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File #: 140074

November 7, 2018

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Jay Larry Moyer v. PPL Electric Utilities Corporation**  
**Docket No. C-2017-2629683**

Dear Secretary Chiavetta:

Enclosed for filing is the Answer of PPL Electric Utilities Corporation to the Petition to Reopen Proceeding in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Devin Ryan

DTR/jl  
Enclosures

cc: Honorable Joel H. Cheskis  
Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jay Larry Moyer,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2017-2629683
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

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**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION TO  
THE PETITION TO REOPEN PROCEEDING**

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**TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

Pursuant to 52 Pa. Code §§ 5.61(e) and 5.571(c), PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby submits its Answer to the Petition to Reopen Proceeding (“Petition”) filed by Jay Larry Moyer (“Complainant”) and served via first class mail on October 25, 2018, in the above-captioned proceeding.<sup>1</sup>

The Pennsylvania Public Utility Commission (“Commission”) should deny the Complainant’s Petition. The Complainant has utterly failed to: (1) prove that there have been “material changes of fact or of law” that “have occurred since the conclusion of the hearing” or that the “public interest requires” reopening the record (52 Pa. Code § 5.571(b), (d)); and (2) demonstrate “good cause” for the admittance of this evidence (52 Pa. Code § 5.431(b)).

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<sup>1</sup> Because the Complainant served the Petition via first class mail only, three days were added to the 10-day response period. See 52 Pa. Code §§ 1.56(b), 5.571(c).

The Complainant's "evidence" entirely relates to his new dispute over the Commission's finding in the First and Second Complaint proceeding<sup>2</sup> that additional information about his virtual meter aggregation accounts are available "by other means" than his bills. *Moyer* at 28. As explained in PPL Electric's Replies to Exceptions, this issue is not properly before the Commission. The Complainant never indicated at the hearing that he would be raising any issue regarding the Company's online resources that provide additional information about his accounts. Furthermore, even if he did, the Complainant waived the issue because he failed to raise it in either his Main Brief or Reply Brief.

In addition, the Complainant's "evidence" merely supports the Commission's prior finding that additional information about his accounts is available "by other means." Although the Complainant attempts to obfuscate and complicate the process by which he can obtain the data, he cannot deny that the Company's "Energy Analyzer" allows him to download information concerning the hourly, daily, and monthly excess generation from his solar account and the hourly, daily, and monthly usage for his residential account. Further, the rates the Company uses to calculate his credits for excess generation are shown on his residential account bills.

Finally, reopening the proceeding to admit this "evidence" would prejudice the Company and deny it due process because PPL Electric has no opportunity now to present evidence in

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<sup>2</sup> The First and Second Complaints were filed at Docket Nos. C-2011-2273645 and C-2014-2444864. Both the Commission and the Commonwealth Court denied the Complainant's claims made in the First and Second Complaints about PPL Electric's virtual meter aggregation program and billing processes, and the Pennsylvania Supreme Court denied the Complainant's Petition for Allowance of Appeal. See *Moyer v. PPL Elec. Utils. Corp.*, Docket Nos. C-2011-2273645, C-2014-2444864 (Order Entered May 19, 2016) ("*Moyer*"); *Moyer v. Pa. PUC*, Docket No. 882 C.D. 2016 (Pa. Cmwlth. 2016) ("*Moyer Appeal*"); *Moyer v. Pa. PUC*, Docket No. 235 MAL 2017 (Pa. 2017) (denying Petition for Allowance of Appeal). Moreover, still pending before the Commission is the Complainant's Third Complaint at Docket No. C-2015-2511904, which concerns, among other things, PPL Electric's bills and billing processes for the Complainant's virtual meter aggregation accounts. The Complainant's Exceptions to the April 25, 2018 Initial Decision dismissing his Third Complaint, and PPL Electric's Replies to those Exceptions, remain pending before the Commission.

rebuttal. The instant matter is ripe for the Commission's disposition and should not be further delayed by the Complainant's continued attempts to introduce and rely on extra-record evidence that is irrelevant to the issues to be decided.

In support thereof, PPL Electric states as follows:

**I. BACKGROUND**

1. On October 18, 2017, PPL Electric was served with the above-captioned Formal Complaint filed by the Complainant with the Commission. The Complainant is a participant in PPL Electric's virtual meter aggregation program, under which the excess generation produced by his solar generating facilities, if any, is used to offset the usage at his residence. This Formal Complaint is the Fourth Complaint that the Complainant has filed against PPL Electric regarding the billing process and payments for virtual meter aggregation electric service provided to the Complainant's house and detached solar array. In this Fourth Complaint proceeding, the Complainant generally has alleged that PPL Electric failed to bill and apply the credits for excess generation correctly.

2. On November 7, 2017, PPL Electric filed its Answer and Preliminary Objections to the Fourth Complaint. In its Preliminary Objections, the Company argued that the Complainant's request for monetary damages be stricken as impertinent matter.

3. On November 13, 2017, the Complainant filed an Answer to PPL Electric's Preliminary Objection as well as a letter correcting the page of a bill submitted with his Fourth Complaint.

4. On December 21, 2017, Administrative Law Judge Joel H. Cheskis ("ALJ") issued his Order granting PPL Electric's Preliminary Objections to strike the Complainant's request for monetary damages as impertinent matter.

5. On January 18, 2018, a Notice was issued scheduling a telephonic hearing for March 6, 2018, before the ALJ. Also on January 18, 2018, a Prehearing Order was issued by the ALJ setting forth certain rules and requirements for the proceeding.

6. On January 25, 2018, a Corrected Notice was issued turning the telephonic hearing into an in-person hearing on March 6, 2018, before the ALJ in Harrisburg, Pennsylvania.

7. The in-person evidentiary hearing was held as scheduled on March 6, 2018, at 10:00 AM.

8. On March 9, 2018, the ALJ issued a Briefing Order setting forth requirements for the briefs to be submitted in this proceeding. Under the Briefing Order, Main Briefs were due on or before April 27, 2018, and Reply Briefs were due on or before May 18, 2018.

9. On April 20, 2018, PPL Electric filed a letter requesting one-week extensions of the briefing deadlines, such that the Main Briefs would be due on or before May 4, 2018, and Reply Briefs would be due on or before May 25, 2018.

10. By correspondence dated April 20, 2018, the ALJ granted PPL Electric's request for one-week extensions to the briefing deadlines.

11. On September 6, 2018, the ALJ issued his Initial Decision ("ID") dismissing the Fourth Complaint.

12. On September 24, 2018, the Complainant filed his Exceptions to the ID.

13. On October 9, 2018, PPL Electric filed Replies to the Complainant's Exceptions.

14. On October 25, 2018, the Complainant filed his Petition to Reopen Proceeding and served it on the Company via first class mail only.

## **II. APPLICABLE LEGAL STANDARDS**

15. The Commission's regulations specify that "at any time after the record is closed but before a final decision is issued, a party may file a petition to reopen the proceeding for the purpose of taking additional evidence." 52 Pa. Code § 5.571(a).

16. Such a petition "must set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing." *Id.* § 5.571(b).

17. Further, "[t]he record may be reopened upon notification to the parties in a proceeding for the reception of further evidence if there is reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of the proceeding." *Id.* § 5.571(d).

18. The Commission's regulations also state that "[a]fter the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion." *Id.* § 5.431(b).

## **III. ANSWER TO PETITION TO REOPEN PROCEEDING**

19. The Complainant's Motion should be denied because he has completely failed to demonstrate that there have been material changes of fact or law since the record closed, that the public interest requires the reopening of the record, and that good cause exists for the admittance of his evidence.

20. First, there have been no changes of fact or law since the record closed. The Company's "Energy Analyzer" with which the Complainant takes issue has continued to offer the same information about the Complainant's accounts since the evidentiary hearing on March 6, 2018. Specifically, the Complainant has, since that time, been able to download information concerning the hourly, daily, and monthly excess generation from his solar account and the

hourly, daily, and monthly usage for his residential account. Moreover, the rates the Company uses to calculate his credits for excess generation have been shown on his residential account bills. Furthermore, the Commission never altered its finding from the First and Second Complaint proceeding that additional information about his bills are available by other means. *See Moyer* at 28. That the Complainant now has an issue with the Company's "Energy Analyzer" or the Commission's prior finding does not constitute a change of fact or law. Indeed, the Complainant could have asked PPL Electric's witnesses at the evidentiary hearing about the resources available to him, but he chose not to do so. Thus, there have been no changes of fact or law.

21. Even assuming *arguendo* that there were such changes, those changes are not "material" to this proceeding, the public interest does not require reopening the proceeding, and there is no good cause to admit the Complainant's "evidence."

22. As explained in PPL Electric's Replies to Exceptions, the Complainant's new issue about the Company's online resources is not properly before the Commission. (PPL Electric Replies to Exceptions at 6) The Complainant never indicated at the hearing that he would be raising any issue regarding the Company's online resources that provide additional information about his accounts. (PPL Electric Replies to Exceptions at 6-7) Moreover, the Complainant never raised this issue in either his Main Brief or Reply Brief. (PPL Electric Replies to Exceptions at 6) Therefore, this issue has been waived and need not be addressed by the Commission.<sup>3</sup>

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<sup>3</sup> See *Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS 45, at \*7 (Order entered Feb. 10, 1994); *Alston v. Nat'l Fuel Gas Distrib. Corp.*, 2013 Pa. PUC LEXIS 180, at \*25 (Mar. 12, 2013) (Initial Decision) (citing *Commonwealth v. Einhorn*, 911 A.2d 960 (Pa. Super. 2006), *appeal denied*, 920 A.2d 831 (Pa. 2007); *Jackson v. Kassab*, 812 A.2d 1233 (Pa. Super. 2002), *appeal denied*, 825 A.2d 1261 (Pa. 2003)), *reconsideration denied*, Docket No. F-2011-2236871 (Order entered Sept. 26, 2013).

23. Further, the Complainant's "evidence" merely supports the Commission's prior finding that additional information about his accounts is available "by other means." Since the evidentiary hearing, PPL Electric's counsel has tried to work with the Complainant on multiple occasions, as a matter of courtesy, to show him how to download and utilize this information. In his Petition, the Complainant attempts to obfuscate and complicate the process by which he can obtain the data. Nevertheless, the Complainant cannot deny that the Company's "Energy Analyzer" allows him to download information concerning the hourly, daily, and monthly excess generation from his solar account and the hourly, daily, and monthly usage for his residential account. It also is undisputed that the rates the Company uses to calculate his credits for excess generation are shown on his residential account bills.

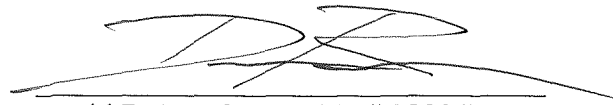
24. Finally, the Complainant's request, if granted, would prejudice the Company and deny it due process. At this late stage of the proceeding, PPL Electric has no opportunity to present evidence in rebuttal. Moreover, there is no need for the parties to present any evidence on the Complainant's new issue because, as explained previously, it is irrelevant Commission's disposition of the Fourth Complaint. The instant matter is ripe for the Commission's disposition and should not be further delayed.

25. For these reasons, the Commission should deny the Complainant's Petition to Reopen Proceeding.

**IV. CONCLUSION**

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission deny Jay Larry Moyer's Petition to Reopen Proceeding.

Respectfully submitted,



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Of Counsel:

Post & Schell, P.C.

Date: November 7, 2018

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Attorneys for PPL Electric Utilities Corporation

## VERIFICATION

I, CHERYL T. OEHLER, being a Billing Specialist, 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: 11/7/18

Cheryl T Oehler

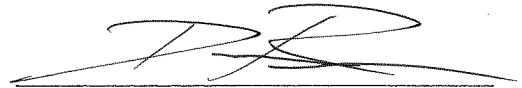
**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing have been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA E-MAIL &  
REGULAR MAIL**

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E-mail:[gtown73@hotmail.com](mailto:gtown73@hotmail.com)

Date: November 7, 2018



Devin T. Ryan