

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ULTIMATE SPORTS COMPANY, INC.,
Complainant,

vs.

PPL ELECTRIC UTILITIES CORPORATION,
Respondent.

COMPLAINT DOCKET

NO. C-2017-2633651

**EXCEPTIONS OF PPL ELECTRIC UTILITIES CORPORATION
TO THE INITIAL DECISION**

AND NOW, comes the Respondent, PPL Electric Utilities Corporation (“Respondent” and/or “PPL Electric”), by and through its counsel, Gross McGinley, LLP, and files the within Exceptions to the Initial Decision, dated September 27, 2018 and issued September 28, 2018, as follows:

Introduction

The Pennsylvania Administrative Code (the “Code”) provides that Exceptions may be filed by a party and served within 20 days after the initial, tentative or recommended decision is issued. 52 Pa. Code § 5.533(a). Exceptions must be “concise.” 52 Pa. Code § 5.533(c). Additionally, the Code provides that each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. 52 Pa. Code § 5.533(b). Further, supporting reasons for the exceptions shall follow each specific exception. *Id.* These Exceptions are offered in conformity therewith.

History of the Proceeding

Complainant, Ultimate Sports Company, Inc., (hereinafter “Complainant” or “Ultimate Sports”) filed a Complaint with the Commission on or about November 14, 2017, alleging (a) PPL Electric was terminating its service, (b) incorrect charges on its bills (without further explanation), (c) PPL Electric refused to honor its request for termination of electric

service, and (d) PPL Electric improperly provided ratepayer's information to a tenant in possession. The Office of Small Business Advocate (hereinafter "OSBA") filed its notice of Intervention, Public Statement and Verification on November 16, 2017. Respondent, PPL Electric, filed its Answer on December 4, 2017 denying violation of any rules or regulations of the Commission. Per Order of the ALJ, each party (inclusive of the OSBA) was required to submit the written testimony of its witnesses. Ultimate Sports filed the written direct testimony of its CEO, Richard McGrath; OSBA filed the written direct testimony of an economist, Richard Knecht; and PPL Electric filed the written direct testimony of its witness Dennis Worthington. A hearing on Ultimate Sports' Complaint was held on May 31, 2018, at which time the written testimony of all witnesses was accepted into the evidence, as well as the live cross examination of the witnesses.

The dispute between the parties involved the provision of electric service to a 41,000 square-foot manufacturing and warehouse facility in Denver, Pennsylvania owned by Richard McGrath, who is not personally a party to the action. (Written Direct Testimony of Richard A. McGrath 1 at 2). In 2000, McGrath began operating a business manufacturing sports equipment, under the name Ultimate Sports, out of the Denver, Pennsylvania facility. (Written Direct Testimony of Richard A. McGrath 1 at 2). At all times during McGrath's ownership of the facility located in Denver, Pennsylvania, PPL Electric Utilities Corporation (hereinafter "PPL Electric") was the provider of electric service and the ratepayer of record for the Denver facility was Ultimate Sports. (Written Direct Testimony of Richard A. McGrath 1 at 2-3).

On November 26, 2013, McGrath entered into a lease agreement with Custom Fab whereby McGrath leased approximately fifty (50%) percent of the Denver facility to Custom Fab while Ultimate Sports continued to use the remaining portion of the facility. (Written Direct Testimony of Richard A. McGrath 1 at 3). McGrath and Custom Fab thereafter entered into a supplement on December 15, 2015. (N.T. at 43). Despite having two tenants,

the Denver facility continued to have only one electric meter, and accordingly only one electric service account with PPL Electric. (Written Direct Testimony of Richard A. McGrath 1 at 3, N.T. at 44).

In May 2015, PPL Electric issued a Notice of Intent to Terminate Service for an unpaid balance. During the 3 day call by PPL Electric to McGrath as the CEO of Ultimate Sports, McGrath informed the Customer Representative that he was not opposed to the termination as it was the obligation of the Customer, Custom Fab, to pay the bill. At that same time, PPL Electric determined that due to a software issue associated with EGS selections, the account had not been issued bills. Shortly thereafter in June 2015, the tenant Custom Fab contacted PPL Electric expressing a desire for service inclusive of an agreement to pay current bills or even accept service in its name. However, Ultimate Sports, who refused to pay the bills, also refused to permit the account to be placed in the name of Custom Fab. Accordingly, following its longstanding policy of accepting payments on an account from persons other than the named ratepayer, PPL Electric provided Custom Fab with the information necessary to make payment on the account and accepted such payment. Ultimate Sports contends such action violated the law.

First Exception

Findings of Fact Nos. 13, 18, and 20 are unsupported by the record

1. PPL Electric excepts to Finding of Fact Nos. 13, 18, 20 to the extent such findings indirectly suggest the Lease Agreement by and between Richard McGrath (McGrath) and Custom Fab required, or otherwise obligated, Custom Fab to install a second electrical meter. Rather, the lease agreement provided for a method of calculating Custom Fab's payment obligation to McGrath in the event (1) no second meter was ever installed and (2) if a second meter was installed.

Specifically, the testimony was clear that on November 26, 2013, McGrath entered into a lease agreement with Custom Fab whereby McGrath leased approximately fifty

(50%) percent of the Denver facility to Custom Fab while Ultimate Sports continued to use the remaining portion of the facility. (Written Direct Testimony of Richard A. McGrath 1 at 3). McGrath and Custom Fab thereafter entered into a supplement on December 15, 2015. (N.T. at 43). Copies of the lease agreements were attached to the written Direct Testimony of Richard A. McGrath as Exhibit 1. Despite having two tenants, the Denver facility continued to have only one electric meter, and accordingly only one electric service account with PPL Electric. (Written Direct Testimony of Richard A. McGrath 1 at 3, N.T. at 44). The lease agreement between McGrath and Custom Fab provided a formula for estimating Custom Fab's actual electric consumption, calculated on the 12 month baseline period before the Lease's effective date (September 2012 through September 2013). Under the Lease, Custom Fab was to pay for its own usage at the end of every electric billing period. (Written Direct Testimony of Richard A. McGrath 1 at 4). Alternatively, the Lease provided Custom Fab with 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. (Written Direct Testimony of Richard A. McGrath 1 at 5). (See also Exhibit 1 to the written Direct Testimony of Richard A. McGrath) (Emphasis added).

The precise formula for calculation of electric expenses to be paid by Custom Fab, as the tenant, can be found in section 5.2 of the Lease Agreement between McGrath and Custom Fab. (N.T. at 45). Specifically, "Tenant shall pay at the end of every electric billing period an amount equal to the current billable rate for electric generation and transmission charges multiplied by the difference of the current kWh consumed in the period less the kWh consumed during the equivalent period from the baseline year." (N.T. at 47). (See also Exhibit 1 to the written Direct Testimony of Richard A. McGrath). Accordingly, Custom Fab had the option, but not the obligation, to install a second meter. To the extent the ALJ found otherwise, and such Findings formed the basis of her Conclusions of Law, PPL Electric objects.

Moreover, PPL Electric worked with the McGrath on the issue on installation of a second meter. As explained by Dennis Worthington in his Written Direct Testimony,

Yes. Initially, I communicated with Ultimate Sports through Mr. McGrath who explained that an issue existed whereby Ultimate Sports shared a facility with Custom Fab, both of which were connected to one meter. As explained to me by Mr. McGrath, Custom Fab was responsible for paying the portion of the electric bill attributed to its use. (See E-mail of June 26, 2015, attached hereto as Exhibit "B"). During such discussions, I recommended to Mr. McGrath that he (Ultimate Sports) install a second meter, so that each entity could be billed for its actual usage. I further advised Mr. McGrath that PPL Electric was willing to have someone within its service department contact him to discuss approximate costs associated with installation of a second meter. Mr. McGrath declined to speak with anyone to initiate the process to separate the service.

Dennis Worthington Written Rebuttal Testimony, Pg. 3, Ins. 1-21. PPL Electric, as the EDC was not obligated to install the meter base. Rather, such option rested with the owner, and/or tenant, and PPL Electric was willing to provide information to the owner on how to accomplish the same. However, to the extent the ALJ found an obligation on the part of Custom Fab to install a second meter and such Finding influenced her decision, PPL Electric objects.

Second Exception

Findings of Fact No. 25 is unsupported by the record

2. PPL Electric excepts to Finding of Fact no. 25 to the extent it finds that billing delays and mistakes were caused by a malfunctioning electric meter. Rather, as explained by Dennis Worthington on behalf of PPL Electric, there was a period of time wherein if a customer changed electric generation suppliers more than one time within a thirty (30) day period, an error in the coding of the billing software would prevent a bill from being issued. However, there was no evidence of any error with the meter recording electrical usage. Specifically, Mr. Worthington testified:

Q: Mr. Worthington, can you tell us, was there an issue with the billing being produced on this account?

A: After I was involved with – whenever the account was scheduled for termination, I did identify that there was a billing issue which needed to be resolved.

Q: And was that in part due to a supplier being placed – multiple suppliers being place on the account?

A: Yes.

Q: Can you explain that a little bit?

A: Well, in 2014, the regulation requires suppliers, which has changed which allowed customers to switch suppliers within three business days. So, our system was – struggled with multiple suppliers within a 30-day period. When we had more than one, it did trip up the system at the time. That issue has since been corrected. But it did trip up the system and would cause an account not to bill.

Q: And were there concerns during that period of time of 2015 of not terminating accounts that had received multiple bills in short periods of time due to supplier change issues?

A: Could you repeat? I'm sorry.

Q: Sure. Am I correct that during this period of time, some accounts, due to frequent EGS switches, were not billing every 28 to 32 days, and that there would be a catch-up bill at a later date, so that a customer may have several months of bills becoming due in a short period of time?

A: Yes.

As all parties acknowledged, due to an error in PPL Electric's billing software, Complainant was not issued bills for February and March 2015, and thereafter was issued a series of bills for the unbilled service.

The law is well established. The burden of proof rests with the Party seeking relief from the Commission. 66 Pa.C.S. § 332(a). To meet this burden, the Complainant has a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950). It is only after the Complainant establishes a prima facie case that the burden of going forward shifts to the Respondent Utility. *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980). If a utility does not rebut that evidence, a complainant will prevail. If the utility rebuts complainant's evidence, the burden of going forward with the evidence shifts back to a complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Replogle v. Pennsylvania Electric Company*, 54 Pa. PUC 528 (1980), and *Waldron v. Philadelphia*

Electric Company, 54 Pa. PUC 98 (1980). If Respondent submits evidence of “co-equal” weight to refute Complainant's evidence, Complainant has not satisfied the burden of proof unless it presents additional evidence opposing Respondent's evidence. *Morrissey v. PA Dept. of Highways*, 225 A.2d 895 (Pa. 1967), and *Burleson v. Pa. P.U.C.* 443 A.2d 1373 (Pa. Cmwlth. 1982), aff'd, 461 A.2d 1234.

A Complainant may establish a *prima facie* case of over-billing by showing (1) the number of occupants in a household has not changed; (2) the potential for energy utilization is low; and (3) the Complainant's power usage for the billing periods in question was unchanged from earlier periods and his bill for the same period was higher than previous bills. See *Dziadas v. Pennsylvania Public Utility Commission*, 2012 (Westlaw 8699988). In holding that Complainant met its burden of proving improper overbilling in the amount of \$5,000, the ALJ refers to a comparison chart of monthly usages for October 2013 through September 2017. However, while all parties acknowledge a problem with invoices being issued between January 2015 and June 2015, a review of the cumulative bills for that period reveal no abnormality. Specifically for the time period of January 2014 through June 2014, Complainant was bills for 263,100 kWh. During the same months in 2015 (the period in dispute), Complainant was bills for 283,500 kwh. At most, there was a difference in usage of 20,400 kWh during a 6 month period. Given the total usage, this does not show any abnormality. (Moreover, one cannot compare the 2015 time period to 2016 as Custom Fab vacated the premises in April 2016).

Third Exception

Findings of Fact Nos. 32, 43 and 45 are unsupported by the record

3. PPL Electric excepts to Finding of Fact Nos. 32, 43 and 45 to the extent those Findings suggest McGrath requested service be discontinued on June 1, 2015. Rather, sufficient evidence shows on May 27, 2015, PPL Electric representative, Brandi Martzen,

contacted McGrath by telephone to provide him with a three day telephone notice of Intent to Terminate Service. (Exhibit 3 to written Direct Testimony of Richard A. McGrath). During the discussions concerning notice of the date after which service could be terminated, McGrath informed PPL that he had a tenant, Custom Fab, was responsible for paying the electric charges. (N.T. at 50). While McGrath stated he was not opposed to PPL Electric terminating the account for nonpayment, McGrath never specifically requested termination. Moreover, although on June 19, 2015, McGrath requested that service to the facility be terminated on June 19, 2015, such requested was premised on the requirement that Custom Fab likewise be denied service should they contact PPL Electric to connect. Upon learning that if post termination Custom Fab contacted PPL Electric to establish service in its name at the facility, PPL Electric would honor such request, Mr. McGrath directed PPL Electric not terminate service as he would not consent to losing control over the account. (Written Rebuttal Testimony of Dennis Worthington at 4).

Specifically, on June 19, 2015 McGrath sent an e-mail to Worthington stating, "Once again I ask that the electricity be immediately turned off but only with the understanding that the major (sic) involved, owned by PPL of course, and the base that is owned by Ultimate Sports remain in their current ownership position and the tenant be required to finally install his own meter despite his 18 months of pretending that we have not allowed him to do so. . . . One way or another we expect that we will not be billed for the electricity use beginning June 1 but we will not agree to shutting off only some of the electricity passing through that meter." (N.T. at 51). (See also Exhibit 4 to written Direct Testimony of Richard A. McGrath). Accordingly, McGrath's requests for termination were always conditioned on PPL Electric agreeing not to place the account in the name of a tenant in possession (Custom Fab).

Fourth Exception

Findings of Fact No. 35 is unsupported by the record

4. PPL Electric excepts to Finding of Fact No. 35 to the extent it finds that PPL Electric entered into a payment arrangement with a non-customer. Rather, a co-tenant in possession of property requested to pay the monthly electric usage charges in order to prevent termination of electric. Where no safety issues existed, PPL Electric agreed to maintain electric service so long as the monthly bills were paid, and likewise agreed to follow the policy of accepting payment on an account from any source. As explained by Dennis Worthington, the policy of accepting all payments on an account benefits all customers. Specifically, Worthington testified:

This policy is for the benefit of all ratepayers. While not the norm, it is not uncommon for a non-customer to make a payment on an account in order for 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 (specifically one in which a small business is the formal customer), 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.

(Dennis Worthington Written Rebuttal Testimony, Pg. 7 Ins. 11-21.)

Dennis Worthington, the supervisor of Regulatory Compliance at PPL Electric further testified, in written direct testimony concerning the unique circumstances which lead him to providing information to Custom Fab in order to accept payment to retain service. Specifically, Mr. Worthington explained:

I first became involved with the account of Ultimate Sports (the "customer") in May or June 2015. PPL Electric contacted the customer to notify him that the electric service to his business address was at risk for service termination. (Notice of Intent to Terminate issued on May 22, 2015 for a date on or after June 1, 2015. See Exhibit "A", a true and correct copy of Complainant's Customer Contacts). After the premises were posted for termination, a representative of Custom Fab contacted PPL Electric raising concerns as to how the termination would affect its business, as a tenant in

possession. This is the point at which I became directly involved with this matter. Accordingly, PPL Electric decided not act on the Notice of Intent to Terminate Service and I had instructed a Customer Service Representative to void the termination order. It was at about this same time that I had identified a billing irregularity and referred the account to a billing specialist to investigate and resolve.

About two weeks after the proposed service termination date, in a telephone call with the PPL Customer Service Representative, Mr. McGrath expressed a concern that PPL Electric did not act on this notice, and the issue was brought to my attention due to my earlier involvement. (See Exhibit "A"). I reviewed the information with Mr. McGrath and began communications with him both over the telephone and via e-mail. I worked with him to find a solution to address his concerns. In June 2015, I was likewise contacted by Custom Fab and advised that any termination would cause business interruption. Custom Fab also indicated a desire to make payment on the account in order to maintain service. I attempted to work with both parties as indicated in my testimony below.

(Written Rebuttal Testimony of Dennis Worthington, pg. 1-2.) PPL Electric did not enter into a specific payment arrangement but rather maintained service so long as all monthly bills were paid.

Fifth Exception

Findings of Fact No. 37 is unsupported by the record

5. PPL Electric excepts to Finding of Fact No. 37 to the extent the Finding implies that Custom Fab could have established separately metered service and started a separate account without first performing additional electrical work. By way of further statement, PPL Electric incorporates Exception No. 1 as if fully set forth a length herein.

Sixth Exception

Findings of Fact No. 51 is unsupported by the record

6. PPL Electric excepts to Finding of Fact No. 51 to the extent it states that PPL Electric billed Custom Fab. Rather, PPL Electric provided Custom Fab with duplicate bills based on a request to pay those bills in order to maintain service. PPL Electric never removed Ultimate Sports as the ratepayer.

Seventh Exception

Findings of Fact No. 66 is unsupported by the record

7. PPL Electric excepts to Finding of Fact No. 66 in so much as Complainant has not asserted any challenge to the charges contained within its electric bills. Rather, a review of Complainant's Complaint reveals the nature of the Complaint to be concerns related to PPL Electric's provision of account information to a tenant without the ratepayer's authority and failure to terminate service and failure to issue bills for several months. Moreover, Complainant's "Requested Relief" makes no reference to high bills. Finally, as Complainant presented no testimony to challenge such bills, Complainant could not have sustained its burden of proof. By way of further statement, PPL Electric incorporates Exception No. 2 as if fully set forth a length herein.

Eighth Exception

Conclusion of Law No. 4, finding incorrect charges, is unsupported by the Record

8. PPL Electric excepts to Conclusion of Law No. 4 wherein the ALJ found "Complainant sustained its burden of proof showing \$5,000 in incorrect charges were on its bills." (Opinion at 44). By way of further statement, PPL Electric incorporates Exception No. 2 as if fully set forth a length herein.

Ninth Exception

Conclusion of Law No. 5, finding PPL Electric violated 52 Pa. Code § 54.8, is unsupported by the Record wherein the instant case does not involve an EGS

9. PPL Electric excepts to Conclusion of Law No. 5 which hold that "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." In finding PPL Electric in violation of this Code Provision the ALJ has extended Section 54, "Electricity Generation Customer Choice" and

Subchapter A, “Customer Information” to situations which do not involve electric generation choice.

The purpose of the Subchapter is clearly set forth in Section 54.1(a) which provides “The purpose of this subchapter is to require that electricity providers enable customers to make informed choices regarding the purchase of electricity services offered by providing adequate and accurate customer information. Information shall be provided to customers in an understandable format that enables customers to compare prices and services on a uniform basis.” 52 Pa. Code § 54.1 The subchapter thereafter provides directives for pricing practices for retail electricity serviced, bill format, contract pricing and term disclosures, marketing/sales activities, and the right to restrict the provision of private information to EGS (privacy of customer information). Section 54.8 specifically regulates what information cannot be related to an EGS unless the customer has been notified. Subchapter A of Chapter 54 is inapplicable to situations outside of Electric Generation Suppliers and cannot form the basis of a violation in the instant action.

Similarly, the ALJ relies upon the Commission’s Policy Statement at Section 69.1812m which pertains to information and data access. 52 Pa. Code §69.1812. However the stated purpose of Title 52, Part I, Subpart C, Chapter 69 is “Sections 69.1802—69.1817 provide guidelines to default service providers regarding the acquisition of electric generation supply, the recovery of associated costs and the integration of default service with competitive retail electric markets.” 52 Pa. Code § 69.1801. Such policy statement should not be read as applicable to the unique situation in which a landlord requests service be removed from his name but at the same time forbids service be placed in the name of a tenant in rightful possession.

While there are EGS and telecommunications regulations, which define customer privacy obligations, in June and July 2015 there were no statutes or regulations which controlled the instant situation. As explained by Dennis Worthington,

My understanding of the law is that as of June and July 2015 there were no statutes or regulations that governed the provision of account information to a tenant in possession attempting to maintain service. Furthermore, I believe it is important to note that at no time was Custom Fab provided with any private information concerning Ultimate Sports such as social security numbers, EIN numbers, or banking information. Rather the information provided about the actual customer was information already in the possession of Custom Fab through its lease agreement, namely the name and address for Ultimate Sports. (See Exhibit "D"; lease agreement between Complainant and Custom Fab.) Further, the additional information all related to usage, payments and electric usage while Custom Fab co-occupied the premises, and the outstanding balance. This was information that Ultimate Sports had informed me was necessary for both parties to have so that allocation of usage could be determined. Moreover, in the underlying civil action between Ultimate Sports and Custom Fab, these documents were subpoenaed from PPL Electric by Custom Fab, and Complainant did not object to PPL Electric providing the information in response to a subpoena issued upon it.

Dennis Worthington Written Rebuttal Testimony at. Pg. 6 ln, 16 – pg. 7 ln. 7.

Tenth Exception

Conclusion of Law No. 6, finding PPL Electric violated 66 Pa.C.S. § 1303, is

unsupported by the Record when all parties were charged a GS-3 rate.

10. PPL Electric excepts to Conclusion of Law No. 6 which holds "PPL violated 66 Pa.C.S. § 1303 by not adhering to its tariffed service regarding a GS-3 customer." (Opinion at 45). This statutory provision provides: "No public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto. The rates specified in such tariffs shall be the lawful rates of such public utility until changed, as provided in this part. Any public utility, having more than one rate applicable to service rendered to a patron, shall, after notice of service conditions, compute bills under the rate most advantageous to the patron." 66 Pa.C.S. § 1303. At all times, the rates charged to the Account were in accordance with the GS-3 tariff.

The cases interpreting Section 1303 make clear that this Statute does not apply to the instant action. No party disputes that the charges to the Ultimate Sports account were

all on the GS-3 rates, as set forth in the PPL Electric published tariff. Moreover, Ultimate Sports was charged the same rate as all other GS-3 customers. No reported cases have extended Section 1303 to disputes in which a landlord attempts to constructively evict a tenant through the prevention of electric service. In fact, it was the intent to PPL Electric to not discriminate against Ultimate Sports, as the ratepayer, or Custom Fab, as a potential ratepayer. The rationale for PPL Electric's actions were best stated by Mr. Worthington:

With regard to Ultimate Sports, PPL Electric had a customer who refused to make payment on the account, but likewise refused to permit PPL Electric to place the account in the name of the tenant. Based on the information provided by Ultimate Sports, PPL Electric understood Custom Fab to be a tenant in possession of the premises pursuant to an existing lease, and that there were no safety issues on the property which would prevent service. With regard to Custom Fab, its representative contacted PPL Electric and explained that termination of service would provide a significant hardship and loss to its business. Further, Custom Fab advanced an offer to make the payment required to prevent termination. Accordingly, a facility existed wherein one of the legal tenants was asking PPL Electric to continue its service, with the offer to pay for the same. PPL Electric determined it would be fundamentally unfair to (1) refuse to place the account in the name of a tenant and (2) terminate service to a tenant despite an offer to render payment.

Written Rebuttal Testimony of Dennis Worthington pg. 8, ln. 7-19.

Eleventh Exception

Conclusion of Law No. 7, finding PPL Electric violated 66 Pa.C.S. § 1304, is unsupported by the Record when PPL Electric did not engage in discriminatory practices.

11. PPL Electric excepts to Conclusion of Law No. 7 which holds "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." (Opinion at 45). This statutory provision provides:

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. Unless specifically authorized by the commission, no public utility shall make, demand, or receive any greater rate in the aggregate for the transportation of passengers or property of the same class, or for the

transmission of any message or conversation for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or any greater rate as a through rate than the aggregate of the intermediate rates. This section does not prohibit the establishment of reasonable zone or group systems, or classifications of rates or, in the case of common carriers, the issuance of excursion, commutation, or other special tickets at special rates, or the granting of nontransferable free passes, or passes at a discount to any officer, employee, or pensioner of such common carrier. No rate charged by a municipality for any public utility service rendered or furnished beyond its corporate limits shall be considered unjustly discriminatory solely by reason of the fact that a different rate is charged for a similar service within its corporate limits.

66 Pa.C.S. § 1304. At no time did PPL Electric seek to discriminate against Ultimate Sports in favor of Custom Fab. Rather, PPL Electric was faced with the untenuous circumstance in which two tenants were in possession of a lease in which each of the two units were serviced by a singular electric meter. The one tenant (Ultimate Sports), who was also the ratepayer, refused to pay the electric bills, claimed the second tenant (Custom Fab) was responsible for payment, but also prohibited PPL Electric from placing the account in the name of Custom Fab. Rather Ultimate Sports sought to constructively evict Custom Fab as a tenant by preventing it from receiving electric service despite a willingness to pay. Given that there were no safety issues preventing service to the facilities, PPL Electric made the decision to continue to provide electric service so long as the current bills were paid. Moreover, it was Ultimate Sports who informed PPL Electric of the terms of the lease which Ultimate Sport's opinion, required Custom Fab to pay the bill. Essentially, Ultimate Sports informed PPL Electric that Custom Fab was responsible for payment of the bill, then brought an action against PPL Electric when PPL Electric provided Custom Fab with the information necessary to pay the bill. Such circumstances should not be interpreted as discrimination against Ultimate Sports.

Moreover, the case law interpreting 66 Pa.C.S. §1304 does not support a violation. In the instant case, both Ultimate Sports and Custom Fab were small business customers. There can be no claims of rate discrimination against either, as Ultimate Sports was charged at the GS-3 rate, as would Custom Fab. *See Allegheny Ludlum Corp. v. Pennsylvania*

Public Utility Com'n, 612 A.2d 6054 (Pa. Cmwlth. 1992) (holding discrimination occurs if the total amount of money demanded is illegally high for one customer and illegally low for another). As both entities are in the same class, there can be no claim that the rates to one class of service was unreasonably prejudicial and disadvantageous to a patron in another class of service. See *Building Owners and Managers Ass'n v. Pennsylvania Public Utility Com'n*, 470 A.2d 1092 (Pa. Cmwlth. 1984). Accordingly, the violation of section 1304 was improper.

To the extent a finding of discrimination was made based on a belief that PPL Electric interfered with McGrath's ability to enforce the terms of the lease, such interpretation is incorrect. PPL Electric took no action that would have prevented McGrath from enforcing the terms and conditions of the lease with Custom Fab, including the enforcement of the proper allocation of electricity bills. Rather, the lease agreement provided for Custom Fab to pay a portion of the electric bills based on current consumption compared to past consumption. PPL Electric was agreeable to providing consumption information in order to permit such payment allocation to occur. PPL Electric had no preference between customers. Rather, PPL Electric was faced with threatened litigation if it did not terminate electric service and if it did termination electric service. Given that PPL Electric had been advised by a tenant in possession of potential harm if power was terminated, and given that no safety issues existed, PPL Electric continued to provide electric service and to permit the parties to litigate (or negotiate) the lease terms amongst themselves. Such rationale and action should not be seen as discriminatory service.

Twelfth Exception

Conclusion of Law No. 8, finding PPL Electric violated 66 Pa.C.S. § 1501, is unsupported by the Record wherein PPL Electric did not provide unreasonable service.

12. PPL Electric excepts to Conclusion of Law No. 8 which holds “PPL violated 66 Pa. C.S. § 1501 by providing unreasonable billing and customer service.” Section 1501 specifically provides:

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. Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility. The commission shall have sole and exclusive jurisdiction to promulgate rules and regulations for the allocation of natural or artificial gas supply by a public utility.

66 Pa. C.S. § 1501.

PPL Electric agrees that it provided billing information to Custom Fab on dates after which Ultimate Sports placed password protection on its account. However, given the unique circumstances of this case, PPL Electric contends such actions did not constitute a violation of 66 Pa. C.S. § 1501.

It was the unique circumstances of the instant case that led to PPL Electric taking the actions it did. Specifically, PPL Electric had a current ratepayer (Ultimate Sports) and a small business in possession of premises within its service territory that wanted service. The landlord, who was likewise the CEO of Ratepayer Ultimate Sports informed PPL Electric (1) he had objection to PPL Electric terminating service because (2) Custom Fab was the entity

responsible for payment of the bill, but (3) that McGrath as the owner demanded that if the power was terminated, that Custom Fab not be permitted to obtain service in its own name. To the best of PPL Electric's knowledge, this was the first time that a landlord wanted electric removed from its name, but likewise demanded PPL Electric not place the account in the name of the tenant occupying the premises. Had Ultimate Sports simply requested termination without the condition, the power could have been terminated and upon request of Custom Fab, reactivated in the name of Custom Fab. However, it appears that McGrath wished to use electric service as a bargaining chip with Custom Fab. In this unique situation, without clear regulations to guide its decisions, PPL Electric attempted to balance the rights of two users and not interject itself in a legal dispute over terms of a lease. PPL Electric is interested only in provision of reliable and safe electricity to those who request it within its territory. Such judgment should not be found to be a violation of Section 1501.

Thirteenth Exception

Conclusion of Law No. 9, finding PPL Electric violated 66 Pa.C.S. § 1303, is unsupported by the Record wherein PPL did not engage in discriminatory practices.

13. PPL Electric excepts to Conclusion of Law No. 9 which holds "PPL violated 66 Pa.C.S. § 1502 by discriminating against its small business customer, Ultimate Sports Company, Inc.". This Section provides:

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. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service.

66 Pa. Stat. and Cons. Stat. Ann. § 1502. PPL Electric herein incorporates all arguments set forth in Exception 7 above.

Fourteenth Exception

Conclusion of Law No. 10 imposing a civil penalty on PPL Electric

14. PPL Electric excepts to Conclusion of Law No. 10 which imposes a civil penalty upon PPL Electric in the amount of \$4,000. In the Initial Decision, the ALJ stated “having found violations of 66 Pa.C.S. §§ 1501 and 1502, as well as 52 Pa. Code § 547.8,” PPL Electric’s actions were serious and warranted a civil penalty. (See Initial Decision at p. 15 and p. 15 at ¶ 3.) The Commission has promulgated a Policy Statement that has adopted the ten “*Rosi* factors” which were first articulated in the case of *Joseph A. Rosi v. Bell-Atlantic, et al.*, Docket No. C-009924409, 2000 Pa. PUC LEXIS 5 (March 16, 2000). See 52 Pa. Code § 69.1201.

Accordingly, the Commission may consider these *Rosi* factors in evaluating whether a civil penalty should be imposed for violating a Commission order, regulation, or statute. These factors are: (i) whether the conduct at issue was of a serious nature; (ii) whether the resulting consequences of the conduct at issue were of a serious nature; (iii) whether the conduct at issue was deemed intentional or negligent; (iv) whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) the number of customers affected and the duration of the violation; (vi) the compliance history of the regulated entity that committed the violation; (vii) whether the regulated entity cooperated with the Commission’s investigation; (viii) the amount of the civil penalty or fine necessary to deter future violations; (ix) past Commission decisions in similar situations; and (x) Other relevant factors. 52 Pa. Code § 69.1201(c). Given the unique situation that existed, as defined above, and the lack of any clear regulations covering the instant action, no penalty is appropriate.

Finally, PPL Electric has shown good faith through its attempts to work with the OSBA, as evidenced by OSBA’s own electronic communications. PPL Electric was

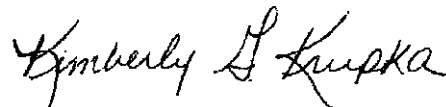
responsive and working with the OSBA, as is evidenced by the OSBA's electronic communication of March 16, 2016 wherein it stated "Thank YOU, Kim . . . and Dennis, too. The OSBA just can't thank you/PPL enough for your ongoing attention in this matter. We all seem to be singing the same song with Mr. McGrath; and certainly, we appreciate your position regarding who is (*currently*) ultimately responsible for the PPL account at this property. And, like PPL, we have no interest (or business) getting involved in the ongoing legal dispute between Mr. McGrath and his current tenant." Exhibit "G".

Conclusion

In light of the foregoing, PPL Electric Utilities Corporation respectfully requests that the Public Utility Commission grant these Exceptions and not adopt the ALJ's Initial Decision.

RESPECTFULLY SUBMITTED,

GROSS MCGINLEY, LLP



BY: _____
KIMBERLY G. KRUPKA, ESQUIRE
*Attorney for Respondent, PPL Electric
Utilities Corporation*

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ULTIMATE SPORTS COMPANY, INC.,
Complainant,

vs.

PPL ELECTRIC UTILITIES CORPORATION,
Respondent.

COMPLAINT DOCKET

NO. C-2017-2633651

CERTIFICATE OF SERVICE

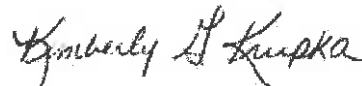
This is to certify that EXCEPTIONS OF PPL ELECTRIC UTILITIES CORPORATION TO THE INITIAL DECISION was mailed to counsel/complainant of record on behalf of Respondents by First Class Mail, on this the 29th day of October, 2018.

The Honorable Elizabeth Barnes
Administrative Law Judge
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VERIFICATION

I, MICHELLE LAWALL-SCHMIDT, being the Director- Revenue Operations at PPL Electric Utilities Corporation, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect PPL Electric Utilities Corporation to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 10/29/18

