



COMMONWEALTH OF PENNSYLVANIA

July 11, 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

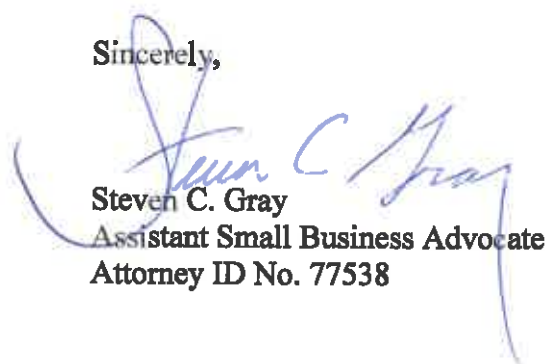
Dear Secretary Chiavetta:

Enclosed please find the Main Brief, 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: Robert D. Knecht
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

v. :

PPL ELECTRIC UTILITIES CORPORATION :

DOCKET NO. C-2017-2633651

**MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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

**For: John R. Evans
Small Business Advocate**

**Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101**

Date: July 11, 2018

I. Introduction.

On November 14, 2017, Ultimate Sports Company, Inc. (“Ultimate”) filed a Complaint against PPL Electric Utilities Corporation (“PPL”) with the Pennsylvania Public Utility Commission (“Commission”).

On November 16, 2017, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention.

On February 13, 2018, a prehearing conference was held before Administrative Law Judge (“ALJ”) Elizabeth H. Barnes.

On February 13, 2018, ALJ Barnes issued her Procedural Order.

On March 27, 2018, the OSBA served the Direct Testimony of Robert D. Knecht.

On April 27, 2018, PPL Electric served the Rebuttal Testimony of Mr. Dennis Worthington.

On May 25, 2018, PPL filed a *Motion to Strike the Pre-Served Direct Testimony of Robert D. Knecht Offered on Behalf of the Office of Small Business Advocate*.

On May 30, 2018, the OSBA answered PPL’s *Motion to Strike*.

On May 31, 2018, an evidentiary hearing was held before ALJ Barnes. ALJ Barnes denied PPL’s *Motion to Strike* at that evidentiary hearing. *May 31st Transcript*, at 37, lines 10-11.

The OSBA submits this Main Brief in accordance with the ALJ’s February 13th Procedural Order, as modified at the May 31st evidentiary hearing. *May 31st Transcript*, at 90, lines 20-21.

II. Summary of Argument

PPL acted unreasonably in revealing Ultimate's account information to an entity that did not possess the password to that account.

PPL violated its own policy by revealing Ultimate's usage information to an entity without written authorization from Ultimate.

PPL canceled a commercial customer's planned termination of service because a commercial tenant of that customer contacted PPL. To justify this action, PPL relied in part on protections afforded to residential customers in regard to termination of service. This reliance was misplaced and entirely inapplicable, and PPL should have declined to take any action as a result of the contact.

PPL acted unreasonably by entering into a payment arrangement with a commercial tenant of a commercial customer. The commercial customer did not grant the commercial tenant access to its password-protected account, nor did the commercial customer provide PPL with written permission to share usage data with the commercial tenant.

III. Argument

This proceeding involves a series of disputes between Ultimate and PPL, a Commission-certificated operating public utility that provides service to various classes of customers in designated service territories within Pennsylvania.

The OSBA's focus is on the actions taken by PPL in 2015, how those actions were harmful to one small business, and how those actions can be addressed in the future. Small businesses across the Commonwealth could be materially impacted if other public utilities act in the manner that PPL did in 2015.

A. Breaching Password-Protected Accounts

On September 1, 2016, PPL witness Dennis Worthington was deposed in a civil action that was before the Court of Common Pleas in Lancaster County, Pennsylvania.¹ Mr. Worthington, in his sworn deposition ("*Worthington Deposition*"), testified about the 2015 events at issue in this proceeding.²

Mr. Worthington testified that on June 15, 2015, Richard A. McGrath, the owner of Ultimate, requested that Ultimate's commercial customer account be password protected. *Worthington Deposition*, at page 134, line 17, through page 136, line 2.³ Specifically, Mr. Worthington testified, as follows:

Q. Do you see after that where it says, this is contact fr. From; is that correct, 06/15/15, per Richard McGrath? It says Magraph, but it means - - I think she means to say McGrath.

A. I agree. Uh-huh.

Q. Request, dot, dot, dot owner?

¹ *Custom Fab, Inc. v. Richard A. McGrath*, Docket No. CI-14-04444.

² A copy of Mr. Worthington's sworn deposition is attached to OSBA Statement No. 1 as Exhibit OSBA-2.

³ The pagination refers to the page numbers embedded in the original transcript.

A. I see that.

Q. What does that mean to you, if anything?

A. Well, I would have to look back to 06/15/15 to see if a prior request was made. That's what it would suggest to me. And I do see that under a special situation.

Q. And where are you looking?

A. 06/15/15 -- the next page, 2015/06/15 it says, special situation. Do you see that?

Q. I do.

A. Cust required, req, password on account of -- we'll leave that blank --

Q. Sure

A. -- for any transactions of account.

* * *

Q. So from June 15th, 2015, forward, information on this account should only have been shared with individuals who had the password for this account; is that correct?

A. That's what that means. Yes.

Worthington Deposition, at 134-136.

PPL's "Disclosure of Customer Information Policy" states, as follows:

Customers may request information about their own accounts. In these cases, no authorization letter is required and there is no charge. The information will be mailed to the customer's current billing address.

For PPL to release usage information to anyone other than the customer, written consent is required.

OSBA Statement No. 1, Exhibit OSBA-3. There is no record evidence that Ultimate provided PPL its written consent to release Ultimate's usage information.

After confirming that the Ultimate's PPL account had been password protected, Mr. Worthington testified that PPL shared Ultimate's account information with entities other than Ultimate:

Q: Do you know if any information about this account was shared with anyone other than Mr. McGrath from June 15th, 2015 forward?

A. Yes.

Q. Yes, it was, or, yes - -

A. Yes, it was.

Q. And who was it shared with?

A. Counsel for his tenant.

Worthington Deposition, at 136. There is no record evidence that Ultimate provided any other entity with its password to its PPL account.

Mr. Worthington's Rebuttal Testimony in this proceeding confirmed this series of events:

Q: Was the account of Ultimate Sports password protected?

A: Yes, on June 15, 2015, while speaking with a customer service representative Mr. McGrath requested that a password be placed on his account for *any* transaction.

PPL Statement No. 1-R, at 5 (emphasis added). Mr. Worthington also testified, as follows:

Q: What does it mean for an account to be password protected?

A: When an account is password protected, *only* an individual with the correct password can make changes to the account or receive account information.

PPL Statement No. 1-R, at 5 (emphasis added). Furthermore, Mr. Worthington testified:

Q. Did PPL Electric provide Ultimate Sports customer account information to representatives of Custom Fab?

A. Yes.

PPL Statement No. 1-R, at 3.

PPL argued that allowing access to the Ultimate account by other parties caused no harm as no “private information” was revealed, only “customer’s name, address . . . kWh usage and demand, charges, and payment amounts.” PPL Statement No. 1-R, at 6. The OSBA respectfully submits that PPL’s argument does not justify the Company’s actions. First, PPL’s rebuttal testimony, set forth above, states that the Ultimate account was password protected for *any* transaction. PPL should have revealed nothing to anyone other than Ultimate. Second, PPL’s own policy, also set forth above, states that written consent of Ultimate is required for PPL to release usage information. Thus, PPL was in clear violation of its own policy. Third, as the Commission knows, regulated utilities are extremely cautious about revealing any customer-specific billing information to third parties. Simply providing customer-specific billing information to attorneys or expert witnesses in a regulatory proceeding is subject to detailed, complex, and highly restrictive protective orders or stipulated protective agreements. However, when there is a chance to get paid an outstanding bill, it would appear that PPL’s obligation to maintain confidentiality simply vanishes.

The Commission has enacted various regulations addressing the privacy of customer information. For example:

(5) Safeguarding customer information. A telephone company is responsible for implementing appropriate procedures to safeguard customer information and prevent access to it by unauthorized persons. Tangible customer records such as paper or microfiche records and electromagnetic media shall be stored in secure buildings, rooms and cabinets, as appropriate, to protect them from unauthorized access. Data processing and other electronic systems shall contain safeguards, such as codes and *passwords*, preventing access to customer information by unauthorized persons.

(i) Transmission of customer information. Customer information shall be transmitted in a manner which will reasonably assure that the information will not be disclosed to persons who are not authorized to have access to it.

52 Pa. Code § 63.135 (emphasis added):

Obviously, Section 69.135 applies to telephone companies, not to electric distribution companies. Nevertheless, this regulation demonstrates that the Commission is concerned with the need to safeguard customer information, and that password protecting that information is a viable solution. Furthermore, the Commission has enacted numerous regulations addressing the need for customer privacy. *See, e.g.*, 52 Pa. Code Section 69.1812 (Information and data access); 52 Pa. Code Section 62.78 (Privacy of customer information); 52 Pa. Code Section 54.8 (Privacy of customer information).

Furthermore, anyone connected to the Internet in mid-2018 realizes that account privacy, hacking, doxxing, and phishing are major issues in our modern society.⁴ The OSBA respectfully requests that the Office of Administrative Law Judge and the Commission take judicial notice of the fact that data privacy is a critical issue throughout society. It is not reasonable for *any* Commonwealth public utility to disclose information in a commercial customer's password-protected account to any entity without the correct password.

Therefore, the OSBA respectfully requests that the Commission:

Consider adopting a policy statement addressing customer privacy and password protection on all public utility customer accounts;

Determine that PPL acted unreasonably in revealing Ultimate's account information to a commercial tenant without the correct password; and

⁴ "Phishing" defined: To request confidential information over the internet or by telephone under false pretenses in order to fraudulently obtain credit card numbers, passwords, or other personal data. *American Heritage Dictionary of the English Language*, Fifth Edition, Copyright 2016. "Doxxing" defined: Publishing someone's personal information (including but not limited to their address, phone number, and social security number) online as an act of vengeance. *Farlex Dictionary of Idioms*, Copyright 2015. "Hacking" defined: To use one's skill in computer programming to gain illegal or unauthorized access to a file or network. *American Heritage Dictionary of the English Language*, Fifth Edition, Copyright 2016.

Determine that PPL violated its own policy by revealing Ultimate's usage information to a commercial tenant without written authorization from Ultimate.

B. Termination of Service to a Commercial Customer

Mr. Worthington testified about the events surrounding Ultimate's electric service disconnection, as follows:

Q. Do you have any understanding as to why the power was not shut off if nine bills were unpaid?

A. We [PPL] had initiated the service termination process in late May, 2015.

Worthington Deposition, at 116. Mr. Worthington also testified:

Q. So if you'll look at Page 5 with me, in Tab D, the e-mail on Page 5 appears to be an e-mail from yourself to Mr. McGrath; is that correct?

A. Yes.

Q. You had mentioned it was nice talking to him on that day, which was June 16th, 2015. Was that the first time that you had ever spoken with Mr. McGrath?

A. Based on how I responded, I would say, yes, it was.

Q. Do you remember anything about the conversation?

A. The thing that sticks out with that conversation, those early conversations with Mr. McGrath is that he was insistent that an associated from my office, her name is Brandi, called him and promised - - and, you know, I'm gonna use that word and maybe highlight that word - - you know, he used the word promised that we would turn the service off on June 1st. His concern to me was PPL failed to deliver on its promise.

Worthington Deposition, at 43-44.

However, because PPL heard from the commercial tenant of Ultimate, PPL made the decision to not terminate electric service to Ultimate. Mr. Worthington testified:

A. We had initiated the service termination process in late May, 2015. It was shortly after that time that we were asked to - - I

heard from my counsel that the tenant is willing to pay for service. And because of that, I wanted to facilitate payment rather than shut off service. I made the decision - - the decision to stop the termination process.

Worthington Deposition, at 116. PPL's decision was in direct conflict with the wishes of Ultimate, the PPL account holder. Ultimate had instructed PPL to have electric service terminated as originally planned. Mr. Worthington testified, as follows:

Q. This may sound like a redundant question, but had Mr. McGrath made his wishes and instructions known to you regarding electric supply at the property?

A. Yeah. His interest in - - in this was to have the service shut off.

Worthington Deposition, at 57.

PPL attempted to justify this decision by stating "there are circumstances such as this where termination affects another individual or entity." PPL Statement No. 1-R, at 10. PPL expanded upon this justification, as follows:

I think one of the issues for the Court is there is no obligation when PPL sends out a notice of intent to terminate to actually disconnect the electric service if it find out that there is, in fact, a tenant. Although the rules for residential are not definitely applicable to commercial, do not provide the same safety or fallback to commercial clients, certainly they are to be read at times as guidance.

Prehearing Conference Transcript, at 9.

The Public Utility code specifically addresses termination between a landlord and a tenant, as follows:

General rule. — This subchapter applies to public utilities as defined in paragraph (1)(i) and (ii) of the definition of 'public utility' in section 102 (relating to definitions) and to public utility service rendered by those public utilities if the premises served constitute *residential* buildings as defined in section 1521 (relating to definitions).

66 Pa. Code § 1522(a) (emphasis added). *See also* Sections 1521 – 1533 of the Public Utility Code, 66 Pa. Code §§ 1521 – 1533 (Subchapter B: Discontinuance of Service to Leased Premises).

Therefore, it is irrelevant that PPL learned that Ultimate had a commercial tenant. Ultimate's account with PPL was (and is) as a commercial customer, not as a landlord of a residential building. PPL should not have involved itself with Ultimate's commercial tenant, and should have proceeded with the service termination as PPL originally planned.

Therefore, the OSBA respectfully requests that the Commission:

Reaffirm that the residential leased premises protections, set forth in the Public Utility Code, and the Commission's own Chapter 56 regulations, do not extend to commercial service customers;

Alternatively, if the Commission determines that commercial tenants need consumer protections that would justify a utility's interference in commercial landlord-tenant relations, promulgate regulations that are specific to such circumstances. The OSBA respectfully submits that this approach would prevent utilities from arbitrarily applying certain Chapter 56 regulations (and not others) to commercial customers in order to achieve their economic goals; and

Determine that PPL acted unreasonably by involving itself with Ultimate's commercial tenant and, based upon that interaction, deciding to cancel Ultimate's service termination as PPL originally planned and as instructed by the customer.

C. Paying a Commercial Customer's Bill

PPL, instead of terminating the electric service to Ultimate, entered into a payment arrangement with a commercial tenant of Ultimate:

Q. If you'll look at the line going up the page, 2015/05/29, there's an entry from it looks like a Carolyn K. Granitz again. And at the - - in the last sentence it says, need to pay to avoid cut. No payment since January. What does - - what does avoid cut mean?

A. Cut is essentially slang for service termination.

Q. So when there's the abbreviation - - or the term cut or the abbreviation term in this document, they essentially mean the same thing?

A. Yes.

Q. If - - at the very top of the page, 2016/06/01, the entry says - - and it says, having termination order voided. Working with OGC [PPL's Office of General Counsel] and tenant's attorney, Sam Wiser. The tenant will pay PPL each month the amount of the electric bill to maintain service.

Worthington Deposition, at 25-26. Mr. Worthington also testified, as follows:

Q. When you had made the notation, having termination order voided, working with OGC and tenant's attorney, Sam Wiser, how were you working with the tenant's attorney at that time?

A. At that time, I'm not certain I had any contact with the attorney. My contact was only with PPL's counsel. I received a notification that we are trying to facilitate payment and, as a result, we didn't want service termination to interfere with that.

Worthington Deposition, at 26-27.

Mr. Worthington stated PPL policy on accepting payments from anyone in his Rebuttal

Testimony:

PPL Electric stated it would follow a long standing policy to accept payment on an account, without regard to the identity of payor.

PPL Statement No. 1-R, at 7. Mr. Worthington also testified to the PPL policy, as follows:

As I stated earlier, our intent, our goal is not to shut off service. We don't make money when we do.

Worthington Deposition, at 118.

Respectfully, there are many problems with PPL's "anyone can pay" policy. First, Ultimate had a password-protected account. As set forth above, no other entity should have been able to access any information about that account without the proper password. Thus, a

commercial tenant of Ultimate should not have been able to call PPL, ascertain the amount of the current bill, and then enter into any payment arrangement. PPL should have politely declined to conduct payment negotiations with that commercial tenant, and referred the commercial tenant to Ultimate.

Second, PPL's own policy, as set forth above, only allows the release of usage information with written permission of the account holder. PPL should not have provided any usage information whatsoever to that commercial tenant, in accordance with their own policy. PPL, again, should have refused to provide any usage information to the commercial tenant, and referred the commercial tenant to Ultimate.

Third, this "anyone can pay" policy needs to have some rational, logical, and orderly restrictions on it for collecting payments. The OSBA wants PPL to get paid, but, respectfully, PPL is a Commission-certificated public utility. Commonwealth public utilities need to have just, reasonable, and structured methodologies to accept payments for commercial accounts that protect the privacy of the account holder and do not interfere with commercial contracts.

Therefore, the OSBA respectfully requests that the Commission:

Clarify if, and under what circumstances, a public utility may accept payment for a commercial account from an entity other than the commercial account holder; and

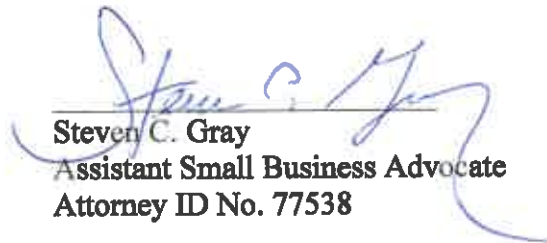
Determine that PPL acted unreasonably by entering into a payment arrangement with Ultimate's commercial tenant, both without written authorization from Ultimate to divulge account information in violation of PPL policy, and by allowing the commercial tenant access to information contained within a password-protected account.

IV. Conclusion

Wherefore, the OSBA respectfully requests that, in light of the actions taken by PPL in 2015, the ALJ and Commission:

1. Clarify if, and under what circumstances, a public utility may accept payment for a commercial account from an entity other than the commercial account holder;
2. Determine that PPL acted unreasonably by entering into a payment arrangement with Ultimate's commercial tenant, both without written authorization from Ultimate to divulge account information in violation of PPL policy, and by allowing the commercial tenant access to information contained within a password-protected account;
3. Reaffirm that the residential leased premises protections, set forth in the Public Utility Code, and the Commission's own Chapter 56 regulations, do not extend to commercial service customers;
4. Alternatively, if the Commission determines that commercial tenants need consumer protections that would justify a utility's interference in commercial landlord-tenant relations, promulgate regulations that are specific to such circumstances;
5. Determine that PPL acted unreasonably by involving itself with Ultimate's commercial tenant and, based upon that interaction, deciding to cancel Ultimate's service termination as PPL originally planned and as instructed by the customer;
6. Clarify if, and under what circumstances, a public utility may accept payment for a commercial account from an entity other than the commercial account holder; and
7. Determine that PPL acted unreasonably by entering into a payment arrangement with Ultimate's commercial tenant, both without written authorization from Ultimate to divulge account information in violation of PPL policy, and by allowing the commercial tenant access to information contained within a password-protected account.

Respectfully submitted,


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

For: John R. Evans
Small Business Advocate

Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101

Dated: July 11, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

v. :

DOCKET NO. C-2017-2633651

PPL ELECTRIC UTILITIES CORPORATION :

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).

The Honorable Elizabeth H. Barnes
Administrative Law Judge
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
ebarnes@pa.gov
(Email and Hand Delivery)

Kimberly G. Krupka, Esquire
Gross McGinley LLP
33 South Seventh Street
PO Box 4060
Allentown PA 18105
kkrupka@grossmcginley.com

Thomas E. Groshens, Esquire
Groshens Law Associates
233 South 24th Street
Philadelphia, PA 19103
TGroshens@cyforelex.com

Richard A. McGrath, President
531 & 539 North Fourth Street
PO Box 286
Denver, PA 17517
ramcgrath@msn.com

DATE: July 11, 2018


Steven C. Gray
Assistant Small Business Advocate
Attorney I.D. No. 77538