



COMMONWEALTH OF PENNSYLVANIA

July 25, 2018

E-FILED

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

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

Dear Secretary Chiavetta:

Enclosed please find the Reply 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,

A handwritten signature in blue ink that reads "Steven C. Gray".

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

**REPLY 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 25, 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.

On July 11, 2018, the OSBA submitted its Main Brief. Also, on July 11, 2018, PPL submitted a document titled “Proposed Findings of Fact, Conclusions of Law, and Brief of Respondent, PPL Electric Utilities Corporation” (“*PPL Brief*”).

The OSBA submits this Reply 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

The Commission's regulation at 52 Pa. Code Section 5.501 sets forth the requirements of an initial or main brief. The *PPL Brief* does not conform to that regulation.

The OSBA provided PPL with notice of its legal arguments in the Direct Testimony of Robert D. Knecht.

The OSBA set forth those legal arguments in its Main Brief.

The *PPL Brief* presents the Company's version of the history of the case, coupled with conclusory remarks on the legal issues presented. The *PPL Brief* does not present any response to the legal arguments raised by the OSBA in this proceeding.

III. Argument

The Commission regulation on the content and form of briefs states, as follows:

(a) Briefs must contain the following:

- (1) A concise statement or counter-statement of the case.
- (2) Reference to the pages of the record or exhibits where the evidence relied upon by the filing party appears.
- (3) An argument preceded by a summary. The party with the burden of proof shall, in its main or initial brief, completely address, to the extent possible, every issue raised by the relief sought and the evidence adduced at hearing.
- (4) A conclusion with requested relief.

52 Pa. Code § 5.501(a).

PPL has complicated the briefing process by not following 52 Pa. Code § 5.501(a). Specifically, PPL did not make any arguments addressing the legal issues raised by the OSBA in this proceeding.

The OSBA provided notice of the legal issues it intended to address in the Direct Testimony of Robert D. Knecht, designated as OSBA Statement No. 1. PPL was well aware of the legal issues raised in Mr. Knecht's testimony. In fact, the Company filed a Motion to Strike that testimony on May 25, 2018.

The OSBA addressed the legal issues noticed by Mr. Knecht in its Main Brief.

First, the OSBA briefed the issue of breaching password-protected accounts. *OSBA Main Brief*, at 3-8. PPL did not address this issue, but instead, and without citation, claims:

Finally, Ultimate Sports and OSBA both admit that there are no laws, statutes, rules or regulations which prohibited the provision of information to Custom Fab.

PPL Brief, at 13. The OSBA denies this assertion by the Company and stands by the arguments set forth in its Main Brief.

Second, the OSBA briefed the issue of termination of service to a commercial customer. *OSBA Main Brief*, at 8-10. PPL also did not address this issue, instead choosing to make broad, unsubstantiated claims:

PPL Electric attempted to work with both parties to reach a resolution which protected the rights of each party.

PPL Brief, at 11. However, nowhere in its brief does PPL explain what those rights are, or even if a commercial tenant of a PPL commercial customer has any rights to service. PPL also states:

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.

PPL Brief, at 12. These are simply a series of conclusions, provided without legal foundation or argument. The OSBA rejects the conclusions of PPL, and stands by its arguments set forth in its Main Brief.

Third, the OSBA briefed the issue of paying a customer's bill. *OSBA Main Brief*, at 10-12. In its Proposed Finding of Facts, PPL states, as follows:

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.

PPL Brief, at 8, Paragraph 41. PPL does not provide any foundation to support that such a policy exists, nor does PPL provide an argument why such a policy is for the benefit of all ratepayers. The OSBA denies that such a policy is a benefit to all ratepayers under all circumstances, especially to commercial landlords such as Ultimate Sports. The OSBA stands by its arguments set forth in its Main Brief.

IV. Conclusion

The *PPL Brief* places the OSBA in a difficult position. The Company did not present any arguments addressing the legal issues raised by the OSBA in this proceeding. Instead, PPL provided what is essentially a recitation of facts from the Company's point of view, coupled with unsubstantiated conclusions as to why PPL took the actions that it did.


There is little in the *PPL Brief* to which the OSBA can meaningfully respond.

Thus, the OSBA respectfully repeats its requests for relief submitted to the ALJ and the Commission in its Main Brief:

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,



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Dated: July 25, 2018

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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
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