



COMMONWEALTH OF PENNSYLVANIA

November 8, 2018

E-FILED

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

Re: Richard McGrath/Ultimate Sports Company, Inc. v. PPL Electric Utilities Corporation / Docket No. C-2017-2633651

Dear Secretary Chiavetta:

Enclosed please find the Reply Exceptions, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Steven C. Gray".

Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Robert D. Knecht
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**RICHARD MCGRATH/ULTIMATE SPORTS :
COMPANY, INC., :**

v. :

PPL ELECTRIC UTILITIES CORPORATION :

DOCKET NO. C-2017-2633651

**REPLY EXCEPTIONS
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

**Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538**

**For: John R. Evans
Small Business Advocate**

**Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101**

Date: November 8, 2018

I. Introduction

On November 14, 2017, Ultimate Sports Company, Inc. (“Ultimate”) filed a Complaint against PPL Electric Utilities Corporation (“PPL”) with the Pennsylvania Public Utility Commission (“Commission”).

On November 16, 2017, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention.

On February 13, 2018, a prehearing conference was held before Administrative Law Judge (“ALJ”) Elizabeth H. Barnes.

On February 13, 2018, ALJ Barnes issued her Procedural Order.

On March 27, 2018, the OSBA served the Direct Testimony of Robert D. Knecht.

On April 27, 2018, PPL Electric served the Rebuttal Testimony of Mr. Dennis Worthington.

On May 25, 2018, PPL filed a *Motion to Strike the Pre-Served Direct Testimony of Robert D. Knecht Offered on Behalf of the Office of Small Business Advocate*.

On May 30, 2018, the OSBA answered PPL’s *Motion to Strike*.

On May 31, 2018, an evidentiary hearing was held before ALJ Barnes. ALJ Barnes denied PPL’s *Motion to Strike* at that evidentiary hearing. *May 31st Transcript*, at 37, lines 10-11.

On July 11, 2018, the OSBA submitted its Main Brief. Also, on July 11, 2018, PPL submitted a document titled “Proposed Findings of Fact, Conclusions of Law, and Brief of Respondent, PPL Electric Utilities Corporation” (“*PPL Brief*”).

On July 25, 2018, the OSBA submitted its Reply Brief.

On September 28, 2018, ALJ Barnes issued her Recommended Decision (“ID”).

On October 29, 2018, the OSBA served a letter stating that it was not filing Exceptions to the ID. The due date for the service of Exceptions was October 29th.

On October 30, 2018, the OSBA was served with the PPL's Exceptions¹ to the ID.

The OSBA submits the following Reply Exceptions in response to the improperly served Exceptions filed by PPL.

¹ 52 Pa. Code § 5.533 governs the filing of exceptions. PPL violated Section 5.533(c) ("the exceptions must be concise" and "A separate brief in support of or in reply to exceptions may not be filed with the Secretary") by adding to its numbered exceptions an argumentative "History of the Proceeding" that amounted to a separate brief. PPL also violated Section 5.533(b) ("Each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken...") by embellishing its Exceptions with this argumentative preamble that is not specifically responsive to the ID. The OSBA will not respond to this section, and requests that the Commission simply disregard PPL's "History of the Proceeding."

II. Reply Exceptions

A. Reply to PPL Exception No. 1: The ALJ's Findings of Fact Nos. 13, 18, and 20 are properly supported by the record. (PPL Exceptions, at pages 3-5)

In her ID, the ALJ found the following facts:

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.

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.

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

ALJ ID, at pages 5-6.

In its Exception No. 1, PPL first claimed that the Findings of Fact numbers 13, 18, and 20 are "unsupported by the record." PPL Exceptions, at page 3. However, as set forth above, each Finding of Fact cites directly to the record.

PPL then stated, as follows:

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.

PPL Exceptions, at page 3 (emphasis added). PPL concluded, as follows:

[T]o 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.

PPL Exceptions, at page 5.

The ALJ accurately cited to the evidentiary hearing transcript and to PPL Exhibits to support each of her Findings of Fact Nos. 13, 18, and 20. Furthermore, nowhere in the ID does the ALJ suggest that she found an obligation on the part of Custom Fab to install a second meter, or that she relied on such a finding in her decision.

Simply put, PPL Exception No. 1 is baseless, and should be summarily rejected by the Commission.

B. Reply to PPL Exception No. 2: The ALJ Findings of Fact number 25 is properly supported by the record. (PPL Exceptions, at pages 5-7)

In her ID, the ALJ found the following fact:

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.

ALJ ID, at 7.

Once again, like it did in its Exception No. 1, PPL Exception No. 2 first claimed that Findings of Fact number 25 is "unsupported by the record." PPL Exceptions, at page 5. This broad claim is simply wrong, as the ALJ cited directly to the record as the basis for Findings of Fact No. 25.

PPL then expanded on Exception No. 2, as follows:

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.

PPL Exceptions, at page 5.

First, the ALJ stated that "[b]illing delays and mistakes were caused by PPL's computerized accounting system," which PPL admitted in its Exceptions:

[A]s 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.

PPL Exceptions, at page 5.

Second, the ALJ cited to Complainant Exhibit 3, page 8 of 9, which is a reproduction of PPL's own account history for Ultimate Sports. In the entry dated April 23, 2015, under the column titled "Remarks," PPL stated: "Please change meter that stopped communicating in March – customer complaint – cg." In the entry dated May 29, 2015, the "Remarks" included "there is a meter change pending."

Thus, PPL's own account history documents that there was a malfunctioning electric meter at the Ultimate Sports facility from sometime in March 2015 through at least May 29, 2015.

The ALJ was entirely correct in her Findings of Fact No. 25. The Commission should reject PPL Exception No. 2 as the ALJ properly summarized the facts set forth in the record of this proceeding.²

C. Reply to PPL Exception No. 3: The ALJ Findings of Fact Nos. 32, 43, and 45 are properly supported by the record. (PPL Exceptions, at pages 7-9)

In her ID, the ALJ found the following facts:

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

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.

² The remainder of PPL Exception No. 2 addresses the burden of proof and the elements of an over-billing case. PPL Exceptions, at 6-7. These arguments are irrelevant to this Exception.

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.

ALJ ID, at pages 8, 10.

PPL Exception No. 3, again, argued that Findings of Fact numbers 32, 43, and 45 are “unsupported by the record.” PPL Exceptions, at page 7. Again, the ALJ cited directly to the record as the basis for these three Findings of Fact.

Starting with Findings of Fact No. 32, the PPL Ultimate Sports account history documents that Mr. McGrath spoke with PPL representative Brandi L. Martzen on May 27, 2015. Complainant Exhibit 3, page 8 of 9. That entry states that Mr. McGrath was aware of the cutoff scheduled for June 1, 2015. *Id.* Furthermore, 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 Mr. Worthington, in his sworn deposition (“*Worthington Deposition*”), testified about this conversation.⁴ Mr. Worthington confirmed that the conversation took place. *Worthington Deposition*, at pages 24-25.⁵ Mr. Worthington recalled that Mr. McGrath was concerned that PPL failed to shut off electric service as he was promised, and that Mr. McGrath wanted Mr. Worthington to promise to shut off the electric service. *Worthington Deposition*, at pages 44-45. Finally, Mr. Worthington equivocally stated that McGrath always wanted the electric service to be shut off. *Worthington Deposition*, at page 181, lines 9-14.

³ *Custom Fab, Inc. v. Richard A. McGrath*, Docket No. CI-14-04444.

⁴ A copy of Mr. Worthington’s sworn deposition is attached to OSBA Statement No. 1 as Exhibit OSBA-2.

⁵ For simplicity, the OSBA is citing to the pagination of the original deposition document.

Thus, not only is the ALJ's Findings of Fact No. 32 correct, it complies with the sworn testimony of PPL's own witness.

Next, the ALJ's Findings of Fact No. 43 is equally correct and accurate. Not only does the ALJ cite to the record, but Mr. Worthington's sworn deposition confirms No. 43 regarding Mr. McGrath's conversation with Cynthia Delp. *Worthington Deposition*, at pages 27-28.

Finally, the ALJ's Findings of Fact No. 45 is equally correct and accurate. Once again, the ALJ cited to the record. In fact, the actual email message is attached as Complainant's Exhibit No. 4. Mr. McGrath's email message says exactly what the ALJ summarized in Findings of Fact No. 45.

Therefore, the ALJ was entirely correct in her Findings of Fact Nos. 32, 43, and 45. The Commission should reject PPL Exception No. 3 as the ALJ properly summarized the facts set forth in the record of this proceeding.

D. Reply to PPL Exception No. 4: The ALJ Findings of Fact No. 45 is properly supported by the record. (PPL Exceptions, at pages 9-10)

In her ID, the ALJ found the following facts:

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.

ALJ ID, at 8, 10.

PPL Exception No. 4, yet again, argued that Findings of Fact number 35 is unsupported by the record. PPL Exceptions, at pages 9. The ALJ, yet again, cited directly to the record as the basis for this Finding of Fact.

Mr. Worthington's sworn deposition confirms, in its entirety, ALJ Findings of Fact No. 35. *Worthington Deposition*, at page 26, line 4 through 27, line 7.

Furthermore, Findings of Fact No. 35 does not use the term “non-customer,” a term employed by PPL in its Exceptions. PPL Exceptions, at page 9. In addition, PPL makes the following incorrect statement:

PPL Electric did not enter into a specific payment arrangement but rather maintained service so long as all monthly bills were paid.

PPL Exceptions, at page 10. Not only does that contradict Mr. Worthington’s sworn deposition, it is also untrue. PPL maintained service for months without receiving any payment from Custom Fab. *Worthington Deposition*, at page 116, line 20 through page 119, line 9.

The ALJ was entirely correct in her Findings of Fact No. 35. The Commission should reject PPL Exception No. 4 as the ALJ properly summarized the facts set forth in the record of this proceeding.

E. Reply to PPL Exception No. 5: The ALJ Findings of Fact No. 37 is properly supported by the record. (PPL Exceptions, at page 10)

In her ID, the ALJ found the following facts:

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.

ALJ ID, at page 9.

PPL Exception No. 5 argued that Findings of Fact No. 37 is unsupported by the record. PPL Exceptions, at page 10. PPL Exception No. 5 also incorporated its Exception No. 1 by reference. *Id.*

The ALJ cited directly to the record as the basis for Findings of Fact No. 37.

Specifically, PPL’s Exception No. 5 stated, as follows:

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.

PPL Exceptions, at 10. The OBSA observes no evidence of that implication by the ALJ. More importantly, whether Findings of Fact No. 37 implied that is irrelevant and did not influence the ALJ's decision.

Furthermore, Mr. Worthington's sworn deposition states exactly what is set forth in Findings of Fact No. 37. *Worthington Deposition*, at page 169, line 24 through page 171, line 16.

The ALJ was entirely correct in her Findings of Fact No. 37. The Commission should reject PPL Exception No. 5 as the ALJ properly summarized the facts set forth in the record of this proceeding.

F. Reply to PPL Exception No. 6: The ALJ Findings of Fact No. 51 is properly supported by the record. (PPL Exceptions, at page 10)

In her ID, the ALJ found the following fact:

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

ALJ ID, at page 10.

PPL Exception No. 6 argued that Findings of Fact number 51 is unsupported by the record. PPL Exceptions, at page 10.

In his sworn rebuttal testimony, Mr. Worthington stated, as follows:

In the summer of 2015, I had several communications with Counsel for Custom Fab regarding the outstanding balance on the account providing electricity to their leasehold. The extent of the information was limited to the name and billing address of the ratepayer (which was already known the Custom Fab), the account number, the number of kWh used, demand, current charges and outstanding balance. As confirmed by Mr. McGrath himself, when notifying me that Custom Fab had an obligation to pay for its own usage, the only information provided to Custom Fab was information necessary for Custom Fab to make payment and ensure the continued supply of electricity to its business.

PPL Statement No. 1-R, at pages 4-5.

Furthermore, Mr. Worthington, in his sworn deposition, testified as follows:

Q: Custom Fab first contacted PPL, to your knowledge, some – and by Custom Fab, I am referring through its counsel, Salzmann Hughes, in May of 2015; is that correct?

A: It was either May or June 1st. It was right around that time.

Q: Understood. Do you know if, from that point forward, copies of bills for the property, or at the very least information regarding amount outstanding on bill for the property was provided to someone at Custom Fab or its counsel?

A: Yes.

Worthington Deposition, page 165, line 18 through page 166, line 5. In addition, Mr. Worthington's sworn deposition states that Custom Fab was provided "a regular bill" in December 2015. *Id.*, page 184, lines 19-22. Mr. Worthington's deposition also states that he provided "billing information" to Custom Fab prior to October 19, 2015. *Id.*, at page 184, line 23 through page 185, line 9.

The record is also clear that Mr. McGrath wanted to retain control and ownership of the PPL account. PPL Statement No. 1-R, at page 4. The record also demonstrates that Mr. McGrath was unaware of PPL providing billing to Custom Fab. Complainant Exhibit 12, at page 1 ("...since we have not received monthly invoices since early this summer, we assumed that you have made some sort of deal behind our back.").

The ALJ was correct in her Findings of Fact No. 51. The Commission should reject PPL Exception No. 6 as the ALJ properly summarized the facts set forth in the record of this proceeding.

G. Reply to PPL Exception No. 7: The ALJ Findings of Fact No. 66 is properly supported by the record. (PPL Exceptions, at page 11)

In her ID, the ALJ found the following facts:

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.

ALJ ID, at pages 12-13.

PPL Exception No. 7 argued that Findings of Fact number 66 is "unsupported by the record." PPL Exceptions, at page 11. PPL Exception No. 7 also incorporated its Exception No. 2 by reference. *Id.*

The ALJ, in Findings of Fact No. 66, was documenting the basis for the differing bills sent to Ultimate Sports by PPL. The ALJ cited to PPL's own account activity statement for Ultimate Sports, as set forth in Complainant Exhibit 2.

The ALJ was correct in her Findings of Fact No. 66. The Commission should reject PPL Exception No. 7 as the ALJ properly summarized the facts set forth in the record of this proceeding.

H. Reply to PPL Exception No. 8: The ALJ Conclusions of Law No. 4 is properly supported by the record. (PPL Exceptions, at page 11)

In her ID, the ALJ concluded, as follows:

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

ALJ ID, at page 44.

PPL Exception No. 8 argued that Conclusions of Law No. 4 is unsupported by the record. PPL Exceptions, at page 11. PPL Exception No. 8 also incorporated its Exception No. 2 by reference. *Id.*

PPL provides no argument, factual, or legal basis for its Exception No. 8. Apparently, PPL simply disagrees with the ALJ's Conclusion.

PPL Exception No. 8 provides no basis for the Commission to overturn the ALJ's Conclusion of Law No. 4. Therefore, the Commission should reject PPL Exception No. 8.

I. Reply to PPL Exception No. 9: The ALJ properly applied 52 Pa. Code § 54.8 in her Conclusions of Law No. 5. (PPL Exceptions, at pages 11-13)

In her ID, the ALJ concluded, as follows:

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.

ALJ ID, at page 45.

PPL argued that Section 54.8 does not apply to this proceeding as “Subchapter A of Chapter 54 in inapplicable to situations outside of Electric Generation Suppliers and cannot form the basis of a violation in the instant action.” PPL Exceptions, at page 12. In support of its argument, PPL cited to Section 54.1(a):

- (a) 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.

PPL Exceptions, at page 12 (citing to “52 Pa. Code § 54.1”). What PPL failed to cite was Section 54.1(b):

b) *As to the scope of this subchapter*, this section and §§ 54.2 -- 54.3 apply to all customers, including large commercial and industrial customers. Sections 54.4 -- 54.9 apply only to residential and small business customers, as the term is defined in § 54.2 (relating to definitions).

52 Pa. Code § 54.1(b) (emphasis added). Thus, PPL's legal argument that Section 54.8 only applies to situations involving EGS's is contradicted by the plain language of the regulation.⁶

The Commission should reject PPL Exception No. 9, and its faulty legal reasoning, in its entirety.

J. Reply to PPL Exception No. 10: The ALJ properly applied 66 Pa. C.S. § 1303 in her Conclusions of Law No. 6. (PPL Exceptions, at pages 13-14)

In her ID, the ALJ concluded, as follows:

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

ALJ ID, at page 45.

PPL apparently believes that the ALJ's citation to Section 1303 is a rate issue: "At all times, the rates charged to the Account were in accordance with the GS-3 tariff." PPL Exceptions, at page 13.

In contrast to PPL's Exception No. 10, the ALJ reasoned, as follows. First, the ALJ cited to PPL Tariff Supplement No. 194 at Electric Pa PUC No. 201 at 25 (C). ALJ ID, at page 22.

Second, the ALJ concluded:

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

⁶ The OSBA respectfully requests that the Commission observe that PPL failed to except to the ALJ's conclusion that PPL violated its own policy by disclosing confidential account information. ALJ ID, at 24.

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.

ALJ ID, at page 23 (citations omitted).

The ALJ never suggested that PPL's violation of Section 1303 was due to the rates PPL charged. PPL's Exception No. 10 is a red herring that does not address the legal reasoning that is the basis for the ALJ's Conclusion of Law No. 6. The Commission should reject PPL Exception No. 10.

K. Reply to PPL Exception No. 11: The ALJ properly applied 66 Pa. C.S. § 1304 in her Conclusions of Law No. 7. (PPL Exceptions, at pages 14-16)

In her ID, the ALJ concluded, as follows:

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.

ALJ ID, at page 45.

PPL posited a series of reasons why it did not violate Section 1304:

At no time did PPL Electric seek to discriminate against Ultimate Sports in favor of Custom Fab.

* * *

There can be no claims of rate discrimination against either, as Ultimate Sports was charged at the GS-3 rate, as would Custom Fab.

* * *

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 Exceptions, at pages 15-16. What PPL failed to address in its Exception No. 11 was the legal reasoning that was the basis for Conclusions of Law No. 7. As set forth above, the ALJ cited Section 1304 because of the unreasonable preference granted to Custom Fab by PPL. ALJ ID, at page 23. The ALJ correctly found that PPL entering into billing deals with Custom Fab, as well as providing Custom Fab with protected billing information (both without the consent of the account owner), were unreasonable preferences in violation of Section 1304.

The Commission should reject PPL Exception No. 11.

L. Reply to PPL Exception No. 12: The ALJ properly applied 66 Pa. C.S. § 1501 in her Conclusions of Law No. 8. (PPL Exceptions, at pages 17-18)

In her ID, the ALJ concluded, as follows:

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

ALJ ID, at 45.

In its Exception No. 12, PPL admitted the following:

PPL Electric agrees that it provided billing information to Custom Fab on dates after which Ultimate Sports placed password protection on its account.

PPL Exceptions, at page 17. PPL providing billing information to an unauthorized third party is *de facto* unreasonable under Section 1501. The ALJ provided a lengthy analysis for Sections 1501 and 1502 in her ID. ALJ ID, at pages 26-32. In that analysis, the ALJ stated:

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 § 54.8, 66 Pa. C.S. §§ 1501 and 1502.

ALJ ID, at 31.

Furthermore, the OSBA has no sympathy for the actions taken by PPL regardless of the alleged “unique circumstances” involving Ultimate Sports and Custom Fab. The OSBA, however, objects to this self-serving, virtue signaling statement by PPL:

PPL Electric is interested only in provision of reliable and safe electricity to those who request it within its territory.

PPL Exceptions, at page 18. This statement is disingenuous. Mr. Worthington testified to the actual PPL policy:

As I stated earlier, our intent, our goal is not to shut off service. We don't make money when we do.

Worthington Deposition, at page 118.

The Commission should reject PPL Exception No. 12.

M. Reply to PPL Exception No. 13: The ALJ properly applied 66 Pa. C.S. § 1502 in her Conclusions of Law No. 9. (PPL Exceptions, at page 18)

In her ID, the ALJ concluded, as follows:

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

ALJ ID, at page 45.

The ALJ provided a lengthy analysis for Sections 1501 and 1502 in her ID. ALJ ID, at pages 26-32. PPL Exception No. 13 provides no legal analysis; mistakenly refers to Section 1303; and incorporates its Exception No. 7.

There is nothing in PPL Exception No. 13 for the OSBA to respond to, and as PPL has provided no legal basis for its Exception, the Commission should simply reject PPL Exception No. 13.

N. Reply to PPL Exception No. 14: The ALJ properly recommended that PPL be charged with a civil penalty in Conclusions of Law No. 10. (PPL Exceptions, at pages 19-20)

In her ID, the ALJ concluded, as follows:

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.

ALJ ID, at page 45.

The ALJ provided a detailed analysis for assessing a civil penalty on PPL for its actions. ALJ ID, at pages 37-44. In response to the detailed analysis of the *Rosi* factors by the ALJ, PPL provided the following brief and conclusory analysis:

Given the unique situation that existed, as defined above, and the lack of any clear regulations covering the instant action, no penalty is appropriate.

PPL Exceptions, at page 19.

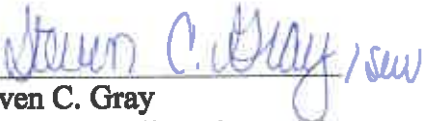
In a failed attempt to buttress its argument, PPL observed that it “has shown good faith through its attempts to work with the OSBA.” PPL Exceptions, at page 20. PPL quoted an email message with a non-attorney OSBA staff member to this effect. *Id.* The OSBA agrees that it has, in the past, had productive discussions with PPL regarding this case, as well as the mediation that proceeded this case. However, the OSBA respectfully submits that those discussions do not overcome any of the *Rosi* factors set forth by the ALJ in her ID.

Thus, unless the Commission finds that the PPL one-sentence rebuttal to the ALJ’s multi-page *Rosi* analysis is compelling, the OSBA respectfully requests that the Commission reject PPL Exception No. 14.

IV. Conclusion

For the reasons set forth herein, the OSBA respectfully requests that the Commission deny PPL Exceptions Numbers 1 through 14.

Respectfully submitted,


Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

For: John R. Evans
Small Business Advocate

Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101

Dated: November 8, 2018

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COMPANY, INC., :**

v. :

PPL ELECTRIC UTILITIES CORPORATION :

DOCKET NO. C-2017-2633651

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

The Honorable Elizabeth H. Barnes
Administrative Law Judge
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
ebarnes@pa.gov
(Email and Hand Delivery)


Kimberly G. Krupka, Esquire
Gross McGinley LLP
33 South Seventh Street
PO Box 4060
Allentown, PA 18105
kkrupka@grossmcginley.com

Thomas E. Groshens, Esquire
Groshens Law Associates
233 South 24th Street
Philadelphia, PA 19103
TGroshens@cyforelex.com

Richard A. McGrath, President
531 & 539 North Fourth Street
PO Box 286
Denver, PA 17517
ramcgrath@msn.com

Commission's Office of Special Assistants
ra-OSA@pa.gov
(Via Email Only)

DATE: November 8, 2018



Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538