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July 11, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

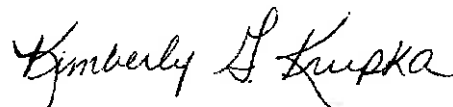
RE: Ultimate Sports Company, Inc. v. PPL Electric Utilities Corporation
Docket No: C-2017-2633651

Dear Ms. Chiavetta:

Enclosed for eFiling in the above-captioned matter are the Proposed Findings of Fact, Conclusions of Law, and Brief of Respondent, PPL Electric Utilities Corporation.

Please note that this filing was eFiled with the Commission on the date indicated above.

Very truly yours,



KIMBERLY G. KRUPKA

KGK/ejm

Enclosure

cc: Administrative Law Judge Elizabeth Barnes (w/enc.); *via email only*
Thomas E. Groshens, Esquire (w/enc.); *via email only*
Steven C. Gray, Esquire (w/enc.); *via email only*
Kimberly R. Hanson (w/enc.) *via email only*
Shelbie Frederick Bayda (w/enc.) *via email only*

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ULTIMATE SPORTS COMPANY, INC.,
Complainant,

vs.

PPL ELECTRIC UTILITIES CORPORATION,
Respondent.

COMPLAINT DOCKET

NO. C-2017-2633651

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND BRIEF OF
RESPONDENT, PPL ELECTRIC UTILITIES CORPORATION**

AND NOW COMES the Respondent, PPL Electric Utilities Corporation (hereinafter “PPL Electric”) by and through its attorneys, Gross McGinley, LLP, offers the following Post-hearing Submission, and states as follows:

I. PROPOSED FINDINGS OF FACT:

1. Complainant, Ultimate Sports Company, Inc., (hereinafter “Complainant” or “Ultimate Sports”) filed a Complaint with the Commission on or about November 14, 2017, alleging (a) PPL Electric was terminating its service, (b) incorrect charges on its bills, (c) PPL Electric refused to honor its request for termination of electric service, and (d) PPL Electric improperly provided ratepayer’s information to a tenant in possession.

2. The Office of Small Business Advocate (hereinafter “OSBA”) filed its notice of Intervention, Public Statement and Verification on November 16, 2017.

3. Respondent, PPL Electric, filed its Answer on December 4, 2017 denying violation of any rules or regulations of the Commission.

4. A hearing in Ultimate Sports’ Complaint was held on May 31, 2018.

5. Ultimate Sports presented the written direct testimony of Richard McGrath (hereinafter “McGrath”), President and Chief Executive of the Company. (N.T. at 39).

6. The dispute between the parties involved the provision of electric service to a 75,000 square-foot manufacturing and warehouse facility in Denver, Pennsylvania owned by Richard McGrath, who is not personally a party to this action. (Written Direct Testimony of Richard A. McGrath 1 at 2).

7. In 2000, McGrath began operating a business manufacturing sports equipment, under the name Ultimate Sports, out of the Denver, Pennsylvania facility. (Written Direct Testimony of Richard A. McGrath 1 at 2).

8. At all times during McGrath's ownership of the facility located in Denver, Pennsylvania, PPL Electric Utilities Corporation (hereinafter "PPL Electric") was the provider of electric service.

9. At all times relevant hereto, the ratepayer of record for the Denver facility was Ultimate Sports. (Written Direct Testimony of Richard A. McGrath 1 at 2-3).

10. On November 26, 2013, McGrath entered into a lease agreement with Custom Fab whereby McGrath leased approximately fifty (50%) percent of the Denver facility to Custom Fab while Ultimate Sports continued to use the remaining portion of the facility. (Written Direct Testimony of Richard A. McGrath 1 at 3). McGrath and Custom Fab thereafter entered into a supplement on December 15, 2015. (N.T. at 43). Copies of the lease agreements were attached to the written Direct Testimony of Richard A. McGrath as Exhibit 1.

11. Despite having two tenants, the Denver facility continued to have only one electric meter, and accordingly only one electric service account with PPL Electric. (Written Direct Testimony of Richard A. McGrath 1 at 3, N.T. at 44).

12. The lease agreement between McGrath and Custom Fab provided a formula for estimating Custom Fab's actual electric consumption, calculated on the 12 month baseline period

before the Lease's effective date (September 2012 through September 2013). Under the Lease, Custom Fab was to pay for its own usage at the end of every electric billing period. (Written Direct Testimony of Richard A. McGrath 1 at 4). Alternatively, the Lease provided Custom Fab with the right to have its premises placed on a separate power meter from the rest of the Property, and shall thereafter pay its own electrical expenses. (Written Direct Testimony of Richard A. McGrath 1 at 5). (See also Exhibit 1 to the written Direct Testimony of Richard A. McGrath).

13. The precise formula for calculation of electric expenses to be paid by Custom Fab, as the tenant, can be found in section 5.2 of the Lease Agreement between McGrath and Custom Fab. (N.T. at 45). Specifically, "Tenant shall pay at the end of every electric billing period an amount equal to the current billable rate for electric generation and transmission charges multiplied by the difference of the current kWh consumed in the period less the kWh consumed during the equivalent period from the baseline year." (N.T. at 47). (See also Exhibit 1 to the written Direct Testimony of Richard A. McGrath).

14. Custom Fab first occupied the leased portions of the Facility and began manufacturing operations in March 2014. (Written Direct Testimony of Richard A. McGrath 1 at 5).

15. McGrath has repeatedly taken the position that while Custom Fab was in possession of the leasehold, Custom Fab was required to pay its portion of the electric bill. (N.T. at 48).

16. McGrath agrees that in order for Custom Fab to know how much of the electric bill to pay, Custom Fab had to know the current consumption of the kW as well as that from the same month from the prior year. (N.T. at 48).

17. On May 29, 2014, Custom Fab filed a lawsuit against McGrath. Neither PPL Electric nor Ultimate Sports were a party to this litigation, and PPL Electric was unaware of the

existence of the litigation at such time. (Written Direct Testimony of Richard A. McGrath 1 at 4, N.T. at 57).

18. In late 2014 and early 2015, McGrath elected to switch electric generation supplies on multiple occasions which resulted in PPL Electric delaying in issuing several bills. (Written Direct Testimony of Richard A. McGrath 1 at 5)

19. PPL Electric resolved the internal error in issuing bills and provided a series of makeup bills in May and June 2015. (McGrath 1 at 5).

20. Due to nonpayment of outstanding bills, on May 22, 2015, PPL Electric issued a Notice of Intent to Terminate Electric on or after June 1, 2015. At such time, PPL Electric had a present intent to terminate in accordance with the information contained within the Notice. (Exhibit 3 to written Direct Testimony of Richard A. McGrath).

21. On May 27, 2015, a PPL Electric representative, Brandi Martzen, contacted McGrath by telephone to provide him with a three day telephone notice of Intent to Terminate Service. (Exhibit 3 to written Direct Testimony of Richard A. McGrath).

22. During the May 27, 2015 telephone call (referenced above), McGrath informed PPL that he had a tenant, Custom Fab, that was responsible for paying the electric charges. (N.T. at 50).

23. After the premises were posted for termination, a representative of Custom Fab contacted PPL Electric raising concerns as to how the termination would affect its business, as a tenant in possession. In addition, a review of the account billings revealed a concern related to the delayed issuance of bills. Specifically, in 2014 the law changed in regard to permitting customers to switch electric suppliers within three (3) business days. The PPL Electric billing system encountered some difficulty with multiply suppliers on an account within thirty (30) days. The

billing issue has since been corrected, but in early 2015 it caused McGrath's account to receive multiple bills in a short period of time. Accordingly, PPL Electric decided not act on the Notice of Intent to Terminate Service. (Written Direct Testimony of Dennis Worthington at 1, N.T. at 80-81).

24. Service to the Denver Facility was not terminated on June 1, 2015.

25. In a telephone call with a PPL Customer Service Representative, Mr. McGrath expressed a concern that PPL Electric did not act on the Notice of Intent to Terminate, and the issue was brought to the attention of Dennis Worthington, PPL Electric Regulatory Compliance Specialist. (Written Direct Testimony of Dennis Worthington at 3).

26. During June 2015, a representative of Custom Fab contacted PPL Electric, expressed its desire to maintain electric service and offered to make payment on the account servicing the Denver Facility in order to maintain service.

27. Throughout the summer of 2015, Dennis Worthington continued to hold discussions, via telephone and e-mail, with McGrath regarding the provision of electric service to the Denver facility and billing for the same. (Written Direct Testimony of Dennis Worthington at 3).

28. As part of the ongoing discussions, Worthington advised McGrath that if Ultimate Sports were to install a second meter, each tenant could be billed directly for its own usage. Worthington further advised Mr. McGrath that PPL Electric was willing to have someone within its service department contact him to discuss approximate costs associated with installation of a second meter. Mr. McGrath declined to speak with anyone to initiate the process to separate the service. (Written Direct Testimony of Dennis Worthington at 3).

29. While Worthington was communicating with McGrath, legal counsel for Custom Fab contacted Worthington to advise that any termination of electric service would cause a severe hardship to its business, and offered to make payment on the account. It was Mr. Worthington's understanding from speaking with both Mr. McGrath and counsel for Custom Fab that Custom Fab was a tenant in possession under a lease agreement, and that no safety issues prevents the provision of electricity to the building. (Written Direct Testimony of Dennis Worthington at 3-4).

30. On June 19, 2015, McGrath requested that service to the facility be terminated. However, upon learning that if post termination Custom Fab contacted PPL Electric to establish service in its name at the facility, PPL Electric would honor such request, Mr. McGrath directed that PPL Electric not terminate service as he would not consent to losing control over the account. (Written Direct Testimony of Dennis Worthington at 4).

31. Specifically, on June 19, 2015 McGrath sent an e-mail to Worthington stating, "Once again I ask that the electricity be immediately turned off but only with the understanding that the major (sic) involved, owned by PPL of course, and the base that is owned by Ultimate Sports remain in their current ownership position and the tenant be required to finally install his own meter despite his 18 months of pretending that we have not allowed him to do so. . . . One way or another we expect that we will not be billed for the electricity use beginning June 1 but we will not agree to shutting off only some of the electricity passing through that meter." (N.T. at 51). (See also Exhibit 4 to written Direct Testimony of Richard A. McGrath).

32. In an e-mail dated June 26, 2015, McGrath advised Worthington that Custom Fab was responsible for paying the portion of the electric bill attributed to Custom Fab's use. (See also Exhibit B to written Direct Testimony of Dennis Worthington).

33. Ultimate Sports notified PPL Electric of its refusal to pay the outstanding electric bill but also refused to relinquish control of the account which would enable the tenant to connect in its name. Neither McGrath or Ultimate Sports ever requested an unqualified termination of service. (Written Direct Testimony of Dennis Worthington at 10).

34. McGrath wanted service terminated to the premises but only if the tenant in possession, Custom Fab, could not place service in its name. McGrath did not want Custom Fab to have electrical service, even if Custom Fab placed the account into its own name and assumed the obligation for payment. (N.T. at 53).

35. In the Summer of 2015, PPL Electric, through its representative Worthington, had several communications with Counsel for Custom Fab to advise them of the outstanding balance on the account providing electricity to their leasehold. The provision of the information was limited to the name and billing address of the ratepayer (which was already known the Custom Fab), the account number, the number of kwh used, demand, current charges and outstanding balance. The only information provided to Custom Fab was information necessary for Custom Fab to make payment and ensure the continued supply of electricity to its business. (Written Direct Testimony of Dennis Worthington at 6-7).

36. On June 15, 2015, while speaking with a customer service representative Mr. McGrath requested that a password be placed on his account for any transactions. This request was made to the Customer Service Representative on a date after PPL Electric Regulatory Specialist Worthington had already been working with Mr. McGrath and a representative of Custom Fab. Mr. McGrath never advised Worthington of this request during their interactions in June or July 2015. (Written Direct Testimony of Dennis Worthington at 6-7).

37. The information provided by PPL Electric to Custom Fab was limited to the customer's name, address (which is available through Google and already known to Custom Fab), kwh usage and demand, charges, and payment amounts. No information was provided as to Ultimate Sports' EIN or any information concerning Complainant's financial institutions. No information was provided that would enable any individual to engage in identify theft; which is believed to be the underlying issues in data privacy breaches. (Written Direct Testimony of Dennis Worthington at 6-7).

38. In August 2015, Custom Fab was acquired by U.S. Pipe Fabrication, LLC (hereinafter "U.S. Pipe). (Written Direct Testimony of Richard A. McGrath 1 at 5).

39. In December 2015, U.S. Pipe notified McGrath of its intent to vacate the Denver Facility as of March 1, 2016. (Written Direct Testimony of Richard A. McGrath 1 at 5).

40. McGrath, U.S. Pipe and Custom Fab reached a global settlement agreement in November 2016. Neither Ultimate Sports nor PPL Electric were a party to the litigation. (Written Direct Testimony of Richard A. McGrath 1 at 5).

41. PPL Electric followed a long standing policy to accept payment on an account, without regard to the identity of payor. This policy is for the benefit of all ratepayers. (Written Direct Testimony of Dennis Worthington at 7).

42. PPL Electric provided credible evidence that the situation presented was unique. PPL Electric could not identify any other time it encountered a ratepayer who stated an intent not to pay but likewise prohibited PPL Electric from placing the account in the name of the tenant in possession; thereby using electricity as a mechanism for constructive eviction. (Written Direct Testimony of Dennis Worthington at 8).

43. Custom Fab was a tenant in possession of the premises pursuant to an existing lease, and that there were no safety issues on the property which would prevent service. (Written Direct Testimony of Dennis Worthington at 8).

44. PPL Electric worked diligently to find a resolution of all issues with the Complainant and the OSBA, attempting to balance the rights of use users and not interject itself into a legal dispute over terms of a lease to which it was not a party.

45. Ultimately, Custom Fab paid for all electric services rendered to it. Custom Fab issued payments to PPL Electric on October 19, 2015 in the amount of \$17,260.92 and then again on April 16, 2016 in the amount of \$44,134.57. Accordingly, it was Custom Fab who paid for all electric service rendered between December 24, 2014 and February 24, 2016. (Written Direct Testimony of Dennis Worthington at 10).

46. At no time did McGrath make an unqualified request to terminate electric service. Had such request been made, PPL Electric would have stopped the billing in McGrath's name and would have permitted Custom Fab, as a tenant in possession, to place the account in its name. However, McGrath advised that he would not relinquish his control as the ratepayer. (N.T. at 82-83).

47. Had PPL Electric terminated service in June 2015 and refused to permit Custom Fab, a tenant in possession of property for which no safety issues precluded the provision of electrical service, PPL Electric would have aided McGrath in a constructive eviction of a tenant.

48. At no time was Custom Fab provided with any private information concerning Ultimate Sports such as social security numbers, EIN numbers, or banking information. (Written Direct Testimony of Dennis Worthington at 6).

49. PPL Electric sought to provide reliable and safe electricity to those individuals and entities who requested service. Absent very unusual circumstances, PPL Electric terminates service upon request of a customer. However, there are circumstances such as this where termination affects another individual or entity. When that affected individual or entity seeks service, is willing to pay for service, is in possession of the premises, and no safety issues prevent PPL from providing safe service, PPL Electric reviews each individual case to attempt to honor and respect the requests of all parties. When such cannot occur, PPL Electric provides electricity so as to ensure the least damage to any individual or entity.

II. DISCUSSION:

PPL Electric has been the supplier of electric service to a 75,000 square-foot manufacturing and warehouse facility in Denver, Pennsylvania owned by Richard McGrath since at least February 2000. Although the facility is owned by Richard McGrath, the premises were occupied (at least in part) by Ultimate Sports and the ratepayer of record has consistently been Ultimate Sports.¹ When payments fell behind, PPL Electric issued a Notice of Intent to Terminate Service dated May 22, 2015. Several days later on May 27, 2015, PPL Electric, through its customer service representative, Brandi Martzen, contacted Ultimate Sports to notify it that the electric service to the business was at risk for service termination. At that time, although the electric service account was in the name of Ultimate Sports, the facility was co-occupied by a second tenant, Custom Fab. Ultimate Sports, through its owner Richard McGrath, informed PPL Electric during the May 27 telephone call that Custom Fab was responsible for payment of the electrical bill pursuant to a lease agreement with the Company.

¹ As Mr. McGrath was the President of Ultimate Sports, any communications with PPL Electric on behalf of Ultimate Sports were with Richard McGrath.

After the premises were posted for termination, a representative of the facility's tenant Custom Fab contacted PPL Electric raising concerns as to how the termination would affect its business, as a tenant in possession. During the same time period, PPL Electric determined that due to multiple supplier issues within a thirty day period, PPL Electric had delayed in issuing bills in the early months of 2015 and then issued multiple bills within a short period of time. Accordingly due to the billing issues and the concerns of the tenant in possession losing power, PPL Electric decided not act on the Notice of Intent to Terminate Service

Shortly after the proposed service termination date, in a telephone call with the PPL Customer Service Representative, Mr. McGrath expressed a concern that PPL Electric did not act on its notice, and PPL Electric's regulatory specialist, Dennis Worthington became personally involved in the account. Mr. Worthington and Mr. McGrath began communications via telephone and e-mail.

In June 2015, PPL Electric was likewise contacted by Custom Fab and advised that any termination would cause business interruption. Custom Fab also indicated a desire to make payment on the account in order to maintain service. Custom Fab was agreeable to placing service in its name. However, Ultimate Sports refused to relinquish control of the account as ratepayer. Ultimate Sports directed PPL Electric not to remove the account from its name if PPL Electric would thereafter permit its tenant to open an account. PPL Electric attempted to work with both parties to reach a resolution which protected the rights of each party.

Ultimate Sports attempted to use electrical service, or denial of the same, to its tenant as a mechanism to achieve superior bargaining power in a commercial lease disagreement, or alternatively to effectuate a constructive eviction. Ultimate Sports had been the ratepayer of record since at least 2000 for the Denver facility and repeatedly refused to relinquish control of the

account. While Ultimate Sports claims to have requested a disconnect of service, such request was qualified. Ultimate Sports requested disconnection of electrical service only if PPL Electric would agree not to honor any request of Custom Fab, the tenant in possession of the property, to connect. Further, Ultimate Sports repeatedly notified PPL Electric that the obligation of payment rested with Custom Fab. Accordingly, PPL Electric was required to balance the relative hardships of both tenants of the property. Had PPL Electric acquiesced to the request of Ultimate Sports, PPL Electric would have denied service to a tenant in possession causing potential irreparable harm to the business (Custom Fab). To elect to continue to provide electric service in such situation is not only *not unreasonable*, but is in fact the only reasonable action to take. There was no duty on the part of PPL Electric to terminate power when (1) a tenant in possession wanted to maintain service, (2) the landlord refused to relinquish control of the electric service account, and (3) no safety concerns existed which prevented the provision of safe and reliable service.

Ultimate Sports further complains that PPL Electric violated its rights by providing billing information to Custom Fab. However, Ultimate Sports fails to come to the Commission with clean hands. The following facts cannot be overlooked: 1) Ultimate Sports, through its President Richard McGrath, informed PPL Representatives Brandi Martzen and Dennis Worthington, that Custom Fab was obligated to pay the electrical bills, (b) the information provided by PPL Electric did not contain any personally identifiable information which would lead to any security (identify fraud) risk to Ultimate Sports, and (c) in order for Custom Fab to calculate its obligation for electrical charges under the lease, Custom Fab was entitled to the information provided by PPL Electric. This was not the case in which PPL Electric provided billing information to a disinterested third party. *Rather, the usage and billing information was provided to an entity using the electric and whom Ultimate Sports itself advised was responsible for payment of the bill.*

Finally, Ultimate Sports and OSBA both admit there are no laws, statutes, rules or regulations which prohibited the provision of information to Custom Fab. Accordingly, the provision of limited information to Custom Fab to enable Custom Fab to make payment on the electric account in order to maintain service was not unreasonable.

III. PROPOSED CONCLUSIONS OF LAW:

1. The Commission has jurisdiction over the parties and the subject matter pursuant to 66 Pa.C.S. §701.
2. The Complainant, Ultimate Sports, has the burden of proof. 66 Pa. C.S. § 332(a).
3. No statutes or regulations prohibit a Public Utility providing a tenant in possession of a leasehold with information necessary to maintain service.
4. PPL Electric acted reasonably in the provision of electrical service to those in possession of the Denver facility.
5. Complainant failed to meet its burden of proving Respondent violated the Public Utility Code, a Commission Regulation, or a Commission Order. 66 Pa.C.S. 332(a).

IV. PROPOSED ORDER:

THEREFORE,

IT IS ORDERED

1. That the Complaint of Ultimate Sports is DENIED.

GROSS MCGINLEY, LLP



BY: _____

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DATE: 7/11/18

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ULTIMATE SPORTS COMPANY, INC.,
Complainant,

vs.

PPL ELECTRIC UTILITIES CORPORATION,
Respondent.

COMPLAINT DOCKET

NO. C-2017-2633651

CERTIFICATE OF SERVICE

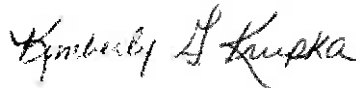
This is to certify that the PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND BRIEF OF RESPONDENT, PPL ELECTRIC UTILITIES CORPORATION was emailed to counsel/complainant of record on behalf of Respondents by Email, on this the 11th day of July, 2018.

The Honorable Elizabeth Barnes
Administrative Law Judge
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