BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Ultimate Sports Company, Inc.	:	
	:	
v.	:	C-2017-2633651
	:	
PPL Electric Utilities Corporation	:	
	:	

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

This decision sustains a small business customer's complaint against an electric distribution company (EDC) and finds that password-protected account information was disclosed to a third-party without authorization in violation of the Commission's regulation at 52 Pa. Code § 54.8 and the Public Utility Code at 66 Pa. C.S. §§ 1303, 1304, 1501, and 1502. Specifically, violations occurred when the EDC ignored the small business customer account holder's directive to discontinue electric service to its account on June 1, 2015, and instead provided password-protected account history information and sought payment from an unauthorized commercial third-party beneficiary of the service for months not in accordance with its tariff provisions in a discriminatory manner.

For violating Commission regulations and the Public Utility Code, the EDC will be directed to pay a civil penalty in the amount of $4,000, to provide a refund/credit in the amount of $5,000 for incorrect charges, and to establish and revise internal procedures to ensure that its regulatory compliance supervisor, account managers and customer service representatives

(CSRs) do not disclose password-protected account information of small business customers to third-parties in order to obtain payment and continue service to an account that the small business account holder wants discontinued.

This decision further recommends that the utility be directed to revise its internal procedures and conduct training reiterating a policy that confidential password-protected account information of a small business customer should not be divulged to unauthorized third parties in compliance with 52 Pa. Code § 54.8. The utility should use its monitoring and observation process to ensure it is in compliance with the new corrective actions outlined in this decision.

HISTORY OF THE PROCEEDING

On November 14, 2017, Ultimate Sports Company, Inc. (Ultimate or Complainant) filed a Complaint against PPL Electric Utilities Corporation (PPL or Respondent) alleging that the utility was threatening to discontinue service, incorrect charges were on its bill, and that it was unreasonable for PPL to refuse to discontinue service in June 2015, when Custom Fab, Inc. (Custom Fab) was causing substantial damage and disruption to Ultimate's business and damage to property. Ultimate avers, "Contrary to PUC regulations and the status of account information as password protected, PPL disclosed account information to the tenant, [Custom Fab], without Ultimate's authority and in violation of Ultimate's rights and ignored customer service directions." Complaint at Par. 4.

Complainant avers that by releasing confidential customer account information without authorization, and by failing to follow customer's instruction regarding service, PPL deliberately and willfully violated Commission regulations. Complainant seeks refunds on its account and a civil penalty for violations of Commission regulations. Ultimate also seeks a Commission directive for corrective action. The Complaint was signed by Richard A. McGrath, Owner and CEO of Ultimate.

The Complaint was served upon Respondent on November 14, 2017.[1] On November 16, 2017, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention. PPL filed an Answer and New Matter on December 4, 2017.

By Notice dated December 19, 2017, an Initial Call-In Telephonic Hearing Notice was issued scheduling an evidentiary hearing for February 13, 2018, and the case was assigned to me. A Prehearing Order was issued on January 2, 2018. On February 5, 2018, Ultimate filed a letter request for an emergency prehearing conference because PPL had terminated service. The letter was served upon the parties and the presiding officer. On February 6, 2018, an off-the-record telephone conference took place during which time an oral request by Ultimate and OSBA to convert the February 13, 2018 hearing into a prehearing conference was granted. Also on February 6, 2018, Ultimate made a payment to PPL and its electric service was reconnected.

On February 13, 2018 a prehearing conference was held and a Procedural Order was issued. On March 27, 2018, OSBA served the Direct Testimony of Robert D. Knecht. On April 27, 2018, PPL served the Rebuttal Testimony of Dennis Worthington. On May 25, 2018, PPL filed a Motion to Strike the Pre-Served Direct Testimony of Robert D. Knecht. On May 30, 2018, OSBA answered PPL's Motion to Strike.

On May 31, 2018, an evidentiary hearing was held, wherein oral arguments were heard, and the presiding officer denied PPL's Motion to Strike. Tr. 37. Thomas Groshens, Esquire, appeared on behalf of Ultimate. Steven Gray, Esquire, appeared on behalf of OSBA. Kimberly Krupka, Esquire, appeared on behalf of PPL. Pre-served direct and surrebuttal testimony of Robert McGrath (C Exhibits A and B, respectively) and C Exhibits 1-14 were admitted into evidence subject to cross examination. N.T. 41. Complainant's Cross 1 (a packet of documents) was admitted. N.T. 80. OSBA Statement No. 1, Direct Testimony of Robert D. Knecht, with accompanying three exhibits, was admitted. N.T. 59. Respondent's Statement No.

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[1] PPL signed a waiver of the Section 702 requirement for registered or certified mail service of formal complaints, 66 Pa. C.S. § 702, and agreed to electronic service under the Commission's waiver of 702 program. *See In Re: Electronic Service of Formal Complaints,* Secretarial Letter Dated December 22, 2014, at Docket Nos. M-2013-2398153 *et al.*

1, Rebuttal Testimony of Dennis Robert Worthington, with accompanying exhibits A-G, was also admitted. N.T. 69. The parties submitted Main Briefs on July 11, 2018. The parties submitted Reply Briefs on July 25, 2018, and the record closed. This case is ripe for a decision.

FINDINGS OF FACT

1. Complainant is Ultimate Sports Company, Inc., with a primary place of business located at 531 North Fourth Street, Denver, PA 17517. C Exhibit 2.

2. Respondent is PPL Electric Utilities Corporation, a jurisdictional public utility providing electric distribution service in the Commonwealth.

3. Intervenor Office of Small Business Advocate (OSBA) represents the interests of small business consumers of utility services in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41-399.50.

4. In February 2000, Richard A. McGrath purchased a 75,000 SF (square foot) manufacturing and warehouse facility located at 531 North Fourth Street, Denver, PA (Denver Facility). C Exhibit A at 2.

5. Mr. McGrath is owner and CEO of Ultimate, a small business. N.T. 39.

6. Mr. McGrath relocated Ultimate from Hatfield, Pennsylvania to the Denver Facility in 2000. C Exhibit A at 2.

7. Since the time of relocation in 2000, electric service to the Denver Facility with PPL has been in Ultimate's name as account holder of an account ending in 001. C Exhibit A at 2-3.

8. Ultimate manufactures athletic mouth-guards and other sports-related protective equipment. C Exhibit A at 2.

9. Mr. McGrath (Landlord) and Custom Fab (Tenant), a Florida Corporation having is principal place of business at 109 Fifth St., Orlando, FL 32824, executed a 5-year Lease Agreement on November 26, 2013 and an amendment on December 15, 2013 for slightly over 50% of the Denver Facility's commercially-viable space at 531 North Fourth Street, Denver, PA. N.T. 41-45, C Exhibit A at 3, Exhibit 1 (Lease) at 17-23.

10. The original lease was for 21,330 SF (square feet) at a monthly rent of $7,500; however, through an amendment to the lease, Custom Fab rented an additional 20,589 SF at a monthly rent of $6,538.87 yielding a total monthly rent of $14,038.87 for 41,919 SF. C Exhibit A, Exhibit 1 (Lease) at 17-24, N.T. 43.

11. Mr. McGrath owns the Denver Facility and is the landlord. N.T. 44-45.

12. Ultimate and Custom Fab shared a common wall within the Denver Facility with one three phase 440 volts electric meter. N.T. 44-45, C Exhibit A at 3.

13. Custom Fab was responsible for paying its portion of the monthly electric bills to Mr. McGrath on a monthly basis until Custom Fab obtained its own separate meter. N.T. 48, C Exhibit A at 4.

14. Custom Fab's occupancy began sometime between December 1, 2013 and February 1, 2014, and the lease was set to expire on November 30, 2018 subject to options to renew or termination. C Exhibit 1, N.T. 54.

15. From the beginning of its occupancy, Custom Fab began renovations to its leased space, damaging the Denver Facility's floors, ceiling, walls and parking lot, and disrupting the business operations of Ultimate by blocking access to areas essential to Ultimate's operations. C Exhibit A at 4.

16. Custom Fab is a commercial tenant manufacturing fabricated metal and hardware products including the fabrication and coating of large-scale commercial piping systems, which is a high electricity consuming operation. C Exhibit 1, C Exhibit A at 3-4.

17. Clause 5.2 of the Lease Agreements provides:

> Electric Expense: Whereas the Tenant and Landlord agree that Tenant is responsible to pay for the electric power consumed by Tenant, and whereas the leased property is not separately metered, Tenant and Landlord agree to the following method to measure and pay for electrical power: Tenant shall pay, at the end of every electrical billing period, an amount equal to the i) current billable rate for electrical Generation and Transmission charges multiplied by the difference of the current KH consumed in the period less the KH consumed during the equivalent period from the Baseline Year, ii) current billable rate for electrical distribution charges multiplied by the difference of the current kW measured in the period less the KW measured during the equivalent period from the Baseline Year, iii) applicable prorated Generation, Transmission and Distribution taxes levied on items i) and ii). The Baseline Year shall be the 12 months immediately preceding the commencement date of the lease as evidenced by Exhibit E. In the event Tenant believes there is an increase in its consumption of electric power unrelated to the use of its Premises, Tenant shall have the right to have the method of calculating its Electric Expense revisited with the Landlord; but in any event, Tenant shall have 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. C Exhibit 1 at 6.

18. In November 2013, Richard McGrath wanted Custom Fab to install a second electric meter in accordance with the Lease Agreement at Custom Fab's expense because it was not paying its share of the electric bills. N.T. 49, C Exhibit 1 at Par. 5.2.

19. Until Custom Fab installed its own second meter, Custom Fab was obligated to pay for its usage at the end of every electrical billing period based upon prior baseline bills of usage prior to occupancy. C Exhibit A at 4 and Exhibit 1 at Par. 5.2.

20. Despite Mr. McGrath's urging, Custom Fab never installed a second meter for its operations. C Exhibit 4.

21. Custom Fab sued Mr. McGrath for breach of Lease Agreement on May 29, 2014 in the Lancaster County Court of Common Pleas at Docket No. CI-14-0444, to which Mr. McGrath filed counterclaims.[2] C Exhibit A at 4-5, N.T. 57.

22. In December 2014 and February 2015, Ultimate dropped and then re-enrolled with electric generation supplier Direct Energy Business. C Exhibit 3 at 7-8.

23. The switching of the electric generation supplier (EGS) correlates to the time period Ultimate's meter stopped communicating actual usage to PPL. C Exhibit 3 at 7-8.

24. Starting in January 2015, PPL failed to send Ultimate monthly invoices until June 2015 when it sent Ultimate a series of invoices combining multiple months into single invoices. C Exhibit A at 5 and C Exhibit 3 at 8, Direct Testimony Dennis Worthington at 1, N.T. at 80-81.

25. Billing delays and mistakes were caused by PPL's computerized accounting system, which was unable to properly process bills when there was more than one EGS change within a 30-day period, as well as the malfunctioning electric meter. C Exhibit 3 at 8, N.T. 80-81.

26. On February 4, 2015, the Court of Common Pleas ordered Custom Fab to resume paying the full monthly rent required by the Lease and give Ultimate full access to areas necessary to its operations; however, Custom Fab continued to fail to pay its share of PPL monthly electric charges under the lease agreement. C Exhibit A at 5.

27. In March 2015, Ultimate called to complain that its meter stopped communicating and a work order to change the meter was pending in May 2015. C Exhibit 3 at 8.

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[2] *Custom Fab, Inc. v. Richard A. McGrath*, Docket No. CI-14-04444 (C.P Lancaster Co, PA), available at http://prothonotary.co.lancaster.pa.us/civilcourt.public.

28. On May 22, 2015, PPL issued a written 10-day Notice of Intent to Terminate Electric on or after June 1, 2015 to Ultimate for nonpayment of electric bills. C Exhibit 3 at 8.

29. Richard McGrath received the notice of termination on or about May 22, 2015. N.T. 49.

30. On May 27, 2015, Brandi Martzen, a PPL customer service representative (CSR), contacted Mr. McGrath by phone to provide him with a three-day notice of termination. C Exhibit A at Exhibit 3.

31. During the May 27, 2015 phone call, Mr. McGrath complained he was not billed after his EGS change and he complained that his tenant, Custom Fab, was refusing to pay its responsible share of the electric bills. C Exhibit 3 at 8, N.T. at 50.

32. During the May 27, 2015 call, Mr. McGrath requested service be discontinued on June 1, 2015. OSBA-2 at 181-182.

33. Under the account holder's name of Ultimate Sports Company, Inc., Custom Fab would not be legally obligated to pay PPL. OSBA-2 at 182.

34. On or about May 29, 2015, Custom Fab contacted Dennis Worthington, a Senior Quality Assurance Specialist with PPL and Regulatory Supervisor, through attorneys and administrators from Salzmann Hughes, P.C., requesting billing information it needed to pay bills for the Denver Facility. Exhibit OSBA-2 at 164, C Exhibit 4.

35. On or about June 1, 2015, Mr. Worthington voided the termination order for Ultimate's service and PPL entered into a payment arrangement with Custom Fab, whereby Custom Fab would pay PPL each month the amount of the electric bill to maintain service. C Exhibit 3 at 8.

36. PPL billed Ultimate an invoice for $1,741 on May 1, 2015, then cancelled the bill on June 5, 2015. PPL issued five bills within a month including: $752.57 on June 10, 2015; $737.03 on June 11, 2015, $664.70 on June 15, 2015; $857.49 on June 30, 2015 and $1,116.55 on July 23, 2015. C Exhibit 6.

37. Custom Fab could have established separately metered service and started a separate account without permission from Mr. McGrath, but it never did so. OSBA-2 at 170-171.

38. PPL never refused a request by Salzmann Hughes, P.C. or anyone on behalf of Custom Fab to provide a breakdown of information relating to the bills for the Denver Facility. OSBA-2 at 172-173; C Exhibit 7 at 1-2.

39. If anyone from Custom Fab had requested the billing information, PPL would have disclosed it. OSBA-2 at 173.

40. When OSBA requested Ultimate's customer payment and consumption history information, PPL required Ultimate to sign a release authorizing the release of information to OSBA. OSBA-2 at 174-175.

41. On June 15, 2015, Ultimate's CEO Mr. McGrath changed or added its password on its PPL account and any transaction information on the account going forward should only have been shared with individuals who had the password for the account. C Exhibit A at 8-9, C Exhibit 3 at 7, Worthington Deposition at 134-136.

42. PPL's "Disclosure of Customer Information Policy" states in pertinent part:

> 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.

OSBA Statement No. 1. Exhibit OSBA-3, PPL Statement No. 1-R at 5.

43. On June 15, 2015, Mr. McGrath complained to Cynthia Delp, a PPL CSR, that his prior instructions to discontinue service to the Denver Facility had been ignored and Mr. McGrath demanded PPL shut service off on June 15, 2015. C Exhibit A at 7, C Exhibit 3 at 7.

44. PPL did not terminate Ultimate's service on June 1 or June 15, 2015. C Exhibit A 7.

45. On June 19, 2015, Mr. McGrath emailed Dennis Worthington further requests to discontinue service, to recognize the meter base remains the property of Ultimate Sports, and to require Custom Fab to install its own meter in order to receive service from PPL. N.T. 52-54, C Exhibit A at 7, C Exhibit 4 at 2.

46. Mr. McGrath did not want to transfer service to or have Custom Fab take over Ultimate's account. N.T. 53.

47. Despite no written authorization from Ultimate to release Ultimate's usage information to Custom Fab or US Pipe, PPL provided an unredacted account activity statement showing Ultimate's phone number, address, kwh usage, payment history, and charges from January 12, 2015 through July 23, 2015 to counsel for Custom Fab upon request on or about August 4, 2015. PPL Statement No. 1-R, Worthington Deposition at 136, C Exhibit 5.

48. Custom Fab was purchased and acquired by U.S. Pipe Fabrication (U.S. Pipe) in August 2015.

49. In December 2015, U.S. Pipe notified Mr. McGrath that it intended to vacate the facility by March 1, 2016, two and a half years prior to the expiration date of the lease. C Exhibit A at 5.

50. On August 29, 2015, PPL provided a spreadsheet disaggregating charges, balances and the history of EGS switching for Ultimate to counsel for Custom Fab/U.S. Pipe. C Exhibit 6.

51. PPL billed Custom Fab without Mr. McGrath's knowledge or consent beginning mid-2015.

52. On December 11, 2015, Mr. McGrath requested an explanation from Mr. Worthington as to why Ultimate was no longer receiving monthly bills, why and when Ultimate's chosen EGS removed itself, and who had taken its place. C Exhibit 11.

53. On October 19, 2015, PPL accepted payment from Custom Fab towards the account ending in 001 in the amount of $17,260.92, which eliminated the arrearages on that date. C Exhibit 2 at 4.

54. PPL did not receive payments for two bills due November 9, 2015 in the amount of $4,812.67 and December 9, 2015 in the amount of $6,513.57. C Exhibit A at 9, C Exhibit 2 at 3-4, C Exhibit 12 at 3.

55. On or about December 1, 2015, PPL billed Custom Fab at 541 North Fourth Street, Denver PA for estimated usage at the Denver Facility from October 27 – November 30, 2015, in the amount of $1,305.72 at an account ending in 003. C Exhibit 10 at 2-4.

56. PPL accepted a check payment from Custom Fab on December 11, 2015 for $1,305.72. C Exhibit 10 at 2.

57. On March 3, 2016, electric service to Ultimate's account ending in 001 was terminated but then reconnected on the same date after U.S. Pipe contacted PPL attempting to make a $44,104.57 payment on Ultimate's account. C Exhibit 3 at 6-7.

58. On March 3, 2016, Custom Fab tendered a check for $44,104.57 to PPL, which was returned on March 9, 2016 as unauthorized. C Exhibit A at 14, C Exhibit 2 at 4, C Exhibit 3 at 4.

59. On March 11, 2016, PPL charged Ultimate's account ending in 001 a "CONP" fee of $30. C Exhibit 2 at 4.

60. On March 11, 2016, Mr. McGrath repeated a request to CSR Sherry Shaffer to terminate service and not allow U.S. Pipe to make unauthorized payments to keep the service on as it was a tenant not in good standing and in the process of moving. C Exhibit 3 at 6.

61. Instead of terminating service on March 11, 2016, PPL maintained connected electric service to Ultimate and eventually accepted a payment of $44,104.57 on the account from third-party U.S. Pipe on or about March 18, 2016. C Exhibit 2 at 4, C Exhibit 3 at 5-7, C Exhibit 12.

62. On June 21, 2016, PPL issued another termination notice for the arrearage amount of $8,557. C Exhibit 2 at 5, C Exhibit 3 at 5.

63. PPL has a policy of accepting payment on an account without regard to the identity of the payor. Direct Testimony of Dennis Worthington at 7, C Exhibit 9.

64. In March of 2016, U.S. Pipe paid Ultimate's electric bill. N.T. 54-55. C Exhibit A at 5.

65. By April 15, 2016, Custom Fab had vacated the premises. N.T. 54.

66. PPL's April 2016 bills to Ultimate totaling $5,731 on April 4 are high in comparison with the $3,714 billed in April of 2015 because: 1) there are EGS charges from Guttman Energy and Engie Resources, LLC plus two electric service charges and two late payment charges on the April 2016 bills; 2) the Automatic Meter Reading (AMR) meter was

failing; and 3) PPL was partially billing U.S. Pipe based upon estimated reads. N.T. 11-13, C Exhibit 2 at 4, and C Exhibit 3 at 5.

67. Mr. McGrath sued U.S. Pipe in Philadelphia Federal Court after Mr. McGrath was notified the company intended to vacate the facility by March 1, 2016. C Exhibit A at 5.

68. On September 1, 2016, PPL witness Dennis Worthington was deposed in a civil action that was before the Court of Common Pleas in Lancaster County, Pennsylvania. [3]

69. Mr. Worthington, in his sworn deposition ("*Worthington Deposition*"), testified about the 2015 events at issue in this proceeding. Exhibit OSBA-2.

70. Mr. Worthington testified that on June 15, 2015, Richard A. McGrath, the owner of Ultimate, requested that Ultimate's commercial customer account be password protected. *Worthington Deposition*, Exhibit OSBA-2 at 134 -136.

71. A Settlement was reached in Federal Court in November 2016. C Exhibit A at 5-6.

72. As Ultimate's account was password-protected, payment by a third party towards Ultimate's balance could only have occurred with knowledge of the password or special permission by PPL account manager or customer service representative. Direct Testimony of Dennis Worthington at 7-8.

73. On September 5, 2017, Ultimate filed an informal complaint at the Commission's Bureau of Consumer Services (BCS). C Exhibit 3 at 2.

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[3] *Custom Fab, Inc. v. Richard A. McGrath*, Docket No. CI-14-04444 (C.P Lancaster Co, PA), available at http://prothonotary.co.lancaster.pa.us/civilcourt.public.
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74. On September 7, 2017, PPL terminated service to Ultimate's account. C Exhibit 3 at 3.

75. BCS issued a Decision at Case No. 3559455 on September 12, 2017 dismissing Ultimate's complaint against PPL and referring the case to mediation. C Exhibit 3 at 2.

76. On October 13, 2017 Ultimate's meter was changed to a radio frequency meter. C Exhibit 3 at 2.

77. On January 18, 2018, a notice of termination was issued for an arrearage amount of $2,226.48, with a cut-off date of January 29, 2018. C Exhibit 3 at 2.

78. On February 5, 2018, Ultimate's service was terminated. C Exhibit 3 at 2.

79. On February 6, 2018, Ultimate paid $2,226.48, and service was restored. C Exhibit 3 at 1.

DISCUSSION

The party filing the Complaint bears the burden of proving that he or she is entitled to relief from the Commission. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). To satisfy the burden of proof against a utility, the Complainant must show that the utility is responsible or accountable for the problem described in the Complaint, *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976), or that the utility has violated either its duty under the Public Utility Code or the orders or regulations of the Commission. 66 Pa. C.S. § 701.

Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Commw., Pa. Pub. Util. Comm'n*, 67 Pa. Commw. 597, 447 A.2d 1100 (1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 154 Pa. Commw. 21, 623 A.2d 6 (1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

The "burden of proof" is composed of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of producing evidence or the burden of coming forward with evidence, determines which party must come forward with evidence to support a particular proposition. This burden may shift between the parties during the course of a trial. If the party (initially, this will usually be the complainant, applicant, or petitioner, as the case may be) with the burden of production fails to introduce sufficient evidence, the opposing party is entitled to receive a favorable ruling. That is, the opposing party would be entitled to a compulsory nonsuit, a directed verdict, or a judgment notwithstanding the verdict. Once the party with the initial burden of production introduces sufficient evidence to make out a prima facie case, the burden of production shifts to the opposing party. If the opposing party introduces evidence sufficient to balance the evidence introduced by the party having the initial burden of production, the burden then shifts back to the party who had the initial burden to introduce more evidence favorable to his position. The burden of production goes to the legal sufficiency of a party's case. *Id.*

Having passed the test of legal sufficiency, the party with the burden of proof must then bear the burden of persuasion to be entitled to a verdict in his favor. "[T]he burden of persuasion never leaves the party on whom it is originally cast, but the burden of production may shift during the course of the proceedings." *Riedel v. County of Allegheny*, 159 Pa.Cmwlth. 583, 591, 633 A.2d 1325, 1328 n. 11 (1993). The burden of persuasion, usually placed on the complainant, applicant, or petitioner, determines which party must produce sufficient evidence to

meet the applicable standard of proof. See, 66 Pa.C.S. § 332(a). It is entirely possible for a party to successfully bear the burden of production but not be entitled to a verdict in his favor because the party did not bear the burden of persuasion. Unlike the burden of production, the burden of persuasion includes determinations of credibility and acceptance or rejection of inferences. Even unrebutted evidence may be disbelieved. *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678 (Pa.Cmwlth. 2005), app. denied, 586 Pa. 776, 895 A.2d 1264 (2006). In order to bear the burden of proof and be entitled to a decision in his favor, a party must bear both the burden of production and the burden of persuasion.

Section 1303 of the Public Utility Code states, in pertinent part: "No public utility shall, directly or indirectly by any device or in anywise, demand or receive from any . . . corporation . . . a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs . . ." 66 Pa. C.S. § 1303. Section 1304 (Discrimination in rates), provides in pertinent part:

> No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service. …

66 Pa. C.S. § 1304.

Section 1501 of the Public Utility Code states, in pertinent part:

> Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every

> public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. . ..

66 Pa. C.S. § 1501.

The Commission has exclusive jurisdiction to adjudicate "issues involving the reasonableness, adequacy, and sufficiency" of a public utility's facilities and services. *See Elkin v. Bell Telephone Co. of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (citations omitted).

In pertinent part, Section 1502 states:

> No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. . . .

66 Pa. C.S. § 1502. The word "service" is broadly defined in the Public Utility Code, as follows:

> "Service." Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities,. . . in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, ...

66 Pa. C.S. § 102.

The Commission's regulation at Section 54.2 defines a "small business customer" as follows:

> *Small business customer*—The term refers to a person, sole proprietorship, partnership, corporation, association or other business entity that receives electric service under a small commercial, small industrial or small business rate classification, and whose maximum registered peak load was less than 25 kW within the last 12 months.

52 Pa. Code § 54.2

There are several regulations addressing a utility's treatment of private customer information. Section 54.8 of the Commission's Regulations applies to residential and small business customers as defined in Section 54.2 (definitions). Section 54.8 provides as follows.

Privacy of Customer information.

> (a) An EDC or EGS may not release private customer information to a third party unless the customer has been notified of the intent and has been given a convenient method of notifying the entity of the customer's desire to restrict the release of the private information. Specifically, a customer may restrict the release of either the following:
> (1) The customer's telephone number.
> (2) The customer's historical billing data.
>
> (b) Customers shall be permitted to restrict information as specified in subsection (a) by returning a signed form, orally or electronically.
>
> (c) Nothing in this section prohibits the EGS and EDC from performing their mandatory obligations to provide electricity service as specified in the disclosure statement and in the code.

52 Pa. Code § 54.8.

The Commission also has a Policy Statement at Section 69.1812 regarding information and data access which provides:

> The public interest would be served by common standards and processes for access to retail electric customer information and data. This includes customer names and addresses, customer rate schedule and profile information, historical billing data, and real time metered data. Retail choice, demand side response and energy conservation initiatives can be facilitated if EGSs, curtailment service providers and other appropriate parties can obtain this information and data under reasonable terms and conditions common to all service territories, that give due-consideration to customer privacy, provide security of information and provide a customer an opportunity to restrict access to nonpublic customer information.

52 Pa. Code § 69.1812.

Additionally, there are Commission regulations addressing the confidential treatment of customer information regarding EGS customers at 52 Pa. Code § 54.122 (code of conduct), telecommunications customers at 52 Pa. Code § 63.135 and natural gas customers at 52 Pa. Code § 62.78. Although these regulations do not apply to EDCs, they show the Commission is interested in protecting customer information across utility industries. For example, Section 63.135 provides:

> **(5) Safeguarding customer information**. A telephone company is responsible for implementing appropriate procedures to safeguard customer information and prevent access to it by unauthorized persons. Tangible customer records such as paper or microfiche records and electromagnetic media shall be stored in secure buildings, rooms and cabinets, as appropriate, to protect them from unauthorized access. Data processing and other electronic systems shall contain safeguards, such as codes and ***passwords***, preventing access to customer information by unauthorized persons.
>
> **(i) Transmission of customer information**. Customer information shall be transmitted in a manner which will reasonably assure that the information will not be disclosed to persons who are not authorized to have access to it.

52 Pa. Code § 63.135 (emphasis added).

These above regulations and policy statements show that the Commission is concerned with the need to safeguard customer information, and that password protecting that information is a viable solution.

Ultimate Sports' Position

Ultimate contends there are incorrect charges on its PPL account due to failed meters and failed billing systems after EGS changes, and that it is owed a refund of approximately $5,000. Additionally, Ultimate requests relief in the form of appropriate sanctions against PPL for conduct in violation of the Code and Commission regulations. Ultimate MB at 13, 19. Specifically, Ultimate requests civil penalties for failure to protect

password-protected account information of Ultimate from another tenant, Custom Fab and its successor U.S. Pipe (Custom Fab/U.S. Pipe) and for failure to discontinue service to Ultimate's account on June 1, 2015 as had been instructed by the CEO of Ultimate, Mr. McGrath, to a customer service representative on May 27, 2015 and the Regulatory Compliance Supervisor of PPL on June 15 and 19, 2015.

Ultimate contends Respondent violated the Public Utility Code and Commission regulations when it disclosed to Custom Fab without Ultimate Sports or Richard McGrath's express authorization password-protected account information in order to obtain payment towards a commercial customer's arrearage. Ultimate MB at 13. Ultimate Sports further contends PPL erred in ignoring Mr. McGrath's instruction to discontinue electric service to his property, and instead continued electric service and accepted payments from a third-party commercial tenant. Ultimate MB at 13.

<u>OSBA's Position</u>

OSBA intervened because it is concerned that PPL's actions were harmful to Ultimate, a small business customer, and that other small businesses across the Commonwealth could be materially impacted if PPL continues to act and other EDCs act in this manner. OSBA requests the Commission: 1) consider adopting a policy statement addressing customer privacy and password protection regarding all public utility customer accounts; 2) 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; 3) determine PPL acted unreasonably in revealing Ultimate's account information to a commercial tenant without the correct password and in entering into a payment arrangement with the other tenant; 4) determine PPL violated its own internal policy by revealing Ultimate's usage information to another commercial tenant without written authorization of Ultimate; and 5) reaffirm that residential leased premises protections set forth in the Code at Chapter 15, 66 Pa. C.S. and regulations at Chapter 56, 52 Pa. Code, do not extend to commercial tenants OSBA MB at 7-13. OSBA argues the customer protections under 66 Pa.Code §§ 1521-1533 only apply to residential tenants of residential dwellings/buildings; thus, PPL was under no obligation to offer Custom Fab an opportunity to

pay its Landlord's account arrearage in order to avoid termination of service to the entire Denver Facility. OSBA MB at 7-8.

PPL's Position

PPL contends there are no laws, statutes, rules or regulations which prohibit the provision of information to Custom Fab. N.T. 85, PPL MB at 13. PPL argues it had no duty to terminate power to Ultimate upon its request because: 1) a tenant in possession (Custom Fab and/or U.S. Pipe) 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 MB at 12. Further, PPL contends it followed its long standing policy to accept payment on an account without regard to the identity of the payor for the benefit of all ratepayers. PPL MB at 8.

PPL argues there are no statutes or regulations prohibiting a utility from providing a tenant in possession of a leasehold with information necessary to maintain service and PPL acted reasonably in providing continued service to Custom Fab, a commercial tenant in possession of a portion of the Denver Facility. PPL MB at 13. Specifically, PPL argues it balanced the relative hardships of both tenants of the property and determined it had no duty to terminate service when: (1) one of two tenants in possession wished to maintain service; (2) there were no safety issues preventing the provision of continued service; and (3) the landlord refused to relinquish control of his electric account to Custom Fab.

PPL admits to providing billing information to Custom Fab. PPL MB at 12. However, PPL argues that Mr. McGrath informed PPL Representatives Brandi Martzen and Dennis Worthington that Custom Fab was obligated to pay the electrical bills and the information PPL gave Custom Fab did not contain any personally identifiable information which would lead to any identity fraud risk to Ultimate Sports. PPL contends Custom Fab was entitled to the billing information for its Landlord's electric account even though it was password protected because Custom Fab is an interested third party using some of the electricity for which the account is being billed. PPL MB at 12.

Disposition

Noncompliance with Tariff Provisions and Internal Customer Information Disclosure Policy

Ultimate has a commercial account ending in 001, at the service address of 531 North Fourth Street, Denver, PA 17517. Ultimate is a Large General Service – 69 KV or Higher (GS-3) customer of PPL. C Exhibit 6 at 2, PPL Tariff Supplement No. 194, Electric Pa. P.U.C. No. 201 at 25. PPL is Ultimate's EDC and Direct Energy Business was its EGS. 6 Exhibit 6 at 2.

PPL's Tariff No. 201 at 25 provides:

> PAYMENT **(C)**
> The above net rate applies when bills are paid on or before the due date specified on the bill, which is not less than 15 days from the date bill is mailed via the U.S. Postal Service or mailed electronically. When not so paid the gross rate applies which is the above net rate plus 5% on the first $200.00 of the then unpaid balance of the monthly bill and 2% on the remainder thereof.
>
> CONTRACT PERIOD
> Service under this Rate Schedule is for an initial term of one (1) year from the date service is first rendered, unless the Company and the customer mutually agree to a different term in the contract for service.

PPL Tariff Supplement No. 194 at Electric Pa PUC No. 201 at 25 (C).

A public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and customer. 66 Pa. C.S. § 316; *Kossman v. Pa. Pub. Util. Comm'n,* 694 A.2d 1147 (Pa.Cmwlth. 1997). In the instant case, the disagreement is whether PPL provided reasonable service when it refused to terminate service to account holder Ultimate and continued to bill for service rendered after June 1, 2015 through March, 2016 for the service property in question. The question before the Commission is whether the utility has provided adequate, efficient, safe and reasonable service within its Commission-approved tariff.

Mr. Worthington corresponded with PPL Paralegal Kim Safford, who wrote,

> 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 2012.

N.T. 77-78, C Cross Exhibit 1.

Mr. Worthington admitted on cross-examination that 66 Pa. C.S. § 1527 applies only to residential customers. N.T. 77. However, he testified on re-direct examination, "So, my concern was either we're going to have a dispute with the existing customer, Ultimate Sports, or we would have a dispute with the tenant in possession, Custom Fab, because we were causing harm to a business he was trying to perform. So, I opted, with the intent to take reasonable steps to keep the service on. That is the reason why I made the decision I made." N.T. 82. Mr. Worthington was asked the following question on cross-examination, "And it [PPL] would proceed to ignore the property owner's rights and directions to not open a new account in a tenant's name?" Mr. Worthington replied, "I'm not aware of any provision that would say we could not do that." He was then asked, "Are you aware of any provision that authorizes PPL to do such a thing?" Mr. Worthington replied, "No." N.T. 85.

I find PPL did not act within its above-referenced tariff in refusing to discontinue service to Ultimate on June 1, 2015 and instead seeking payment under Ultimate's account number ending in 001 and a separate account number ending in 003 for Custom Fab for the same meter, overlapping the same time period, using estimated usage readings for multiple months without the consent and against the directives of Ultimate's CEO and Custom Fab/U.S. Pipe's Landlord, Mr. McGrath. The actions of PPL are unreasonable and exceed the company's tariffed service regarding Rate Schedule GS-3 service provisions in violation of 66 Pa. C.S. §§ 1303 and 1304 (relating to adherence to tariffs and discrimination in rates respectively). The statutory definition of "service" is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n,* 654 A.2d 72 (Pa. Cmwlth. 1995).

These actions are also contradictory to PPL's "Disclosure of Customer Information Policy," which provides in pertinent part as follows.

> 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.

C Exhibit 13.

A preponderance of the evidence shows PPL required written consent from Ultimate prior to the release of Ultimate's usage information to OSBA. However, it did not seek or obtain said written consent prior to the release of Ultimate's usage information to Custom Fab and its successor, U.S. Pipe. Thus, PPL was noncompliant with its own Disclosure of Customer Information Policy.

Violation of 52 Pa. Code § 54.8(a)(2)

In the instant case, Ultimate's kilowatt hour usage comparison is as follows.

Month/Year	2013	2014	2015	2016	2017
January		59100	75600	89100	36300
February		82200	0	87000	31200
March		6900	0	67800	22500
April		48900	45900	20100	16200
May		33900	83100	7800	6300
June		32100	78900	6900	9300
July		37500	39600	8100	5400
August		36900	46200	10500	5100
September		35400	40500	7500	6900
October	14400	33300	42300	6300	

November	24300	46200	60600	9900	
December	49800	67200	80700	29700	

C Exhibit 2.

Custom Fab/U.S. Pipe moved out of the Denver Facility on April 15, 2016, and usage dropped from 67,800 kwh in March 2016 to 20,100 in April 2016. In May, usage was 7,800, considerably less, showing Ultimate to be a small business customer within the meaning of Section 54.2, 52 Pa. Code. § 54.2.

Additionally, PPL does not refute Complainant's and OSBA's contention that Ultimate is a small business customer. Mr. Worthington testified it is PPL's policy to accept payment on a small business account without regard to the identity of the payor. He testified:

> [I]t is not uncommon for a non-customer to make a payment on an account in order to avoid termination. By way of example, family members, churches and community groups regularly make payments for the benefit of a customer to avoid pending termination. If PPL Electric instituted a policy whereby it rejected payments from anyone other than a customer, there will likely be an increase in service terminations. Alternatively, even on a commercial account (<u>specifically one in which a small business is the formal customer</u>), a family member or friend of the owner may seek to make payment in order to permit the business to retain service. To deny such payment would create undue hardships on the customer without any corresponding public or small business benefit.

PPL Statement No. 1-R at 7. (Emphasis added).

PPL agrees that generally, when an account is password protected, only an individual with the correct password can make changes to the account or receive account information. PPL Statement No. 1-R at 5. PPL's Regulatory Compliance Supervisor does not recognize a password-protected account's customer name, address, kWh usage and demand, charges and payment amounts as being private information. PPL Statement No. 1-R at 6, N.T. 83-84. The fact that Mr. Worthington emailed scanned unredacted account history information revealing customer name, address, kWh usage and demand, charges and payments to Sam Wiser, Esquire, counsel for Custom Fab, without the written consent of Mr. McGrath, CEO of Ultimate,

shows disregard for PPL's written "Disclosure of Customer Information Policy" as well as 52 Pa. Code § 54.8. C Exhibit 13.

I find credible the testimony that no EIN number, social security numbers, or information concerning Complainant's financial institutions was revealed to Custom Fab. Only Complainant's name, address, kWh usage and demand, charges and payment amounts were revealed to Custom Fab. PPL Statement No. 1-R at 6. However, I disagree with Mr. Worthington's opinion that this data disclosed was not subject to privacy rights and that an "anyone can pay" attitude is always in the best interest of a small business customer. No password should mean no access. *Mid-Atlantic Power Supply Assoc. v. Pa. Pub. Util. Comm'n,* 746 A.2d 1196 (Pa. Cmwlth. 2000). In the *Mid-Atlantic* case, the Commonwealth Court affirmed the Commission's Order enabling customers to restrict the release of their load data and all other information provided to the EGS. *Id.* at 1199-2000. Also, Section 54.8 defines "private customer information" to include a customer's "historical billing data." 52 Pa. Code §54.8(a)(2). Ultimate's account history information constitutes historical billing data within the meaning of Section 54.8(a)(2).

<u>Violations of 66 Pa. C.S. §§ 1501 and 1502</u>

Pursuant to 66 Pa. C.S. § 1502, PPL is prohibited from making or granting any unreasonable preference or advantage to any person or corporation or subject any person or corporation to any unreasonable prejudice or disadvantage as to service. 66 Pa. C.S. § 1502. In *PPL Electric Utilities Corporation v. Pa. Pub. Util. Comm'n,* 912 A.2d 386 (Pa.Cmwlth. 2006)(*PPL*), the Commonwealth Court held if knowledge and or goodwill gained at the ratepayer's expense was used to generate profit for a non-regulated affiliate of PPL, it amounted to "cross-subsidization" which is unlawful under Section 1502 of the Code, 66 Pa. C.S. § 1502. Additionally, the Court held that PPL discriminated against two competitors of its affiliate because this joint venture with a non-regulated utility consultant affiliate planned to displace other utility consultants. *Id.* at 386-388. By using the knowledge and goodwill gained in its regulated duties of key account managers to cross-subsidize and benefit PPL's non-regulated affiliates, the Court found that PPL had violated 66 Pa. C.S. § 1502. Thus, PPL has disclosed

confidential customer information without the customer's knowledge or consent in prior cases resulting in violations of the Code. *Id.*

In the instant case, there is no allegation that PPL is an affiliate of Custom Fab or U.S. Pipe. Custom Fab or U.S. Pipe are not EGSs. However, Custom Fab is neither a residential tenant nor the original account holder of the one metered account. The ratepayer is Ultimate Sports and a fundamental duty of the Commission is the protection of the public including small business ratepayers. *Id.* PPL's conduct complained of, disclosure of confidential account information of a small business tenant to another commercial tenant, constitutes unreasonable discrimination or preference concerning the establishment of different service for different customers in violation of 66 Pa. C.S. § 1502.

Complainant in the instant case complains PPL discriminated against Ultimate because PPL's conduct of not terminating service in June/July 2015, when requested by Complainant, and instead making a payment arrangement with a third party and disclosing usage and billing information negatively impacted Ultimate's ability to compete and interfered with the lease agreement between Richard McGrath and Custom Fab. It is well-settled the Commission has jurisdiction over matters relating to the reasonableness of a utility's services, facilities and rates as well as over matters concerning the utility's formation of reasonable rules and regulations governing the conditions under which service, facilities and rates shall be rendered, constructed or imposed. *DiSanto v. Dauphin Consolidated Water Supply Company,* 436 A.2d 197 (Pa. Super. 1981).

PPL inserted itself into a commercial Landlord-Tenant dispute and a dispute between two tenants even though its actions may have been an attempt to not do so as testified by Mr. Worthington. Regarding PPL's contention that its actions were proper because "no safety concerns existed which prevented the provision of reliable service," I agree there is insufficient evidence to show safety concerns. However, there is also insufficient evidence to show termination would cause a safety concern. This reasoning of PPL might be convincing if Ultimate (the tenant account holder) wanted service to remain uninterrupted despite a government entity ordering termination. *See Americus Centre, Inc. v. PPL Electric Utilities*

Corporation and the City of Allentown, C-20077427 (Opinion and Order entered May 15, 2007) (Emergency Order directed PPL to not terminate service absent an imminent threat to life, health safety or substantial property damage or in the event of a local, state or national emergency to the Americus Hotel pending entry of a final Commission Order ending the complaint proceeding).

In the instant case, Ultimate requested termination at least three times in June 2015 and on March 11, 2016, and there is insufficient evidence to show a termination would have been unsafe or unreasonable in these circumstances. The only party in the instant case objecting to termination seems to be PPL because termination would hamper its ability to seek and obtain payment from a non-party to the instant action, Custom Fab/U.S. Pipe.

Ultimate's CEO Mr. McGrath instructed PPL prior to June 1, 2015 to discontinue its service on that date and PPL originally planned to terminate service on that date. However, an entry on June 1, 2015 shows PPL made a payment arrangement with Custom Fab including an agreement that Custom Fab would pay PPL each month the amount of the electric bill to maintain service. *Worthington Deposition* at 25-26. Mr. Worthington was directly told by Mr. McGrath on June 16, 2015 that Ultimate's service was to have been terminated on June 1, 2015. Again, on June 16, 2015, Mr. McGrath, on behalf of Ultimate, instructed PPL to terminate service. This instruction was intentionally disregarded by Mr. Worthington because he made the decision to pursue payment from another tenant of the building, Custom Fab. Worthington Deposition at 57, 116. Then on March 3, 2016, service was again terminated to Ultimate's account for nonpayment, and reconnected shortly after U.S. Pipe contacted PPL in an attempt to make payment on the account. Despite Mr. McGrath's verbal instructions in March 2016 to terminate service as U.S. Steel was in the process of moving out, PPL maintained connection of electric service to Ultimate's meter.

At the prehearing conference held in this matter, PPL argued:

> I think one of the issues for the Court is there is no obligation when PPL sends out a notice of intent to terminate to actually disconnect the electric service if it finds out that there is, in fact, a tenant. Although the rules for residential are not definitely applicable to commercial, do not provide the

same safety or fallback to commercial clients, certainly they are to be read at times as guidance.

N.T. at 9.

PPL looked to the residential tenant protection statutes at Chapter 15, 66 Pa. Consolidated Statutes, and residential consumer protections in Chapter 56 of the Pennsylvania Code for guidance, which do not extend to commercial tenants or customers. I agree with OSBA's position that these chapters apply to residential tenants residing at residential dwellings where the landlord ratepayer is delinquent in paying its bills. These protections do not extend to commercial customers including the small business customer.

Furthermore, the landlord is not the ratepayer to the account. Ultimate (another tenant) is the ratepayer, not Mr. McGrath in his capacity as landlord. It is Ultimate's account, not the landlord's account. Mr. McGrath may own and be CEO of Ultimate, but Ultimate does not own the property within which it operates. The land and buildings belong to Mr. McGrath individually. Mr. McGrath is Custom Fab's landlord. Ultimate is not Custom Fab's landlord. PPL appears to be applying Chapter 15 protections to a commercial tenant from the other commercial tenant in a building with one meter. PPL also appears to prioritize its goal of not shutting off service and accepting payment on an account without regard to identity of the payor or authorization from the account holder over the consumer protection rights under Chapter 54 of a small business customer because PPL does not make money when it shuts off service. Worthington Deposition at 118.

A PPL account manager knows the details of their customers' electric usage and costs for business purposes. Commercial customer specific data is confidential to the customer and extremely valuable to energy consultants. *PPL Electric Utilities Corporation v. Pa. Pub. Util. Comm'n,* 912 A.2d 386 (Pa.Cmwlth. 2006). As in the *PPL* case, I find that in the instant case, PPL violated Section 1502 when it disclosed confidential customer information of Ultimate to Custom Fab/U.S. Steel without Ultimate or Mr. McGrath's knowledge or consent. *Id.* at 386-388

The Commission has recognized that pursuant to 52 Pa. Code § 54.8, a small business customer has the right to restrict the release of its historical billing data and telephone numbers to the same extent as a residential customer. *Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers*, M-2010-2185981 at 14 (Final Order entered November 5, 2010). Currently, the most sensitive customer data is held by the EDC, charged with protecting small business consumers from security vulnerabilities or attacks from unauthorized third-parties. The Commission has promoted cybersecurity through its regulations requiring EDCs to give customers advance notice and opportunity to restrict the release of their phone numbers and historic billing data. 54 Pa. Code § 54.8. *See also, Mid-Atlantic, supra* (affirming Commission Final Order enabling customers to restrict release of their load data or all information and requiring EGSs to maintain confidentiality of all data provided to them).

Even when customers switch EGSs, the EDC's billing systems are not open to the EGSs or any other party given the inherent privacy, proprietary and security concerns. The EDC is the default service provider obligated under 66 Pa. C.S. § 2807(e) to provide electric service to the customer. The EDC remains the entity responsible for maintaining the confidentiality of customer information and handling billing inquiries. *See In re: Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing,* Docket No. P-2016-2579249 (Opinion and Order entered January 31, 2018). As the Commission held in *In re: EDC Customer Account Number Access Mechanism for EGSs*, M-2013-2355751 (Final Order entered July 17, 2013):

> 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 39, Docket No. M-2013-2355751.

PPL's argument that Custom Fab was a "tenant in possession under a lease agreement and no safety issues prevented the provision of electricity to the building" are not explicit exceptions to the general customer protection regulation of 52 Pa. Code § 54.8. These reasons are insufficient to excuse the improper failure to discontinue service as directed by the account holder and the disclosure of password-protected account information of the account holder to another commercial tenant. Direct Testimony of Dennis Worthington at 3-4, N.T. at 51. 66 Pa. C.S. § 1501.

PPL could have refused to provide Custom Fab with usage information without a password and referred the tenant to Ultimate, the ratepayer. That would have been reasonable service to Ultimate and Custom Fab. Custom Fab could have paid for a second meter to be installed at the Denver Facility and applied for an account in its name.

On March 3, 2016, electric service to Ultimate's account ending in 001 was terminated. On that same date, Custom Fab tendered a check for $44,104.57, which was returned on March 9, 2016 as unauthorized. C Exhibit A at 14, C Exhibit 2 at 4, C Exhibit 3 at 4. This "anyone can pay" policy could have negative outcomes, especially in cases such as this when Custom Fab's initial payment was returned as unauthorized and a $30 charge was added to Ultimate's bill on March 11, 2016. C Exhibit 2 at 4. PPL accepted payment of a third party that it was warned was not paying its share of electric bills in advance by Mr. McGrath. If the entity wanting to pay tenders a bad check or a non-negotiable instrument, the credit rating of the account holder may be negatively affected. Small business consumers should have an expectation of privacy regarding their social security numbers, EIN numbers, financial institution information, usage and demand information disclosed to the EDC, especially involving a password-protected account. By disclosing the first tenant's account information including name, address, kwh usage and demand, charges and payment history to the second tenant, PPL has violated 52 Pa. Code § 54.8, 66 Pa. C.S. §§ 1501 and 1502. Direct Testimony of Dennis Worthington at 6-7.

Also, terminating Ultimate's account and switching the one meter to U.S. Pipe for a $44,104 payment was improper as it is clear from the record that one needed a password and

account number in order to wire a payment. PPL argues it worked diligently to find a resolution of all issues with Complainant and that it attempted to balance the rights of users and not interject itself into a legal dispute over the terms of a lease to which it was not a party. PPL MB at p. 9. PPL argues it would have aided a landlord in constructively evicting a tenant if it had terminated service in June 2015. PPL MB at p. 9. However, PPL offers no caselaw and cites to no regulations or statutes to support its position other than 66 Pa. C.S. § 332(a) (burden of proof).

PPL has intentionally or unintentionally inserted itself into a landlord-tenant dispute and a tenant-tenant dispute and has chosen sides with the non-accountholder tenant who offered to pay $44,104. PPL should have followed the Commission's regulations at 52 Pa. Code § 54.8. The consumer rights of the account holder, a small business, are paramount to that of a third-party commercial tenant and beneficiary of the electric service. That commercial tenant could have applied for service in its name at a separate meter and account number. The fact that PPL disregarded a direct request to discontinue service in June 2015 is a violation of Sections 1501 and 1502 of the Code in that it is unreasonable and discriminatory service. 66 Pa. C.S. §§ 1501 and 1502. PPL did not disclose social security numbers, EIN numbers or financial institution information to Custom Fab. Direct Testimony of Dennis Worthington at 6, N.T. 83. However, the disclosure of other account information pertaining to usage, demand, EGS supplier, etc., and the acceptance of payment from a third-party unauthorized by the commercial account holder is unreasonable. It is also unreasonable to open an account for the same meter, in the third-party commercial tenant's name against the express wishes of Ultimate and its CEO, the landlord Mr. McGrath. N.T. 83-85, 66 Pa. C.S. §§ 1501 and 1502.

<u>Custom Fab and U.S. Pipe are not tenants within the meaning of 66 Pa. C.S. § 1526 and 1527</u>

Custom Fab and its successor, U.S. Pipe, are not residential tenants entitled under Chapter 15 of the Public Utility Code to an ability to pay an arrearage amount owed by a landlord ratepayer in order to avoid service termination to a residential dwelling. N.T. 76-79. Complainant's Cross Exhibit 1. See 66 Pa. C.S. § 1527 *et seq*. If PPL is attempting to extend the consumer protections of Section 1527 to U.S. Pipe Fabricators, such action is contrary to

caselaw precedent. *See Alfred Stempo-Sammy Jo's Inc. v. Metropolitan Edison Company,* C-2016-2532581 (Opinion and Order entered November 16, 2016)(*Stempo)*.

In the *Stempo* case, the Complainant (a restaurant/bar owner and small business commercial tenant) argued it deserved thirty days' notice prior to termination of service because of a landlord ratepayer's arrearage. The EDC argued it was not required under Chapter 15, to give notice of termination to the commercial (small business) tenant prior to terminating service. 66 Pa. C.S. § 1526. The Commission agreed stating, "Commercial tenants or individuals running a business at a commercial service property are not as protected a class of customers as residential tenant customers." Section 1527(b) provides that a utility shall not terminate service or shall promptly resume service previously terminated if it receives from the residential tenants an amount equal to the bill for the affected account of the landlord ratepayer for the billing month. Section 1527(b) also provides that a residential tenant is entitled to 30 days' notice of termination prior to termination due to a landlord ratepayer's nonpayment. 66 Pa. C.S. § 1527(b).

In the instant case, PPL did not give Custom Fab or U.S. Pipe 30 days' tenant termination notice, but now argues under the guidance of Section 1527, it owed Custom Fab an opportunity to pay the delinquent tenant Ultimate's bills prior to a shut off. This is contradictory to caselaw interpretation and application of Chapter 15 of the Public Utility Code. I know of no provision authorizing the Commission to direct a utility to continue service to a third-party commercial tenant beneficiary of service when the account holder small business tenant and customer of the EDC requests termination. PPL was under no legal obligation to continue service to either Custom Fab or its successor U.S. Pipe as neither were residential tenants in a residential dwelling with a residential landlord ratepayer within the meaning of 66 Pa. C.S. § 1526. This is an erroneous interpretation of the Public Utility Code.

Custom Fab/U.S. Pipe may have a viable cause of action in civil court under landlord-tenant law regarding the contractual provisions of its lease; however, the Commission has no jurisdiction to determine contractual disputes between landlords and tenants. Complainant and/or Respondent may have viable actions in other jurisdictions against Custom

Fab or U.S. Pipe. However, those actions are not before the Commission. The Commission only has jurisdiction to determine whether the utility is acting in compliance with provisions of the Public Utility Code, Commission regulations and Orders. Custom Fab has no right under the Code or Commission regulations to take over another tenant's meter base without the landlord or other tenant's consent. N.T. 53.

Similar to the *PPL* case, the data in the instant case, consisting of billing statements from PPL to Ultimate, was available to Mr. Worthington, the Regulatory Specialist and the account managers in the regular course of PPL's regulated business activities. There is no evidence in the record to suggest PPL was subpoenaed for the account information. The evidence shows Mr. Sam Wiser, Esquire, counsel for Custom Fab, Inc. (Law Firm of Salzmann Hughes, P.C.) contacted PPL in an attempt to gain the information.

PPL collected Ultimate's customer information at issue while carrying out its duties under the Code. Dennis Worthington, a Regulatory Compliance Specialist for PPL, had confidential knowledge of Ultimate's billing and usage data as a part of his duties within his scope of employment for PPL. After acquiring this information, which was password protected, he disclosed the information to the benefit of Custom Fab, Inc. and PPL entered into a payment arrangement regarding Ultimate's account with Custom Fab, Inc. instead of terminating service as requested by Ultimate in June 2015. These actions are unreasonable and in violation of Sections 1501 and 1502 of the Public Utility Code.

<u>High Bill Complaint and Refund</u>

From October 2013 through September 2017, there were approximately $1,000 in late fees and returned check fees on the account. It is undisputed that the Company's meter failed to communicate in February and March 2015. PPL failed to bill for some months, then billed five times in June 2015. PPL also used estimated bills for more than two consecutive months. PPL did not refute Ultimate's claim that it was overbilled in 2016 by approximately $5,000. PPL admits that two EGS switches within a 30 day period disrupted the billing systems of PPL. Ultimate switched EGSs more than twice in a month's time during this period. At the hearing, no meter test report

was offered by the Company to show the accuracy of any of the meters, either prior to or after meter changes were made. The kwh usage chart gleaned from C Exhibit 2, shows anomalies in usage. Also, C Exhibit 2 shows many late fees were assessed on Ultimate's Account.

A preponderance of the evidence shows the first meter (an AMR meter) was malfunctioning as admitted by PPL and that during February and March 2015, it was posting a zero-kWh usage at the service property. In cases of alleged high billing, the Commission applies the *Waldron* rule, which provides that to establish a *prima facie* case of overbilling, a complainant must show: (1) that the number of occupants in the household has not changed, (2) that the potential for energy utilization was low and (3) that complainant's billing history shows no prior abnormalities. Once the complainant makes out a *prima facie* case, the burden of proof then shifts to the utility; however, the ultimate burden of persuasion always remains with the complainant. *Malcolm Waldron v. Philadelphia Electric Company,* 54 Pa. PUC 98 (1980); *Repogle v. Pennsylvania Electric Company*, 54 Pa. PUC 528 (1980). In *Milkie,* 768 A.2d 1217 (Pa. Cmwlth. 2001), the Commonwealth Court of Pennsylvania further refined the *Waldron* rule by holding:

> While the [Waldron] rule is often explained by stating that the ratepayer must establish certain specific elements in order to make out a prima facie case of overbilling by a utility company, we believe this view is too restrictive. Rather, the controlling principle is that even where the utility can present evidence that it has tested the customer's meter and found it to be accurate, the customer may, nonetheless, prove his case by circumstantial evidence which would support a finding that the metered usage exceeded the actual usage. Thus, as our Supreme Court has explained, the rule operates as a device by which the complainant is protected from dismissal because of his inability to marshal *direct* proof that his meter had malfunctioned. *Burleson v. Pennsylvania Pub. Util. Comm'n*, 501 Pa. 433, 435-36, 461 A. 2d 1234, 1235 (1983).

Id. at 1219-1220 (emphasis in original) (footnote omitted). In *Nehemiah Thomas v. PECO Energy Company,* Docket No. C-2010-2187197 (Final Order entered November 15, 2011), the Commission explained that:

> [C]onsistent with our holding *in Charisse Bennett v. Peoples Natural Gas Co*., Docket No. C-2009-2122979 (Order entered October 13, 2010), the *Waldron Rule* allows a complainant to establish a prima facie case in a "high bill" complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed or by providing other relevant evidence showing that the disputed bill is unreasonably high. In evaluating a "high bill" complaint, the Commission may consider such evidence as "the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), and any other relevant facts or circumstances that come to light during the proceeding."

Id. at 6 (emphasis added).

Considering Ultimate's kilowatt hour usage comparison in the table under the above "small business" heading, I am not convinced all current charges are accurate given there was no meter test offered into evidence at the hearing to show the accuracy or inaccuracy of the first or second meters, and merely an assertion by the company's witness that rebilling based upon adjusted readings occurred more than once. PPL knew for a while that the module had stopped and instead of sending a technician to replace the meter, it billed Complainant based upon inaccurate reads for months. The company should have replaced its meter if it believed it was malfunctioning. Additionally, without the knowledge or consent of Ultimate, the account holder at Account No. ending in 001, PPL began sometime in 2015 also billing Custom Fab at the same service address at an Account No. ending in 003 based upon estimated reads and an agreement between PPL and counsel for Custom Fab as to a percentage of usage. C Exhibit 10. This billing was done without the knowledge or authorization of the account holder for the meter, and without the knowledge of the commercial landlord in a contractual relationship with a commercial tenant, Custom Fab.

It is through no fault of Complainant that PPL was using estimated reads and there is no evidence that Complainant barred PPL access to the meter at any time or that exigent circumstances existed such as major storm events preventing PPL from installing a second meter, or conducting meter reads or switching a meter earlier. Also, PPL did bill Custom Fab despite the express instruction of Ultimate to discontinue its own service on June 1 and again on June 15, 2015, which PPL decided not to do at a managerial level. Thus, I find by a preponderance of

evidence there are incorrect charges on Complainant's account and Ultimate is entitled to a bill credit/refund of $5,000. N.T. 12. C Exhibits 2 and 3. *See Jesus Campos v. Philadelphia Gas Works,* C-2012-2328020 (Tentative Opinion and Order entered March 10, 2016) citing *Angie's Bar v. Duquesne Light Company,* 72 Pa. P.U.C. 213 (1990); and *Anne Te v. Philadelphia Gas Works*, F-2012-2300790 (Order entered February 6, 2014).

In summary, I find that by charging incorrectly, refusing to discontinue service, and disclosing password protected account information to a commercial third party, PPL violated the Commission's regulations at 52 Pa. Code § 54.8 and PPL provided inadequate service to Complainant in violation of 66 Pa. C.S. § 1501. PPL also provided discriminatory service against Ultimate in violation of 66 Pa. Code § 1502. PPL should revise its internal procedures to ensure these violations do not recur. PPL should monitor Complainant's account to ensure incorrect billing does not recur. As Complainant switches its EGS frequently, PPL should be examining the account to make sure Complainant is currently being billed properly. C Exhibits 2 and 3. In the event Ultimate believes it is being misbilled going forward, then it should file another complaint. Additionally, I find a refund in the amount of $5,000 should be awarded to Complainant for incorrect charges on its account.

Civil Penalty

Having found violations of 66 Pa. C.S. §§ 1501 and 1502, as well as 52 Pa. Code § 54.8, I turn to whether a civil penalty is warranted. The Commission has promulgated a Policy Statement at 52 Pa.Code § 69.1201 that sets forth ten factors (Rosi Factors) that the Commission will consider in evaluating, *inter alia*, litigated proceedings and determining whether a fine for violating a Commission order, regulation or statute is appropriate. The factors and standards that will be considered by the Commission include the following:

> (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

See 52 Pa.Code § 69.1201(c).

1) First Factor – PPL's Conduct

The first factor for consideration is whether the conduct at issue was of a serious nature. Section 69.1201(c)(1) states:

> Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

52 Pa.Code § 69.1201(c)(1).

PPL's misconduct was intentional and serious, which results in a higher civil penalty. PPL's conduct involved intentional disclosure of password-protected small business customer account information to another commercial tenant without informing or seeking authorization from the account holder customer. This intentional misconduct occurred over a period of several months in mid-2015 through early-2016. Additionally, PPL intentionally disregarded a small business customer's directive to discontinue service on June 1, 15 and 19, 2015, and March 11, 2016. PPL continued service to the benefit of a third-party commercial tenant.

2) Second Factor - Consequences of PPL's Conduct

The second factor is whether the resulting consequences of PPL's conduct at issue were of a serious nature. Section 69.1201(c)(2) states:

> Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

52 Pa.Code § 69.1201(c)(2).

Complainant alleges property damage occurred as a result of PPL's actions. If PPL had terminated service on June 1, 2015, Custom Fab would have either had to vacate the Denver Facility or apply for a second meter installation in its name as a separate account holder. Either way, less damage might have occurred to Complainant. Complainant alleges Custom Fab interfered with its abilities to operate because of blocking access in its parking lot, shipping area, etc. with Custom Fab's construction and renovations. Additionally, Custom Fab failed to pay its

portion of electric bills pursuant to its lease agreement with Mr. McGrath. There appears to be some property damage to Complainant as a result of PPL's actions. These are serious consequences.

3) Third Factor – Whether PPL's Conduct Was Intentional

The third factor is whether the conduct at issue was deemed intentional or negligent. Section 69.1201(c)(3) provides:

> Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

52 Pa.Code § 69.1201(c)(3). "Intentional" is defined as "done by intention or design." Merriam-Webster's Collegiate Dictionary 609 (10th ed. 1999). I believe the actions of the Regulatory Supervisor were at a managerial level and intentional. The account was scheduled for a termination date of June 1, 2015, when Mr. Worthington intervened and stopped termination. Then he intentionally disclosed password-protected account information to counsel for Custom Fab.

Record evidence demonstrates that the overbilling was not intentional; however, it appears to be a negligent oversight and a misunderstanding of the effect of supplier switching upon the meter reads of certain customers switching more than twice per month. I am not convinced all corrected rebilling has occurred. I found Complainant was entitled to a $5,000 refund.

4) Fourth Factor – PPL's Modifications of Internal Practices and Procedures

The fourth factor considers whether PPL made any effort to modify internal practices and procedures to address the conduct at issue. Section 69.1201(c)(4) states:

> Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

52 Pa.Code § 69.1201(c)(4).

PPL does not agree that its actions were in violation of its Customer Disclosure Policy or that the actions are violations of 52 Pa. Code § 54.8, 66 Pa. C.S. §§ 1501 or 1502. The Company made no effort to modify its internal practices to address its violations of the Public Utility Code and the Commission's regulations and Orders even after the Complaint was filed.

5) Fifth Factor - The Impact of PPL's Conduct

The fifth factor involves the number of customers affected and the duration of the violation. 52 Pa.Code § 69.1201(c)(5). The duration lasted several months involving one customer, Ultimate.

6) Sixth Factor – PPL's Compliance History

The sixth factor addresses the compliance history of PPL. 52 Pa.Code § 69.1201(c)(6). Section 69.1201(c)(6) provides that an isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty. 52 Pa.Code § 69.1201(c)(6). PPL has disclosed confidential commercial customer information to an unauthorized third party in violation of Section 1502 before; however, the frequency of disclosures is unknown. *PPL Electric Utilities Corporation v. Pa. Pub. Util. Comm'n,* 912 A.2d 386 (Pa.Cmwlth. 2006).

7) Seventh Factor – PPL's Cooperation With Investigation

The seventh factor addresses whether PPL cooperated with I&E's investigation. 52 Pa.Code § 69.1201(c)(7). There was no Commission investigation in this case. Therefore, this factor does not apply.

8) Eighth Factor – Amount of Civil Penalty Necessary to Deter Future Violations

The eighth factor is consideration of the amount of the fine or civil penalty necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount. 52 Pa.Code § 69.1201(c)(8).

The amount of a civil penalty necessary to deter future conduct is $4,000, as at least one violation of Sections 54.8, 1303, 1501, and 1502 occurred. 52 Pa. Code § 54.8, 66 Pa. Code §§ 1303, 1501 and 1502. This is in accordance with other Commission decisions regarding incorrect charges*, See Bracken v. Champion Energy*, C-2011-2256514 (Opinion and Order entered June 12, 2012). In *Bracken,* the Commission assessed a $400 civil penalty for violating Section 56.14 by not giving a 4-months amortized bill when the EGS estimated bills for four consecutive months. See also, *Harris v. PECO Energy Company*, F-2016-2537039 (Opinion and Order entered March 5, 2018)(*Harris)*. In the *Harris* case, the Commission found Ms. Harris had an AMR meter at her residence, which if working properly should have been transmitting readings to PECO showing actual usage. However, since the meter was malfunctioning, this resulted in estimated bills from May 2014 through February 2015 in violation of 52 Pa. Code § 56.12. The Commission found that PECO should have addressed the issue and taken actual meter readings. Because it did not, PECO provided unreasonable service regarding billing concerns. The Commission held a total civil penalty of $500 for having violated of Section 56.12 should be imposed against PECO.

In comparison to *Harris,* the AMR meter was also malfunctioning for multiple months in the instant case and the utility billed for consecutive months based upon estimated

meter reads. Additionally, it is unknown if the outcomes of a negligent act or omission to act caused damage to property; however, Ultimate does allege it sustained damages as a result of PPL allowing Custom Fab/U.S. Pipe to make payments instead of disconnecting service. Complaint at 2.

PPL could have mitigated incorrect charges to Complainant by conducting a customer billing analysis and testing/replacing the meters earlier. PPL could have fixed its billing software to handle EGS switches without incorrect bills being issued. PPL could have terminated Ultimate's account in June 2015 instead of ignoring the account holder's request and working with the other commercial tenant's counsel to make a payment arrangement or bill Custom Fab under a separate account number.

9) Ninth Factor - Past Commission Decisions in Similar Situations

The ninth factor calls for a consideration of past Commission decisions in similar situations. 52 Pa.Code § 69.1201(c)(9). In the *PPL* case, the Commonwealth Court affirmed the Commission's Order directing PPL to cease and desist violating its tariff and section 1303 of the Code. Although there was no civil penalty assessed for violating Sections 1303, 1304 and 1502 of the Code, in *Commercial Utility Consultants and Public Utility Service Corporation v. PPL Electric Utilities Corporation*, Docket No. C-20027172 (Opinion and Order entered January 17, 2006), the utility was directed to cease and desist from violating Sections 1303, 1304 and 1502 by disclosing private information to other third-parties without authorization. Since PPL is intentionally and actively employing an "anyone can pay" policy and presumably continuing to disclose unauthorized private information to third parties, a civil penalty is warranted as a deterrent to this particular EDC and ten others operating in Pennsylvania. The Commission may consider the penalty's impact upon the industry as a whole. *See Pa. Pub. Util. Comm'n., Bureau of Investigation and Enforcement v. HIKO Energy, LLC*, Docket No. C-2014-2431410 (Opinion and Order entered December 3, 2015), citing *Towne v. Great American Power*, LLC Docket No. C-2012-2307991 (Ordered entered October 18, 2013).

10) Tenth Factor - Other Relevant Factors.

There are no other relevant factors.

For all of these above reasons, I find in favor of Complainant as far as Ultimate is entitled to a $5,000 credit/refund to its account for incorrect charges. Additionally, in order to deter future misconduct, a civil penalty of $4,000 is being assessed against PPL for violation of the Commission's regulations at 52 Pa. Code § 54.8 and violations of the Public Utility Code, 66 Pa. C.S. §§ 1303, 1304, 1501 and 1502. PPL shall revise its internal procedures manual in accordance with the Commission's final order and shall train and monitor its account managers and customer service representatives to not disclose password protected information to non-account holder third party commercial tenant beneficiaries.

CONCLUSIONS OF LAW

1. The party filing the Complaint bears the burden of proving that he or she is entitled to relief from the Commission. 66 Pa.C.S. § 332(a).

2. "Burden of proof" means a duty to establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

3. The Commission has jurisdiction over the parties to and the subject matter of this proceeding. 66 Pa.C.S. § 701.

4. Complainant sustained its burden of proof showing $5,000 in incorrect charges were on its bills.

5. PPL violated 52 Pa.Code § 54.8 by disclosing password-protected account information of a small business customer to a third-party commercial beneficiary of the electric service without authorization from the account holder.

6. PPL violated 66 Pa. C.S. § 1303 by not adhering to its tariffed service regarding a GS-3 customer.

7. PPL violated 66 Pa. C.S. § 1304 by discriminating against Ultimate in favor of Custom Fab and/or its successor, U.S. Pipe regarding tariffed GS-3 service.

8. PPL violated 66 Pa. C.S. § 1501 by providing unreasonable billing and customer service.

9. PPL violated 66 Pa. C.S. § 1502 by discriminating against its small business customer, Ultimate Sports Company, Inc.

10. A civil penalty of $4,000 will deter PPL from overbilling and not seeking and obtaining written authorization of small business customers prior to disclosing their account information to electric service beneficiaries or other third-parties.

11. Residential leased premises protections set forth in the Code at Chapter 15, 66 Pa. C.S. and regulations at Chapter 56, 52 Pa. Code, do not extend to commercial tenants. 66 Pa.Code §§ 1521-1533.

12. PPL was under no legal obligation to offer Custom Fab or U.S. Pipe an opportunity to pay their Landlord's account arrearage in order to avoid termination of service to the entire Denver Facility. 66 Pa.Code §§ 1521-1533.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Ultimate Sports Company, Inc. against PPL Electric Utilities Corporation at Docket No. C-2017-2633651 is sustained.

2. That PPL Electric Utilities Corporation shall provide a billing adjustment in the form of a refund/credit to Ultimate Sports Company, Inc. within thirty (30) days from the date of entry of the Commission's Final Order, in the amount of $5,000 pertaining to its account ending in No. 001.

3. That within thirty (30) days of the date of entry of a Final Order, PPL Electric Utilities Corporation shall pay a civil penalty in the amount of $4,000 by certified check or money order made payable to "Commonwealth of Pennsylvania" and sent addressed as follows:

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

4. That PPL Electric Utilities Corporation shall revise its internal procedures in accordance with the Commission's Final Order and shall train and monitor its account managers and customer service representatives to not disclose password protected information to non-account holder third party commercial tenant beneficiaries.

5. That PPL Electric Utilities Corporation shall cease and desist from further violations of the Public Utility Commission's Regulations.

6. That the Secretary's Bureau shall mark the matter at Docket No. C-2017-2633651 closed upon payment of the refund and civil penalty in Ordering Paragraph Nos. 2 and 3.

Date: September 27, 2018

/s/
Elizabeth H. Barnes
Administrative Law Judge