

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY BRIEF OF ULTIMATE SPORTS COMPANY, INC.**

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**Dated:** July 25, 2018

## Ultimate Sports' Reply Brief

PPL's Main Brief offers several justifications for revealing a commercial customer's password-protected billing and usage information to the customer's commercial tenant, and for disregarding the customer's unambiguous directions to discontinue electric service to his own property. When examined against the undisputed facts of records, these justifications unravel.

### ***PPL's "Sham" Motives for Disclosing a Customer's Password-Protected Billing and Usage Information***

PPL claims that its unauthorized disclosure of Ultimate's confidential information demonstrates only its "attempt[] to work with both parties to reach a resolution which protected the rights of each party." [PPL Main Brief at p. 11]. PPL also claims concern for the irreparable harm its customer's commercial tenant would suffer if the property's electricity was shut off, and that it was merely trying to "balance the relative hardships of both tenants of the property." *Id.* at p. 12.

Taking sides with its customer's litigation adversary, PPL further accuses Ultimate and McGrath of wielding electric service to McGrath's property "as a mechanism to achieve superior bargaining power in a commercial lease disagreement, or alternatively to effectuate a constructive eviction." *Id.* at p. 11.

### ***PPL's Real Motives***

These after-the-fact justifications have one thing in common – all are belied by the record and Dennis Worthington's own words. PPL's chief of Regulatory Compliance emphasized repeatedly that PPL had only one concern – to get paid,

regardless of who paid or how. On September 1, 2015, McGrath discovered that PPL has been communicating with Custom Fab's lawyers and confronted Worthington.

Disclaiming any "secret arrangement" between PPL and Custom Fab, Worthington explained to McGrath: "PPL's only concern in this matter 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 bill gets paid. [Exh. "9" to Ultimate's Main Brief at p. 1 (09/01/15 email exchange between R. McGrath and D. Worthington)]. In a December 2015 email exchange with McGrath, Worthington repeated these words, verbatim: "PPL's only concern in this matter is that the outstanding electric bill for your building gets paid ...." [Exh. "12" at p. 3].

Strikingly absent from Worthington's communications with McGrath, or indeed from any contemporaneous document of record, is any suggestion that PPL acted out of any other motive. Nothing in the record suggests that then, in 2015 and 2016, PPL had any concern for, *e.g.*, possible irreparable harm to a commercial customer's commercial tenant, or "balancing relative hardships" of the "parties," or "not interject[ing] itself into a legal dispute over terms of a lease to which it was not a party." [PPL Brief at p. 9, ¶ 44].

### ***PPL's Personal Animus Directed to McGrath***

To the extent the record reflects that PPL had any motive other than getting paid, that motive was personal animus directed to Richard McGrath. On June 1, 2015, a PPL paralegal emailed Worthington, raising her concerns about either

getting involved “in the middle” of a legal dispute, or “releasing account information to a third party.” [Exh. “15” to Ultimate’s Main Brief at p. 3 (PPL internal email exchange re Ultimate and Custom Fab)]. But in addition to those concerns, the PPL paralegal admitted that she “sympathize[d] with the tenant as I remember Mr. McGrath from a long drawn out complaint proceeding back in 2012.” *Id.*

In the same email exchange, Worthington and the paralegal discussed arranging a conference call that day with Custom Fab’s attorney, Samuel Wiser: “to ensure that we are all on the same page, why don’t we set up a call for the three of us to talk to the tenant’s attorney?” *Id.* If PPL had any real concern for “work[ing] with both parties to reach a resolution which protected the rights of each party,” PPL would have included McGrath in that conference call<sup>1</sup>

### **Conclusion**

Ultimate concurs with the OSBA’s conclusion – that “PPL acted unreasonably by entering into a payment arrangement with [McGrath’s] commercial tenant, both without written authorization to divulge account information in violation of PPL policy, and by allowing the commercial tenant access to information contained within a password-protected account.” [OSBA Main Brief at p. 12].

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<sup>1</sup> On May 8, 2015, the PPL paralegal emailed Worthington: “The name Richard McGrath sounds so familiar to me, I can’t help but think we’ve dealt with him in the past but I haven’t been able to confirm ...” [Exh. “15” at p. 4].

Respectfully submitted,

/s/ *Thomas E. Groshens*

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### *Certificate of Service*

I certify that I caused Ultimate Sports Company, Inc's attached Reply 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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