

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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SEP 24 2018

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Jay Larry Moyer, Complainant

V.

C-2017-2629683

PPL Electric Utilities Corporation, Respondent

**Complainant's Filing of Exceptions**

**September 24, 2018**

This filing of Exceptions is submitted in response to the Initial Decision of ALJ Judge Joel H. Cheskis on September 6, 2018. Among the issues raised in the above complaint, some are addressed clearly and directly in Judge Cheskis' Initial Decision. In other instances, however, the issues are inadequately addressed or avoided entirely, and they demand a more careful consideration. This filing of Exceptions is submitted to ask that these issues receive more careful review and a more adequate response.

**A. The Commission's policy regarding "fair business practice" should be applied uniformly and consistently.**

Judge Cheskis firmly endorses the Commission's policy of "fair business practice", as defined by ALJ Jeffrey A. Watson in 2013. ID at 23 Judge Cheskis concludes, however, that the policy does not apply to PPL's billing practices for virtual metering customers like me. Id "Fair business practice", according to Judge Cheskis, does not apply to my case, since my case involves an electric utility and not a gas utility. If this exemption from "fair business practice" is upheld, PPL will not be required to provide transparent aggregation data in my bills.

Judge Cheskis' suggestion that "fair business practice" should apply to one utility and not to another is a blow to the principle of "fairness" itself. It is a distinction that undermines the broader exercise of fair practice.

Like the National Fuel account of Fat Katz Tattooz, the PPL account for my solar panels is a “commercial” one. Like the bills for Fat Katz Tattooz, my bills “lack clarity”, and are “adjusted” on a frequent basis”.<sup>1</sup>  
Initial Decision, C-2013-2359146, Finding of Fact #6 at 3

There is nothing in the AEPS Act or in the public utility code to suggest that “fair business practice” should be afforded to a National Fuel customer and not to a virtual metering PPL customer. It is imperative that the PUC apply this principle of fairness to all customers in a consistent and uniform manner. I respectfully ask that the Commission order PPL to apply Judge Watson’s standard of “fair business practice” to virtual meter aggregation and order PPL to implement and apply that standard fully for all of my monthly bills, including my solar bills.

**B. Judge Cheskis concludes, erroneously, that aggregation data is available to me by “other means”.**

For nearly ten years, PPL has refused to provide me with current generation and aggregation data from my generation system. Judge Cheskis does not deny that this information is vital to me or that my expectation of this data is legitimate. In fact, he recounts several factors that show why my

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<sup>1</sup> Every solar bill is identified as an “adjusted” bill.

expectation is reasonable or “understandable”. ID at 22. Still, he insists that this data will not be required “on the bill itself”. ID at 23

Judge Cheskis’ conclusion is based on an apparent belief that this aggregation data is available “by other means”. Id. at 21

He is mistaken in that belief.

He refers to “tools” which, he says, “PPL offers to its customers enrolled in virtual meter aggregation to aid them in understanding their bills”. ID at 20

Again, he is mistaken.

PPL has indeed made such a claim, but it is not supported by PPL’s practice. It is an erroneous claim, no matter how often it is repeated.

PPL assured the Commission in 2015, “There are ways for customer-generators participating in virtual net meter aggregation to verify their usage and generation”. (PPL Electric Statement No. 1, March 6, 2015 at 46) This assurance has been accepted repeatedly as fact by the Commission, and now by Judge Cheskis.

The fact is this: despite PPL’s claims, current and reliable details about my solar generation and meter aggregation are simply not provided to me at all on a monthly basis in any form.

PPL, in the Statement No. 1 cited above, claimed to have a “virtual net meter aggregation post where a customer generator (sic) participating in that program can see the host account’s generation hour by hour each day”. (PPL Electric Statement No. 1, March 6, 2015 at 46) Repeated efforts to access this online “post” have proven futile.

On September 18, 2018, in anticipation of this filing, I again contacted PPL and spoke at length with Dana, a customer service representative. I described PPL’s purported “post” and expressed my interest in obtaining data from my solar panels. She sent a message to the net metering specialists as we spoke and assured me that one of them would return my call. As I prepare to mail these exceptions, I have yet to receive a response.

PPL also touts its online “Energy Analyzer”, saying it is “a web-based product that any of its customer-generators can access and examine their electric use daily.” I have accessed the Energy Analyzer multiple times, but it shows no meaningful information about meter aggregation.<sup>2</sup>

Judge Cheskis also cites the “spreadsheets” that PPL has prepared for various proceedings. He repeats an assumption of the Commission, namely that the spreadsheet is “updated monthly”. ID at 20-21 He fails to observe, however, that these have never been provided voluntarily and are not

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<sup>2</sup> The analyzer provides a separate “usage” chart for my house account, but it is not associated with my solar panels.

available to me on a monthly basis. No such spreadsheet has ever been provided to me at PPL's initiative, but only in response to a formal complaint.

In a related claim, PPL avers (and the Commission apparently believes) that the company will provide these spreadsheets "upon customer request". Opinion and Order, May 19, 2016

This claim, too, has no basis.

My own written request on April 25, 2017, for the spreadsheets went unanswered, and a discussion of that letter is part of the evidence in this case. Moyer Exhibit 8 at 2

The letter is also referenced in Moyer Exhibit 37, which is dated September 15, 2017. On that date, in a phone call with PPL's representative, Tammy Nalesnik, I asked about the lack of response to my April letter. Id. After another delay of six weeks, and only after I filed the present complaint, did PPL provide me with a spreadsheet. The formal complaint was filed on September 29, 2017, and I finally received a spreadsheet on October 25.

In the absence of spreadsheets, my only "means" of obtaining detailed information has been to file a formal complaint.

In short, PPL's claim that the information is available "by other means" is disingenuous.

The legitimate role of deference in these proceedings is not disputed. In this case, however, the Commission has deferred so completely to PPL that it has accepted, implicitly, claims which are demonstrably false. The Commission's failure, in the face of evidence, to examine the veracity of PPL's claims is an egregious abuse of its discretion.

I'm requesting respectfully that the Commission reverse the conclusion of Judge Cheskis and order PPL to provide me each month, along with my printed bills, comprehensive, reliable, and verifiable details regarding generation, credit and aggregation, either in the printed bills themselves, or, alternatively, in a separate document enclosed with the printed bills.

**C. Billing data should be provided "continually".**

As noted above, except when I filed a formal complaint, I have never been provided with consistent (i.e. monthly) access to the complete generation, credit, and aggregation data. The Commission, in 2014, ordered PPL to provide that information, which is itemized on page 17 of the initial Decision. That is the information that I have been asking to receive on a monthly basis.

Judge Cheskis notes PPL's contention that the company is not required to provide this data "continually" (ID at 20), but he does not endorse or refute that contention. Is it the Commission's view that the information which PPL was ordered to provide in 2014 should be made available only in response to a formal complaint? Is it the Commission's view that filing a formal complaint is the appropriate and necessary means of obtaining monthly details about my generation, credit, and aggregation? Am I "misinterpreting" (ID at 19) what the Commission intended? These are questions that remain unanswered.

I ask respectfully that I be provided with that information "continually" and on a monthly basis without being required to file a formal complaint or to make a special request for it.

**D. Judge Cheskis does not address claims about PPL's methodology for applying generation credit.**

Judge Cheskis discusses the question of errors in my bills and makes effort to explain how errors were corrected. ID at 27-29 He cites the repair supplement, PPL Electric Exhibit Number 10, which was created, in part, to make corrections to the bills<sup>3</sup> and which PPL claims to be the "accurate

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<sup>3</sup> PPL Electric Exhibit Number 10 explicitly purports to "correct the amount of the credit" for September 17 and November 17.

record”. Id. at 27 Judge Cheskis also acknowledges that the bills submitted with this complaint “have not been previously litigated”. ID at 37.

In his review of the evidence, however, he fails to address a larger grievance in the complaint. He does not address PPL’s methodology for applying generation credit to my accounts. He fails to address the specific regulations cited in my main brief, even as he asserts that none were violated. ID at 16, 20, 24, 37

The procedures for applying credit are clearly delineated in the public utility code, and nothing suggests an exception for virtual meter aggregation. These procedures were also described in my main brief. Section IV.C, pp. 15-17, and IV.F.1, pp. 29-30. It is the enforcement of those procedures and regulations as written that my Complaint is seeking. Regrettably, these explicit procedures were not acknowledged or addressed in the Initial Decision.

In particular, the regulations distinguish between a) immediate credit “up to the total amount of electricity used . . . during the [immediate] billing period”; b) credit “carried forward . . . and credited against usage . . . in subsequent periods; and c) excess kilowatt hours remaining “at the end of the year”. 52 Pa. Code § 75.13(d)(e)(f). These three steps or stages are explicit and unambiguous. The electricity that my system generates must

first “offset” the amount which PPL delivers “in a given billing period”.

75.13(d) It is only the “excess kilowatt hours” which should be “carried forward” to subsequent billing periods. Id.

In PPL’s methodology, the immediate “offset” does not occur. In PPL’s methodology, all of the generation in a given month is “carried forward”. What results is an arbitrary “one-month lag”, as PPL calls it.<sup>4</sup> This “one-month lag” is an arbitrary and unilateral practice that violates the explicit directive of the Code and deprives me of the immediate credit that should be applied.

The Code also adds a stipulation, saying that “Distribution credits are not carried forward into the next year”. 75.13(f). In PPL’s methodology, by contrast, credits are routinely carried forward to the next year, as demonstrated by my brief. MB at 38

Judge Cheskis makes no effort to address these violations, and the Initial Decision passes over these aberrations without any mention. It remains evident that PPL continues to flout these procedures, and does so with impunity. I respectfully ask the Commission to find that PPL is not in compliance with the procedures for applying credit as established in 52 Pa. Code § 75.13(d)(e)(f) of the public utility code. I also request specifically

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<sup>4</sup> In some cases, the generation credit is withheld up to two months.

that the Commission order PPL to discontinue its practice of a “one-month lag” and begin applying credit in three distinct stages, as required by the public utility code.

**E. Virtual meter aggregation customers are consigned to a “twilight zone” with no billing standards.**

The public utility code includes billing standards for telephone customers, for gas customers, and for electric customers. Even for third-party providers (EGS’s), the billing standards are explicit. 52 Pa. Code § 54.4

In PPL service area, however, 110 electric customers occupy a “twilight zone” of billing. Virtual metering alone is exempt from prescribed billing standards. According to Judge Cheskis, there are no billing protocols that apply to virtual meter aggregation or that specify the information that PPL must include in my solar bills. ID at 20-24 His statements echo what the Commission has stated before: “the specific billing process is not prescribed”. Opinion and Order, May 19, 2016, at 23

In that virtual metering “twilight zone”, PPL is free to alter its procedures and modify my bills at will, and has done so repeatedly with impunity. Judge Cheskis cites a change which PPL made to my bills and then reversed without notice. ID at 29. Before June, 2017, generation credit

was applied as a separate line item (“Excess Credit”). In June, 2017, without notice or explanation, PPL removed the line item and began applying an unspecified sum directly to the past due balance. That problematic change of procedure was not reversed until I filed a formal complaint.

In December, PPL reverted to its prior practice and re-instated the line item. Judge Cheskis cites this example, but regards it as inconsequential. In the absence of billing standards for virtual metering, PPL is at liberty to modify its procedures with impunity, as it has done countless times before. Many of these changes were documented in prior complaints.<sup>5</sup>

Virtual meter aggregation must be completed “by means of the EDC’s billing process”. 52 Pa. Code § 75.12 I respectfully ask that the Commission, within 90 days, prescribe a uniform “billing process” for virtual meter aggregation that comports with the public utility code’s procedures for applying credit.

**F. The Initial Decision reflects erroneous assumptions about eligibility.**

A persistent issue throughout this and prior complaints is the fundamental question, “What constitutes eligibility?” The question is answered in the definition of “customer-generator”, which is defined in the

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<sup>5</sup> C-2011-2273645/C-2014-2444864, Filing of Exceptions, October 10.26.2015, at 3-9; Hearing, April 21, 2015, Moyer Exhibit JLM-62;

statute. Eligibility as a customer-generator is defined, moreover, by three distinct components or limitations, all of which are essential to qualifying as a “customer-generator”. The first limitation is that the renewable system must be a “net metered distributed generation system”; the second limitation relates to the generating capacity of the proposed system; and the third component is the type of service (“residential service” vs “other service”) associated with the system.

Every renewable application must comply with these three components of the statute’s definition, and it is only after compliance with all three that eligibility can be established. Neither the DEP nor the court can make a determination of eligibility unless all three components are clearly identified.

Furthermore, as defined in the statute, the category of “customer generator” has no stand-alone designation that is independent of these three components. There is no pool of “pre-approved customer-generators” who are later assigned or attached to a facility; there is only a specific application for a specific renewable system. Eligibility as a customer-generator has no relevance apart from the net metering function; the capacity of the system; and the specific type of “service” that the system performs. Based on the

statute's definition, my system must be deemed eligible for "residential service".

The Commonwealth Court's decision in the *Sunrise* case offers some guidance on determining eligibility, although it does not draw any conclusion about the definition itself. It says, in particular, that the question of eligibility cannot be answered by the PUC. *Sunrise v. First Energy and West Penn*, 1282 CD 2015, Opinion filed October 14, 2015 at 23

That question, according to the Court, is a statutory one. In the words of the Court, "Eligibility has been fully established by the legislature in the Alternative Energy Act". *Id.*

Where eligibility may be disputed, the AEPS Act states unequivocally that the DEP "shall verify that an alternative energy source meets the standards set forth in section 2". AEPS Act, Section 7(b)

The Commonwealth Court also establishes that this question originates with Common Pleas Court and not with the PUC. 1282 CD 2015, Opinion, October 14, 2016 at 1

A clear implication from the Commonwealth Court's opinion is that the PUC acted without authority when it supported PPL in 2011 and found my system ineligible. It also follows, by extension, that the PUC acted

without authority when it authorized PPL to waive ineligibility and grant credit on a provisional basis.

Prior to this complaint, the crucial role of the DEP (Department of Environmental Protection) went unnoticed and was not addressed. As noted above, that role is defined explicitly in the AEPS Act itself and is raised in my brief. MB at 17-18

The DEP has not made a determination on any specific installation. Significantly, however, in 2015, the DEP offered an opinion regarding the eligibility of installations like mine. In its public comments to the PUC on May 29, 2015, the Department spoke forcefully in favor of approving systems like mine for virtual meter aggregation.

#### **75.14(e) - Virtual Meter Aggregation**

*Under the AEPS ANOFR, customer-generators can aggregate generation and load at different locations subject to certain conditions. One of these conditions is that "all service locations to be aggregated must. . . have measurable load independent of any alternative energy system."*

*The PUC identifies as a problem "fact patterns where distributed generation is proposed to be installed at a location with no load, but then virtually aggregated with another location that has no distributed generation." The PUC seemingly intends the identification of this issue as a problem to be self-evident. DEP disagrees.*

*It would not be unreasonable, for example, for a property owner with multiple acres to install solar panels on a remote corner of*

*their property. If it makes more economic sense to interconnect this generation to a nearby distribution line instead of connecting the system back to the customer-generator's meter, that option should remain available to both the customer-generator and the electric distribution company. The result of requiring load independent of the distributed generation system will add additional costs or disqualify systems unnecessarily. (Comments of DEP L-2014-2404361, Advanced Notice of Final Rulemaking, page 4)*

The situation described by the DEP is precisely that of my system and my ten-acre property, as the Department may have been aware.

Unfortunately, the absence of the DEP's role in earlier appeals left an incomplete and distorted perspective that requires correction.

My status as a "customer-generator" will remain unresolved until it is properly determined by the DEP.<sup>6</sup> It is the DEP that must determine whether my system qualifies as a "customer-generator", and, if so, on what criteria that eligibility is based. The statute's definition suggests clearly that the three criteria (noted above) are critical for any determination.

The Initial Decision improperly dismisses the role of the DEP in determining whether my system was "installed for residential service". ID at 31 I respectfully ask that the Commission seek the opinion of the DEP regarding the criteria for eligibility as a "customer-generator".

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<sup>6</sup> The Commonwealth Court established further that any dispute over eligibility for net metering must be adjudicated in Common Pleas Court. 882 CD 2016, Opinion submitted November 23, 2016 at 8.

**G. The conclusions of Judge Cheskis regarding “residential service” are improperly drawn.**

Responding to my appeal for “residential status” (ID at 30), Judge Cheskis, as noted, dismisses the DEP and, instead, invokes an earlier case, 882 CD 2016. ID at 31 In the case which Judge Cheskis cites, the Commonwealth Court was not asked to consider the DEP’s role, or to weigh the fact that the Department is charged with determining “standards”. It is evident now, from a closer reading of the statute, that the DEP must be involved and that more clarification is needed.

The Commission has long assumed that it had authority to determine eligibility of my system and to designate the “type of service” which applies to my solar panels. The Commission has assumed, further, that each of these decisions could be made separately. In the passage quoted by Judge Cheskis (ID at 31), the Court merely defers to this untested assumption (i.e. that the “type of service” -- i.e. “residential” or “other -- is determined separate from eligibility) without ruling on its merits.

The statute’s definition of “customer-generator” does not support the PUC’s assumption and affirms that eligibility entails several criteria, including the type of “service” which the system performs. Which reading of the statute is correct is a decision that rests ultimately with the DEP.

## **H. Judge Cheskis has created an undefined “class of one”.**

While Judge Cheskis contends that my solar panels do not merit a “residential” account (ID at 23-24; 32-34), he also argues that they are not subject to rules of a “small business” account, such as those found in 52 Pa. Code § 74(b)(5). ID at 23. By eliminating both categories, Judge Cheskis, in effect, has created a “class of one”, a class without a definition. Even though I am not using the system “to engage in any commercial activity”, he still insists that my system merits an undefined “commercial” status. ID at 33

In this “twilight status”, my system is neither fish nor fowl, and there are no billing protocols, as we’ve seen. Judge Cheskis is not authorized to create a new class of customer. In doing so, Judge Cheskis again bypasses the role of the DEP and usurps authority over the ultimate question of “eligibility”. AEPS Act, Section 7(b) Until that is decided by the DEP, my “commercial” renewable system will occupy a “twilight zone”.

In my brief, I appealed to Judge Cheskis to direct this question to the Department. MB at 49 That appeal received no reply from Judge Cheskis. I respectfully ask that the Commission formally seek, from the DEP, a determination stating 1) whether my system meets the “standards” of a

“customer-generator” and 2) whether my system was “installed under residential service” and 3) whether it qualifies for residential (RS) status.

Respectfully submitted,



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**Certificate of Service**

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**Filing of Exceptions**

RE: Docket No. C-2017-2629683

I hereby certify that I have this day served a true copy of the foregoing Exceptions upon the parties listed below in accordance with the requirements of § 1.54 (relating to service by a party).

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September 24, 2018



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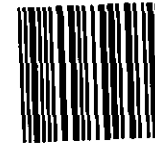
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