



COMMONWEALTH OF PENNSYLVANIA

May 30, 2018

**E-FILED**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

**Re: Richard McGrath/Ultimate Sports Company, Inc. v PPL Electric Utilities Corporation / Docket No. C-2017-2633651**

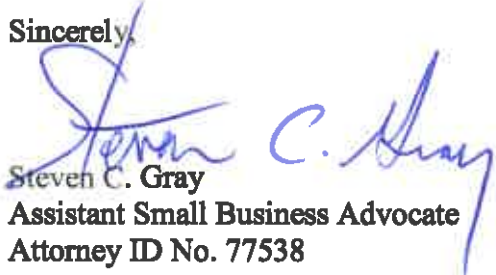
Dear Secretary Chiavetta:

I am delivering for filing today the Answer to PPL Electric Utilities Corporation's Motion to Strike the Pre-Served Direct Testimony of Robert D. Knecht, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

  
Steven C. Gray  
Assistant Small Business Advocate  
Attorney ID No. 77538

***Enclosures***

cc: The Honorable Elizabeth H. Barnes  
Mr. Robert D. Knecht  
Parties of Record

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**RICHARD MCGRATH/ULTIMATE SPORTS :  
COMPANY, INC., :  
 :  
 :  
 v. : DOCKET NO. C-2017-2633651  
 :  
 :  
 PPL ELECTRIC UTILITIES CORPORATION :**

**OFFICE OF SMALL BUSINESS ADVOCATE’S  
ANSWER TO PPL ELECTRIC UTILITIES CORPORATION’S  
MOTION TO STRIKE  
THE PRE-SERVED DIRECT TESTIMONY OF ROBERT D. KNECHT**

Pursuant to 52 Pa. Code §§ 5.61 and 5.103(c), the Office of Small Business Advocate (“OSBA”) submits this Answer to the *Motion to Strike the Pre-Served Direct Testimony of Robert D. Knecht Offered on Behalf of the Office of Small Business Advocate (“Motion to Strike”)* that was filed by PPL Electric Utilities Corporation (“PPL” or the “Company”) with the Pennsylvania Public Utility Commission (“Commission”) and Administrative Law Judge (“ALJ”) Elizabeth H. Barnes on May 25, 2018.<sup>1</sup>

PPL’s *Motion to Strike* should be denied.

Response to the *Motion to Strike*’s Unnumbered Paragraph

Some of the averments of Unnumbered Paragraph 1 contain summaries of PPL’s request for relief and conclusions of law to which no response is required. By way of further

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<sup>1</sup> The OSBA received the *Motion to Strike* via email at 4:03 pm on Friday, May 25, 2018 from PPL counsel. The OSBA observes that, on page 4, the *Motion to Strike* is dated May 24, 2018.

response, PPL requests that the OSBA's pre-served testimony be excluded because of a "conflict" with Pennsylvania Rules of Evidence 702 and 703, and that Mr. Knecht is "incompetent to testify." The OSBA denies these averments.

Responses to the Motion to Strike's Numbered Paragraphs

1. Admitted. By way of further response, the OSBA served the written Direct Testimony of Robert D. Knecht on March 27, 2018, in accordance with the procedural schedule set forth by ALJ Barnes in her February 13, 2018, Procedural Order.

2. Admitted in part. By way of further response, Mr. Knecht's Direct Testimony speaks for itself.

3. Admitted in part. By way of further response, the Resumé and Expert Testimony List for Mr. Knecht are attached to his Direct Testimony, and they speak for themselves.

4. Admitted. By way of further response, Mr. Knecht holds a Bachelor of Science in Economics from the Massachusetts Institute of Technology ("MIT"). Furthermore, Mr. Knecht holds a Masters of Science in Management, with concentrations in Applied Economics and Finance, from the Sloan School of Management at MIT.

5. Admitted. By way of further response, Mr. Knecht has testified in 40 proceedings before the Commission since January 2012. Of those 40 proceedings, 8 involved PPL. Mr. Knecht is therefore well-versed in testifying before the Commission, and with the operations of PPL.

6. Denied. By way of further response, Mr. Knecht's testimony speaks for itself.

In particular, none of the highlighting shown in *Motion to Strike Paragraph 6* appears in his text.

7. Denied. By way of further response, Mr. Knecht's testimony speaks for itself.

In addition, Mr. Knecht as testified, as follows:

OSBA counsel advises that it is the *normal practice* before the Pennsylvania Public Utility Commission ('Commission') for counsel to state legal arguments through expert testimony. This is done in order to provide notice to the parties of the legal positions being taken, as well as to grant the parties an opportunity to prepare and respond to those legal positions.

OSBA Statement No. 1, at 1 (emphasis added). Mr. Knecht is correct. For example, PPL itself has participated in this "normal practice" as recently as March 2018, in a case that is currently before the Commission. *See, e.g., PPL EU Statement No. 1, Application of PPL Electric Utilities Corporation for Approval of Intercompany Restructuring, Docket A-2017-2629534, at 5, 6.*

8. Denied, because Rule 702 of the Pennsylvania Rules of Evidence does not govern Mr. Knecht's Direct Testimony. The Commission, as well as the OSBA, are Commonwealth agencies. Section 505 of Title 2 states, as follows:

Commonwealth agencies shall not be bound by technical rules of evidence at agency hearings, and *all relevant evidence of reasonably probative value may be received*. Reasonable examination and cross-examination shall be permitted.

2 Pa. C.S. § 505 (emphasis added). Mr. Knecht's Direct Testimony is relevant because it provides PPL with the notice of what legal positions the OSBA will be taking in its briefs. His "on advice of counsel" testimony is provided to satisfy the demands of due process, as

well as providing PPL (and any other party) the opportunity to develop the record with facts prior to the briefing stage.

In fact, the OSBA would be subject to a valid motion to strike if the OSBA raised its legal issues for the first time in its main brief.<sup>2</sup> It is well-established that the purpose of a brief is not to introduce new, additional evidence or to offer rejoinder testimony. The Commission has held that use of a brief for such purposes in a contested proceeding is a violation of due process. *Enron Capital & Trade Resources Corporation v. The Peoples Natural Gas Company, et al.*, Docket No. R- 00973928C000I, 1998 Pa. PUC LEXIS 199 (August 24, 1998); *see also Dee-Dee Cab, Inc. v. Pa. P.U.C.*, 817 A.2d 593,598 (Pa. Cmwlth. 2003), *appeal denied*, 575 Pa. 698,836 A.2d 123 (2003) ("For matters coming before an administrative agency, procedural due process, however, requires that a party be afforded reasonable notice of the issues raised and the agency's rulings on those issues, so that the party has an opportunity to present any response or objection.").

9. Denied, as the legal citations provided by PPL in Paragraph 9 do not govern Mr. Knecht's Direct Testimony. *See* 2 Pa. C.S. § 505, set forth above.

10. Denied, because Rule 703 of the Pennsylvania Rules of Evidence does not govern Mr. Knecht's Direct Testimony. *See* 2 Pa. C.S. § 505, set forth above.

11. Denied, because Rule 703 of the Pennsylvania Rules of Evidence does not govern Mr. Knecht's Direct Testimony. *See* 2 Pa. C.S. § 505, set forth above. By way of further response, Mr. Knecht's Direct Testimony speaks for itself.

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<sup>2</sup> If expert witnesses, such as Mr. Knecht, are prohibited from testifying "on the advice of counsel," the only notice of a party's legal issues would be that which is provided in the party's prehearing memorandum.

12. Denied, because Rule 703 of the Pennsylvania Rules of Evidence does not govern Mr. Knecht's Direct Testimony. *See* 2 Pa. C.S. § 505, set forth above. By way of further response, Mr. Knecht's Direct Testimony speaks for itself.

13. Denied. By way of further response, Mr. Knecht's Direct Testimony speaks for itself. In addition, PPL appears to miss the point of Mr. Knecht's testimony, which is notice and due process. A statutory advocate, such as the OSBA, has limited means to provide notice to other parties as to the legal positions it will be taking in its briefs. A prehearing memorandum may provide some initial indication, but those memos are typically generalized and do not have sufficient detail to provide a reasonable statement of a party's legal positions. Nor do those memos contain the detail that is subsequently developed throughout rounds of testimony in a multi-month proceeding. Moreover, discovery is not a viable means to obtain an advocate's legal positions, because advocates (such as the OSBA) have no lay party witness, only expert witnesses and attorneys. Thus, in the interests of due process, as well as developing a comprehensive record, the standard practice in proceedings before the Commission is to have expert witnesses for the advocates (as well as experts for regulated utilities like PPL), testify "on advice of counsel."

14. Denied, as the legal citations provided by PPL in Paragraph 14 do not govern Mr. Knecht's Direct Testimony. *See* 2 Pa. C.S. § 505, set forth above.

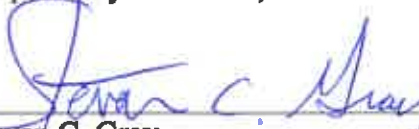
15. Paragraph 15 contains summaries of PPL's request for relief and conclusions of law to which no response is required. By way of further response, Rules 702 and 703 of the Pennsylvania Rules of Evidence do not govern Mr. Knecht's Direct Testimony. *See* 2 Pa. C.S. § 505, set forth above.

16. Paragraph 16 contains summaries of PPL's request for relief and conclusions of law to which no response is required.

Conclusion

For all the reasons stated above, the Office of Small Business Advocate respectfully requests that Administrative Law Judge Elizabeth H. Barnes deny PPL's *Motion to Strike*.

Respectfully submitted,

  
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Assistant Small Business Advocate

For:

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Small Business Advocate

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Dated: May 30, 2018

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**RICHARD MCGRATH/ULTIMATE SPORTS :  
COMPANY, INC., :**

**v. :**

**PPL ELECTRIC UTILITIES CORPORATION :**

**DOCKET NO. C-2017-2633651**

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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DATE: May 30, 2018

  
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