

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ULTIMATE SPORTS COMPANY, INC.,	:	
	:	PUC Docket No.
<i>Complainant,</i>	:	C-2017-2633651
v.	:	
PPL ELECTRIC UTILITIES	:	
CORPORATION,	:	
	:	
<i>Respondent,</i>	:	
&	:	
OFFICE OF SMALL BUSINESS	:	
ADVOCATE,	:	
	:	
<i>Intervenor.</i>	:	

ULTIMATE SPORTS COMPANY, INC'S MAIN BRIEF

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Dated: July 11, 2018

Statement of the Case

In February 2000, Richard McGrath purchased a 75,000 square-foot manufacturing and warehouse facility in Denver, Pennsylvania. Later that year he relocated his sports equipment and apparel business, operating as Ultimate Sports Company, Inc., to his Denver facility (the “Facility”). [Direct Testimony of Richard A. McGrath (“McGrath Direct”) at 2:20 to 2:23].

At the time of McGrath’s purchase, the business then operating in the Facility obtained electric services from PPL, and following his purchase, McGrath continued to rely on PPL for electric utility service. Since his purchase through today, the Facility’s PPL account has been in Ultimate’s name, and PPL’s monthly bills have been in the name of and addressed to “Ultimate Sports Co.” [McGrath Direct at 2:24 to 3:02].

The “Custom Fab” Lease

In August 2013, McGrath suffered a serious and temporarily incapacitating stroke. Approximately a month later, a local real estate broker introduced McGrath to a potential manufacturing tenant for the Facility operating as “Custom Fab.” Under a lease agreement dated November 26, 2013 (and a December 15, 2013 amendment) (the “Lease”), Custom Fab obtained a five-year tenancy for slightly over 50% of the Facility’s total commercially-viable space. [McGrath Direct at 3:14 to 3:20 (citing Exh. “1” (Lease Agreement), ¶ 5.2, at p. 6)].

***The Lease required Custom Fab
to pay for its own electric usage***

Given Custom Fab’s intent to fabricate and coat large-scale commercial piping systems — a high electricity consuming operation — the Lease required Custom Fab to separately pay for its own for its own electric usage. But the space it was occupying was not separately metered, so the Lease 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 electrical billing period.” [McGrath Direct at 2:20 to 2:23]. (citing Exh. “1” at ¶ 5.2)].

In the alternative to this monthly utility payment to McGrath, the Lease provided Custom Fab “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.” *Id.* If electing that option, Custom Fab would bear the sole expense of installing the separate meter and, following installation of a separate meter, the parties contemplated that PPL would bill Custom Fab separately. Despite McGrath’s express urging, Custom Fab declined to pursue this separate meter alternative. [McGrath Direct at 4:08 to 4:15].

Custom Fab Sues McGrath and McGrath Counterclaims

In early March 2014, Custom Fab occupied its leased portions of the Facility and began manufacturing operations. From the outset, Custom Fab began renovations unauthorized by the Lease, damaged the Facility’s floors, roofs, walls,

and asphalt parking lot, and disrupted Ultimate's business by blocking access areas of the Facility essential to its operations. [McGrath Direct at 4:19 to 4:23].

On May 29, 2014, in retaliation for McGrath's complaints about the damage it was causing, Custom Fab sued McGrath in Lancaster County Common Pleas Court, falsely claiming that he was the party breaching the Lease. After Custom Fab began improperly withholding its monthly rent, McGrath filed Counterclaims in Custom Fab's action, challenging the rent withholding and demanding access to the areas that Ultimate required access to. [McGrath Direct at 5:01 to 5:06].

On February 4, 2015, the Court ordered Custom Fab to resume paying the full monthly rent required by the Lease and give Ultimate full access to the areas necessary to its operations. The serious injuries that Custom Fab was inflicting on both the Facility and Ultimate's business nonetheless continued, despite the Judge's Order. One continuing problem for McGrath was Custom Fab's failure to pay its share of PPL's monthly electric charges. [McGrath Direct at 5:07 to 5:12].

In August 2015, Custom Fab was acquired by an apparently related company (U.S. Pipe Fabrication) and in December 2015, the new owner informed McGrath the company intended to vacate the Facility by March 1, 2016, which was more than two years before the five-year lease term expired. In response, McGrath sued U.S. Pipe/Custom Fab in federal court in Philadelphia, and the defendants filed counterclaims, again raising spurious allegations that McGrath was improperly interfering with their business operations. [McGrath Direct at 5:13 to 5:19].

Both the Lancaster County and federal court actions dragged on until November 2016, when McGrath reached a global settlement with U.S. Pipe and Custom Fab. In both cases, McGrath was represented by the law firm of Fox Rothschild, which ended up costing him approximately \$115,000 in legal fees alone. [McGrath Direct at 5:20 to 6:02].

PPL's Billing Errors and Omissions

Beginning in January 2015, PPL failed to send Ultimate monthly invoices. In fact, Ultimate didn't receive PPL bills from February 2015 until June, when PPL sent a series of highly-confusing invoices, combining multiple months into single invoices, some of which it canceled and reissued, and some of which McGrath found inaccurate. [McGrath Direct at 6:07 to 6:12 (citing Exh. "2" (PPL "Account Activity Statement") at pp. 2-3)].

According to PPL's head of Regulatory Compliance, Dennis Worthington, these billing delays and mistakes resulted from the failure of PPL's computerized accounting system to properly handle McGrath's decision (in December 2014), to obtain electric generation services from an alternative provider, Direct Energy Business. [May 31, 2018 Hearing Transcript at 80:11 to 81:05 ("When we had more than one [EGS change within a 30-day period], it did trip up the system at the time. The issue has since been corrected.")] PPL's billing delays and problems were exacerbated by the malfunction of the Facility's electric meter. According to PPL's customer Account Contact History, the meter simply "stopped communicating in

March.” [Exh. “3” (PPL Account Contact History, 2015-04-23 “Change Meter” entry) at p. 8].

***PPL ignores McGrath’s instructions to
discontinue electric service to the Facility***

On May 27, 2015, a PPL customer service representative (Brandi Martzen) warned McGrath that unless the outstanding invoices were paid immediately, PPL would shut off the Facility’s electric service, by as early as June 1, 2015. [McGrath Direct at 7:07 to 7:10 (citing Exh. “3” (2015-05-27 “Credit-Outbound Call” entry) at p. 8)].

In addition to pointing out the billing confusion caused by PPL, McGrath replied that the bulk of any amounts owed to PPL were owed by Custom Fab, which was not paying him for its portion of the Facility’s monthly electric usage. Advising the PPL representative that he would not pay for Custom Fab’s electric usage, McGrath instructed the PPL representative to discontinue the Facility’s electric service. PPL nonetheless ignored that express instruction and continued to provide the Facility with electricity. [McGrath Direct at 7:11 to 7:17].

In fact, Worthington had been investigating the status of Ultimate’s account since no later than May 8, 2015, when, in response to a PPL paralegal’s inquiry, Worthington advised the paralegal that the service termination process would most likely begin the following week. [May 31, 2018 Transcript at 79:07 to 79:15 (Worthington Cross-Examination); Complainant’s Cross-Exhibit No. “1” (attached hereto as Exh. “15”)].

On June 15, 2015, McGrath complained to a PPL customer service representative (Cynthia Delp) that his prior instructions to discontinue the Facility's electric service had been ignored, and McGrath demanded that PPL shut service off that very day. [McGrath Direct at 7:18 to 7:22 (citing Exh. "3" (2016-06-15 Service entry) at p. 7)]. PPL again ignored those instructions, and the Facility's electric power remained on. *Id.*

On June 19, 2015, McGrath emailed PPL's head of regulatory compliance in Pennsylvania, Dennis Worthington, and again complained about PPL's failure to follow his instruction in late May to discontinue the Facility's electric service:

Brandy [the PPL CSR] telephoned me to inform me that our electricity at 531 N. 4th St. would be turned off on June 1 due to a past due amount on our invoice. I listened carefully to her promise and ***responded that she do so [discontinue service] without fail*** because most of my electric use was going to a tenant on my meter who was refusing to pay their fair share promptly and has a history of taking deductions in excess of their rent in excess of what would be allowed by the lease.

[McGrath Direct at 7:23 to 7:11 (citing Exh. "4" (06-19-15 email) at p. 2 (emphasis added))].

McGrath emphasized to Worthington that he did not intend to pay for Custom Fab's electric consumption. To remove any possibility that PPL had somehow misunderstood his instructions, McGrath reiterated to Worthington his unambiguous directive that PPL "immediately" turn off the Facility's electricity. [McGrath Direct at 7:13 to 7:16].

After PPL failed again to comply with McGrath's service instructions, and while continuing to provide the Facility with full power, PPL sought payment for the outstanding invoices directly from Custom Fab — without obtaining McGrath's consent or even advising him of these improper communications and collection efforts. [Worthington Rebuttal Testimony at 8:01 to 8:19 (PPL "determined it would be fundamentally unfair to ... "terminate service to a [commercial] tenant despite an offer to render payment.")].

***McGrath instructs PPL to install a password to protect
Ultimate's Confidential Account Information***

In late May or early June 2015, McGrath began suspecting that PPL was disclosing Ultimate's confidential account, billing, and electric usage information to Custom Fab. Accordingly, on June 15, 2015, McGrath contacted a PPL customer service representative (Aida Castro) to make clear that PPL must reject any third-party request for Ultimate's account information without his express authorization. [McGrath Direct at 8:32 to 9:04 (citing Exh. "3" (2015-06-15 "Special Situation" entry) at p. 7)].

To ensure the confidentiality McGrath requested, on June 15, 2015, PPL installed a password he selected (which included his dog's name). Unless the party requesting account information (or attempting to perform a transaction, such as a bill payment) provided the password, PPL could not disclose Ultimate's confidential account information or authorize any account transaction (e.g. accept payment for a PPL invoice). [McGrath Direct at 9:10 to 9:16 (citing Exh. "3" (2015-06-15 "Special Situation" entry) at p. 7 ("cust req password on acct"))].

Despite password protection and without McGrath's authorization, PPL and Worthington disclose Ultimate's account information to Custom Fab

Following June 15, 2015, PPL ignored the password requirement and, on multiple occasions in the following months, provided Custom Fab with Ultimate's confidential account information. And on October 19, 2015, PPL accepted a \$17,260.92 payment from Custom Fab for PPL's outstanding invoices. [McGrath Direct at 9:22 to 9:26 (citing Exh. "2" ("0/19/2015 Payment") at p. 4)].

By way of example of PPL's improper disclosures, on August 4, 2015, PPL's Dennis Worthington sent an email to Custom Fab's lawyers at the Salzmann Hughes law firm, attaching a PPL billing statement disclosing the Facility's monthly electric usage and PPL's monthly charges going back to January 2015. [Exh. "5" (8-04-15) at pp. 1-2)].

McGrath never authorized PPL's disclosure of this confidential account information to Custom Fab, at the time his adversary in protracted litigation, nor did McGrath even know about Worthington's email until it was turned over by Custom Fab in his federal lawsuit. [McGrath Direct at 10:06 to 10:09].

On August 26, 2015, Worthington again emailed Custom Fab's attorneys, this time attaching his own custom spreadsheet "which breaks out the charges you (a Custom Fab attorney) and I (Worthington) were discussing yesterday." The spreadsheet Worthington disclosed to Custom Fab's lawyers included Ultimate's detailed usage and billing information for the billing periods extending from

December 31, 2014, through July 23, 2015. [Exh. “6” (08-26-15 email and spreadsheet) at pp. 1-2].

Again, McGrath never authorized Worthington’s disclosure of this confidential, password-protected account information. Given that Worthington failed to copy McGrath on this email, the Court should conclude that Worthington deliberately intended to conceal from McGrath that PPL was sharing Ultimate’s confidential account information with a tenant of the Facility who was suing McGrath. [McGrath Direct at 10:17 to 10:20].

On September 1, 2015, Custom Fab’s lead attorney Samuel E. Wiser, Jr. wrote McGrath directly, admitting that “[s]ince April 2015, the undersigned (Wiser) has worked closely with PPL, both its legal counsel and service representatives, to obtain accurate monthly service period usage and charges information.” [McGrath Direct at 11:05 to 10:11 (quoting Exh. “7” (09-01-15 letter from SEW to RAM), at p. 2)].

Providing additional detail, Wiser informed McGrath: “Our most recent conversation with PPL’s service representative was yesterday, August 27, 2015. We believe that we have obtained almost all necessary information to permit Custom Fab to accurately calculate its payment responsibilities for electric service.” [McGrath Direct at 11:10 to 11:14 (quoting Exh. “7” at p. 3)].

On receipt of attorney Wiser’s letter, McGrath immediately emailed Worthington, objecting to PPL’s now-confirmed, unauthorized communications with and disclosures of Ultimate’s confidential account information to Custom Fab.

McGrath also asked Worthington for the details of whatever deal PPL had orchestrated with Custom Fab, which McGrath then knew nothing about:

I understand that you want separate metering as do I but I think that until we receive it you should be dealing with me alone and not going behind my back with a secret arrangement with my tenant. I would like a reply ... ASAP and I wish to know all the details of your relationship with my tenant.

[McGrath Direct at 11:15 to 11:28 (quoting Exh. “8” (09-01-15 RAM email) at p. 1)].

Within hours Worthington responded to McGrath’s request for “the details.” Although purporting to deny “any secret arrangement with your tenant, Custom Fab and PPL,” Worthington nonetheless admitted to McGrath, as Wisner had, that PPL was revealing Ultimate’s account activity without McGrath’s authorization.

Worthington then explained PPL’s motive for these disclosures:

PPL’s only concern in this matter is that the outstanding electric bill for your building gets paid.
It does not concern PPL whether you pay, or your tenant pays. Likewise, the dispute you are having with your tenant is for the two of you to resolve. When Custom Fab contacted me through its attorney and indicated that it was interested in pay the outstanding bill, ***I provided information to facilitate payment. ... I want to reiterate, my only concern is that the bills get paid.***

[McGrath Direct at 12:01 to 12:17 (quoting Exh. “9” (09-01-15 DW email reply) at p. 1 (emphasis added))].

Through discovery and Worthington’s deposition in the Custom Fab, McGrath learned that on October 19, 2015, without his authorization, knowledge, or consent, PPL accepted Custom Fab’s \$17,226.92 payment for PPL’s then

outstanding invoices to Ultimate – no password required. [McGrath Direct at 12:22 to 12:26 (citing Exh. “2” at p. 4)].

Through the Custom Fab litigation McGrath also learned that PPL’s unauthorized disclosure of Ultimate’s confidential account information had continued, unabated, through at least early April 2016, when Custom Fab/U.S. Pipe breached the Lease and vacated the Facility. PPL’s billing errors and omissions likewise continued. [McGrath Direct at 13:05 to 13:09].

For example, a December 14, 2015 email from attorney Wiser to Worthington makes clear that he and Worthington had been engaged in ongoing communications and discussions: “Dennis, one more thing I wanted to get from you before we talk tomorrow. Custom Fab has been paying the electric bills it has received from PPL. They are attached. Are these bills solely for the new service?” [McGrath Direct 13:10 to 13:16 (citing Exh. “10” (12-14-15 email from SEW to DW) at p. 1)]. Apparently, PPL’s billing practices were now confusing even Custom Fab.

On December 11, 2015, McGrath emailed Worthington, asking why he had failed to respond to McGrath’s email sent over a week before, and asking for the details of what was transpiring between PPL and Custom Fab:

I am hoping to get a response from someone as to why my company is not being billed monthly, why and when our chosen electric supplier removed themselves, and who has taken their place. I feel that since the building belongs to me and not the tenant who is obviously attempting to disrupt our utility relationships, ***I am entitled to full disclosure as regards what is happening. No one that I have spoken to has ever heard of the rule that my request to cut off power, made in the spring,***

could not be carried out because there was a tenant, especially one refusing to pay their electric bill.

[McGrath Direct at 31:21 to 14:06 (citing Exh. “11” (12-11-15 email from RAM to DW) (emphasis added)].

Three days later Worthington responded, claiming that he had always been “straightforward” with McGrath, but again making clear that PPL’s “only concern in this matter is that the outstanding electric bill for your building gets paid. It does not concern PPL Electric whether you pay, or your tenant pays.” [McGrath Direct at 14:08 to 14:12 (citing Exh. “12” (RAM-DW email exchanges) at p. 3)].

PPL’s unauthorized disclosure of Ultimate’s confidential account information and its improper transaction with Custom Fab caused serious financial harm to both McGrath and Ultimate

As McGrath’s unrebutted, direct testimony established, if PPL had complied with McGrath’s instructions and discontinued electric service to the Facility in early June 2015, Custom Fab would have had no option but to negotiate with McGrath in good faith and the two lawsuits would have quickly resolved. In fact, when PPL shut off power in early March 2016, to restore power Custom Fab immediately paid invoices totaling \$44,104.57. [McGrath Direct at 14:19 to 14:24 (citing Exh. “3” (03/16/2016 Payment) at p. 4)].

Because PPL ignored McGrath’s instructions, the two lawsuits continued for another 18 months, during which the injuries Custom Fab inflicted on both the Facility and Ultimate’s business were compounded. [McGrath Direct at 14:25 to 14:27].

Summary of the Argument

In Pennsylvania and throughout the nation, information privacy laws forbid public utilities from disclosing to third parties account and billing information without the customer's express authorization. Relatedly, utilities must implement proper service instructions received from their customers. The testimony and evidence presented at the May 31, 2018 Final Hearing demonstrate that PPL willfully and deliberately breached those duties owed to its commercial customer, Ultimate Sports Company, Inc.

Unless sanctioned, PPL's conduct will suggest to other Pennsylvania utilities that the information privacy rights of small business and commercial customers are beyond the Commission's jurisdiction or concern.

Statement of Questions Involved

To dispel any such misapprehension, the Commission and the Court should resolve two discrete issues in Ultimate's favor:

- If a commercial customer instructs a utility that its usage and billing information may not be disclosed to any third party without the customer's express authorization, and where the account information is password-protected, does the Code permit a utility to ignore that instruction solely to facilitate obtaining payment from the commercial customer's tenant?
- Does the Code permit a utility to ignore a small business owner's instruction to discontinue electric service to his property, to continue providing electricity despite the commercial customer's complaints, and to then seek and accept utility payments from the customer's tenant?

Argument

As demonstrated by Mr. Worthington's written Rebuttal testimony and his testimony at the Final Hearing, PPL unquestionably concedes that on multiple

occasions, PPL disclosed to Ultimate's tenant Ultimate's confidential and password-protected billing, usage, payment, and account information. As explained below, none of the several justifications which Worthington offers for these admitted disclosures, some plainly inconsistent, possess any legal foundation or support:

1. Contrary to Worthington's belief, the reasons for protecting utility customer data go far beyond preventing identity theft, and the scope of protected customer data goes far beyond Social Security or EIN numbers

Foremost, according to PPL's chief of "Regulatory Compliance," "[n]o information was provided [by PPL to Custom Fab] that would enable any individual to *engage in identity theft, which is believed to be the underlying issues [sic] in data privacy breaches.*" [Worthington Rebuttal at 6:10 to 6:11 (emphasis added)]. Confirming that world-view of privacy law, in his live testimony, Worthington emphasized that PPL had never disclosed to Custom Fab "any Social Security or EIN numbers." [Hearing Transcript at 83:16 to 83:22].

But Pennsylvania's appellate courts and the Commission itself take a broader view of the reasons for protecting a utility customer's informational and data privacy – and those reasons go well beyond "identity theft." For example, in a July 2013 Final Order (limiting EGS access to customer data), the Commission emphasized:

We repeat that the Commission has zero tolerance for violations of customer privacy and confidentiality and that any EGS who obtains a customer account number without authorization from the customer and/or uses or discloses an account number

inappropriately will be held responsible for such. Any breach can result in the imposition of civil penalties and the suspension or revocation of their license per Section 54.42 (relating to License suspension; license revocation).

July 17, 2013 Final Order at p. 39, PUC Docket No. M-2013-2355751 (citing 52 Pa. Code § 54.42) (emphasis added)].

In this same Final Order, the Commission recognized that, from the perspective of a commercial customer, “**usage and billing information** ... can be sensitive for **competitive reasons**.” *Id.* at p. 13 (emphasis added).

The Commonwealth Court has likewise made clear that a utility customer’s privacy rights go beyond Social Security or federal Employer Identification numbers, and indeed extend to the customer’s usage and consumption data. *See, e.g., Mid-Atlantic Power Supply Assoc. v. Pa. Public Util. Comm’n*, 746 A.2d 1196, 1199, 2000 (Pa. Commw. 2000) (affirming PUC Final Order enabling customers “to restrict the release of either their **load data or all information** The forms used for these purposes shall also advise customers that EGS [Suppliers] are required to maintain the confidentiality of **all data** that is provided to them.” (emphasis added). *See also* Cal. Pub. Util. Code § 8380 (“An electrical corporation ... shall not share, disclose, or otherwise make accessible to any third party a customer’s electrical or gas consumption data, except as [required for operations] or upon the consent of the customer.”).

PUC regulations again confirm that an electric utility customer’s private or confidential information encompasses historical billing and usage information,

which is precisely the information that PPL disclosed to Custom Fab here. For example, § 54.8 expressly defines “private customer information” to include a customer’s “historical billing data.” 52 Pa. Code § 54.8(a)(2). Likewise, § 54.43 requires an EGS to “maintain the confidentiality of a consumer’s personal information including ... historic payment information, and provide the right of access by the consumer to his own load and billing information.” 52 Pa. Code § 54.43(d).

Finally, PPL’s own “Disclosure of Customer Information Policy” expressly acknowledges that customer “usage information” is confidential, and must not be disclosed to any third party without the customer’s prior written authorization:

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.

[Exh. “13” (emphasis added)].

In a June 1, 2015 email to Worthington (two weeks before PPL installed the password on Ultimate’s account), a PPL paralegal raised her “concerns” about disclosing customer account information to third parties:

The tenant is interested in paying the bill to avoid termination of service, but I’m not sure how we would manage that since the account is in McGrath’s name. ***Obviously releasing account information to a third party is a concern*** and we don’t want to get in the middle of their dispute, but I also sympathize with the tenant as I remember Mr. McGrath from a long drawn out complaint proceeding back in in 2012.

[Exh. “15” at p. 3 (PPL email exchange re Ultimate and Custom Fab)].

Thus, even before McGrath requested password protection for Ultimate’s account information, as the head of Regulatory Compliance, Worthington should either have known at the outset or quickly determined that PPL was prohibited from disclosing Ultimate’s account information to Custom Fab. To the extent there existed any possible unclarity, once McGrath’s requested password protection on the account, the question was resolved definitively against disclosure.

In sum, by disclosing Ultimate’s account information to Custom Fab without McGrath’s authorization, Worthington: (1) ignored the Commission’s unambiguous declarations from the July 2013 Final Order quoted above (a proceeding in which PPL participated); (2) reported appellate case law; (3) the Commission’s customer privacy regulations cited above; (4) PPL’s own published privacy policy quoted above; and (5) indeed, his own paralegal’s warnings.

2. A public utility’s desire to get electric bills paid fails to justify the utility’s unauthorized disclosure of password-protected account information or its refusal to implement a customer’s clear and repeated service instructions

On several key points, Worthington waffles. For example, Worthington’s testimony fails to disclose when he first knew that Ultimate’s account was subject to password protection. Implausibly, Worthington did testify that when personally documenting a phone call with McGrath in the PPL’s “Account Contact History” database, he failed to notice that just the day before and four entries below, a PPL

customer service representative had documented McGrath's personal request for a password. [Hearing Transcript at 71:09 to 71:13; Exh. "3" at p.7].

Worthington also claims to have informed McGrath of his contacts with Custom Fab "early on" in his communications with McGrath. Although he couldn't recall to an "exact date," Worthington testified that he so advised McGrath "within weeks" of his first conversation with McGrath, probably in June 2015. [Hearing Transcript at 73:18 to 73:25 ("Yes, I believe so.")].

But no document supports Worthington's recollection about this June timing, and Worthington's first written disclosure to McGrath regarding his Custom Fab communications appears in Worthington's response to McGrath's September 1, 2015 email, demanding "ASAP all the details of your relationship with my tenant." [McGrath Direct at 11:15 to 11:28 (quoting Exh. "8" (09-01-15 RAM email at p. 1)].

Worthington is nonetheless clear and consistent on one point. He disclosed Ultimate's account information to Custom Fab, and he rescinded McGrath's service termination instructions, for one simple reason: "PPL's only concern in this matter is that the outstanding electric bill for your building gets paid. It does not concern PPL whether you pay, or your tenant pays. ... ***I want to reiterate, my only concern is that the bills get paid.***" [Exh. "9" at p. 1 (09-01-15 Worthington email reply)].

On Re-Cross Examination, Ultimate's counsel posed the following hypothetical to Worthington: suppose the commercial tenant of a utility customer

approached PPL and, to avoid service termination, offered to pay the outstanding electric bill balance, but the customer refused to authorize PPL to open an account in the commercial tenant's name. What would PPL do?

Worthington responded: "PPL would accept an application from a commercial tenant." When asked to confirm that PPL "would proceed to ignore the property owner's rights and directions to not open a new account in a tenant's name," Worthington responded: "I'm not aware of any provision that would say we could not do that." [Hearing Transcript at 85:08 to 85:19]. Of course, neither could Worthington identify "any provision that authorizes PPL to do such a thing." *Id.* at 85:20 to 85:22.

Conclusion & Requested Relief

Worthington's plainly erroneous beliefs about the scope of confidential customer information, the circumstances under which PPL may disclose confidential information to third parties, and PPL's authority to ignore a commercial customer's directive to discontinue service, should not shield PPL from the available remedies.

Ultimate Sports Company, Inc. requests that the Court declare PPL's conduct described above in clear violation of Pennsylvania's regulatory scheme protecting the informational privacy rights of utility customers, and issue appropriate sanctions.

Respectfully submitted,

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Dated: July 11, 2018

Certificate of Service

I certify that I caused Ultimate Sports Company, Inc's attached Main Brief of Ultimate Sports Company, Inc. to be filed through the PUC's electronic filing portal and served on counsel of record in the manner and to the addresses set forth below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

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