negative effects on the Complainant." (Appendix A, p. 30) "On review of this evidence," the Commission found "PPL's assertion to be persuasive." (Appendix A, p. 30 n.11)

Eighth, the Complainant argues that the Commonwealth Court's decision in *Sunrise Energy, LLC v. FirstEnergy Corp.* 148 A.3d 894 (Pa. Cmwlth. 2016) "renders moot any appeal which PPL Electric makes to the Company's 'Commission-approved tariff'" regarding the manner in which it bills the Complainant. (Complainant's MB at 50-52) Notably, the Complainant omits that the Commonwealth Court explicitly addressed the *Sunrise* decision in its Order affirming the Commission's May 19, 2016 Order. (Appendix B, pp. 6-9) In fact, while his Petition for Review was pending, the Complainant filed an application for relief with the Commonwealth Court, in which he argued that the *Sunrise* decision "ha[d] immediate implications for his case and that, pursuant thereto, the PUC's jurisdiction in his case [was] rendered null and void." (Appendix B, pp. 6-7) The Court rejected the Complainant's argument, finding that *Sunrise* was "distinguishable from the present case" because the Complainant's "eligibility for virtual meter aggregation became moot." (Appendix B, p. 9) Therefore, "[a]t a minimum, the remaining issues," such as "PPL's billing procedures and its practices for virtual meter aggregation and PPL's assignment, based on its tariff, of its commercial GS-1 rate" to the Complainant's solar account, "were within the PUC's jurisdiction." (Appendix B, p. 9) (citing 66 Pa. C.S. § 701; *PPL Elec. Utils. Corp. v. Pa. PUC*, 912 A.2d 386, 400 (Pa. Cmwlth. 2006))

More importantly, the Commonwealth Court proceeded to rely upon PPL Electric's Commission-approved tariff in analyzing and ultimately rejecting the Complainant's argument that his solar account should not be assigned to Rate Schedule GS-1. (Appendix B, pp. 11, 13-14)

Ninth, the Complainant claims that PPL Electric's manual billing process is inconsistent with the "fair business practice" standard set forth in Administrative Law Judge Jeffrey A. Watson's Initial Decision in *Fat Katz Tattooz v. National Fuel Gas Distribution Corp.*, Docket No. C-2013-2359146, 2013 Pa. PUC LEXIS 585 (Sept. 23, 2013) (Initial Decision) ("*Fat Katz*"), *became final without further action*, 2013 Pa. PUC LEXIS 673 (Order entered Nov. 13, 2013). (Complainant's MB at 9, 18-20) The Complainant previously made this argument in his Post-Hearing Brief in the First and Second Complaint proceeding. (*See* Complainant's Post-Hearing Brief, Docket Nos. C-2011-2273645 and C-2014-2444864, p. 17 (June 4, 2015)) Ultimately, as described previously, the Commission found PPL Electric's manual billing process to be reasonable and lawful. Moreover, the Complainant overlooks that *Fat Katz* involved a dispute about estimated bills. *Fat Katz*, 2013 Pa. PUC LEXIS 585 at *19-31. Given that the Complainant's bills are based on actual meter readings (Tr. 123, 125-19; PPL Electric Exhibit Nos. 10 and 11), the case is readily distinguishable. Furthermore, the Complainant fails to recognize that *Fat Katz* found a regulatory violation because the bills did not include all of the required information under Section 56.15 of the Commission's regulations. *Fat Katz*, 2013 Pa. PUC LEXIS 585 at *23-31. Here, the Commission held in the First and Second Complaint proceeding that the Company's bills for his residential and solar accounts comply with Section 56.15. (Appendix A, pp. 25-28)

Tenth, the Complainant argues that "PPL's practice of requiring 'independent load'" is an "impediment[] to the expansion of virtual meter aggregation and thus violate[s] the intent of the AEPS Act." (Complainant's MB at 11-12) The Complainant previously raised his issue with the independent load requirement in the First and Second Complaint proceeding. Both the Commission and Commonwealth Court found the issue to be moot because the Complainant was granted an exemption to the independent load requirement. (Appendix A, pp. 41-43; Appendix B, pp. 9-10) Furthermore, the Commonwealth Court stated that the Commission's final rulemaking order, which clarified that independent load is required at generating facilities, "is not an appealable order. (Appendix B, pp. 9-10) Therefore, as in the First and Second Complaint proceeding, the Complainant cannot challenge the independent load requirement in the instant matter.

As seen above, it appears that the Complainant believes any new bill he receives or any alleged inconsistency in his bills is yet another opportunity for him to re-litigate all of these claims, issues, and requests for relief from the First and Second Complaint proceeding. However, the Complainant is not entitled to a second bite at the proverbial apple. The doctrines of *res judicata* and collateral estoppel exist to ensure finality in legal disputes, establish respect for court judgments, and shield litigants and the courts from vexatious litigation. *Wilkes v. Phoenix Home Life Mut. Ins. Co.*, 902 A.2d 366, 376 (Pa. 2006) (citation omitted); *In re Adoption of S.A.J. (In re S.S.)*, 838 A.2d 616, 623 n.4 (Pa. 2003) (quoting *Montrose Med. Grp. Participating Savings Plan v. Bulger*, 243 F.3d 773, 779 n.3 (3d Cir. 2001)); *Knox v. Pa. Bd. of Probation & Parole*, 588 A.2d 79, 82 (Pa. Cmwlth. 1991) (citation omitted).

Moreover, even if there were claims that the Complainant has raised in this proceeding that could have been raised in the First and Second Complaint proceeding, *res judicata* prohibits

the Complainant from doing so. *Tobias v. Halifax Twp.*, 28 A.3d 223, 227 (Pa. Cmwlth. 2011) ("*Res judicata* bars *all* causes of action that were either raised or *could have been raised* during a prior proceeding.") (citation omitted) (emphasis in original); *accord Wilkes*, 902 A.2d at 376 (Pa. 2006) (citation omitted). Certainly, except for any alleged billing inconsistencies from April 2017 through February 2018, all of the Complainant's claims, issues, and requests for relief either were raised or could have been raised in the First and Second Complaint proceeding. For example, the Complainant avers in his Main Brief that the Company's manual billing process does not provide "immediate positive feedback," as allegedly intended by the AEPS Act. (Complainant's MB at 28-29); *see Final Rulemaking Re Net Metering for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.5*, Docket Nos. L-00050174, *et al.*, 2006 Pa. PUC LEXIS 20, at *22 (Order entered June 23, 2006). Not only is the Complainant's argument without merit,[9] but it clearly could have been raised in the previous proceeding because this 2006 Final Rulemaking Order predates the First and Second Complaints. Thus, the Complainant cannot re-litigate all of the claims, issues, and requests for relief that were raised or could have been raised previously.

Based on the foregoing, the Complainant's Main Brief firmly establishes that he is seeking to re-litigate claims, issues, and requests for relief that are barred by *res judicata* and collateral estoppel.

[9] The Commission held in the First and Second Complaint proceeding that PPL Electric's manual billing process, including the one-month lag, was permissible under the AEPS Act. (Appendix A, pp. 18, 22-24, 30) Furthermore, this passage from the Commission's 2006 Final Rulemaking Order relates to the use of bidirectional meters, which can "provide an immediate impact on the customer's bill." 2006 Pa. PUC LEXIS 20, at *22. However, the Complainant omits the Commission's sentences before and after this passage, which state that "[i]n the event that the EDC's meter would not be capable of operating in a bi-directional mode, then a dual meter application would be permitted at the EDC's expense" and that "the intent of this Section is to provide some flexibility for the meter arrangement." *Id.* Therefore, this was not a declaration that all net metering participants must have a single bidirectional meter.

B. THE COMPLAINANT'S ISSUES RELATED TO THE JANUARY 9, 2014 ORDER ARE COMPLETELY WITHOUT MERIT

The Complainant mischaracterizes multiple aspects of the January 9, 2014 Order[10] in the First Complaint proceeding, which remanded the case for the development of a more complete record. First, the Complainant alleges that his bills do not include the "specific and itemized data" as required by the January 9, 2014 Order. (Complainant's MB at 20-24) In actuality, the January 9, 2014 Order simply ordered PPL Electric to submit within 60 days a "tabulation" that set forth certain information about the Complainant's accounts. (*See* Appendix D, pp. 21-22) On March 10, 2014, PPL Electric submitted the required tabulation pursuant to the Commission's January 9, 2014 Order at Docket No. C-2011-2273645.[11] Nothing in the January 9, 2014 Order required PPL Electric to continually provide this tabulation to the Complainant, present it on the record in future complaint proceedings, or include the various items of information on his bills.

Second, the Complainant contends that a version of PPL Electric's spreadsheet (Moyer Exhibit 51) fails to comply with the Commission's January 9, 2014 Order in the First Complaint proceeding because it allegedly "does not include 'any payments made by Mr. Moyer'" or "fulfill the requirement that the 'information 'directly associate' with the data on [his] bills." (Complainant's MB at 5-6, 20-24) To be clear, this spreadsheet did not have to comply with the January 9, 2014 Order, as it was not the tabulation filed with the Commission. Moreover, the Complainant completely ignores the spreadsheet actually submitted by the Company in this

[10] A copy of the Commission's January 9, 2014 Order in the First Complaint proceeding is attached hereto as **Appendix D**.

[11] To the extent that the Complainant believes that PPL Electric failed to comply with this directive, he should have raised this argument in the First and Second Complaint proceeding. Moreover, any allegation that PPL Electric failed to comply with this aspect of the January 9, 2014 Order is barred by the Commission's three-year statute of limitations. *See* 66 Pa. C.S. § 3314(a). PPL Electric's tabulation was due to be submitted within 60 days of the Order, *i.e.*, by March 10, 2014. Here, the Fourth Complaint was received by the Secretary's Bureau on September 29, 2017, and served on PPL Electric on October 18, 2017, both well past the date the three-year statute of limitations expired on March 10, 2017.

proceeding, which does in fact show the payments he made. (*See* PPL Electric Exhibit No. 10, Column 14) Further, the Company previously explained at length in its Main Brief how PPL Electric Exhibit No. 10 ties out to the Complainant's bills and account statements. (*See* PPL MB at 15-22) Thus, even though the January 9, 2014 Order was not applicable to any spreadsheets submitted in future matters, including the instant proceeding, PPL Electric Exhibit No. 10 provides all of the information set forth in that Order.

For these reasons, the Complainant's issues related to the January 9, 2014 Order are entirely without merit.

C. THE COMPLAINANT MISTAKENLY BELIEVES THAT THE COMPANY'S COMMISSION-APPROVED TARIFF DOES NOT GOVERN THE RATE CLASSIFICATION OF HIS SOLAR ACCOUNT

The Complainant also argues in his Main Brief that under the AEPS Act, the Pennsylvania Department of Environmental Protection ("DEP") is responsible for designating whether an alternative energy source is residential or commercial. (Complainant's MB at 17-18, 49) In support, the Complainant relies on 73 P.S. § 1648.7(b), which states that DEP "shall ensure that all qualified alternative energy sources meet all applicable environmental standards and shall verify that an alternative energy source meets the standards set forth in section 2." (Complainant's MB at 49) To the Complainant, the "standards set forth in section 2" include whether his solar facilities are "residential" or not. (Complainant's MB at 17-18, 49)

The Complainant's strained interpretation is without merit. Section 1648.7(b)'s reference to "standards set forth in section 2" is directly related to whether a facility qualifies as an "alternative energy source" under section 2, *i.e.*, 73 P.S. § 1648.2 (Definitions). That statutory provision has absolutely nothing to do with what electric utility rate schedule should apply to an alternative energy source. Clearly, such a determination is governed by the electric utility's tariff, which actually sets forth the qualifications for each rate schedule and is within the

Commission's jurisdiction. *See* 66 Pa. C.S. §§ 1302, 1303; *PPL Elec. Utils. Corp. v. Pa. PUC*, 912 A.2d 386, 400 (Pa. Cmwlth. 2006). Here, both the Commission and Commonwealth Court previously concluded that the Complainant's solar facilities do not qualify for a residential rate schedule under PPL Electric's tariff.[12] (Appendix A, pp. 35-38; Appendix B, pp. 13-14)

For these reasons, the Complainant's allegation that the DEP determines whether his solar account is "residential" or "commercial" is without merit.

D. THE COMMISSION HAS SUBJECT MATTER JURISDICTION OVER THE ISSUES PROPERLY RAISED IN THIS PROCEEDING

The Complainant also argues that the Commission lacks the authority to adjudicate the instant Fourth Complaint. (Complainant's MB at 53) In support, the Complainant cites the Commonwealth Court's decision in *Sunrise* and claims that "the hearings conducted by the PUC are themselves of doubtful validity." (Complainant's MB at 53) The Complainant's argument is without merit.

The Commonwealth Court previously ruled in the *Moyer Appeal* decision that *Sunrise* did not strip the Commission of its jurisdiction over this type of complaint. (Appendix B, pp. 6-9) The dispute in *Sunrise* revolved around the complainant's eligibility to participate in the utility's net metering program. *See Sunrise*, 148 A.3d 894, 896-99. Ultimately, the Court held that the Commission lacked the authority to adjudicate whether Sunrise Energy qualified as a customer-generator under Section 2 of the AEPS Act. *Id.* at 904, 909. In *Moyer Appeal*, however, the Commonwealth Court recognized that the Complainant's eligibility to participate as a customer-generator was a moot issue. (Appendix B, p. 9) Therefore, "[a]t a minimum, the remaining issues were within the PUC's jurisdiction." (Appendix B, p. 9) Here, the Complainant's eligibility to participate in virtual meter aggregation is not in dispute. His

[12] In addition, the Complainant's argument about the rate classification of his solar account is barred by *res judicata* and collateral estoppel. *See* Section III.A., *supra*.

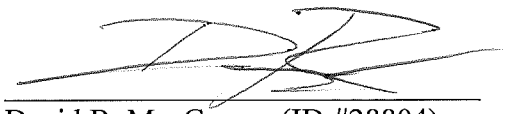
exemption to the independent load requirement remains effective, in accordance with the May 19, 2016 Order. Thus, as in the First and Second Complaint proceeding, the Complainant's issues concerning PPL Electric's virtual meter aggregation program, bills, and billing process are all within the Commission's jurisdiction.

For these reasons, the Complainant's argument that the Commission lacks jurisdiction over the issues raised in the Fourth Complaint is without merit.

IV. CONCLUSION

WHEREFORE, as explained above and in PPL Electric Utilities Corporation's Main Brief, the Company respectfully requests that Administrative Law Judge Joel H. Cheskis recommend and the Pennsylvania Public Utility Commission issue an Opinion and Order dismissing the Formal Complaint of Jay Larry Moyer with prejudice.

Respectfully submitted,



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Date: May 25, 2018

Attorneys for PPL Electric Utilities Corporation

Appendix A

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held May 19, 2016

Commissioners Present:

Gladys M. Brown, Chairman
Andrew G. Place, Vice Chairman
John F. Coleman, Jr.
Robert F. Powelson

Jay Larry Moyer

C-2011-2273645
C-2014-2444864

v.

PPL Electric Utilities Corporation

OPINION AND ORDER

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BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Jay Larry Moyer (Complainant) on October 26, 2015, to the Initial Decision on Remand (I.D.R) of Administrative Law Judge (ALJ) Cynthia Williams Fordham, issued on October 9, 2015, in the above-captioned proceeding. PPL Electric Utilities Corporation (PPL) filed Replies to Exceptions on November 9, 2015. For the reasons stated herein, we shall deny the Exceptions, in part, find them moot, in part, and adopt the ALJ's Initial Decision on Remand, as modified herein.

I. History of the Proceeding

On November 15, 2011, the Complainant, through counsel, filed a Formal Complaint (*2011 Complaint*) against PPL regarding the billing and payments for electric service to his house in Philadelphia, Pennsylvania and his solar panels connected to PPL's distribution system at a separate location in Klingerstown, Pennsylvania. The Complainant alleged, *inter alia*, the following:

- that he contacted PPL regarding the installation of solar panels at his property;
- that PPL assigned an account number to the meter on his house (satellite account, residential account, or residence) and also assigned an account number to the meter associated with his solar panels (host account, solar facility, or solar array);
- that the solar panels were mounted, inspected, and approved by PPL in March 2009;
- that he did not receive credits or payments for the electricity that was generated by his solar panels between April 2009 and February 2010;

- that the checks that he received since April 2010 related to credit for his solar generation did not have an accounting or explanation of the payment;

- that PPL failed to properly aggregate his accounts according to the virtual net metering provisions in the Company's Net Metering for Renewable Customer-Generators Rider; and

- that PPL did not fully credit him for all of the electricity generated by his solar panels and delivered to PPL since March 2009.

2011 Complaint at 6-8. As relief, the Complainant requested that the Commission order PPL to apply virtual net metering to his two accounts, disclose all credits and/or payments that have been made to him, and, if necessary, fully reimburse him for the electricity generated. *Id.* at 9.

On December 8, 2011, PPL filed an Answer to the *2011 Complaint* (*2011 Answer*) wherein it requested that the *2011 Complaint* be dismissed. Notwithstanding its request for dismissal, PPL averred that the Commission's mediation process would be an appropriate forum to address and resolve the issues raised in the *2011 Complaint*. Therefore, PPL requested that the *2011 Complaint* be assigned to the Mediator of the Office of Administrative Law Judge (OALJ) pursuant to our Regulations at 52 Pa. Code § 69.392(b)(2). *2011 Answer* at 1.

In responding to the Complainant's allegations, PPL acknowledged that it failed to aggregate the excess, uncredited kilowatt-hours (kWh) generated from the Complainant's solar panels with the usage at his residence for the months of March 2009 through December 2009. *2011 Answer* at 5. PPL also addressed, *inter alia*, the payments it made to the Complainant for the excess generation produced by the Complainant's solar panels and the credits that were applied to his residential account between January 2010 and August 2011. *Id.* at 6-8.

The matter was referred to the Commission's Mediation Unit, and a mediation session was held as scheduled on April 10, 2012. Subsequent to the mediation session, it was determined that the case was no longer appropriate for mediation and mediation was terminated.

On August 15, 2012, a hearing (2012 Hearing) was held. The Complainant appeared *pro se,* testified on his own behalf, and presented two witnesses. The Complainant introduced twenty exhibits, ten of which were admitted into the evidentiary record. PPL presented two witnesses and introduced ten exhibits, nine of which were admitted. The hearing resulted in a transcript of 254 pages. The record was closed upon the receipt of the transcript on September 7, 2012.

On February 22, 2013, we issued the Initial Decision of ALJ Fordham in which she dismissed the Complaint.

On March 15, 2013, the Complainant filed Exceptions to the Initial Decision (2013 Exceptions) wherein he reiterated his concerns regarding PPL's billing process and disagreed with the ALJ's interpretation of PPL's tariff for virtual net metering and with her findings regarding the amount of compensation the Complainant should receive.[1] Also on March 15, 2013, the Complainant filed a Request for Oral Argument. PPL filed Replies to Exceptions on March 29, 2013 (2013 Replies to Exceptions).

On May 8, 2013, the Complainant filed a Petition to Reopen the Record (Petition) as well as additional information in support of his *2011 Complaint.* PPL filed an Answer to the Petition on May 20, 2013, requesting that the Petition be denied. On

[1] The Complainant did not serve PPL the 2013 Exceptions. By letter dated March 19, 2013, the Commission's Secretary transmitted a copy of the 2013 Exceptions to PPL and established a deadline of March 29, 2013, for Replies to Exceptions.

May 21, 2013, and July 14, 2013, the Complainant again filed additional information in support of his *2011 Complaint*. PPL filed responsive pleadings on May 21, 2013, and August 1, 2013, requesting that we deny the Complainant's additional attempts to reopen the record.

On January 9, 2014, we issued an Opinion and Order (*January 2014 Order*) addressing the Complainant's 2013 Exceptions, Petition, and Request for Oral Argument. With respect to the issues the Complainant raised regarding the accuracy of the net metering credits that he received from PPL, we, *inter alia*:

- determined that the record was insufficient to determine whether PPL properly credited the Complainant for his solar generation and remanded the proceeding to the OALJ for further development of the record;
- directed PPL to file the Complainant's actual data for the period April 2009 through May 2013;
- encouraged the parties to meet and attempt to resolve the Complainant's concerns;
- directed the Complainant to present all of his monthly bills and statements from April 2009 through the entry date of the *January 2014 Order*;
- stated that, if the Complainant's concerns were not resolved through the informal discussions with PPL, the Complainant could request further hearings and submit his monthly bills into the record;
- granted the Complainant's Petition to Reopen the Record, in part, to include this additional information; and
- denied the Petition in all other respects.

We vacated the ALJ's Initial Decision to the extent she found that PPL properly provided credits to the Complainant. *January 2014 Order* at 6-7, 16. We also denied the Complainant's request for oral argument. *Id.* at 7-8.

In his *2011* Complaint, the Complainant raised a legal issue regarding whether his solar array was eligible for net metering. The Complainant's 4.75kW solar array is located approximately 600 yards from his residence, and is interconnected to PPL's distribution system through a dedicated meter (host account meter), separate from the Complainant's meter at his residence (satellite account meter). Other than a lighting fixture installed at the solar array, there is no load served through the host account meter. Rather, the Complainant's load is all served through a meter that is interconnected at his residence. The legal question that arose was whether the readings and billings from the two meters should be eligible for virtual meter aggregation and net metering in the absence of independent, or non-generational, load interconnected through the host account meter. We determined that it was not necessary to address the issue given PPL's waiver of its objections to the Complainant's eligibility for net metering as part of its effort to settle the issues raised in the *2011 Complaint.* Consistent with PPL's waiver, we directed PPL "to continue to permit [the Complainant] to utilize net metering and virtual meter aggregation for his existing 4.75 kW solar array and residence in the future." *January 2014 Order* at 20. We also referred "the legal issue raised by this proceeding to the Commission's Law Bureau to consider whether our regulations need to be clarified." *Id.* Specifically, the Law Bureau was directed to "advise the Commission on whether our Regulations need to be clarified to address the issues raised in [the *2011 Complaint*]." *Id.* at 23, Ordering Paragraph No. 10.

On January 17, 2014, the Complainant filed a Motion for Certification of Interlocutory Order for Immediate Appeal of the *2011 Complaint* (Complainant's Motion). On January 30, 2014, PPL filed an Answer in Opposition to the Complainant's Motion. On February 14, 2014, we entered an Opinion and Order granting the Complainant's Motion, in part, and denying it, in part. Specifically, we concluded that an immediate appeal of the *January 2014 Order* would not advance the resolution of this proceeding and, therefore, denied the Complainant's request to permit an immediate appeal from the *January 2014 Order*. However, we, granted, in part, the Complainant's

alternative request that we establish a deadline for the Law Bureau to provide a status report to the Commission regarding whether the net metering regulations needed to be clarified.[2]

On March 10, 2014, PPL submitted a tabulation reflecting the specific *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 the *January 2014 Order*.

Subsequently, the Complainant filed two separate Petitions for Review with the Commonwealth Court at Docket Nos. 390 CD 2014 and 448 CD 2014. By Orders dated May 14, 2014, and July 21, 2014, the Commonwealth Court quashed the Complainant's two Petitions for Review.

By correspondence dated September 26, 2014, and October 7, 2014, the Complainant requested a further hearing. The Complainant explained his intent to introduce evidence regarding PPL's billing practices for its virtual meter aggregation program. On October 14, 2014, PPL filed a response to the Complainant's request for a further hearing. PPL argued that the Complainant's request failed to "delineate *specific*

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[2] By Order entered February 20, 2014, we issued a Notice of Proposed Rulemaking and requested comments on the Proposed Rulemaking Order amending Chapter 75 of our Regulations, 52 Pa. Code §§ 75.1, *et seq.*, to further comply with the Alternative Energy Portfolio Standards Act of 2004, 73 P.S. §§ 1648.1 – 1648.8 and 66 Pa.C.S. § 2814 (*AEPS Act*). The stated purpose of the Proposed Rulemaking Order was to update the existing portfolio standards, interconnection, and net metering rules to provide guidance and clarify certain issues of law, administrative procedure, and policy in accordance with the intent of the *AEPS Act*. Various parties, including the Complainant, filed Comments to the proposed regulations. On February 11, 2015, we issued a Final Rulemaking Order (*AEPS Final Rulemaking Order*) that addressed these Comments and set forth proposed changes to our existing Regulations, including the addition of clarifying language to address the legal question posed by our *January 2014 Order*. The proposed changes to our Regulations are now pending before the Independent Regulatory Review Commission (IRRC).

errors in the bills, credits and payments rendered by PPL Electric" as required by our *January 2014 Order*. *See January 2014 Order*, Ordering Paragraph 8 (emphasis in original). Nonetheless, PPL agreed that further hearings should be scheduled and requested that a prehearing conference be held to establish a litigation and hearing schedule and to address any other matters that would facilitate resolution of the matter.

On October 23, 2014, PPL was served a second Formal Complaint (*2014 Complaint*) wherein the Complainant raised issues regarding the accuracy and content of PPL's billing processes for his virtual net metering accounts. As relief, the Complainant requested that we order PPL to develop and implement new billing procedures and processes for virtual net metering accounts using a single bill for both accounts to be virtually aggregated. *2014 Complaint* at Attachments 4-5.

On November 5, 2014, PPL filed an Answer (2014 Answer) and Preliminary Objections to the *2014 Complaint*. In its Preliminary Objections, PPL requested that the *2014 Complaint* be dismissed pursuant to our Regulations at 52 Pa. Code § 5.101(a)(6), because the allegations, issues, and relief requested in the *2014 Complaint* would be fully addressed by the Parties and the Commission through the *2011 Complaint* proceeding. In the alternative, PPL requested that the *2014 Complaint* be consolidated with the *2011 Complaint*.

On November 12, 2014, the Complainant filed an Answer in which he requested that PPL's Preliminary Objections they be dismissed and that his two complaints continue to proceed separately.

In a Prehearing Order dated January 14, 2015, the ALJ denied PPL's Preliminary Objections and granted PPL's motion to consolidate the *2011 Complaint* and the *2014 Complaint* pursuant to our Regulation at 52 Pa. Code § 5.81.

On February 2, 2015, the Complainant served his written Direct Testimony. On March 6, 2015, PPL served its Rebuttal Testimony. On April 3, 2016, the Complainant served his Surrebuttal Testimony.

On April 21, 2015, a hearing on remand (2015 Hearing) was held in this consolidated matter. The Complainant appeared *pro se* and submitted his Direct and Surrebuttal Testimony, which were admitted into the record. The Complainant also proffered 267 additional exhibits, 179 of which were admitted into the record. PPL was represented by counsel and submitted the Rebuttal Testimony of its witness, along with five additional exhibits, all of which were admitted into the record. The 2015 Hearing generated a transcript of 238 pages.

On June 4, 2015, the Complainant filed Main Briefs. On June 29, 2015, PPL filed Reply Briefs.

On October 9, 2015, we issued the Initial Decision on Remand of ALJ Fordham wherein she granted the *2011 Complaint*, in part, and dismissed it, in part, and dismissed the *2014 Complaint* in its entirety.

As previously noted, the Complainant filed Exceptions to the Initial Decision on Remand on October 26, 2015. PPL filed Replies to Exceptions on November 9, 2015.[3]

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[3] We note that on December 14, 2015 the Complainant filed correspondence with our Secretary's Bureau attempting to introduce additional information, which he classified as "material evidence" that was not part of the record in this proceeding. On December 22, 2015, PPL filed a response requesting that the Commission not consider this extra-record evidence. We shall grant PPL's request. It is axiomatic that we base our decisions on the evidence in the record, and we are prohibited from looking beyond the record for evidence not previously supplied to support a desired finding of fact or conclusion of law. 52 Pa Code §5.431.

II. Discussion

A. Legal Standards

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Pennsylvania Public Utility Code (Code). 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that PPL is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by PPL. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to PPL. If the evidence presented by PPL is of co-equal value or "weight," the burden of proof has not been satisfied. The Complainant now has to provide some additional evidence to rebut that of PPL. *Burleson v. Pa. PUC,* 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd,* 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always

remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC,* 768 A.2d 1217 (Pa. Cmwlth. 2001).

As a preliminary matter, we note that any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, Univ. of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

ALJ Fordham made seventy-seven Findings of Fact and reached nineteen Conclusions of Law. I.D.R. at 13-22, 41-44. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order. As discussed below, the ALJ granted the Complainant's *2011 Complaint* with respect to his request that he be compensated for credits "earned" between May and December 2010 and that he be permitted to participate in PPL's virtual meter aggregation program unless there is a change in PPL's tariff or the applicable law. The ALJ dismissed the *2011 Complaint* in all other aspects. Further, the ALJ dismissed the *2014 Complaint* in its entirety. I.D.R. at 41

B. Complainant's Issues with PPL's Virtual Meter Aggregation Program and Manual Billing Process

1. Positions of the Parties

a. The Complainant

The Complainant alleged that from the outset of the connection of his solar facility to PPL's distribution system in 2009, PPL has utilized a manual billing process for virtual meter aggregation that has resulted in his bills being incomplete, inconsistent,

inaccurate, and indecipherable. Complainant Main Brief (M.B.) at 5. According to the Complainant, PPL has routinely omitted or withheld pertinent information from his bills including, *inter alia*, the kWh generated at his solar facility, the kWh used to offset his energy consumption at his residence, the kWh of excess generation carried forward each month, and credit data for excess generation expressed in terms of kWh. In addition, the Complainant argued that the beginning and ending meter readings listed for each billing period were frequently identical on his solar bills. *Id.* at 12-14. Moreover, the Complainant contended that PPL Exhibit APC-5, a separate tabulation which PPL prepared in accordance with our *January 2014 Order*, highlights the flaws that are present in PPL's manual billing process because this exhibit does not accurately depict the credits he received or the payments he made, and therefore cannot be reconciled with his bills.

The Complainant submitted that the flaws in PPL's manual billing process are further exacerbated by the fact that since 2012, there has been a constant one-month lag between when the credit for the electric generation produced by his solar facility is earned and when it is applied. The Complainant contended that this violates our Regulations and also leads to incorrect billing. In this regard, the Complainant argued that this one-month lag resulted in PPL not fully cashing out his banked net excess generation at the end of each PJM planning year.[4] As an example, the Complainant noted that the credit he received in May 2013, prior to the annual cash-out, was not applied until June 2013, which is after the annual cash-out at the end of the PJM planning year. The Complainant further alleged that this incorrect billing was compounded each quarter when the full retail rate was adjusted. Complainant M.B. at 15-16.

Additionally, the Complainant noted that as a result of its manual billing process, PPL issues him two bills each month: one for his host account and one for his satellite account. As a result, the Complainant argued he improperly receives a customer

[4] The PJM Planning year runs from June 1 to May 31.

charge for each account.[5] The Complainant pointed out that customers enrolled in physical meter aggregation do not receive this "double charge." Further, the Complainant argued that neither the bills for his host account nor those for his satellite account make any reference to meter aggregation. Complainant M.B. at 8, 18.

In light of the above, the Complainant argued that the Commission should direct PPL to implement an automated billing process for its customers that are enrolled in virtual meter aggregation and should instruct PPL to issue him a single bill that lists all pertinent information from both accounts. Complainant M.B. at 20-21. Specifically, the Complainant characterized the following information as being "pertinent," and argued that PPL should be instructed to list it on his bills:

- a specified, common billing period with beginning and ending dates for all aggregated meters
- a specified, common meter read date for all aggregated meters
- the total kWh used at each meter during the billing cycle
- the total kWh generated for the billing cycle
- the full retail value in price per kWh that is used to calculate the generation credit
- the total value (in price per kWh) for electricity generated
- the total kWh of generation used to offset usage at each meter
- the total value (in price per kWh) of generation being credited during that billing cycle
- the total kWh of excess generation that are being banked
- the total kWh of banked generation

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[5] This issue is addressed in Part C of our Discussion, *infra.*

- in the final bill of the PJM planning year, the amount of the cash-out and the data supporting the calculation of the cash-out
- a current account balance

Id. at 24-25.

b. PPL

PPL submitted that, at present, the design of its billing system is such that it is unable to utilize an automated billing process for its customers that are enrolled in its virtual meter aggregation program. PPL explained that, unlike net metering,[6] which

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[6] The *AEPS Act* and our Regulations define "net metering" as follows:

> The means of measuring the difference between the electricity supplied by the electric utility and the electricity generated by a 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. 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.

utilizes one meter, virtual meter aggregation employs two meters at different locations. PPL asserted that its billing system is unable to associate two separate accounts that are read and billed independently. Specifically, PPL clarified that its billing system cannot currently transfer and aggregate data among separate meters, either data from a host account to the associated satellite account or vice versa, nor is it capable of accommodating the negative meter readings that are often associated with a generating facility at a host account. Further, according to PPL, it would not be possible to upgrade its billing system to implement an automated billing process without undertaking a costly upgrade. PPL argued that even if it were to undertake this costly upgrade, doing so would be impractical because, at present, it only has ninety-eight customers enrolled in its virtual meter aggregation program. PPL Reply Brief (R.B.) at 10-11, 16-17, 37-38.

The *AEPS Act* and our Regulations define "customer-generator" as follows:

> 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.

See 73 P.S. § 1648.2; 52 Pa. Code § 75.12.

As an alternative, PPL claimed that it has developed and utilized a manual billing process that is inexpensive and that accurately calculates and applies credits for the electricity generated by its virtual meter aggregation customer-generators, in accordance with Section 75.13 of our Regulations. As background, PPL described its manual billing process by explaining that it uses computer software to track, record, store, and calculate the excess generation produced, the credits applied, and the cash-outs paid. PPL stated that for each of its customers enrolled in virtual meter aggregation, it maintains a computer generated spreadsheet that tracks, on a monthly basis, the excess generation at the host account and the allocation of excess kWh to each satellite account. PPL R.B. at 17-18. PPL explained that it reads the meters for the host account and the satellite account on the same day, measures the generation at the host account, and aggregates it with the usage at the satellite account by recording it on the spreadsheet. PPL noted that it applies the excess generation up to the usage metered at each satellite account by applying a kWh to the satellite account for each kWh generated by the host account. The excess generation appears on the bill for the satellite account as an excess credit. This excess credit is applied at the full retail rate that was in effect during the applicable billing cycle. PPL indicated that any unused excess generation that remains after this application is banked in kWh and is carried forward and applied in future billing cycles. At the end of each PJM Planning year, PPL explained that it "cashes out" any remaining banked generation at the host account's Price-to-Compare (PTC). PPL R.B. at 17-18.[7]

PPL argued that, contrary to the Complainant's assertion, it has properly calculated and applied his credits for generating electricity using its manual billing process. PPL contended that its Exhibit APC-5 represents an accurate record of the crediting and billing history of the Complainant's accounts. PPL asserted that it has

[7] PPL also noted that prior to January 1, 2011, its tariff provided that it would credit a customer for its generation up to the kWh of usage during that billing cycle. Any net excess generation in a billing cycle would be banked and then cashed out at the end of the calendar year based on the full retail value for all energy produced. PPL St. 1.0 at 15.

explained the inconsistencies that the Complainant alleged were present on his bills. PPL R.B. at 26-32. 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. Nonetheless, PPL averred that this one-month lag does not cause any harm. In this regard, PPL pointed out that a customer-generator still receives the full amount to which it is entitled to under our Regulations, *i.e.* the full retail value at the time the excess kWh are generated. PPL emphasized that it always applies the credit based upon the full retail rate at the time the electricity is generated, and not when it is applied. 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, in accordance with the terms of its Commission-approved tariff and the requirements of Section 75.13(c) of our Regulations. *Id.* at 34-37.

Finally, PPL argued that because the Complainant has two meters, each with a separate point of interconnection and a separate account, it is appropriate that he receive a bill associated with each account. PPL contended that it is not required under the Code, the *AEPS Act*, our Regulations, or its tariff to provide all of the information requested by the Complainant on the bills it issues to him. PPL asserted that it has offered to provide the Complainant with all of the information he has requested on a separate spreadsheet, but that the Complainant has refused this offer. PPL R.B. at 39-44.

2. ALJ's Initial Decision

The ALJ found that in raising the issues of whether PPL should be required to implement an automated billing process for its customers that are enrolled in virtual

meter aggregation and whether PPL should be required to provide such customers with all pertinent information on a single bill, the Complainant established a *prima facie* case. Nonetheless, the ALJ ruled that PPL successfully rebutted the evidence the Complainant presented. Specifically, the ALJ found PPL's testimony that its billing system is not able to process the readings of two separate meters on the same bill to be persuasive. The ALJ pointed out that because the Complainant has elected virtual meter aggregation, he has a meter located at his solar facility and a separate meter located at his residence, and an account associated with each meter. Therefore, the ALJ found it reasonable to conclude that the Complainant will receive a bill for each account. I.D.R. at 32-33.

The ALJ also concluded that PPL provided a satisfactory explanation for its decision to continue utilizing a manual billing process for its virtual meter aggregation program. Specifically, the ALJ noted that PPL made a business decision not to automate billing for this program on the basis that only ninety-eight of its customers out of its entire customer base are enrolled in virtual metering. Nonetheless, the ALJ pointed out that PPL made an effort to modify its billing system to attempt to implement an automated billing process for virtual meter aggregation, but was not able to do so. Further, the ALJ noted that while the additional information the Complainant sought was not on his bill, PPL offers such information on a spreadsheet on a monthly basis. The ALJ highlighted that the Complainant rejected PPL's offer to receive this spreadsheet. I.D.R. at 32-33.

Additionally, the ALJ found that the Complainant failed to set forth evidence to refute the evidence PPL provided with regard to the content of his bills. In this regard, the ALJ found that that the Complainant failed to demonstrate that the information PPL presented was incorrect or inadequate. As such, the ALJ ruled that PPL did not violate any Statutes, Commission Regulations, or its tariff. I.D.R. at 33.

3. Exceptions and Replies to Exceptions

a. Complainant's Exceptions

The Complainant disputes the ALJ's findings and maintains that by utilizing its manual billing process for virtual meter aggregation, as opposed to implementing an automated process, PPL has failed to provide him with bills that are current, complete, accurate, and transparent. The Complainant argues that the majority of the billing issues he has raised originate from the question of whether the monthly bills PPL issues to him should contain information that is current and complete and which reflects the activity on his accounts during the most recent period. In the Complainant's view, the ALJ either found irrelevant or failed to consider the inability of PPL's manual billing process for virtual meter aggregation to, *inter alia,* (1) transfer and aggregate data from separate meters; (2) accommodate the negative usage resulting from the energy generated at his solar account or to indicate the associated number of kWh; (3) depict actual meter readings and reflect cash-outs on the Complainant's bills; and (4) automate virtual meter aggregation. Further, the Complainant submits that the ALJ failed to address the complications PPL's manual billing process creates with respect to the one-month lag in the application of credit for excess generation. Complainant Exceptions (Exc.) at 9-10.

The Complainant also finds fault with the ALJ's findings that PPL is not able to implement an automated billing process for virtual meter aggregation and that the manual billing process PPL currently has in place is inexpensive. Complainant Exc. at 15-16. The Complainant alleges that the ALJ failed to recognize contradictory claims PPL has made about its ability to implement automated billing. Specifically, the Complainant contends that at the 2012 Hearing, PPL's witness testified that automated billing would be possible, but that at the 2015 Hearing, PPL's witness stated that PPL attempted to modify its billing system but was unable to do so. Therefore, the

Complainant posits that the Commission should confer with IT experts for the purpose of determining the feasibility of automating the billing process for virtual meter aggregation. *Id.* at 12-13, 18.

Additionally, the Complainant excepts to the ALJ's finding that PPL calculated and applied his credits appropriately. The Complainant asserts that he presented detailed evidence delineating specific omissions, inconsistencies, and irregularities in PPL's records, but that the ALJ failed to discuss these submissions. Complainant Exc. at 5. The Complainant maintains that the information on PPL's Exhibit APC-5 does not accurately depict the credits he received or the payments he made, and, therefore, cannot be reconciled with his bills. Further, the Complainant takes issue with the ALJ's Finding of Fact No. 72, which states that "[t]he Company has offered to provide the Complainant with the monthly calculation sheets that it uses to calculate and apply the credits to his accounts, which contain all of the information requested by the Complainant." I.D.R. at 22. The Complainant opines that it is inadequate for PPL to provide information via a separate monthly spreadsheet and as opposed to including this information on his actual bills. The Complainant contends that the absence of crucial information on the bills themselves makes it impossible for him to verify the charges, credits, and adjustments listed on his bills. Complainant Exc. at 11.

To remedy the above, the Complainant submits that the Commission should modify the ALJ's Initial Decision on Remand by directing PPL to cease using its manual billing process and to implement, within a reasonable amount of time, an automated billing system for its virtual meter aggregation program that is capable of performing real-time aggregation and producing data from both his meters on a single bill. Complainant Exc. at 13. In the alternative, the Complainant contends that the Commission should direct PPL to include on his separate bills critical information that does not currently appear, including the number of kWh generated at his solar account, credits for his excess generation, and the excess kWh carried forward. Further, the

Complainant contends that the Commission should clarify that he is not required to accept PPL's spreadsheets in place of actual printed bills. *Id.* at 23.

b. PPL's Reply

PPL rejoins that in excepting to the ALJ's ruling, the Complainant incorrectly portrays the fundamental issue. According to PPL, the primary issue in this proceeding is not whether PPL *should* implement an automated billing process for its virtual meter aggregation program, but whether PPL is *legally required* to do so. PPL submits that nothing in the Code, the *AEPS Act*, or our Regulations requires it to implement an automated billing process. Further, PPL argues that the Commission endorses the use of a manual billing process if an automated process is unavailable, is too costly, or is not capable of performing the required functions. PPL contends that although the Complainant excepts to the ALJ's findings that PPL is not able to automatically aggregate his meter readings and that PPL's manual billing process is inexpensive, PPL presented evidence in support of its position. PPL notes that the Complainant did not dispute this evidence during this proceeding and argues that the Complainant cannot do so now that the record has closed. PPL Replies to Exceptions (R. Exc.) at 5, 9.

PPL maintains that unless it undertakes a costly upgrade, its current billing system is not capable of automating virtual meter aggregation. PPL cites its testimony at the 2015 Hearing wherein it asserted that after it submitted rebuttal testimony in this proceeding, it attempted unsuccessfully to modify its billing system. PPL R. Exc. at 9, citing Tr. at 223. Nonetheless, PPL avers that its manual billing process accurately calculates and applies the credits for customer-generators who have elected virtual meter aggregation, thereby negating the need for it to upgrade its billing system to accommodate automatic billing. Additionally, PPL reiterates that even if it were to upgrade its billing system, doing so would only benefit the ninety-eight customer-

generators who have elected virtual meter aggregation. PPL points out that the Complainant is the only one of these customer-generators to take issue with its manual billing process. Therefore, PPL submits that it would not be reasonable to shift the costs of developing and implementing an automated billing process onto all of PPL's ratepayers. Further, PPL argues that the Complainant's request that the Commission confer with IT experts to determine the feasibility of implementing an automated billing system would exceed the Commission's authority. PPL R. Exc. at 8-10.

PPL also rebuts the Complainant's assertion that the information on his bills is inaccurate and cannot be reconciled with PPL's spreadsheets. PPL argues that it set forth detailed evidence regarding how its Exhibit APC-5 matches up with the Complainant's bills. Referring to its argument in its Reply Brief at pages 26-32, PPL claims that it explained any alleged discrepancies or inconsistencies highlighted by the Complainant. PPL also asserts that it has offered to provide the Complainant with all information necessary to verify his bills. Specifically, PPL states that it has offered to provide the Complainant with the exact same calculation sheets it used in its billing process. PPL avers that these sheets would provide the Complainant with all of the information he has requested be present on his bills. Additionally, PPL points out that the Complainant has several tools available to him, which would enable him to verify the information presented on his bills. PPL R. Exc. at 6-7, 10.

Moreover, PPL cites to the Complainant's own testimony in which he stated that his own independent side meter has tracked the energy generated at his solar facility. PPL R. Exc. at 10 (citing Complainant St. 1.0 at 44). PPL points out that the Complainant acknowledged that his detached solar array's inverter tracks and stores data showing the kWh of generation at his host account. Therefore, PPL asserts that it is clear that the Complainant has all of the information he needs to verify his bills either already in his possession or readily available to him. PPL R. Exc. at 10.

4. Disposition

On review and consideration of the positions of the Parties and the record evidence, we shall deny this Exception consistent with the discussion below.

a. Should PPL be directed to implement an automated billing process for its virtual meter aggregation program?

As an initial matter, we concur with PPL that nothing in the *AEPS Act*, the Code, or our Regulations mandates that virtual meter aggregation be done via an automated billing process or prohibits the use of a manual billing process. For example, virtual meter aggregation is defined in our Regulations, as follows:

> *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. Virtual meter aggregation on properties owned or leased and operated by the same customer-generator and located within 2 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.

52 Pa. Code § 75.12.[8] In a similar fashion, PPL's Commission-approved tariff describes virtual meter aggregation as "the combination of readings and billing for all meters, regardless of rate class, installed on properties owned, or leased and operated, by a customer-generator by use of the Company's billing process, rather than through physical rewiring of the customer-generator's owned or leased property for a physical, single-point of contact." *See* Supplement No. 194 to PPL's Tariff Electric Pa. P.U.C. No. 201, effective January 1, 2016, at 19L.4. Thus, while virtual meter aggregation is attained through the electric distribution company's (EDC's) billing process, the specific billing process is not prescribed.

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

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[8] In our *AEPS Final Rulemaking Order* we added clarifying language to this definition. While we do not rely on this proposed change for purposes of our resolution of the instant case, if this language is approved by IRRC, Virtual Meter Aggregation will be defined in our Regulations as follows:

> 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. Virtual meter aggregation on properties owned or leased and operated by the same customer-generator and located within 2 miles of the boundaries of the customer-generator's property and within a single EDC's service territory shall be eligible for net metering. *Service locations to be aggregated must be EDC service location accounts, held by the same individual or legal entity, receiving retail electric service from the same EDC and have measureable electric load independent of the alternative energy system. To be independent of the alternative energy system, the electric load must have a purpose other than to support the operation, maintenance or administration of the alternative energy system.*

AEPS Final Rulemaking Order at Annex A (new language in italics).

system is unable to accommodate negative meter readings that result when a generation facility produces more electricity than it uses. As such, PPL must use a manual billing process for its virtual meter aggregation program. PPL R.B. 16-17. The record also affirms that PPL presented detailed evidence explaining how it uses its manual billing process to calculate and apply credits owed to its virtual meter aggregation customer-generators. Although the Complainant excepts to the ALJ's finding that PPL's manual billing process is accurate and inexpensive, we agree with PPL that he has not offered any credible evidence to rebut this finding.

As noted above, the ALJ also found reasonable PPL's explanation why it continues to utilize a manual billing process for its customer-generators that are enrolled in its virtual meter aggregation program. We agree. The Complainant has not offered any evidence to rebut PPL's assertion that, at present, there are only ninety-eight participants in its virtual metering program and that the Complainant is the only one of these customer-generators that has taken issue with PPL's manual billing process. Therefore, 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. Specifically, we concur with PPL that it would not be reasonable for it to shift the costs of developing and implementing an automated billing process for its virtual meter aggregation program, which would only benefit a small portion of its customer base, on to all of its ratepayers. Accordingly, we shall deny the Complainant's request that we direct PPL to implement an automated billing process for its customer-generators that are enrolled in virtual meter aggregation.

b. Should PPL be directed to issue the Complainant a single bill for his two accounts?

In light of the limitations of PPL's manual billing process and the costs that would be associated with upgrading to an automated billing process, we are of the opinion that the Complainant's argument that PPL should be mandated to issue him a single bill is also without merit. As previously noted, the Complainant's solar facility and his residence are connected to PPL's distribution system at different locations and different points of interconnection. Therefore, the Complainant has two separate accounts: a host account and a satellite account. Because PPL's manual billing process is unable to aggregate the data associated with these separate accounts, we agree with the ALJ's finding that it is reasonable for PPL to issue the Complainant a bill for each account. Moreover, the record indicates that PPL is not required under the Code, the *AEPS Act*, our Regulations, or the terms of its tariff to issue the Complainant a single bill for his two accounts. Consequently, we shall deny the Complainant's request that we direct PPL to issue the Complainant a single bill that combines both his host and satellite accounts.

c. In the alternative, should PPL be directed to list all of the information the Complainant requests on his bills?

Similarly, we shall deny the Complainant's alternative request that we mandate that PPL include additional information that he characterizes as "critical" on his separate bills. As noted, *supra,* the Complainant argues that PPL should list on his bills, *inter alia,* the amount of electricity generated by his solar facility, the per-unit value of generation, and the amount of credit expressed in kWh. However, PPL is not obligated under the Code, the *AEPS Act*, our Regulations, or its tariff to list such information on his bills. With respect to residential customers, our Regulations mandate that the following information be listed on a customer's bill:

§ 56.15. Billing information.

A bill rendered by a utility for metered residential utility service must state clearly the following information:

(1) The beginning and ending dates of the billing period.

(2) If applicable, the beginning and ending meter readings for the billing period. If a bill is estimated, it must contain a clear and conspicuous marking of the word ''Estimated.''

(3) The due date on or before which payment shall be made or the account will be delinquent.

(4) The amount due for service rendered during the current billing period, specifying the charge for basic service, the energy or fuel adjustment charge, State tax adjustment surcharge if other than zero, State Sales Tax if applicable and other similar charges. The bills should also indicate that a State Gross Receipts Tax is being charged and a reasonable estimate of the charge. A Class A utility shall include a statement of the dollar amount of total State taxes included in the current billing period charge. For the purpose of this paragraph, a Class A utility shall also include a Class A telephone utility as defined under § 63.31 (relating to classification of public utilities).

(5) Amounts due for reconnection charges.

(6) Amounts due for security deposits.

(7) The total amount of payments and other credits made to the account during the current billing period.

(8) The amount of late payment charges, designated as such, which have accrued to the account of the customer for failure to pay bills by the due date of the bill and which are authorized under § 56.22 (relating to accrual of late payment charges).

(9) The total amount due.

(10) A clear and conspicuous marking of estimates.

> (11) A statement directing the customer to "register any question or complaint about the bill prior to the due date," with the address and telephone number where the customer may initiate the inquiry or complaint with the utility.
>
> (12) A statement that a rate schedule, an explanation of how to verify the accuracy of a bill and an explanation, in plain language, of the various charges, if applicable, is available for inspection in the local business office of the utility and on the utility's web site.
>
> (13) A designation of the applicable rate schedule as denoted in the officially filed tariff of the utility.

52 Pa. § 56.15. However, as outlined in Part C of our discussion, the Complainant's solar facility is a commercial account. Our Regulations do not require that this specific information or level of information be included on a commercial customer's bill. Similarly, PPL is not required under the terms of its tariff to list all of the information the Complainant requests on the bill for his solar facility.

We acknowledge the Complainant's assertion that in response to Section 52.15(2) above, PPL regularly lists the same beginning and ending meter reading on each month's solar facility bill. However the record clearly indicates that this is a result of PPL's billing system and its inability to accommodate the negative meter readings that result from the Complainant's solar facility generating more electricity than it consumes. Also, even though the above Regulation is not applicable to commercial customers, our review of the bills the Complainant submitted as evidence indicates that they contain the information, where applicable, that we require for residential accounts. *See* Complainant

Exh. JLM 101-170, 202-267.[9] Moreover, the record indicates that if PPL were to include the additional information the Complainant requests, it would not fit on a standard bill. PPL R.B. at 42 n.18.

We also recognize that the limitations of PPL's manual billing system may present a difficulty to its customers enrolled in virtual meter aggregation with regard to their ability to determine the impact of the net generation from a host account on a satellite account from their individual monthly bills for each account. Nonetheless, the record indicates that PPL offers tools to its customers enrolled in virtual meter aggregation to aid them in understanding their bills. As noted above, after the end of the 2012 PJM planning year, PPL began sending to its virtual meter aggregation customers, upon request, a calculation spreadsheet which depicts their monthly credits. PPL has continued this practice after the end of each PJM planning year. Further, PPL has offered to provide the Complainant with a spreadsheet that is updated monthly, which outlines the data PPL uses to calculate his bills and credits. Tr. at 218-20. Therefore, the evidence affirms that while PPL is not required to present the additional information the Complainant requests on the Complainant's bills, PPL has made this information available to the Complainant by other means.

In his Exceptions, the Complainant argues that such information is inadequate and requests that we clarify that he is not required to accept the supplemental information PPL has offered. Although we shall grant this request and acknowledge the evidence that shows the Complainant's receipt of this additional information is optional,

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[9] As noted above, the Complainant argues that the full retail rate in price per kWh is omitted from his bills, but should appear. In its Rebuttal Testimony, PPL pointed out that this rate does, in fact, appear on his bills. PPL explained that the full retail rate is the total rate it charges for a customer's distribution, transmission, and generation, as well as any applicable riders. PPL asserted that the bills the Complainant received for his satellite account, *i.e.* Exhibits JLM 202-267, show the price per kWh for distribution, transmission, and generation. PPL St. 1.0 at 33. Our review of the record corroborates PPL's assertion.

the record also reflects that such information would likely prove useful in aiding the Complainant in understanding his bills and in verifying his generation credits.

d. Did the ALJ err in finding that that PPL calculated and applied the Complainant's credits appropriately?

Although we note the complexity of PPL's Exhibit APC-5, we are not persuaded by the Complainant's contention in his Exceptions that the ALJ erred in finding that PPL calculated and applied his credits accurately. As noted, *supra,* 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. Accordingly, we remanded this proceeding and instructed PPL to prepare a tabulation containing the Complainant's actual data for his two accounts dating back to the commencement of his participation in virtual meter aggregation in 2009 and instructed the Complainant to present all of his monthly bills and statements for his two accounts dating back to April 2009. *January 2014 Order* at 16. Therefore, PPL compiled a tabulation which it placed on the record as PPL Exhibit APC-5. Likewise, the Complainant placed Exhibits JLM 101-170 (solar account bills) and 202-267 (satellite account bills) on the record. Our review of these exhibits corroborates PPL's assertion that it demonstrated how its tabulation of the Complainant's actual data for the two accounts since 2009 reconciles with the Complainant's bills, and that it explained any alleged inconsistencies in the Complainant's bills. This affirms the ALJ's conclusion that the Complainant was appropriately billed for his usage and credited for his generation. In particular, we note the following explanations offered by PPL:

- PPL provided a description for each of the columns in its Exhibit APC-5 along with an explanation regarding how it calculated and applied credits for the Complainant's excess generation. PPL R.B. at 20-22; *see also* I.D.R. at 30-31.

- The Complainant took issue with the value PPL used for his annual cash-outs. Complainant St. 1.0 at 32. PPL explained that it has always calculated the cash-outs in accordance with its tariff provisions in effect at the time. Therefore, PPL calculated the Complainant's cash-outs in December 2009 and May 2010 based upon the full retail rate at the Complainant's satellite account as required by the provisions of its tariff in effect at that time period. On the other hand, PPL calculated the cash-outs in May 2012, May 2013, and May 2014 based upon the PTC for the Complainant's host account as required by its current tariff provisions. PPL St. 1.0 at 25. PPL provided further comments regarding each of these cash-outs on its Exhibit APC-5. [10]

- PPL explained that the Complainant enrolled in virtual meter aggregation during a time period in which PPL was still learning how to implement virtual meter aggregation and overcome the inability of its billing system to aggregate virtual meter aggregation customer generators' accounts on an automated basis. Consequently, PPL initially experienced difficulties in finding the optimal method to process the billing for such customer-generators, leading to some inconsistencies in how often the credits were applied to the customer generators' accounts, *i.e.* monthly or annually. PPL R.B. at 26. PPL also pointed out that prior to 2011, it was not required under the terms of its tariff to apply credits for excess generation on a monthly basis. Tr. at 147.

- PPL demonstrated that it has refined its manual billing process and that, with the exception of credits earned by the Complainant in June 2013, it has consistently applied credits on a monthly basis since 2012 in accordance with the present terms of its tariff. PPL demonstrated that the one-month delay in the application of credits was solely the result of the limitations of its manual billing process and ultimately had no negative effects on the Complainant. PPL R.B. at 26-27; Tr. at 147-53; PPL Exh. APC-5.[11]

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[10] As noted elsewhere in this Opinion and Order, PPL removed the Complainant from its virtual meter aggregation in May 2010 after determining that there was no non-generational load present at his host account. Therefore, PPL did not apply any credits or cash-outs between June and December 2010. Thereafter, PPL agreed to make an exception to permit the Complainant to participate in virtual net metering. Although PPL did not credit the Complainant for the excess generation produced at his solar account between June and December 2010, it has agreed to do so. In addition to providing this information elsewhere in the record, PPL provided comments regarding these events on its Exhibit APC-5.

[11] On review of this evidence, we find PPL's assertion to be persuasive.

- The Complainant noted that no credit appeared on his satellite bill in July 2013 to reflect the credits he earned in June 2013. Complainant M.B. at 16. PPL explained that this was due to human error and that it reprimanded the employee responsible for this error. Further, PPL highlighted that it corrected this omission by issuing two credits to the Complainant in August 2013. PPL R.B. at 28-29; PPL Exh. APC-5.

Based on the forgoing, we find no merit in the issues the Complainant has raised. Accordingly, this Exception is denied.

C. Appropriate Rate Schedule for the Complainant's Solar Facility

1. Positions of the Parties

a. The Complainant

The Complainant submitted that his solar facility exists solely to provide electricity to his residence and is not used for any commercial or business purpose. Therefore, the Complainant argued that PPL wrongly designated his detached solar array as a commercial facility subject to PPL's Rate Schedule GS-1. In the Complainant's view, PPL should treat his solar facility as a residential facility under PPL's Rate Schedule RS (residential service). The Complainant reasoned that although his solar panels are detached and are ground-mounted, they function in a manner that is identical to rooftop solar panels that would be attached to a residence for which the customer has elected physical meter aggregation. Complainant M.B. at 10-12, 23.

b. PPL

PPL countered that under the terms of its Commission-approved tariff, the Complainant's detached solar facility simply does not qualify for service under Rate

Schedule RS. According to PPL, its tariff mandates that the Complainant's solar facility must receive service under its commercial GS-1 rates because the facility receives small general single phase non-residential service at secondary voltage. PPL pointed out that the Complainant voluntary elected to participate in virtual meter aggregation and that he always had the option of physically connecting his detached solar facility to his residence at his own expense and becoming a physical meter aggregation customer-generator. PPL R.B. at 44-47.

2. ALJ's Initial Decision

The ALJ ruled that the Complainant did not meet his burden of proving that his host account should be considered a residential account. The ALJ pointed to PPL's explanation regarding its RS and GS-1 Rate Schedules as set forth in its tariff. The ALJ found that based on PPL's tariff, the Complainant's solar facility does not meet the requirements necessary to be considered a residential facility or to qualify for service under PPL's RS rates. I.D.R. at 33

3. Exceptions and Replies to Exceptions

a. Complainant's Exceptions

In his Exceptions, the Complainant remains of the opinion that his solar facility should be treated strictly as a residential facility subject to service under Rate Schedule RS. The Complainant argues that the ALJ failed to address his position, and thereby accepted PPL's position that his solar facility should be considered a commercial account under Rate Schedule GS-1. The Complainant reiterates that despite the evidence that the vast majority of PPL's virtual meter aggregation customer-generators are mid-size commercial customers or larger, there is no commercial activity at his solar facility. According to the Complainant, nothing in the our Regulations or the *AEPS Act* mandates

that customer-generators who are purely residential in nature and who have elected virtual meter aggregation must be considered commercial customers subject to service under a commercial rate schedule. In the Complainant's view, requiring that such customers pay GS-1 rates is akin to imposing a penalty. The Complainant reasons that residential customer-generators who elect physical meter aggregation are not charged commercial rates nor are they required to pay two different customer charges. Therefore, the Complainant submits that, with respect to virtual metering customers who have no commercial operations, the Commission should recognize their residential status and place them on par with residential customers who elect physical meter aggregation by serving them under Rate Schedule RS and by requiring them to only pay a single customer charge. Complainant Exc. at 20-22.

b. PPL's Reply

In its Replies to Exceptions, PPL retorts that it is required to adhere strictly to the terms of its Commission-approved tariff, which mandates that it serve the Complainant's detached solar array under its Rate Schedule GS-1 and that it assess the Rate Schedule GS-1 customer charge on this account. PPL explains that its tariff provisions specify that its Rate Schedule RS applies to single phase electric service for, *inter alia*, a single family dwelling, a separate dwelling in an apartment house, a single farm dwelling, or a building previously wired for single meter service that is converted to not more than eight separate dwelling units served through a single meter. In contrast, PPL notes that its tariff provisions stipulate that a customer be served under Rate Schedule GS-1 if the customer's property will receive small general single phase non-residential service at secondary voltage. PPL explains that secondary voltage is voltage that results from one standard transformation at the point of delivery from the line voltage. PPL R. Exc. at 16.

PPL argues that the Complainant's detached solar facility does not qualify for service under Rate Schedule RS because it is separately metered, is not a "dwelling" as defined by its tariff, and receives single phase electric service at secondary voltage. According to PPL, it must perform one standard transformation to step down the distribution line's voltage from 240 volts to 120 volts in order to provide service to the Complainant's solar facility. Additionally, PPL points out that the Complainant does not attempt to demonstrate that his solar facility meets the requirements necessary to be assessed under PPL's Rate Schedule RS. PPL R. Exc. at 16-17.

PPL further contends that its tariff specifies that customer-generators must pay the customer charge, the demand charge, and other applicable charges applicable under the appropriate rate schedule. PPL claims that, in the Complainant's case, the applicable customer charge on his solar account is the charge under Rate Schedule GS-1. PPL reasons that if it were to exempt the Complainant from paying the customer charge on his solar facility's account, it would potentially be granting the Complainant an undue preference over other GS-1 customers, in violation of Section 1304 of the Code.[12] PPL R. Exc. at 17.

Additionally, PPL refutes the Complainant's assertion that virtual meter aggregation customer-generators should be treated in the same manner as physical meter aggregation customer-generators. PPL argues that these two types of customer-generators are treated differently because of the methods by which their solar generating facilities are configured and utilize PPL's distribution system. PPL emphasizes that virtual meter aggregation customer-generators have two separate accounts, meters, and points of interconnection with PPL's distribution system. As a result, PPL submits that virtual meter aggregation customer-generators must pay a customer charge for each metered account. PPL contrasts this by noting that because physical meter aggregation customer-generators have only one account, one meter, and one point of interconnection

[12] Section 1304 of the Code prohibits rate discrimination.

with PPL's system, they pay only one customer charge. PPL further highlights the contrasts between the two types of customer-generators by noting that virtual meter aggregation customer-generators receive electricity and put electricity back on to PPL's distribution system at both their host and satellite accounts, as opposed to the single location of the physical meter aggregation customers. Finally, PPL asserts that the customer charge is part of the distribution rate design required under a Commission-approved rate schedule that is intended to recover the costs associated with connecting a customer to the electric distribution system regardless of the customer's usage. PPL R. Exc at 18-19.

4. Disposition

The Complainant's frustration is understandable. There is no evidence to suggest that he is using his solar facility to engage in any commercial activity. Therefore, his explanation that his solar facility exists for the sole purpose of generating electricity for use at his residence is plausible. Further, the Complainant is correct that nothing in the *AEPS Act* or our Regulations explicitly mandates that a residential customer-generator receive service under a commercial rate schedule for his host account if he elects virtual meter aggregation. Nonetheless, as both PPL and the ALJ correctly observed, the current terms of PPL's Commission-approved tariff simply do not permit the Complainant's solar facility to be billed under PPL's Rate Schedule RS nor does the construct of the Complainant's virtual net metering impose the same burdens on or uses of PPL's infrastructure as do physical meter aggregation customers.

As a utility's contract with its customers, a tariff states the terms and conditions under which the utility will serve its customers, and the responsibilities of both the company and the customer in this provision of this service. The tariff is a legal document that is binding on both the utility and its customers. *Pennsylvania Electric Co.*

v. Pa. PUC, 663 A.2d 281 (Pa. Cmwlth. 1995). Therefore, PPL is bound by law to abide by the terms, conditions, and rates outlined in its tariff.

PPL's tariff states that its Rate Schedule RS is applicable to single phase electric service for the following:

> (a) A single family dwelling and detached buildings when the detached buildings are served at the customer's expense through the same meter as the single family dwelling
>
> (b) A separate dwelling unit in an apartment house.
>
> (c) A single farm dwelling and general farm uses when general farm uses are served at the customer's expense through the same meter as the single farm dwelling.
>
> (d) A building previously wired for single meter service which is converted to not more than 8 separate dwelling units served through one meter.

See Supplement No. 194 to PPL's Tariff Electric Pa. P.U.C. No. 201, effective January 1, 2016, at 20B. PPL's tariff defines a dwelling as "a living space consisting of at least permanent provisions for shelter, dining, sleeping, and cooking, with provisions for permanent electric, water, and sanitation services." *Id.*

The Complainant's solar facility is simply an array of mounted solar panels located several hundred yards away from the Complainant's residence. The Complainant does not use this solar facility for shelter, dining, sleeping, or cooking. Additionally, this detached solar facility is served on a separate meter from the meter located at the Complainant's residence. *See* Complainant St. 1.0 at 6; PPL St. 1.0 at 28. Therefore, the evidence supports PPL's position that Complainant's solar facility does not share any of the characteristics of a dwelling as defined above.

We note that the section of PPL's tariff regarding its Rate Schedule RS also contains the following provision:

> (3) Where any use of service at a residence or on a farm is not eligible for the application of this Rate Schedule, customer has the option to provide separate circuits so that the portion that is applicable can be metered and billed separately hereunder and the remaining portion can be billed under the applicable general service rate schedule. When separate circuits are not provided, the entire service is billed under the applicable general service rate schedule.

Id. Similarly, our Regulations define Residential Service as "[p]ublic utility service supplied to a dwelling, including service provided to a commercial establishment if concurrent service is provided to a residential dwelling attached thereto." 52 Pa. Code § 56.2. Because the Complainant is billed separately for his two accounts, we find that this tariff provision and this provision of our Regulations each lends additional support to PPL's position that the Complainant's solar facility does not qualify for service under Rate Schedule RS. Further, as PPL correctly observed, the Complainant did not offer any evidence to prove how his solar facility satisfies the requirements to qualify for service under Rate Schedule RS.

Based on the above, we agree with the ALJ, and with PPL, that the Complainant's solar facility must instead be served under PPL's Rate Schedule GS-1. PPL's tariff states that this rate schedule is applicable to "single phase non-residential service at secondary voltage and **other applications outside the scope of the Residential Rate Schedule.**" *See* Supplement No. 194 to PPL's Tariff Electric Pa. P.U.C. No. 201, effective January 1, 2016 (emphasis added). The Complainant offered no evidence to refute the evidence set forth by PPL that it in order to provide service to the Complainant's solar facility, PPL must perform one standard transformation to step down the distribution line's voltage from 240 volts to 120 volts at the point of delivery.

Moreover, although the Complainant contends that he is at a disadvantage vis-à-vis a residential customer that has elected physical meter aggregation, the record indicates that he voluntarily elected to enroll in PPL's virtual meter aggregation program and was not forced to do so by the Company. PPL R.B. at 46.

We likewise find persuasive PPL's position that the Complainant is responsible for paying the customer charge on both his host and satellite accounts. The record is clear that because the Complainant is a virtual meter aggregation customer-generator, his host account and his satellite account are each served at separate points of interconnection on PPL's system and on separate meters. Thus, these accounts are separate and will have separate customer charges associated with them. The customer charge is applicable to all customers regardless of whether they are enrolled in net metering. *See* Tr. at 226. As a result, the customer charge cannot be waived.

For all of the above reasons, this Exception is denied.

D. Complainant's Eligibility for Net Metering

1. Background

In our *January 2014 Order*, we noted PPL's position that because the Complainant did not have any non-generational, load (*i.e.* load independent of that which is generated for the grid) at his host account, he did not qualify for net or virtual metering as required under the *AEPS Act* and PPL's Commission-approved tariff. Therefore, PPL removed the Complainant from its virtual meter aggregation program in June of 2010. Nonetheless, in an effort to settle the issues and concerns raised by the Complainant, PPL agreed to waive its objection to the Complainant's participation in its virtual meter aggregation program. Accordingly, we directed PPL to continue permitting the Complainant to utilize net metering and virtual meter aggregation for his existing solar

facility and residence in the future, subject to future changes in PPL's tariff and the applicable laws. As noted, *supra,* we also referred the legal issue regarding the Complainant's eligibility for virtual meter aggregation to the Law Bureau to consider whether our Regulations needed to be clarified. *January 2014 Order* at 17-20. This matter was addressed in our *AEPS Final Rulemaking Order.*

2. ALJ's Initial Decision

The ALJ pointed out that although the Complainant does not have independent, non-generational load at his solar facility, PPL made an exception to permit him to qualify for participation in its virtual meter aggregation program. The ALJ found that on a monthly basis since December 2011, PPL compensated the Complainant pursuant to its revised tariff that became effective January 1, 2011. The ALJ ruled that PPL credited the Complainant's account in accordance with its tariff. I.D. at 34-35.

The ALJ explained that because PPL did not apply credits between June 2010 and December 2010, it prepared a document to track the maximum benefit that the Complainant would have received if he had qualified for virtual metering during the entire period between March 2009 and February 2015. This document indicated that the difference between what the Complainant actually received and what he could have received if his solar energy facility were eligible and he had participated in virtual net metering during this entire period would have been $559.95. When interest was applied, the amount PPL owed to the Complainant would have been $738.98. The ALJ emphasized that PPL agreed to pay this amount to the Complainant. I.D.R. at 35 (citing PPL Exh. APC-5). Therefore, as previously noted, the ALJ sustained the Complainant's *2011 Complaint* to the extent that PPL should compensate the Complainant for credits earned between May and December 2010 and to the extent that the Complainant should be permitted to participate in virtual net metering barring a change in the law or in PPL's tariff. I.D.R. at 41.

3. Exceptions and Replies to Exceptions

a. Complainant's Exceptions

The Complainant excepts to ALJ Fordham's Finding of Fact No. 49, which states that "[t]he Complainant's two accounts did not qualify for virtual metering under the terms of PPL's tariff because there was no non-generational load." I.D.R. at 19. The Complainant continues to oppose the requirement that in order to participate in virtual metering, a customer-generator must have non-generational load present at his host account. The Complainant submits that the Commission should remove this requirement from our Regulations and declare his photovoltaic solar generating facility fully qualified for virtual meter aggregation. Further, the Complainant argues that PPL should be issued fines and penalties for having removed him from its virtual meter aggregation program in 2010. Complainant Exc. at 13-15.

b. PPL's Reply

PPL responds that the ALJ correctly stated that the Complainant's host account must have non-generational load in order for the Complainant to participate in virtual meter aggregation. PPL emphasizes that this requirement is outlined in its Commission-approved tariff, which has the force and effect of law. PPL further points out that because our *January 2014 Order* instructed PPL to permit the Complainant to participate in PPL's virtual meter aggregation program, subject to changes in applicable laws or tariffs, the Complainant's concerns are moot. As such, PPL asserts that the Commission does not need to declare that the Complainant's solar facility qualifies for virtual meter aggregation because it already has done so under our *January 2014 Order.* PPL R. Exc. at 11-13.

4. Disposition

We shall deny this Exception, in part, and find it moot, in part, consistent with the following discussion. As an initial matter, we shall reject the Complainant's request that we levy fines and penalties on PPL for having removed him from its virtual meter aggregation program from May 2010 to December 2010. The record indicates that PPL did so in accordance with the provisions of the *AEPS Act* and its Commission-approved tariff, each of which requires that non-generational load be present at a host account in order for the customer-generator to qualify for virtual meter aggregation. Therefore, as PPL has not violated any provisions of the Code, our Regulations, or its Commission-approved tariff, the Complainant's request is not warranted.

In a similar fashion, we shall also deny the Complainant's request that we remove the non-generational load requirement from our Regulations. As noted above, we referred to our Law Bureau the legal issue whether an interconnected alternative energy system qualifies for net or virtual metering if there is no non-generational load at the interconnection point. In our recent *AEPS Final Rulemaking Order*, issued after the Complainant filed his Exceptions, we addressed this issue. In disposing of this issue, we maintained the requirement that independent, *i.e.* non-generational, load must be present and permanent for a customer-generator to obtain and maintain net metering status. We explained that to be independent, the electric load must have a purpose other than to support the operation, maintenance, or administration of the alternative energy system. We reasoned that in the absence of independent load, the alternative energy system would simply be a generator. We noted that this requirement is currently implied in the definition of net metering in the *AEPS Act*, *supra,* which 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." We also noted that this

requirement is implied in Section 75.13(a) of our Regulations, as currently written, where this section states that "EDCs shall offer net metering to customer-generators that generate electricity on the customer-generator's side of the meter." *AEPS Final Rulemaking Order* at 29-30, 33-35. Upon consideration of the comments of interested parties, we proposed to add the following clarifying language to our Regulations:

> **§ 75.13. General provisions.**
>
> (a) EDCs **and DSPs** 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. **To qualify for net metering, the customer-generator shall meet the following conditions:**
>
> **(1) Have electric load, independent of the alternative energy system, behind the meter and point of interconnection of the alternative energy system. To be independent of the alternative energy system, the electric load must have a purpose other than to support the operation, maintenance or administration of the alternative energy system.**

AEPS Final Rulemaking Order at Annex A (emphasis in original indicating amendments).[13] In light of the above, we must deny this portion of the Complainant's Exceptions.

On the other hand, we concur with PPL that the balance of the Complainant's Exception is moot. As the ALJ observed, PPL has agreed to fully compensate the Complainant, with interest, for the value of all of the credits and cash-outs that he would have received for his excess generation if he had been deemed

[13] As previously noted, the proposed clarifying language to our Regulations is currently pending before IRRC.

qualified for virtual meter aggregation during the entire period between March 2009 and February 2015. Moreover, as previously noted, in an effort to resolve the issues in this proceeding, PPL has agreed to permit the Complainant to continue to participate in its virtual meter aggregation program despite the fact that there is no non-generational load at his solar facility. In our *January 2014 Order*, we directed PPL to continue to permit the Complainant to do so, subject to future changes in PPL's tariffs or the applicable law. We reinforce this direction here. [14]

Notwithstanding the above, although we agree with the ALJ's finding that PPL should fully compensate the Complainant for the value of all of the credits and cash-outs he would have received for his excess generation had he been deemed qualified for virtual meter aggregation for the entire period since his enrollment in 2009, we also are mindful of the time that has elapsed since the close of the record in this proceeding. Accordingly, we shall modify the ALJ's Initial Decision on Remand by directing PPL to adjust the amount it has agreed to pay the Complainant to account for interest accrued through the entry date of this Opinion and Order. We shall direct PPL to apply interest at the legal rate as specified in 41 P.S. § 202.

[14] We note that while future changes in the law or in PPL's tariff may alter the waiver PPL has agreed to, our *AEPS Final Rulemaking Order* proposed additional clarifying language to reinforce the already existing provisions of our AEPS Regulations which requires a customer-generator to have independent, non-generational load to be eligible to participate in net metering. Therefore, our issuance of the *AEPS Final Rulemaking Order* does not disturb our prior direction that PPL permit the Complainant to participate in its virtual meter aggregation program, which we reinforce here.

E. Complainant's request that PPL be directed to pay damages and civil penalties

1. Positions of the Parties

a. The Complainant

The Complainant contended that PPL should be directed to pay fines and civil penalties. The Complainant also submitted that, in addition to requiring PPL to compensate him for credits owed from June 2010 to December 2010 and to refund him for the customer and demand charges assessed on his host account, the Commission should instruct PPL to pay him reasonable compensation for the time he spent attempting to have his Complaint resolved. In the Complainant's view, such action is appropriate due to, *inter alia,* PPL's persistent failure to implement a suitable billing process for virtual meter aggregation and its alleged repeated violations of our Regulations and the *AEPS Act.* Complainant M.B. at 24

b. PPL

PPL argued that the Complainant's request for additional compensation was akin to requesting that he be awarded monetary damages. PPL pointed out that the Commission lacks the jurisdiction to award such damages. Additionally, PPL asserted that it should not be ordered to pay any civil penalty with respect to this matter. In support of this claim, PPL argued the following:

- PPL complied with its Commission-approved tariff and should not be penalized for doing so.
- PPL was enforcing its Commission-approved tariff and should not be subject to penalties.

- 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.

- The Complainant is the lone PPL customer that has filed a formal complaint, or any complaint, with the Commission concerning PPL's manual billing process.

PPL R.B. at 52-59.

2. ALJ's Initial Decision

The ALJ agreed with PPL's position that it is well established that the Commission does not have the authority to award damages to parties. Therefore, the ALJ ruled that the Complainant is not entitled to damages. With respect to the Complainant's argument that PPL should be subject to fines and civil penalties, the ALJ found that PPL presented unrefuted evidence for why the imposition of such fines and civil penalties is not warranted. I.D.R at 40.

3. Exceptions and Replies to Exceptions

a. Complainant's Exceptions

The Complainant finds fault with the ALJ's decision not to impose any fines or civil penalties on PPL for not having implemented an automated billing process for its virtual meter aggregation program and for having temporarily removed him from this program in 2010. The Complainant submits that in doing so, the ALJ ignores the duration of PPL's misconduct and ignores the seriousness of PPL's flawed billing. The Complainant maintains that PPL has repeatedly violated our Regulations regarding virtual meter aggregation and has disregarded the *AEPS Act* and should be punished accordingly. Complainant Exc. at 19-20.

b. PPL's Reply

PPL replies that the Complainant has failed to meet his burden of proving that PPL violated any provision of its tariff, the *AEPS Act*, our Regulations, or the Code. PPL reiterates its position that no applicable law or regulation obligates it to implement an automated billing process for virtual meter aggregation or to provide the Complainant with a single bill for his two accounts. PPL also points out that it attempted to mitigate the Complainant's concerns despite the limitations of its billing system. PPL restates that none of its other customer-generators who have elected virtual meter aggregation have filed any complaints or have taken issue with PPL's manual billing process. Therefore, PPL submits that the Complainant's request that the Commission impose fines or penalties is unreasonable and should be rejected. PPL R. Exc. at 13-15.

4. Disposition

We have previously established that PPL was not legally required to implement an automated billing process for virtual meter aggregation or issue the Complainant a single bill for his two accounts. Additionally, we have determined that PPL was acting in accordance with its Commission-approved tariff and the applicable law when it temporarily removed the Complainant from its virtual meter aggregation program in 2010. Further, as previously discussed, the evidence supports PPL's assertion that it made an effort to mitigate the Complainant's concerns by attempting to modify its billing system, making an exception to permit the Complainant to participate in virtual meter aggregation, and agreeing to reimburse the Complainant, with interest, for the difference between the credit amount he has already received for his excess generation and the credit amount he could have received if he had been enrolled in virtual meter aggregation for the entire time period covered by this proceeding. Based on the above, we are not persuaded by the Complainant's argument that the ALJ erred by declining to

levy fines and penalties on PPL. As PPL correctly points out, the Complainant has not demonstrated that PPL has violated any provision of its tariff, the *AEPS Act*, our Regulations, or the Code that would warrant a fine or penalty. Therefore, we shall deny this Exception.

III. Conclusion

Based upon the foregoing discussion, we shall deny the Complainant's Exceptions, in part, and find them moot, in part, and adopt the Initial Decision on Remand, as modified, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Jay Larry Moyer that were filed on October 26, 2015, to the Initial Decision on Remand of Administrative Law Judge Cynthia Williams Fordham are denied, in part, and rendered moot, in part, consistent with this Opinion and Order.

2. That the Initial Decision on Remand of Administrative Law Judge Cynthia Williams Fordham issued on October 9, 2015, is adopted, as modified, consistent with this Opinion and Order.

3. That the Complaint of Jay Larry Moyer against PPL Electric Utilities Corporation at Docket No. C-2011-2273645 is sustained, in part, and dismissed, in part, consistent with this Opinion and Order.

4. That the Complaint of Jay Larry Moyer against PPL Electric Utilities Corporation at Docket No. C-2014-2444864 is dismissed, consistent with this Opinion and Order.

5. That PPL Electric Utilities Corporation, as directed by the Pennsylvania Public Utility Commission in its Opinion and Order entered January 9, 2014, at Docket No. C-2011-2273645, shall continue to permit the Complainant to virtually aggregate his two existing metering accounts, subject to changes in applicable laws or tariffs.

6. That PPL Electric Utilities Corporation shall credit Jay Larry Moyer's residential account in the amount agreed to on the record, adjusted for interest accrued through the entry date of this Opinion and Order.

7. That the proceeding at Docket No. C-2011-2273645 be marked closed.

8. That the proceeding at Docket No. C-2014-2444864 be marked closed.

BY THE COMMISSION,

Rosemary Chiavetta
Secretary

(SEAL)
ORDER ADOPTED: May 19, 2016

ORDER ENTERED: May 19, 2016

Appendix B

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jay Larry Moyer, Petitioner	:	
v.	:	No. 882 C.D. 2016
	:	SUBMITTED: November 23, 2016
Public Utility Commission, Respondent	:	

BEFORE: **HONORABLE P. KEVIN BROBSON, Judge**
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
SENIOR JUDGE LEADBETTER **FILED: March 13, 2017**

This case involves a long ongoing dispute between petitioner, Jay Larry Moyer, and his electric supplier, PPL Electric Utilities Corporation (PPL), and the Public Utility Commission (PUC). Before us for disposition is Moyer's *pro se* petition for review of the final order of the PUC ruling on two consolidated complaints (2011 and 2014 complaints) that he filed against PPL (intervenor here). Moyer challenged PPL's billing under a virtual net meter aggregation program for accounts associated with solar panels that he installed on a hillside approximately 600 yards from his farmhouse in Klingerstown, PA.

In its brief, PPL explains the concepts involved as follows:

> Net metering enables customer-generators to use the electricity produced from their eligible alternative energy sources, such as solar panels, to offset all or a portion of their electric usage. The crediting is done

on a one-to-one basis: for every kilowatt-hour ("kWh") of electricity generated, one kWh of electricity is credited to the account up to the total amount of electricity used in the monthly billing period. *See* 52 Pa. Code § 75.13(c).

***

Under traditional net metering, such as a solar panel mounted on the roof of the customer's residence, the alternative energy system is wired directly with the customer's home or business. [T]he customer-generator has a single bidirectional meter that measures and records the flow of electricity in both directions, meaning that it runs forward when electricity is used and runs backward when electricity is generated to produce a single "net" meter read each month.

***

In contrast, meter aggregation enables a customer-generator to aggregate multiple locations for the purposes of net metering. (PPL St. No. 1, p. 7) These properties must be within two miles of the customer-generator's property and located within the electric utility's service territory. Two types of meter aggregation exist: (1) physical meter aggregation; and (2) virtual meter aggregation.

Under physical meter aggregation, the customer-generator connects the alternative energy source directly to the single meter at the customer's home or business. (PPL St. No. 1, p. 7) For example, solar facilities located in a field could be directly connected to the meter at a nearby residence by extending an electrical conductor/conduit between the solar facility and the residence. Physical meter aggregation functions like traditional net metering because the facilities are physically connected to a single bidirectional meter....

***

On the other hand, virtual meter aggregation "virtually" aggregates separate meters that are not physically connected. (PPL St. No. 1, p. 7) For example, the meter at a residence can be "virtually"

> aggregated with the meter for a solar facility located in a nearby field without a physical connection to the residence. (PPL St. No. 1, p. 7) To accomplish this result, the electric utility measures the electricity used and generated at the meter for the generating facilities (such as Mr. Moyer's solar array) and aggregates that with the customer-generator's usage from the meter at his or her other property (such as Mr. Moyer's residence). Under this scenario, there are two different meters with two entirely different points of interconnection with the electric system: (1) a bidirectional meter at the generating facilities (referred to as the host account) to measure usage and generation of electricity; and (2) a standard meter at the other property (referred to as the satellite account) that measures the customer's electric usage.... Consequently, PPL Electric must [manually] virtually aggregate the generation and usage measured from the meter for the generating facilities with the usage measured from the meter for the customer's home or business.

(Brief for PPL at 9-12) (Record citations deleted).

The relevant procedural history of this case is as follows. In November 2011, Moyer filed a complaint against PPL alleging that he contacted it regarding the installation of solar panels on his property and that a representative inspected and approved them in March 2009.[1] He further alleged that for the period of April 2009 to February 2010, PPL failed to credit him for the electricity that was generated by those solar panels and delivered to PPL and that the checks that he had received since April 2010 lacked any accounting for the credits. Further, alleging that PPL failed to properly aggregate his accounts in accordance with the virtual-net metering provisions in its Net Metering for Renewable

[1] At that time, Moyer was represented by counsel. Since counsel's March 2012 notice of withdrawal, however, Moyer has been proceeding *pro se*.

Customer-Generators Rider, Moyer averred that PPL failed to credit him for all of the electricity generated by his solar panels since March 2009. Accordingly, Moyer requested that the PUC order PPL to apply virtual net meter aggregation to his two accounts, disclose all credits and/or payments that PPL made to him and, if necessary, fully reimburse him for the electricity generated.

In response, PPL acknowledged that for a discreet period it failed to aggregate the excess generation produced by the solar panels generated with the usage at Moyer's residence. It maintained, however, that it made payments to him for that excess generation and applied credits to his residential account. In any event, following failed mediation, Administrative Law Judge Cynthia Williams Fordham (ALJ) conducted an August 2012 evidentiary hearing at which time Moyer testified, presented two witnesses, and introduced twenty exhibits into the record, ten of which were admitted. PPL presented two witnesses and introduced ten exhibits, nine of which were admitted. In February 2013, the ALJ issued her initial decision dismissing the 2011 complaint.

In January 2014, the PUC vacated the ALJ's initial decision to the extent that she found that PPL properly credited Moyer for his solar generation. Concluding that the record was insufficient to make such a determination, the PUC remanded the case to the ALJ for further development of the record. In so doing, the PUC granted Moyer's petition to reopen the record to include the following additional information: (1) PPL to provide Moyer's actual data for the period of April 2009 to May 2013; and (2) Moyer to provide all of his monthly bills and statements for the period of April 2009 to January 9, 2014. Further, the PUC encouraged the parties to meet and attempt to resolve Moyer's concerns and

advised him that, if informal discussions with PPL did not result in a resolution, he could request further hearings.

In September 2014, before a second hearing could be held, Moyer filed a new complaint raising issues concerning the accuracy and content of PPL's billing processes for his virtual-net metering accounts and requesting that the PUC order PPL to develop and implement new billing procedures and processes for such accounts using a single bill for both accounts being virtually aggregated. In January 2015, the ALJ consolidated the 2011 and 2014 complaints.

At an April 2015 hearing, Moyer submitted his direct and surrebuttal testimony and proffered 267 additional exhibits, 179 of which were admitted into the record. PPL submitted rebuttal testimony and five additional exhibits, all of which were admitted into the record. In October 2015, the ALJ issued her initial decision on remand in which she (1) dismissed the 2014 complaint in its entirety; and (2) sustained the 2011 complaint to the extent that PPL was to compensate Moyer for credits earned for the electricity generated from his solar panels between May and December 2010, and that PPL permit Moyer to participate in its virtual-meter aggregation program, as earlier during the litigation it had agreed to do, subject to changes in PPL's tariffs or the applicable law, but dismissed the 2011 complaint in all other respects.

On May 19, 2016, the PUC entered its final opinion and order, adopting the ALJ's decision on remand, finding that PPL correctly billed and credited Mr. Moyer's accounts but modified that decision to require PPL to pay additional interest through the date of its order. Further, although the PUC opined that the accounts did not qualify for virtual-meter aggregation under the terms of PPL's tariff because he failed to show the existence of an independent, non-

generational load[2] at his generation facility, the PUC reiterated the order that Moyer be allowed to virtually aggregate his two accounts because PPL had agreed to a waiver of the load requirement in an effort to resolve the issues. *See* PUC's May 19, 2016, Opinion at 30 n.10, 38-39, 43, and 48.

In addition to Moyer's petition for review, we have the following three applications before us for disposition with the merits: (1) the PUC's November 1, 2016, application to strike the *amicus curiae* brief filed by Sunrise Energy, LLC, (Sunrise) via its principal and majority shareholder David N. Hommrich; (2) Moyer's October 20, 2016, application for relief, asserting, *inter alia*, that this Court's decision in *Sunrise Energy, LLC, v. FirstEnergy Corporation*, 148 A.3d 894 (Pa. Cmwlth. 2016) (*en banc*),[3] has immediate

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[2] The regulation defining "virtual meter aggregation" provides:

> 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 [electric distribution company] billing process, rather than through physical rewiring of the customer-generator's property for a physical, single point of contact. Virtual meter aggregation on properties owned or leased and operated by a customer-generator and located within 2 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.

52 Pa. Code § 75.12. An additional regulation then in effect, which the PUC asserts implicitly required an independent, non-generational load, provides that electric distribution companies shall offer net metering to customer-generators that generate electricity on the customer-generator's side of the meter. 52 Pa. Code § 75.13(a). The PUC asserts that its proposed rulemaking at Commission Docket L-2014-2404361, which has now been made part of its regulations at 52 Pa. Code § 75.13, makes explicit what was previously implied.

[3] On December 12, 2016, we denied the application of FirstEnergy Corporation and West Penn Power Company for reargument/reconsideration *en banc* of the *Sunrise* decision. On January 12, 2017, they filed a petition for allowance of appeal to our Supreme Court at No. 25 WAL Docket 2017.

implications for his case and that, pursuant thereto, the PUC's adjudication in his case is rendered null and void;[4] and (3) Moyer's November 23, 2016, application for relief asserting, *inter alia*, that the PUC's final proposed rulemaking on November 19, 2016, makes the issue of the independent-load requirement for virtual-meter aggregation ripe for review. For the reasons that follow, we grant the PUC's application to strike the purported *amicus curiae* brief, deny both of Moyer's applications for relief, and affirm the PUC's final order on the merits.

In considering the PUC's application to strike the purported *amicus curiae* brief filed by Mr. Hommrich on behalf of Sunrise, as joined by PPL, we note that, in addition to the untimeliness of the brief,[5] it does not appear as though Mr. Hommrich is an attorney licensed to practice law in the Commonwealth. In that regard, in *Moyer v. Public Utility Commission*, (Pa. Cmwlth. No. 336 C.D. 2016, filed July 26, 2016), wherein this Court granted the PUC's motion to quash Moyer's petition for review of a PUC final rulemaking order, we dismissed Sunrise as an intervenor due to Mr. Hommrich's failure to file a copy of the certificate of organization and docketing statement on file for Sunrise with the Department of State, Bureau of Corporations and Charitable Organizations, or to have a member of the Pennsylvania Bar enter an appearance on Sunrise's behalf. In light of

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[4] This Court ruled that, "to the extent that the application raises the applicability of this court's recent decision in [*Sunrise Energy, LLC*], the application and the answer thereto will be treated as supplemental briefs." In addition, we ordered that, "[t]o the extent [Moyer] seeks any additional relief in his application, the application is denied." November 1, 2016, Commonwealth Court Order at 1.

[5] In an August 30, 2016, order rejecting Sunrise's initial August 23, 2016, brief for noncompliance with the Pennsylvania Rules of Appellate Procedure, this Court directed that, unless a conforming brief was filed on or before September 29, 2016, Sunrise would be precluded from filing a brief. Our docket entries indicate that Sunrise's brief was filed on September 30, 2016.

Sunrise's recent inability and/or failure to comply with this Court's directive and the fact that Mr. Hommrich represents only that he is principal and majority shareholder of the company, which is not represented by counsel, we grant the PUC's application to quash Sunrise's brief. *See* 20 West's Pa. Prac., Pa. Appellate Practice § 102.11 at 281 (2015) (providing that a corporation must be represented by counsel and that the failure to have such counsel may result in dismissal). We turn now to Moyer's October 20, 2016, application for relief and the effect of this Court's decision in *Sunrise Energy, LLC.*

In *Sunrise Energy, LLC*, solar power generator Sunrise initiated its complaint in the court of common pleas against one public utility/electric distribution company (West Penn Power Company) and one non-public utility (FirstEnergy Corporation), alleging a breach of contract and seeking declaratory relief arising from a contract dispute over West Penn Power Company's purchase of excess energy from Sunrise. The defendants filed preliminary objections based on primary jurisdiction, seeking dismissal and/or transfer of certain counts to the PUC. After common pleas dismissed the preliminary objections and permitted an interlocutory appeal, which this Court granted, we affirmed the court's order, ruling that neither the doctrine of exclusive nor that of primary jurisdiction required it to transfer certain issues to the PUC. Specifically, we held that common pleas had jurisdiction to decide eligibility for net metering pursuant to the Alternative Energy Portfolio Standards Act (AEPS), Act of November 30, 2004, P.L. 1672, *as amended*, 73 P.S. §§ 1648.1-1648.8, and that it did not err in refusing to cede jurisdiction to the PUC. Contrary to Moyer's position herein, *Sunrise Energy, LLC*, does not affect the jurisdictional validity of the PUC's order in this case.

In the present case, Moyer through his then counsel, filed a complaint with the PUC challenging PPL's billing procedures and its practices for virtual-meter aggregation and PPL's assignment, based on its tariff, of its commercial GS-1 rate to Moyer's host (solar panel) account. Before the PUC entered its final order, the issue of Moyer's eligibility for virtual meter aggregation became moot when PPL agreed to allow Moyer to participate in the program. At a minimum, the remaining issues were within the PUC's jurisdiction. *See* Section 701 of the Public Utility Code, 66 Pa. C.S. § 701 (providing, in pertinent part, that "any person . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission") and *PPL Elect. Util. Corp. v. Pa. Pub. Util. Comm'n*, 912 A.2d 386, 400 (Pa. Cmwlth. 2006) (holding that the PUC is responsible for regulating utility rates and evaluating tariffs over which it has the particular expertise). *Sunrise Energy, LLC*, therefore, is distinguishable from the present case and the PUC had jurisdiction to decide the issues before it. Accordingly, we deny Moyer's October 20, 2016, application for relief.

Finally, in his November 23, 2016, application for relief, Moyer asserted, *inter alia*, that the PUC's final proposed rulemaking on November 19, 2016 (*see supra* n.2), makes his challenge to the independent-load requirement for virtual-meter aggregation ripe for review. However, as noted above, the PUC ordered that Moyer continue to be allowed to participate in net metering because of PPL's waiver of the independent-load requirement in Moyer's case. Thus, the instant appeal does not encompass the issue of whether Moyer is subject to the independent-load requirement, nor is the final rulemaking (which occurred more

than a year after the record closed in this case) at issue here.[6] At any rate, a final rulemaking order is not an appealable order. *Moyer v. Pub. Util. Comm'n*, (Pa. Cmwlth. No. 336 C.D. 2016, filed July 26, 2016) [citing *Popowsky v. Pub. Util. Comm'n*, 701 A.2d 277, 278-79 (Pa. 1997) and *Pub. Advocate v. Brunwasser*, 22 A.3d 261, 269 (Pa. Cmwlth. 2011)]. Accordingly, we will not consider it here.

Turning to the merits of Moyer's petition for review, the cognizable issues are follows:[7] (1) whether the PUC erred in determining that PPL's manual billing procedures for its virtual-meter aggregation customers were sufficient; (2)

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[6] Mindful that it directed PPL in a January 2014 order to continue permitting Moyer to participate in PPL's virtual-meter aggregation program despite the fact that there is no independent, non-generational load at his solar facility, the PUC observed as follows regarding Moyer's waiver:

> [W]hile future changes in the law or in PPL's tariff may alter the waiver PPL has agreed to, our *AEPS [Alternative Energy Portfolio Standards] Final Rulemaking Order* proposed additional clarifying language to reinforce the already existing provisions of our AEPS Regulations which requires a customer-generator to have independent, non-generational load to be eligible to participate in net metering. Therefore, our issuance of the *AEPS Final Rulemaking Order* does not disturb our prior direction that PPL permit [Moyer] to participate in its virtual meter aggregation program, which we reinforce here.

May 19, 2016, PUC's Opinion at 43 n.14. Accordingly, because the independent-load requirement at 52 Pa. Code § 75.13 is not being applied to Moyer's facility, its validity is not properly before this Court, and we must decline Moyer's request that we issue an advisory opinion. In that regard, "an actual case or controversy must be extant at all stages of review. . . ." *Pap's A.M. v. City of Erie*, 812 A.2d 591, 600 (Pa. 2002).

[7] It is well established that an appellate court may only consider a question on appeal that was previously raised before the PUC. Section 703(a) of the Administrative Agency Law, 2 Pa. C.S. § 703(a); *Wheeling & Lake Erie Ry. Co. v. Pa. Pub. Util. Comm'n*, 778 A.2d 785, 794 (Pa. Cmwlth. 2001). All other issues are waived. Accordingly, to the extent that Moyer has raised issues that were not raised before the PUC, we decline to consider them on appeal. Moreover, to the extent that Moyer attempts to raise issues concerning the independent-load requirement, we also decline to consider them on appeal. *See supra* n. 6.

whether there is substantial evidence to support the PUC's finding that PPL's records for Moyer's accounts do not contain inconsistencies and irregularities or reflect that there are omissions; and (3) whether the PUC erred in determining that PPL followed the law and its tariff in assigning the host (solar panel) account PPL's commercial GS-1 rate.[8] We turn first to the PUC's determination regarding PPL's manual billing procedures.

In determining that PPL could use manual billing and was not required to implement an automated billing process for its virtual-meter aggregation program, the PUC construed the Public Utility Code and its regulations as well as the AEPS, and determined that nothing mandated that PPL implement an automated billing process and nothing prohibited PPL from using a manual billing system. In addition, the PUC took into consideration the evidence that PPL presented regarding the relatively small number of customers enrolled in virtual-meter aggregation, ninety eight, and the cost for upgrading PPL's billing system. The PUC concluded, therefore, that manual billing was sufficient and that there was nothing requiring PPL to implement automated billing.[9] PUC's May 19, 2016, Opinion at 22-24. We conclude that the PUC did not err in rendering that determination. *See City of Phila. v. Pa. Pub. Util. Comm'n*, 829 A.2d 1241, 1243 (Pa. Cmwlth. 2003) (holding that the PUC's interpretation of a utility law and

[8] Pertinent here, we are limited on appeal to determining whether an error of law occurred and whether necessary findings of fact are supported by substantial evidence. *Popowsky v. Pa. Pub. Util. Comm'n*, 910 A.2d 38, 48 (Pa. 2006). Substantial evidence means more than a mere trace of evidence or suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm*'n, 413 A.2d 1037, 1047 (Pa. 1980).

[9] In this regard, we note the PUC's acknowledgment of PPL's efforts to provide its customers enrolled in virtual-meter aggregation with the tools to better understand their bills. PUC's May 19, 2016, Opinion at 28.

regulations is to be given great deference). We turn now to addressing whether there is substantial evidence for the PUC's determination regarding the accuracy and adequacy of PPL's records for Moyer's accounts.

In addressing the sufficiency of PPL's records for Moyer's accounts, the PUC's relied on PPL's Exhibit APC-5. In reviewing that exhibit, the PUC noted that PPL provided a description for each of the columns and an explanation as to how it calculated and applied credits for Moyer's excess generation. PUC's May 19, 2016, Opinion at 29. In addition, the PUC noted that it also considered Moyer's Exhibits JLM 101-170 (solar/host account bills) and 202-267 (satellite/residential account bills) and concluded that they "corroborate[d] PPL's assertion that it demonstrated how its tabulation of [Moyer's] actual data for the two accounts since 2009 reconciles with [his] bills, and that it explained any alleged inconsistencies in [his] bills." *Id.* The PUC stated that, "[t]his affirms the ALJ's conclusion that [Moyer] was appropriately billed for his usage and credit for his generation." *Id.*

Moreover, beyond generally asserting that PPL's tabulation reflecting specific actual information on a monthly basis did not correspond to the actual bills mailed to him, Moyer has failed to identify any evidence in the record indicating that PPL's records were inconsistent or irregular, or reflect that there may have been omissions. In that regard, the party seeking affirmative relief from the PUC bears the burden of proving its claims by competent evidence. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001). Further, even where it exists, evidence that supports a different result than that reached by the PUC is irrelevant as long as the record contains substantial evidence to support its decision. *Wheeling & Lake Erie Ry. Co. v. Pa. Pub. Util. Comm'n*, 778 A.2d 785,

794-95 (Pa. Cmwlth. 2001). Accordingly, we conclude that the evidence that the PUC relied upon constituted substantial evidence to support its determination.

Finally, in rejecting Moyer's argument that the host account should be assigned PPL's residential RS rate, the PUC acknowledged that there was no evidence indicating that he was using his solar facility to engage in commercial activity and that there was nothing in the AEPS or PUC regulations explicitly mandating that a residential customer-generator electing virtual-meter aggregation receive service under a commercial rate schedule for his host account. PUC's May 19, 2016, Opinion at 35. Nonetheless, the PUC determined that, "the current terms of PPL's Commission-approved tariff simply do not permit [Moyer's] solar facility to be billed under PPL's Rate Schedule RS nor does the construct of [his] virtual net metering impose the same burdens on or uses of PPL's infrastructure as do physical meter aggregation customers." *Id.*

Specifically, in support of its determination that Moyer did not meet PPL's tariff specifications for its residential RS rate applicable to single-phase electric service, the PUC reviewed the relevant criteria:

> (a) A single family dwelling and detached buildings when the detached buildings are served at the customer's expense through the same meter as the single family dwelling;
>
> (b) A separate dwelling unit in an apartment house;
>
> (c) A single farm dwelling and general farm uses when general farm uses are served at the customer's expense through the same meter as the single farm dwelling;
>
> (d) A building previously wired for single meter service which is converted to not more than 8 separate dwelling units served through one meter.

Id. at 36. In concluding that Moyer's solar facility did not meet the above criteria, the PUC observed that Moyer's solar facility was "simply an array of mounted

solar panels located several hundred yards away from [his] residence[,]" that he "did not use it for shelter, dining, sleeping, or cooking[,]" and that it was served by a separate meter from the one located at his residence. *Id.*

Moreover, in determining that Moyer was properly subject to PPL's commercial rate, the PUC reviewed PPL's tariff for rate schedule GS-1, which provides, in relevant part, that it is applicable to "single phase non-residential service at secondary voltage and *other applications outside the scope of the Residential Rate Schedule*." *Id.* at 37 (emphasis in original). In support of its determination, the PUC noted that Moyer offered no evidence to refute PPL's evidence that, in order to provide service to his solar facility, PPL had to perform one standard transformation to step down the distribution line's voltage from 240 volts to 120 volts at the point of delivery. *Id.* Accordingly, mindful that a public utility's tariff has the force and effect of law and is binding on both the customer and the utility,[10] we conclude that the PUC did not err in determining that PPL properly assigned a commercial rate to Moyer's host account. *See PPL Elec. Util. Corp.*, 912 A.2d at 400 (holding that the PUC is responsible for regulating utility rates and evaluating tariffs over which it has the particular expertise).

For the above reasons, therefore, we grant the PUC's application to strike the purported *amicus curiae* brief, deny both of Moyer's applications for relief, and affirm the PUC's final order on the merits.

Bonnie B. Leadbetter

BONNIE BRIGANCE LEADBETTER,
Senior Judge

[10] *PECO Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996, 1004 (Pa. Cmwlth. 2007).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jay Larry Moyer, Petitioner	:	
v.	:	No. 882 C.D. 2016
Public Utility Commission, Respondent	:	

ORDER

AND NOW, this 13th day of March, 2017, the order of the Public Utility Commission is hereby AFFIRMED. Further, Respondent's application to strike the purported *amicus curiae* brief filed by Sunrise Energy, LLC, is hereby GRANTED. Finally, both Petitioner's applications for relief, filed October 20, 2016, and November 23, 2016, are hereby DENIED.

Bonnie B. Leadbetter

BONNIE BRIGANCE LEADBETTER,
Senior Judge

Appendix C

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

JAY LARRY MOYER,	:	No. 235 MAL 2017
Petitioner	:	
	:	Petition for Allowance of Appeal from the Order of the Commonwealth Court
v.	:	
PUBLIC UTILITY COMMISSION,	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 12th day of September, 2017, the Petition for Allowance of Appeal is **DENIED**.

Appendix D

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105

Public Meeting held January 9, 2014

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
James H. Cawley
Pamela A. Witmer
Gladys M. Brown

Larry Moyer C-2011-2273645

v.

PPL Electric Utilities Corporation

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are: (1) the Exceptions filed by Larry Moyer (Complainant) on March 15, 2013, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Cynthia Williams Fordham, issued on February 22, 2013, with a Request for Oral Argument before the Commission (Request for Oral Argument); and (2) the Petition to Reopen the Record (Petition) filed by the Complainant on May 8, 2013. PPL Electric Utilities Corporation (PPL or Company) filed Reply Exceptions on March 29, 2013, and an Answer to the Petition (Answer to Petition) on May 20, 2013. For the reasons delineated, *infra*, we shall, *inter alia:* (1) grant, in part, the Complainant's Exceptions; (2) deny the Request for Oral Argument; and (3) grant the Petition to Reopen.

I. History of the Proceeding

On November 15, 2011, the Complainant, through counsel, filed a Formal Complaint (Complaint) against PPL regarding the billing and payments for electric service to his house and his solar panels connected to PPL's distribution system at a separate location in Klingerstown, PA. The Complainant alleged, *inter alia*, the following:

- that he contacted PPL regarding the installation of solar panels at his property;
- that PPL assigned an account number to the meter on his house (satellite account), and assigned an account number to the meter associated with his solar panels (host account);
- that the solar panels were mounted, inspected and approved by PPL in March 2009;
- that he did not receive credits or payments for the electricity that was generated by his solar panels between April 2009 and February 2010;
- that the checks that he received since April 2010, did not have an accounting or explanation of the payment;
- that PPL failed to properly aggregate his accounts according to the virtual net metering provisions in the Company's Net Metering for Renewable Customer-Generators Rider; and
- that PPL did not fully credited him for all of the electricity generated by his solar panels and delivered to PPL since March 2009.

Complaint at 6-8. As relief, the Complainant requested that the Commission order PPL to apply virtual net metering to his two accounts, disclose all credits and/or payments that have been made to him, and, if necessary, fully reimburse him for the electricity generated. *Id.* at 9.

On December 8, 2011, PPL filed an Answer to the Complaint (Answer to Complaint) wherein it requested that the Complaint be dismissed. Notwithstanding its request for dismissal, PPL averred that the Commission's mediation process would be an

appropriate forum to address and resolve the issues addressed in the Complaint. Therefore, PPL requested that the Complaint be assigned to the Mediator of the Office of Administrative Law Judge (OALJ) pursuant to 52 Pa. Code § 69.392(b)(2). Answer to Complaint at 1.

In its Answer to Complaint, PPL acknowledged that it failed to aggregate the excess, uncredited kilowatt-hours generated from the Complainant's solar panels with the usage at his residence for the months March 2009 through December 2009. *Id.* at 5. PPL also addressed, *inter alia*, the payments it made to the Complainant for the excess generation produced by Complainant's solar panels and the credits that were applied to his residential account between January 2010 and August 2011. *Id.* at 6-8.

By Interim Order issued December 9, 2011, Chief ALJ Charles E. Rainey directed the Parties to hold a conference and attempt resolve the matter by January 6, 2012. The Interim Order also directed PPL to file a report with the Commission's Mediator within ten days of the conference.

By letter dated January 10, 2012, PPL reported that the Parties held a telephonic conference on January 6, 2012. PPL explained that, although the Parties did not resolve the matter, PPL submitted a proposal for the Complainant to consider and the Parties agreed to further discuss the matter. PPL stated that the Parties agreed that it was unnecessary to proceed to formal litigation at that time.

The matter was referred to the Commission's Mediation Unit and a mediation session was held as scheduled on April 10, 2012. Subsequent to the mediation session, it was determined that the case was no longer appropriate for mediation and mediation was terminated. I.D. at 3.

A hearing was held on August 15, 2012, in Philadelphia before ALJ Fordham. The Complainant appeared *pro se,* testified on his own behalf and presented two witnesses. The Complainant introduced twenty exhibits, of which ten were admitted into the record. PPL presented two witnesses and introduced ten exhibits, nine of which were admitted into the record. The hearing resulted in a transcript of 254 pages. The record was closed upon the receipt of the transcript on September 7, 2012.

By Initial Decision issued February 22, 2013, the ALJ dismissed the Complaint. As noted, *supra*, on March 15, 2013,[1] the Complainant filed Exceptions to the Initial Decision. Also on March 15, 2013, the Complainant filed a Request for Oral Argument. PPL filed Reply Exceptions on March 29, 2013.

On May 8, 2013, the Complainant filed a Petition to Reopen and additional evidence to support his Complaint. In this Petition, the Complainant requests that the Commission either consider the new evidence as part of its consideration of the Exceptions, or reopen the record to examine the new evidence. Petition at 3. PPL filed an Answer to the Petition on May 20, 2013, requesting that the Petition be denied.

On May 21, 2013, the Complainant filed additional documents to support his Petition to Reopen (May 21, 2013 Filing). By letter filed May 31, 2013, PPL averred that the May 21, 2013 Filing appears to be a second Petition to Reopen the Record, and requested that the second Petition be denied.

On July 24, 2013, Complainant filed additional information to support his Exceptions, Request for Oral Argument, and Petition to Reopen (July 24, 2013 Filing).

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[1] The Complainant did not serve PPL with the Exceptions. By letter dated March 19, 2013, the Commission's Secretary transmitted a copy of the Exceptions to PPL and established a deadline of March 29, 2013, for Reply Exceptions.

By letter filed August 1, 2013, PPL averred that the July 24, 2013 Filing appears to be a third Petition to Reopen the Record and requested that the third Petition be denied.

II. Discussion

A. Burden of Proof

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate that PPL was responsible for the problems alleged in his Complaint through a violation of the Code, or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. 66 Pa. C.S. § 701; *Patterson v. The Bell Telephone Company of Pennsylvania,* 72 Pa. P.U.C. 196 (1990). Preponderance of the evidence means that the party with the burden of proof must present evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. PUC,* 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's findings of fact must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of the Complainant shifts to PPL. If the evidence presented by PPL is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant now has to provide some additional evidence to

rebut the evidence of PPL. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC,* 768 A.2d 1217 (Pa. Cmwlth. 2001).

B. Petition to Reopen the Record and the May 21, 2013 and June 24, 2013 Filings

As indicated, *supra*, the Complainant filed a Petition to Reopen the Record pursuant to 52 Pa. Code § 5.571 on May 8, 2013, and submitted additional information on May 8, 2013, May 21, 2013, and July 24, 2013.

As discussed in our disposition of the Exceptions, *infra,* we find that the record developed in this proceeding does not contain sufficient information to determine whether PPL properly credited or paid for the net generation from the Complainant's solar panels. Consequently, we shall remand this proceeding to the OALJ for the limited purpose of including a complete history of the Complainant's host and satellite accounts from April 2009 through May 2013 in the record of this proceeding. In order to adequately develop the record, we shall direct PPL to file, within sixty days, a revised version of PPL Exhibit No. 7 that reflects the Complainant's *actual* data, including meter readings, if available, for the period April 2009 through May 2013.

Also, as discussed, *infra*, following the filing of this information by PPL, we encourage the Parties to meet and discuss the Complainant's actual bills and virtual metering statements, and attempt to resolve the Complainant's concerns with his billing, credits and payments. At that time, the Complainant should present all of his monthly

bills and statements from April 2009 through the last monthly bills rendered prior to the entry date of the Opinion and Order, so that his monthly billings and statements for both the host and satellite accounts may be reconciled with the information to be provided by PPL. If the Complainant's concerns cannot be resolved through the informal discussions with PPL, the Complainant may submit his monthly bills into the record as part of any further proceedings conducted by OALJ. Accordingly, we shall grant the Petition to Reopen to the extent that we shall direct PPL to provide this additional information, and, will allow the Complainant to submit his monthly bills and other statements from PPL into the record if further proceedings are warranted. The Petition is denied in all other respects and the information submitted by the Complainant following the close of the record shall not be considered at this juncture.

C. Request for Oral Argument

As noted, *supra*, on March 15, 2013, the Complainant submitted a Request for Oral Argument before the Commission with his Exceptions. The Complainant's request consists of one sentence, with no further explanation of the reasons why oral argument would be appropriate or necessary in this case. We note that Section 5.538(b) of our Regulations, 52 Pa. Code § 5.538(b), provides that requests for oral argument may be filed, in writing, with exceptions to initial, tentative or recommended decisions. The Complainant technically complied with this provision, but did not include any justification or support for his request. Given the high volume of cases adjudicated by the Commission, it would be impractical to schedule oral argument before the Commission in most cases. Oral argument before the Commission is scheduled only in rare instances, for example in cases that raise questions of general policy of such importance that oral argument would be appropriate. *See, e.g., Level 3 Communications v. Marianna & Scenery Hill Telephone Co.*, Docket No. C-20028114 (2003); *Petition of Metropolitan Edison Co.*, Docket No. P-00900429 (1993); *Re Fowler and Williams*, 56 Pa. P.U.C. 272 (1982). We are not persuaded by the Complainant's one-sentence request

that an oral argument in this particular case would be an efficient use of the Commission's resources. The Complainant's Request for Oral Argument accordingly is denied.

D. Exceptions to the Initial Decision

We note that any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The ALJ made forty-nine Findings of Fact and reached ten Conclusions of Law. I.D. at 4-11, 29-30. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

1. Inconsistencies in PPL's Records, Billing and Payments

a. Initial Decision

The ALJ acknowledged that PPL did not apply credits from the Complainant's host account to his satellite account during the period between June 2010 and December 2010. The ALJ noted that PPL agreed to pay the Complainant $537.27 to reimburse him for credits earned during this period. Otherwise, the ALJ found that PPL has provided credits to the Complainant in accordance with its prevailing Net Metering

Tariffs.[2] The ALJ also found that the Complainant failed to prove, by a preponderance of the evidence, that PPL improperly aggregated the Complainant's accounts, or that PPL failed to fully reimburse the Complainant for the electricity generated. I.D. at 15-16.

b. Complainant's Exceptions

In his Exceptions, the Complainant argues that the glaring inconsistencies in the Company's records appeared to go unnoticed by the Initial Decision. The Complainant states that, for four years, PPL has been issuing credits to him, but only sporadically, and in an incoherent, confusing manner. The Complainant submits that PPL's monthly billing records are "inconsistent and unreliable," and the Company has been unable to defend those monthly bills. Exc. at 4. The Complainant states that PPL Exhibit No. 5 (Actual Credits Applied) shows delayed payments, payments in "lump sum fashion," and long gaps without any payment at all. The Complainant avers that these irregularities were overlooked, and that PPL Exhibit No. 5 did not receive proper scrutiny. Exc. at 4.

The Complainant opines that credits have been applied "sporadically and improperly" because PPL failed to implement proper procedures for handling virtual net metering. *Id.* The Complainant states that PPL employs a manual process for billing which may explain many of the irregularities in his billing. *Id.*

The Complainant avers that the Initial Decision is "erroneous" when it finds that PPL has provided credits to him in accordance with its Net Metering Tariff.

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[2] Supplement No. 60 to Tariff - Electric Pa. PUC. No. 201, First Revised Page Nos. 19L.2 – 19L.4, and Supplement No. 102 to Tariff - Electric Pa. P.U.C. No. 201, Third Revised Page Nos.19L.2 – 19L.4, Net Metering for Renewable Customer Generators (Net Metering Tariff). These tariffs were placed on the record as PPL Exhibits Nos. 3 and 4.

Exc. at 5. The Complainant recommends that the Commission order a complete and accurate re-issue of all billing transactions in his two accounts since January 1, 2010.

c. PPL's Reply Exceptions

As background, PPL explains that the Complainant's 4.75 kW solar array, which became operational in March 2009, is located approximately 600 yards from his residence. R. Exc. at 8. PPL submits that its Net Metering Tariff in effect at that time provided, in pertinent part, as follows:

> The customer-generator will receive a credit for each kilowatt-hour received by the Company up to the total amount of electricity delivered to the Customer by the Company during the billing period at the full retail rate consistent with Commission regulations. On an annual basis, the Company will compensate the customer-generator for kilowatt-hours received from the customer-generator during the preceding year at the "full retail value for all energy produced" consistent with Commission regulations. The customer-generator is responsible for the customer charge, demand charge and other applicable charges under the applicable Rate Schedule.

R. Exc. at 8 (citing PPL Exh. 3).

PPL explains that initially the Company applied virtual metering to the Complainant's two accounts during the period of March 2009 through May 2010. PPL states that it sent the Complainant two checks in April 2010, to compensate the Complainant at the full retail rate for the excess generation produced between March 2009 and December 2009.[3] PPL submits that it also applied credits in lump sums for the excess generation produced during the period of January 2010 through May 2010.

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[3] The Commission's Regulations at 52 Pa. Code § 75.13(d) require that customer-generators be compensated for excess generation at the EDC's price to compare.

R. Exc. at 8. PPL states that it did not apply credits on a monthly basis because the Commission-approved Net Metering Tariff in effect at the time did not require credits to be applied on a monthly basis. *Id.* at 9. Consequently, PPL avers that, consistent with the Initial Decision, the payments and credits made to the Complainant for excess, unused generation produced during the period of March 2009 through May 2010 were consistent with PPL's Net Metering Tariff in effect at the time. *Id.*

PPL explains that in June 2010, it determined that the Complainant's host account did not qualify for net or virtual metering because it did not have any non-generational load as required by PPL's Net Metering Tariff. PPL submits that, as a result, it discontinued virtual metering and credits were not applied to the Complainant's account for the period June 2010 through December 2010. *Id.*

PPL states that, in response to an informal complaint filed by the Complainant with the Commission's Bureau of Consumer Services, the Company agreed to allow the Complainant to participate in the virtual metering program. PPL explains that it applied credits to the Complainant's account in September 2011, for all excess generation produced by his host account since January 2011. PPL submits that, consistent with its Net Metering Tariff, it has applied virtual metering to the Complainant's account, with a cash-out of any excess, unused credits at the end of the PJM Planning Year, at PPL's price to compare since September 2011. *Id.* PPL avers that, if the Commission determines that PPL's decision to allow the Complainant to participate in the virtual metering program is contrary to its Net Metering Tariff, the Commission should order PPL to prospectively discontinue virtual metering for the Complainant. *Id.* at 10.

In response to the Complainant's Exception regarding its manual billing process, PPL explains that, unlike net metering[4] that utilizes one meter, virtual metering employs two meters at different locations. PPL states that its billing system currently is unable to associate two separate accounts that are read and billed independently. PPL avers that, because there are only about eighty participants in the virtual metering program, automating the billing process for virtual metering customers would not be a prudent expense at this time. *Id.* at 11. PPL also points out that there is nothing in Chapter 14 of the Code, Chapter 56 of the Commission's Regulations or the billing

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[4] The Act and Commission regulations define "net metering" as follows:

> The means of measuring the difference between the electricity supplied by the electric utility and the electricity generated by a 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. 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.

The Act and Commission's regulations define "customer-generator" as follows:

> 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.

See, 73 P.S. § 1648.2.

provisions of PPL's Tariff that requires PPL to undertake automated billing for virtual metering customers. R. Exc. at 11-12.

PPL argues that the Commission should reject the Complainant's request that the Company re-issue all billing transactions for the Complainant's accounts back to January 2010. PPL states that it provided a detailed explanation of the manual process it currently uses to aggregate host and satellite accounts under the virtual net metering program. *Id.* at 12 (citing Tr. at 214-216). PPL notes that it provides a detailed, twelve-month worksheet to each virtual net metering customer at the end of the PJM Planning Year.[5] PPL explains that the worksheet shows the monthly meter readings, the monthly excess kWh generation produced from the host account, the monthly credits applied to the satellite account, the unused credits that are banked and carried forward to a subsequent billing period, and any cash-outs for any excess, unused credits that remain at the end of the PJM Planning Year. PPL states that this is the very same information that is used by the Company to prepare the separate bills issued for the host and satellite accounts. R. Exc. at 13 (citing Tr. at 223, 228).

d. Disposition

As discussed, *supra*, PPL's billing system is unable to associate two separate accounts that are read and billed independently on the monthly bills of

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[5] The record indicates that this information may have been supplied to virtual metering customers only for the 2012 and 2013 PJM Planning Years. In his direct examination, PPL witness Mr. Cannon explained that for 2012, upon a customer's request, PPL would provide its virtual net metering customers a calculation sheet similar to PPL Exhibit No. 7 with information such as meter readings. Mr. Cannon also explained that for the 2013 PJM Planning Year, PPL would provide these statements to all virtual metering customers as a standard practice. Tr. at 221.

customers with virtually aggregated meters.[6] 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. Consequently, customers with virtually aggregated meters need a separate tabulation that shows how credits were generated and applied, and how annual cash payouts, if any, were calculated. As noted, *supra*, PPL has been providing such a tabulation to customers for the 2012 and 2013 PJM Planning Years.

The Complainant argues, *inter alia*, that PPL's monthly billing records are inconsistent and unreliable and the Company has been unable to defend those monthly bills. However, neither the Complainant's monthly bills nor an exhibit reflecting the pertinent information presented on his actual bills were included in the record of this proceeding.[7]

PPL avers that it provided credits to the Complainant for his excess generation in accordance with its Net Metering Tariff, but the record does not contain a complete tabulation that ties the Complainant's monthly bills to the amounts credited on the satellite account and the cash-out payment made to the Complainant. We recognize that PPL placed a schedule on the record reflecting the monthly credits applied to the

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[6] The Commission's regulations at 52 Pa. Code § 75.12 define "virtual meter aggregation" as follows:

> 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. Virtual meter aggregation on properties owned or leased and operated by a customer-generator and located within 2 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.

[7] The Complainant did submit a few bills after the record was closed.

Complainant's account and the two cash-out payments remitted to the Complainant in April 2010. PPL Exh. No 5. However, PPL Exhibit No. 5 does not reflect how the credits were generated by the host account, how the credits were applied to the satellite account, how the credits affected the Complainant's net bill on the satellite account, and how the cash-outs were calculated.

PPL Exhibit No. 7 contains the *type* of information that would enable the Commission to review the Complainant's bills and determine if PPL improperly credited or paid for the net generation from the Complainant's solar panels. A portion of the information presented in PPL Exhibit No. 7 has been compiled into a single schedule, presented as an Appendix to this Opinion and Order. However, PPL Exhibit No. 7 is a recreation of the Complainant's accounts presented by PPL to demonstrate the maximum benefit that he could have realized had he qualified for virtual meter aggregation continuously since March 2009. Tr. at 182, 184. In addition, some of the information on PPL Exhibit No. 7 does not match the information on Exhibit No. 5. Therefore, even if the Complainant's billing history was contained in the record, PPL Exhibit No. 7 in its present form could not be used to determine if PPL's credits and payments were in compliance with its Tariff.

Arguably, the Complainant did not satisfy his burden of proving that he was not properly billed by PPL and that PPL did not properly credit or pay him for his net generation from his solar array. However, it is well settled that the burden of producing evidence may be placed on the party who can discharge the burden most easily, or who has peculiar means of knowledge of the facts. *Andrew Maholik v. PECO Energy Company*, Docket No. F-2011-2263263 (Order entered August 2, 2013); *Barrett v. Otis Elevator Co.*, 431 Pa. 446, 246 A.2d 668 (1968); *Shaffer v. The Commonwealth Telephone Co.*, Docket No. C-00924648 (Order entered January 24, 1995). Since the Complainant may not be in possession of all of the information necessary to definitively resolve the issues regarding his billing, credits and payments, we shall direct PPL to file

additional information on the record within sixty days of the entry of this Opinion and Order. Specifically, we shall direct PPL to file a revised version of Exhibit No. 7 that contains actual data for the period from March 2009 to the last monthly billing periods for each of Mr. Moyer's two accounts that ended prior to the entry date of this Opinion and 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.[8] Accordingly, we shall grant the Complainant's Exceptions regarding the accuracy of PPL's records, billing and payments to the extent that we are remanding this proceeding to the OALJ for the further development of the record. We shall also vacate the Initial Decision to the extent that it found that PPL properly provided credits to the Complainant.

Pursuant to our Regulations at 52 Pa Code § 5.231, it is the Commission's policy to promote settlements. Therefore, following the submission of the information by PPL, *supra*, we encourage the Parties to meet and review the Complainant's actual bills and the information to be supplied by PPL, and, attempt to resolve the Complainant's concerns with his billing, credits and payments. If the Complainant's concerns cannot be resolved, the Complainant may request further hearings for the limited purpose of addressing any inconsistencies between his billings and the credits and payments provided by PPL as a result of the virtual aggregation of Complainant's accounts. If the Complainant requests further hearings, he must be prepared to demonstrate that the specific credits and payments made by PPL are inaccurate based on his actual bills, meter readings, his payments made to PPL, or the cash-out payments received from PPL.

The Complainant was not credited for excess generation for the period of June 2010 through December 2010. Tr. at 172. PPL has agreed to fully compensate him

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[8] Absent an objection from the Complainant, the revisions to Exhibit No. 7 shall be included in the formal record of this proceeding.

for the value of all of the credits and cash-outs he would have received for excess generation as if PPL had deemed him to be qualified for virtual meter aggregation the entire time.[9] PPL estimated that the net difference between what the Complainant actually received and would have received as a net metering customer is $537.25, including interest. R. Exc. at 18. PPL states that to "fully and finally" resolve this matter, it remains willing to provide this payment to the Complainant. *Id.* In order to facilitate the resolution of these outstanding credits and payments, we also shall direct PPL to demonstrate the basis for the calculation of the outstanding credits and payments in a manner that is directly linked to the billing, credit and payout information to be supplied by PPL.

2. Eligibility for Net Metering

a. Initial Decision

The ALJ stated that net metering is only available to installations in PPL's service territory where a portion of the electricity generated by the renewable energy generating system offsets part or all of the customer generator's requirements for electricity. The ALJ concluded that "there should be usage or load that exists [at the host account] regardless of whether the generation equipment is in place." I.D. at 13. The ALJ noted that it was undisputed that the Complainant only has a light on the host account. The ALJ found that the evidence supported PPL's determination that the Complainant did not qualify for net or virtual metering because there was no non-generational load at the host account. *Id.* at 13-14.

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[9] The Complainant's eligibility for virtual meter aggregation is discussed, *infra*.

b. Complainant's Exceptions

The Complainant states that neither a "load" nor "minimum load" requirement is specified in the law or in PPL's Net Metering Tariff. Exc. at 5. The Complainant argues that, in virtual metering, load should not be a requirement of the host site. The Complainant avers that, if some specific load is to be required, it must be defined, and the Initial Decision fails to offer a definition. *Id.* at 5-6. The Complainant also avers that his system is unfairly regarded as an "exception" to PPL's requirements. *Id.* at 6. This status puts his system in jeopardy because he is at risk of having his credits terminated again, as they were in 2011. *Id.* at 6-7. The Complainant requests that the Commission determine that his system is qualified with or without a load requirement. If the Commission were to determine otherwise, the Complainant requests that the Commission indicate clearly what is required to qualify and permit the Complainant reasonable time to qualify. *Id.*

c. PPL's Reply Exceptions

PPL explains that the Commission's Regulations require electric distribution companies 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." R. Exc. at 14 (citing 52 Pa. Code § 75.13(a)). PPL states that the Commission's Regulations further require all electric distribution companies to file a tariff for net metering. R. Exc. at 14 (citing 52 Pa. Code § 75.13(b)). PPL submits that its Commission-approved Net Metering Tariff provides that net and virtual metering is "available to installations where any portion of the electricity generated by the renewable energy generating system offsets part or all of the customer-generator's requirements for electricity." R. Exc. at 14 (citing PPL Exhs. 3, 4). PPL avers that this provision of its Tariff means that there should be usage or a load that exists regardless of whether the generation equipment is in place. R. Exc. at 14 (citing

Tr. at 155-56, 162.) PPL submits that the Complainant's expert consultant, Ron Celentano, the President of the Pennsylvania Solar Energy Industries Association, agreed with PPL's interpretation of its Tariff. PPL points to Mr. Celentano's testimony that, under the Alternative Energy Portfolio Standards Act and the Commission's Regulations, "there would have to be load on both accounts ... you can't have a standalone account without a load because then you are what we call a grid supplier and you're just putting power onto the grid, not serving any load." R. Exc. at 14 (citing Tr. at 106-107).

PPL states that it is undisputed that the only load on the Complainant's host account is a light that would not be there if the solar panels were not installed. R. Exc. at 14 (citing Tr. at 61, 169). PPL explains that the Complainant repeatedly was advised of the requirement for non-generational load and the fact that his system did not qualify for virtual metering. PPL notes that the Complainant conceded that PPL advised him that his host account should not have been approved for virtual metering and will not be approved for other customers. R. Exc. at 14 (citing Tr. at 55-60). PPL submits that, because the Complainant did not have any non-generational load at his host account, it determined that Complainant's host account did not qualify for net or virtual metering as required under PPL's Net Metering Tariff; the Company discontinued virtual metering of the Complainant's accounts in June 2010. R. Exc. at 14-15 (citing Tr. at 167-169, 172; PPL Exh. No. 5). PPL also explains that, in an effort to settle the Informal Complaint that the Complainant filed with the Commission's Bureau of Consumer Services, PPL agreed to allow the Complainant to participate in the virtual metering program and applied credits to the Complainant's account in September 2011 for all excess generation produced by his host account since January 2011. R. Exc. at 15.

PPL avers that, to the extent that the Commission concludes that permitting Complainant to participate in virtual metering is inconsistent with the Company's Net Metering Tariff provisions, the Commission should order PPL to discontinue virtual metering prospectively for the Complainant. Alternatively, PPL argues that assuming,

arguendo, that the Complainant's host account did qualify for virtual metering under PPL's Net Metering Tariff, the Complainant has not been harmed. PPL explains that it has agreed to settle the issues raised in the Compliant by fully compensating the Complainant for the value of the credits, plus interest, that he would have received for excess generation as if his accounts qualified for virtual net metering. *Id.*

d. Disposition

As noted, *supra*, PPL has agreed that it will waive its objections to Mr. Moyer's participation in its virtual metering program in an effort to settle the issues and concerns raised in his Complaint. R. Exc. at 10, 15-16. Considering this waiver, we find that it is not necessary for the Commission to address the issue of the prior eligibility of Mr. Moyer's 4.75 kW solar array and his residence for net metering or virtual meter aggregation in this proceeding. With respect to Mr. Moyer's prospective eligibility for net metering or virtual meter aggregation, consistent with the waiver discussed, *supra*, we shall order PPL to continue to permit Mr. Moyer to utilize net metering and virtual meter aggregation for his existing 4.75 kW solar array and residence in the future (subject to future changes in applicable laws or tariffs). Because we have determined that it is not necessary to address this issue in this proceeding and due to the fact that we are vacating the Initial Decision, we shall refer the legal issue raised by this proceeding to the Commission's Law Bureau to consider whether our regulations need to be clarified.

III. Conclusion

Based on the forgoing discussion, we shall vacate the Initial Decision and remand this case to the OALJ for further proceedings as may be required to address the accuracy of the bills and credits provided by PPL for the Complainant's net metered virtually aggregated metering accounts. The Complainant's Exceptions are granted to the extent that: (1) this case is remanded for the limited purpose of further developing the

record with regard to the bills and credits received by Mr. Moyer; and (2) we find that PPL has waived its objection to net meter Mr. Moyer's 4.75 kW solar array and virtually aggregate his two existing metering accounts. By this Opinion and Order we shall vacate the Initial Decision and sustain the Complaint, **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions to the Initial Decision of Administrative Law Judge Cynthia Williams Fordham, filed by Larry Moyer on March 15, 2013, are granted, in part, consistent with this Opinion and Order.

2. That the Request for Oral Argument filed by Larry Moyer on May 8, 2013, is denied.

3. That the Request to Reopen the Record filed by Larry Moyer on May 8, 2013, is granted for the limited purpose of further developing the record with regard to the bills and credits received by Mr. Moyer from PPL Electric Utilities Corporation.

4. That the Initial Decision of Administrative Law Judge Cynthia Williams Fordham, issued February 22, 2013, is vacated.

5. That the Complaint against PPL Electric Utilities Corporation, filed on November 15, 2011, by Larry Moyer is sustained, consistent with this Opinion and Order.

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.

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.

7. That PPL Electric Utilities Corporation shall utilize the relevant data submitted in response to Ordering Paragraph No. 6, *supra*, to demonstrate the amount of credits and cash-out payments Complainant should have received between April 2009, and the monthly billing periods ending prior to the entry date of this Opinion and Order. This information shall be submitted to the Office of Administrative Law Judge, the Commission Secretary and Mr. Larry Moyer within sixty (60) days of the entry of this Opinion and Order.

8. That following the submission of data to be supplied by PPL pursuant to Ordering Paragraphs Nos. 6 and 7, *supra*, if PPL Electric Utilities Corporation and Mr. Larry Moyer are unable to agree on the issues related to billing, credits and payments, Mr. Larry Moyer may request that the Office of Administrative Law Judge schedule further hearings. Mr. Moyer's request for further hearings must

delineate *specific* errors in the bills, credits and payments rendered by PPL Electric Utilities Corporation between April 2009, and the monthly billing periods ending prior to entry date of this Opinion and Order.

9. That PPL Electric Utilities Corporation shall permit Mr. Moyer to net meter his 4.75 kW solar array and virtually aggregate his two existing metering accounts from when Mr. Moyer's solar array was first connected to PPL Electric Utilities Corporation's system in March 2009, and prospectively, subject to changes in applicable laws or tariffs.

10. That the Secretary shall serve a copy of this Opinion and Order on the Commission's Law Bureau and the Law Bureau shall advise the Commission on whether our Regulations need to be clarified to address the issues raised in this proceeding.

BY THE COMMISSION,

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: January 9, 2014
ORDER ENTERED: January 9, 2014

Appendix - Compilation of PPL Exhibit No. 7

Billing Month	Host Excess kWh	Satellite Usage kWh	kWh Applied to Satellite	Value of kWh Applied to Satellite[10]		kWh Banked	Cumulative Total kWh Banked	kWh Billed	Cash-Out Payment[15]	
				Cents per kWh	Credit				Cents per kWh	Payment
April-09	9	565	9	10.777	$0.97	0	0	556		
May-09	569	321	321	10.376	$33.31	248	248	0		
June-09	562	326	326	10.365	$33.79	236	484	0		
July-09	576	185	185	10.800	$19.98	391	875	0		
August-09	614	288	288	10.454	$30.11	326	1,201	0		
September-09	571	215	215	10.716	$23.04	356	1,557	0		
October-09	427	329	329	10.358	$34.08	98	1,655	0		
November-09	358	562	-204	10.080	$56.65	-204	1,451	0		
December-09	218	456	-238	10.173	$46.39	-238	1,213	0	8.196	$141.38
January-10	317	779	317	13.025	$41.29	0	0	462		
February-10	318	376	318	13.025	$41.42	0	0	58		
March-10	374	439	374	12.994	$48.60	0	0	65		
April-10	587	384	384	12.992	$49.89	203	203	0		
May-10	593	305	305	13.029	$39.74	288	491	0		
June-10	554	233	233	13.081	$30.48	321	812	0		

[10] The value of the credits applied to the satellite account was based on "the full retail value" of the rate applied to the satellite account (Rate RS) and the cash-out payment was based on the price to compare for the host account (Rate GS-1). Tr. at 175, 180.

Appendix - Compilation of PPL Exhibit No. 7 (Continued)

Billing Month	Host Excess kWh	Satellite Usage kWh	kWh Applied to Satellite	Value of kWh Applied to Satellite		kWh Banked	Cumulative Total kWh Banked	kWh Billed	Cash-Out Payments	
				Cents per kWh	Credit				Cents per kWh	Payment
July-10	674	254	254	13.062	$33.18	420	1,232	0		
August-10	579	216	216	13.342	$28.82	363	1,595	0		
September-10	563	267	287	13.285	$38.13	276	1,871	0		
October-10	541	292	292	13.277	$38.77	249	2,120	0		
November-10	410	351	351	13.247	$46.50	59	2,179	0		
December-10	293	383	383	13.229	$50.67	-90	2,089	0	12.012	$250.93
Jan.-Feb. -11	579	1,586	579	12.557	$72.71	0	0	1,007		
March-11	451	576	451	12.552	$56.61	0	0	125		
April-11	426	591	426	12.556	$53.49	0	0	165		
May-11	476	441	441	12.555	$55.37	35	35	0	9.766	$3.42
June-11	539	217	217	12.078	$26.21	322	322	0		
July-11	648	303	303	12.079	$36.60	345	667	0		
August-11	444	327	327	12.079	$39.50	117	784	0		
September-11	0	206	206	11.718	$24.14	-206	578	0		
October-11	0	353	353	11.713	$41.35	-353	225	0		
November-11	124	240	240	11.712	$28.11	-116	109	0		
December-11	301	379	379	11.077	$41.98	-78	31	0		
January-12	309	1,098	340	11.083	$37.68	0	0	758		
February-12	293	561	293	11.083	$32.47	0	0	268		
March-12	480	595	480	10.288	$49.38	0	0	115		

Appendix - Compilation of PPL Exhibit No. 7 (Continued)

Billing Month	Host Excess kWh	Satellite Usage kWh	kWh Applied to Satellite	Value of kWh Applied to Satellite		kWh Banked	Cumulative Total kWh Banked	kWh Billed	Cash-Out Payments	
				Cents per kWh	Credit				Cents per kWh	Payment
April-12	598	428	428	10.288	$44.03	170	170	0		
May-12	493	347	347	10.288	$35.70	146	316	0	6.387	$20.18