

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ULTIMATE SPORTS COMPANY, INC.,	:	
	:	PUC Docket No.
<i>Complainant,</i>	:	C-2017-2633651
v.	:	
	:	
PPL ELECTRIC UTILITIES	:	
CORPORATION,	:	Hon. Elizabeth H. Barnes
	:	
<i>Respondent,</i>	:	
&	:	
	:	
OFFICE OF SMALL BUSINESS	:	
ADVOCATE,	:	
	:	
<i>Intervenor.</i>	:	

**ULTIMATE SPORTS COMPANY, INC'S REPLY TO PPL
ELECTRIC UTILITIES CORPORATION'S EXCEPTIONS TO
THE ALJ'S SEPTEMBER 28, 2018 INITIAL DECISION**

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Dated: November 8, 2018

Procedural Background

On November 14, 2017, Ultimate Sports Company, Inc. filed a Formal Complaint asserting that PPL Electric Utilities Corp. (“PPL”) violated PUC regulations by revealing password-protected account information to a commercial tenant of Ultimate’s owner, Richard McGrath, ignored McGrath’s instructions to terminate service to his Denver, Pennsylvania warehouse and manufacturing facility (the “Facility”), and overbilled Ultimate for its electric consumption.¹

On February 13, 2018, Judge Elizabeth H. Barnes (the “ALJ”) conducted a Prehearing Conference, following which she issued a Procedural Order authorizing the parties to conduct discovery, and establishing dates for the submission of written Direct and Surrebuttal testimony, an evidentiary Hearing, and Post-Hearing briefing. Ultimate and PPL exchanged a substantial volume of discovery, including hundreds of email files and original attachments in native format, and all parties filed written Direct and Surrebuttal testimony.

On May 31, 2018, the ALJ conducted an evidentiary Hearing at which: (1) Ultimate introduced McGrath’s Direct and Surrebuttal testimony, together with fifteen Exhibits; (2) PPL introduced the Direct and Surrebuttal testimony of Dennis Worthington, the head of PPL’s Regulatory Compliance in Pennsylvania, together

¹ On November 16, 2016, the OSBA filed a Notice of Intervention “to protect the interests of small business customers across the Commonwealth.” Based on its preliminary review of the Complaint, the OSBA determined that PPL “may be dealing with its small business customers in an unjust, unreasonable, and discriminatory manner,” requiring a “thorough inquiry into all elements of the Complaint.” [OSBA Intervention Notice, Public Statement at p. 1].

with seven Exhibits; and (3) the OSBA introduced the Statement and Direct testimony of its expert witness, Robert D. Knecht, together with three exhibits. McGrath, Worthington, and Knecht each testified, and each was cross-examined. Following the Hearing, the parties submitted Main and Reply Briefs.

On September 28, 2018, the ALJ issued a 45-page Initial Decision, sustaining Ultimate's Formal Complaint. In addition to a 30-page legal discussion, the ALJ's Decision includes 79 Findings of Fact and 12 Conclusions of Law. As the ALJ summarized, the evidence demonstrated that from early March 2015 through March 2016, PPL had disclosed Ultimate's confidential, password-protected account, electric usage, and billing information to McGrath's commercial tenant (Custom Fab), had ignored McGrath's repeated direction to discontinue electric service to his Facility, and had overbilled Ultimate by \$5,000.

Finding PPL's violations serious, intentional, and injurious (to both Ultimate and McGrath), the ALJ concluded that PPL's conduct and its "anyone can pay" policy warranted imposing a \$4,000 civil penalty.

On October 29, 2018, PPL filed fourteen Exceptions to the ALJ's Decision, the first seven of which challenge eleven of the ALJ's 79 Findings, with the remaining seven directed to the ALJ's substantive Conclusions of Law. As detailed below, PPL's Exceptions to the ALJ's Findings range from quibbling with semantics, to suggesting that certain Findings raise implications which they plainly do not raise, to disputing Findings fully supported by the record and beyond colorable dispute.

PPL's Exceptions to the ALJ's Conclusions of Law are likewise without merit, and indeed demonstrate PPL's willful blindness to long-standing customer privacy regulations. Accordingly, Ultimate respectfully requests that this Commission deny each of PPL's Exceptions and adopt the ALJ's comprehensive Initial Decision in its entirety.

Ultimate's Reply to PPL's First Exception

PPL directs its First Exception to Finding Nos. 13, 18, and 20, each of which pertains to Custom Fab's payment for its monthly electric usage. Within these Findings, PPL somehow discerns the ALJ's "indirect suggestion" that the November 26, 2013 Lease Agreement between McGrath and Custom Fab "obligated Custom Fab to install a second electric meter." [PPL Excpt. at p. 3].

Although PPL recognizes that the Lease terms gave PPL the option, not the legal obligation, to install a second meter, PPL frames its First Exception through two assumptions; that: (1) "the ALJ found an obligation on the part of Custom Fab to install a second meter"; and (2) "such finding influenced [the ALJ's] decision." [PPL Excpt. at p. 4].

First, nothing in the text of Finding Nos. 13, 18, or 20 can plausibly be construed as the ALJ's finding, suggestion, or implication, whether direct or indirect, that the Lease ***required*** Custom Fab to install a second electric meter. Indeed, Finding No. 17, which PPL does not challenge, quotes the relevant Lease provision in full, including its concluding sentence: "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.” [ALJ. Dec. at p. 6 (emphasis added) (quoting Lease Agreement § 5.2)].

Even if the ALJ had found the Lease to compel Custom Fab to install a separate meter, PPL fails to explain how that could have “influenced” any Conclusion of Law or the ALJ’s Decision. Moreover, as the ALJ recognized, the parties’ respective rights and duties under the Lease raise issues beyond the Commission’s jurisdiction. [ALJ Dec. at p. 33 (“Custom Fab ... 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.”)].

Ultimate’s Reply to PPL’s Second Exception

In challenging Finding No. 25 as “unsupported by the record,” PPL contends “there was no evidence of any error with the meter recording electrical usage.” [PPL Excpt. at p. 5]. Although PPL fails to explain how any finding about its malfunctioning electric meter (whether correct or incorrect), influenced any Conclusion of Law, the record fully supports that ALJ’s finding that PPL’s meter had failed, and that such failure contributed to PPL’s billing errors.

For example, PPL’s own “Account Contact History” (“ACH”) demonstrates that, by no later than March 2015, PPL’s meter began malfunctioning. [McGrath Dir., Exh. “3” at p. 8 (2015-04-23 ACH entry: “Please change meter that stopped communicating in March.”)]. Over a month later, PPL’s had yet to replace the malfunctioning meter, and was calculating Ultimate’s electric bills based on

estimated usage. [Exh. “3” (2015-05-29 ACH entry) (“there is a meter change pending but his bill are actual use up to the last bill which is estimated”)].

Based PPL’s ACH and billing records, the ALJ found “undisputed” that 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.” [ALJ Dec. at p. 34].

According to the ALJ, “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.” [ALJ Dec. at p. 36 (emphasis added)].

Thus, the Commission should reject PPL’s Second Exception and adopt Finding No. 25 as fully supported by the record.

Ultimate’s Reply to PPL’s Third Exception

PPL’s Third Exception challenges Findings Nos. 32, 43, ad 45, again as “unsupported by the record.” In each of these Findings the ALJ determined that, at least three times, McGrath instructed PPL to discontinue electric service to his Facility. [ALJ Dec. at pp. 8, 10].

According to PPL, although the record shows that McGrath “was not opposed to PPL Electric terminating the account for nonpayment, McGrath never specifically requested termination.” In another permutation of this argument, PPL claims that McGrath’s “requests for termination were always conditioned” on PPL “agreeing not to place the account in the name of a tenant in possession (“Custom Fab”).” [PPL Excpt. at p. 8].

The ALJ found otherwise, accepting McGrath's testimony that he specifically instructed PPL to discontinue service to his Facility. *See R.J.W. v. Dep't of Human Servs.*, 139 A.3d 270, 287 (Pa. Commw. 2016) ("The ALJ is free to accept or reject the testimony of any witness ... in whole or in part, and determinations regarding credibility and weight of the evidence are within the province of the ALJ.").

The record fully supports the ALJ's Findings regarding McGrath's directions to PPL. In a May 27, 2015, telephone call with McGrath, a PPL customer service representative (Brandi Martzen) warned McGrath that unless Ultimate's purported past-due balance was paid immediately, PPL would shut off electric service on June 1, 2015. [McGrath Direct at 7:07 to 7:10 (citing Exh. "3" at p. 8 (2015-05-27 "Credit-Outbound Call" entry))].

In addition to pointing out the billing confusion caused by PPL, McGrath replied that the bulk of any amounts Ultimate owed to PPL were owed by Custom Fab, which was not paying him for its portion of the Facility's monthly electric usage. Advising the PPL representative that he would not pay for Custom Fab's electric usage, McGrath instructed the PPL representative to discontinue the Facility's electric service. PPL nonetheless ignored that express instruction and continued to provide the Facility with electricity. [McGrath Dir. at 7:11 to 7:17].

On June 15, 2015, McGrath complained to a PPL customer service representative (not Ms. Martzen) that his prior instructions to discontinue the Facility's electric service had been ignored, and he demanded that PPL shut service

off immediately. [McGrath Dir. at 7:18 to 7:22 (citing Exh. “3” at p. 7 (2016-06-15 Service entry))]. Again, PPL again ignored McGrath’s instructions. *Id.*

On June 19, 2015, McGrath emailed Worthington and again complained about PPL’s failure to follow his instructions to discontinue service:

In late May, possibly May 29, a female calling herself Brandy telephoned me to inform me that our electricity at 531 N. 4th St. would be turned off on June 1 due to a past due amount on our invoice. I listened carefully to her promise and ***responded that she do so [discontinue service] without fail*** because most of my electric use was going to a tenant on my meter who was refusing to pay their fair share promptly and has a history of taking deductions in excess of their rent in excess of what would be allowed by the lease.

[McGrath Dir. at 7:23 to 7:11 (emphasis added) (citing Exh. “4” at p. 2 (06-19-15 email))].

At his deposition in Custom Fab’s lawsuit,² Worthington confirmed McGrath’s account of their June 2015 communications:

The thing that sticks out with that conversation, with those early conversations with Mr. McGrath is that he was insistent that an associate from my office, her name is Brandi, called him and promised –and you know, I’m gonna use that word and maybe highlight that word – you know, ***he used the word promised that we would turn the service off on June 1st. His concern to me was PPL failed to deliver on its promise.***

[OSBA Main Brief at p. 8 (emphasis added) (quoting Worthington Dep. at pp. 43-44)]. *See also* OSBA Main Brief at p. 9 (“Q. [H]ad Mr. McGrath made his wishes and instructions known to you regarding electric supply at the property? A. Yeah.

² The OSBA introduced the entirety of Worthington’s deposition transcript in *Custom Fab, Inc. v. McGrath*, Docket No. CI-14-04444 (Lancaster Cty. 2014), as Hearing Exhibit “OSBA-2” to OSBA Statement “1.” [N.T. at p. 65].

His interest in – in this was to have the service shut off.”) (quoting Worthington Dep. at p. 57)].

Accordingly, this Commission should reject PPL’s Third Exception and adopt the ALJ’s Findings of Fact Nos. 32, 43, ad 45.

Ultimate’s Reply to PPL’s Fourth Exception

PPL directs its Fourth Exception to Finding of Fact No. 35, which pertains to PPL’s decision to accept Custom Fab’s payments and maintain electric service to the Facility:

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.

PPL takes issue with this Finding, but only “to the extent that it finds that PPL Electric entered into a payment arrangement with a non-customer.” Objecting solely to the Finding’s use of the term “payment arrangement,” PPL prefers to describe its relationship with Custom Fab as one where “a co-tenant in possession of property [was] request[ing] to pay monthly electric charges ... to prevent termination of electric.” [PPL Excpt. at pp. 8-9].

PPL explains that where no safety concerns existed, and where a non-customer tenant agreed to pay monthly electric bills, PPL was merely following its own “policy of accepting payment on an account from any source.” [PPL Excpt. at p. 9 (citing Worthington Rebuttal at 7:11 to 7:21)].

Regardless of whether PPL's agreement with Custom Fab is described as a "payment arrangement," as an "agreement," or as something else, the undisputed facts speak for themselves. As the record demonstrates, ignoring McGrath's directions to discontinue service and based on Custom Fab's June 1, 2015 agreement to pay monthly electric bills going forward, Worthington rescinded the termination order and PPL maintained the Facility's electric service. [Worthington Rebuttal at 8:01 to 8:19 (PPL "determined it would be fundamentally unfair to ... terminate service to a [commercial] tenant despite an offer to render payment.")].

For example, on August 26, 2015, Worthington emailed Custom Fab's attorneys, attaching his own spreadsheet "which breaks out the charges you (a Custom Fab attorney) and I (Worthington) were discussing yesterday." The spreadsheet included Ultimate's confidential and monthly usage and billing information from December 2014 through July 2015. [McGrath Dir., Exh. "6" at pp. 1-2 (08-26-15 email and spreadsheet)].

McGrath never authorized Worthington's disclosure of this password-protected account information, and Worthington's failure to copy McGrath on this email demonstrates Worthington's intent to conceal his communications with Custom Fab. [McGrath Dir. at 10:17 to 10:20].

On September 1, 2015, Custom Fab's attorney Samuel E. Wiser, Jr. wrote McGrath directly, admitting that since April 2015, he had "worked closely with PPL, both its legal counsel and service representatives, to obtain accurate monthly

service period usage and charges information.” [McGrath Dir. at 11:05 to 10:11 (quoting Exh. “7” at p. 2 (09-01-15 correspondence))].

Providing additional detail, Wisner informed McGrath: “Our most recent conversation with PPL’s service representative was yesterday, August 27, 2015. We believe that we have obtained almost all necessary information to permit Custom Fab to accurately calculate its payment responsibilities for electric service.” [McGrath Dir. at 11:10 to 11:14 (quoting Exh. “7” at p. 3)].

On receiving Wisner’s letter, McGrath immediately emailed Worthington, objecting to PPL’s now-confirmed, unauthorized disclosure of Ultimate’s confidential account information to Custom Fab. McGrath also asked Worthington for the details of whatever “secret arrangement” PPL and Custom Fab had reached, which McGrath then knew nothing about:

I understand that you want separate metering as do I but I think that until we receive it you should be dealing with me alone and not going behind my back with a secret arrangement with my tenant. I would like a reply ... ASAP and I wish to know all the details of your relationship with my tenant.

[McGrath Dir. at 11:15 to 11:28 (quoting Exh. “8” at p. 1 (09-01-15 McGrath email))].

Within hours, Worthington responded to McGrath’s request for “the details.” Although purporting to deny “any secret arrangement” with Custom Fab, Worthington admitted, as Wisner had, that PPL was revealing Ultimate’s account information to Custom Fab without McGrath’s authorization:

PPL's only concern in this matter is that the outstanding electric bill for your building gets paid. It does not concern PPL whether you pay, or your tenant pays. Likewise, the dispute you are having with your tenant is for the two of you to resolve. When Custom Fab contacted me through its attorney and indicated that it was interested in pay the outstanding bill, ***I provided information to facilitate payment. ... I want to reiterate, my only concern is that the bills get paid.***

[McGrath Dir. at 12:01 to 12:17 (emphasis added) (quoting Exh. "9" at p. 1 (09-01-15 email))].

On October 19, 2015, without McGrath's authorization, knowledge, or consent, PPL accepted Custom Fab's \$17,226.92 payment for Ultimate's unpaid bills – no password required. [McGrath Dir. at 12:22 to 12:26 (citing Exh. "2" at p. 4)].

As additional evidence confirming that PPL and Custom Fab had entered into a "payment arrangement," in his December 14, 2015 email to Worthington, attorney Wisner confirmed that Custom Fab had made payments on Ultimate's account, but needed clarification of electric bills recently received: "Dennis, one more thing I wanted to get from you before we talk tomorrow. Custom Fab has been paying the electric bills it has received from PPL. They are attached. Are these bills solely for the new service?" [McGrath Dir. at 13:10 to 13:16 (citing Exh. "10" at p. 1 (12-14-15 email))].

Several days earlier McGrath had emailed Worthington demanding an explanation for why Ultimate had not been receiving monthly bills and the full details of PPL's relationship with Custom Fab:

I am hoping to get a response from someone as to why my company is not being billed monthly, why and when our

chosen electric supplier removed themselves, and who has taken their place. I feel that since the building belongs to me and not the tenant who is obviously attempting to disrupt our utility relationships, ***I am entitled to full disclosure as regards what is happening. No one that I have spoken to has ever heard of the rule that my request to cut off power, made in the spring, could not be carried out*** because there was a tenant, especially one refusing to pay their electric bill.

[McGrath Dir. at 31:21 to 14:06 (emphasis added) (citing Exh. “11” (12-11-15 email))].

Three days later Worthington responded, again confirming that PPL’s “only concern in this matter is that the outstanding electric bill for your building gets paid. ***It does not concern PPL Electric whether you pay, or your tenant pays.***”

[McGrath Dir. at 14:08 to 14:12 (emphasis added) (citing Exh. “12” at p. 3 (email exchanges))].

This documentary evidence, which PPL cannot challenge, demonstrates unequivocally that PPL and Custom Fab had established a “payment arrangement” under which PPL sole motive was to get paid, regardless of the payment’s source.

Thus, the Commission should reject PPL’s Fourth Exception and its semantic quibbling with the ALJ’s description of a “payment arrangement” between PPL and Custom Fab.

Ultimate’s Reply to PPL’s Fifth Exception

PPL directs its Fifth Exception to Finding No. 37, which pertains only to Custom Fab’s rights under the Lease to install a second electric meter. Citing Worthington’s deposition testimony in the Custom Fab litigation, the ALJ found

that: “Custom Fab could have established separately metered service and started a separate account without permission from Mr. McGrath, but it never did so.” [ALJ Dec. at p. 9 (citing Worthington Dep. at pp. 170-71)].

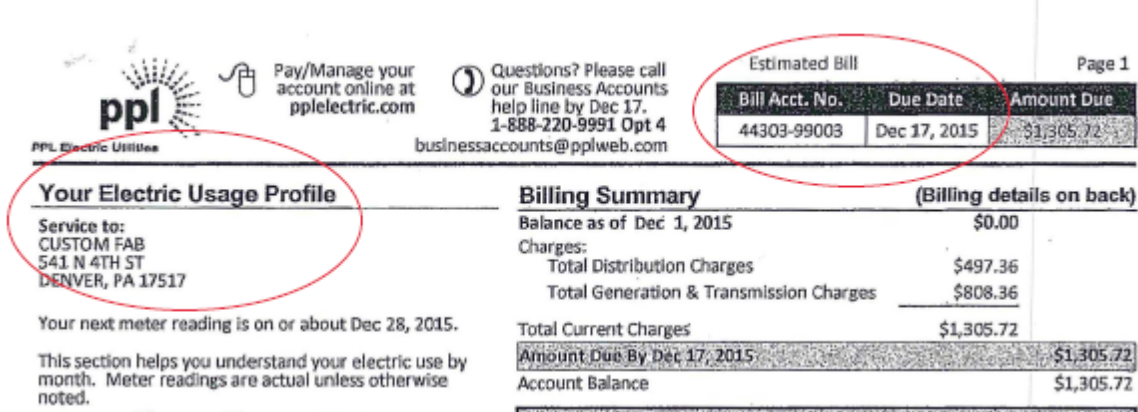
Again relying on an implausible reading, PPL limits its Fifth Exception to any *implication* within Finding No. 37 “that Custom Fab could have established separately metered service without first performing additional electrical work.” [PPL Excpt. at p. 10]. But as Finding No. 37’s plain words should make clear, the ALJ never intended any such implication, nor do any of the ALJ’s Conclusions of Law suggest that a separate meter could be installed without “additional electrical work.”

Indeed, common sense should make clear that a “separately metered service” requires the installation of a second electric meter, and that electric meters do not install themselves. Thus, the Commission should reject PPL’s Fifth Exception and adopt the ALJ’s Finding of Fact No. 37.

Ultimate’s Reply to PPL’s Sixth Exception

Through Finding No. 51, the ALJ determined that “PPL billed Custom Fab without Mr. McGrath’s knowledge or consent beginning mid-2015.” [ALJ Dec. at p. 11]. PPL objects to Finding No. 51, but only to the extent it could be construed as a finding “that PPL Electric *billed* Custom Fab.” [PPL Excpt. at p. 10], According to PPL, it never billed Custom Fab because it sent only “duplicate” bills to Custom Fab, and “never removed Ultimate Sports as the ratepayer.” *Id.*

The record evidence refutes this claim. On December 11, 2015, Custom Fab’s attorney Wisner emailed Worthington “electric bills it has received from PPL,” which clearly are not “duplicates” of bills PPL sent to Ultimate:



[McGrath Dir., Exh. “10” at p. 3].

As the ALJ recognized, the account number under which PPL had billed Ultimate ended in 001, but this December 2015 bill references a new “Bill Acct. No. 44303-99003,” which appears nowhere on any bill PPL had sent Ultimate. [Finding No. 55 (citing McGrath Dir., Exh. “10”)]. Thus, contrary to PPL’s duplicate bill argument, the ALJ properly found that PPL directly *billed* Custom Fab.³

Ultimate’s Reply to PPL’s Seventh Exception

In its Seventh Exception, directed to Finding No. 66, PPL suggests that Ultimate’s claims should have been confined to PPL’s improper disclosure of confidential account information, and not include any challenge “to the charges contained within its electric bills.” [PPL Excpt. at p. 11].

³ The ALJ found that PPL’s billing under this new Account No. (ending in 99003) “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.” [ALJ Dec. at p. 36].

First, although Ultimate included “incorrect charges” among the grounds for its Formal Complaint, PPL never moved to strike that claim, nor did it raise any objection at the Hearing to Ultimate’s evidence supporting its overbilling claim.

Second, beneath the heading “High Bill Complaint and Refund,” the ALJ devoted four pages of her analysis to marshalling the evidence supporting Ultimate’s overbilling claim. [ALJ Dec. at pp. 34-37]. According to the ALJ, PPL charged Ultimate late fees for bills that, because of its malfunctioning meter, PPL could only base on the Facility’s estimated usage. The ALJ further found that “PPL did not refute Ultimate’s claim that it was overbilled in 2016 by approximately \$5,000.” [ALJ Dec. at p. 34].

Accordingly, the Commission should reject PPL’s Seventh Exception and adopt the ALJ’s Finding of Fact No. 66.

Ultimate’s Reply to PPL’s Eighth Exception

In its Eighth Exception, PPL challenges Conclusion of Law No. 4, holding that Ultimate “sustained its burden of proof in showing \$5,000 in incorrect charges were on its bills.” As the only ground for this Exception, PPL incorporates its Second Exception (to Finding No. 25), “as if fully set forth a[t] length herein.” [PPL Excpt. at p. 11].

In its Reply to PPL’s Second Exception, incorporated here by reference, Ultimate identified record evidence supporting the ALJ’s connection between the malfunctioning meter and PPL’s billing delays and mistakes. Thus, with PPL’s Second Exception rebutted, PPL’s Eight Exception fails as well.

Moreover, in the four-page section of her Decision supporting the \$5,000 rebate (through application of *Waldron v. Philadelphia Elec. Co.*, 54 PUC 98 (1980)), the ALJ summarized the undisputed fact supporting Conclusion No. 4:

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. ... 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.

[ALJ Dec. at pp. 34-35 (emphasis added)].

Accordingly, the Commission should reject PPL's Eighth Exception and adopt in full the ALJ's Conclusion of Law No. 4.

Ultimate's Reply to PPL's Ninth Exception

In its Ninth Exception, directed to Conclusion of Law No. 5, PPL challenges the ALJ's holding 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." [PPL Excpt. at pp. 11-12].

Although conceding that it provided Custom Fab with Ultimate's confidential account information, PPL claims these disclosures fall outside § 54.8's scope. Under

PPL's interpretation, § 54.8's privacy mandates apply only to disclosures by an electric distribution company ("EDC") to an electric generation supplier ("EGS"):

Contrary to PPL's interpretation, § 54.8 prohibits both EDCs and EGSs from disclosing customer information to *any third party*:

§ 54.8. 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.

52 Pa. Code § 54.8(a) (emphasis added). *See also* Final Order at p. 39, PUC Docket No. M-2013-2355751 (July 17, 2013) ("We repeat that the Commission has zero tolerance for violations of customer privacy and confidentiality Any breach can result in the imposition of civil penalties and the suspension or revocation of their license per Section 54.42"); *Mid-Atlantic Power Supply Assoc. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1199-2000 (Pa. Commw. 2000) (affirming PUC Order authorizing customer to restrict release of load data and account information).

Indeed, under its own "Disclosure of Customer Information Policy," PPL has expressly acknowledged that customer "usage information" is confidential, and must not be disclosed to any third party without the customer's prior written authorization: "For PPL to release usage information to anyone other than the customer, *written consent is required.*" [McGrath Dir., Exh. "13" (emphasis added)].

In the ALJs' words – “No password should mean no access.” [ALJ Dec. at p. 26]. Thus, the Commission should reject PPL's Ninth Exception and adopt the ALJ's Conclusion of Law No. 5.

Ultimate's Reply to PPL's Tenth Exception

PPL's Tenth Exception is directed to Conclusion of Law No. 6, which held that PPL “violated 66 Pa.C.S. § 1303 by not adhering to its tariffed service regarding a GS-3 customer.”⁴ [ALJ Dec. at p. 45]. In support of this Exception, PPL claims that, “[a]t all times, the rates charged to the Account were in accordance with the GS-3 tariff.” [PPL Excpt. at p. 13].

The record demonstrates otherwise. As the ALJ recognized, Tariff 201 required PPL to charge Ultimate (a GS-3 customer) a usage-based “net rate” – provided the customer pays the full invoice balance within fifteen days of the bill's mailing. If not paid in full, the Tariff requires PPL to charge a “gross rate,” which adds to the net rate a 5% interest charge on the first \$200 of the unpaid balance, and 2% interest on any additional unpaid balance. [ALJ Dec. at p. 22 (quoting PPL's Tariff No. 201, at 25)].

On June 1, 2015, Worthington entered the following note into PPL's Account Contact History: “Having termination order voided - working with OGC and tenant s attorney Sam Wiser. The tenant ***will pay PPL each month the amount of the electric bill*** to maintain service.” [McGrath Dir., Exh “3” at p. 8 (2015-06-01 ACH

⁴ Section 1303 prohibits utilities from charging “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.

Entry)]. *See also* Finding of Fact ¶ 35 (“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.”).

Following this arrangement for Custom Fa’s monthly payments, PPL failed to charge the full gross rate required by Tariff 201. For example, PPL’s July 23, 2015 bill, payable by August 10, 2015, included a \$6,726.23 forward balance, \$1,116.55, in current charges, a \$22.97 late payment charge, totaling \$7,886.64. Custom Fab failed to pay the bill when due, and PPL imposed a \$34.10 late payment charge. [McGrath Dir., Exh. “2” at p. 3].

But this \$34.10 late charge failed to impose Tariff 201’s gross rate. Properly calculated (sum of 5% x \$200 (\$10) and 2% x \$7,686.64 (\$153.77)), the Tariff required PPL to impose a late charge of \$163.77. Indeed, basic math demonstrates that in each of PPL’s subsequent monthly bills (August 2015 through February 2016), PPL failed charge Custom Fab the full gross rate required the Tariff.

Thus, by charging Custom Fab a “lesser rate” than required by Tariff 201, PPL violated 66 Pa.C.S. § 1303. Accordingly, the Commission should reject PPL’s Tenth Exception and adopt the ALJ’s Conclusion of Law No. 6.

Ultimate’s Reply to PPL’s Eleventh Exception

PPL’s Eleventh Exception is directed to Conclusion of Law No. 7, which held that PPL “violated 66 Pa. C.S. § 1304 by discriminating against Ultimate in favor of Custom Fab ... regarding tariffed GS-3 service.” [ALJ Dec. at p. 45]. Section 1304 provides: “No public utility shall, as to rates, make or grant any unreasonable

preference or advantage to any ... [customer] or subject any [customer] to any unreasonable prejudice or disadvantage.” 66 Pa.C.S. § 1304.

Ultimate incorporates by reference its Reply to PPL’s Tenth Exception, which establishes that PPL discriminated in Custom Fab’s favor, regarding the Tariff, by failing to charge Custom Fab the Tariff’s mandated gross rate.

In addition, the ALJ properly held that PPL violated § 1304 by providing “unreasonable service” to Ultimate, which included: (1) ignoring McGrath’s directions and refusing to discontinue service on June 1, 2015; (2) thereafter seeking payment from Custom Fab, under both Ultimate’s account number and a new account number PPL created for Custom Fab; (3) issuing bills under both accounts, based on estimated readings or readings from Ultimate’s single meter; and (4) disclosing Ultimate’s account and billing information to Custom Fab in violation of its own “Disclosure of Customer Information Policy.” [ALJ Dec. at p. 23].

Accordingly, the Commission should reject PPL’s Eleventh Exception and adopt the ALJ’s Conclusion of Law No. 7.

Ultimate’s Reply to PPL’s Twelfth Exception

PPL directs its Twelfth Exception to Conclusion of Law No. 8, holding that “PPL violated 66 Pa.C.S. § 1501 by providing unreasonable billing and customer service.” [ALJ Dec. at p. 44]. Section 1501 requires utilities to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities, Such service and facilities shall be in conformity with the regulations and orders of the commission.” 66 Pa.C.S. § 1501.

In applying § 1501, the ALJ relied on both the Code’s broad definition of service and this Commission’s exclusive jurisdiction to decide “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services. [ALJ Dec. at p. 17 (citing *Elkin v. Bell Telephone Co. of Pa.*, 420 A.2d 371, 374 (Pa. 1980)). See also *Di Santo v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197, 199 (Pa. Super. 1981) (“it has long been recognized that the reasonableness, adequacy and sufficiency of public utility service are all matters within the exclusive original jurisdiction”).

In concluding that PPL violated § 1501, the ALJ explained: “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.” [ALJ Dec. at p. 32 (citing N.T 83-86, 66 Pa.C.S. §§ 1501 & 1502)].

In rejecting PPL’s proffered excuses for these action, the ALJ emphasized both the priority PPL should have given to its customer’s rights, and the alternatives available to PPL:

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.

[ALJ Dec. at p. 31].

Accordingly, the Commission should reject PPL's Twelfth Exception and adopt the ALJ's Conclusion of Law No. 8.

Ultimate's Reply to PPL's Thirteenth Exception

PPL directs its Thirteenth Exception⁵ to the ALJ's Conclusion of Law No. 9, in which the ALJ held that "PPL violated 66 Pa.C.S. § 1502 by discriminating against its small business customer, Ultimate Sports Company, Inc. [ALJ Dec. at p. 45]. Titled "Discrimination in Service," § 1502 provides: "No public utility shall, ***as to service***, make or grant any unreasonable preference or advantage to any [person or corporation], or subject any [person or corporation] to any unreasonable prejudice or disadvantage." 66 Pa.C.S. § 1502 (emphasis added).

Ultimate incorporates its Reply to PPL's Twelfth Exception. Moreover, specifically directed to § 1502's application, the ALJ held that PPL's "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." [ALJ Dec. at p. 27].

Rejecting PPL's argument that these disclosures were proper because Custom Fab was a "tenant in possession" under the Lease, and no safety concerns prevented

⁵ In support of its Thirteenth Exception, PPL "incorporates all arguments set forth in ***Exception 7*** above." [PPL Excpt. at p. 18]. In a November 7, 2018 email to Ultimate's undersigned counsel, PPL's counsel advised that the reference incorporating its Seventh Exception was instead intended to incorporate its ***Eleventh Exception***.

PPL from discontinuing electric service, the ALJ pointed out that neither ground was an exception to § 54.8’s “general customer protection regulation.” [ALJ Dec. at p. 31]. Moreover, the ALJ explained, the justifications PPL offers for its actions “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.” [ALJ Dec. at p. 31].

PPL claims it had no “preference between “customers,” and “was faced with threatened litigation if it did not terminate electric service and if it did terminate electric service.” [PPL Excpt. at p. 16]. But as the ALJ observed, Ultimate – not Custom Fab – was the account holder and ratepayer, and “a fundamental duty of the Commission is the protection of the public including small ratepayers.” [ALJ Dec. at p. 27].

Accordingly, the Commission should reject PPL’s Thirteenth Exception and adopt the ALJ’s Conclusion of Law No. 9.

Ultimate’s Reply to PPL’s Fourteenth Exception

Finally, PPL challenges the ALJ’s Conclusion of Law No. 10, imposing a \$4,000 civil penalty. In objecting to this *de minimus* penalty, PPL contends that no penalty is warranted because: (1) PPL’s actions involved the “unique circumstance” of a tenant in possession offering to pay for continued electric service; (2) the absence of “any clear regulations” prohibiting PPL from revealing the password-protected billing information of its small business customer; and (3) evidence of

PPL’s “good faith,” as purportedly demonstrated by a single March 2016 email from OSBA. [PPL Except. at pp. 19-20].

None of these excuses overcome the ALJ’s detailed application of the factors this Commission adopted in *Rossi v. Bell-Atlantic*, Doc. No. C-009924409, 2000 Pa. PUC LEXIS, *5 (Mar. 16, 2000). *See also* 52 Pa. Code § 69.1201(c)(1-10).

In applying the first factor – whether the violation was “serious” – the ALJ properly concluded that PPL’s Code violations were both “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. ... 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.”

[ALJ Dec. at p. 39]

The ALJ also held the second *Rossi* factor – the violation’s consequences – to warrant a civil penalty, finding that Custom Fab interfered with Ultimate’s operations, failed to pay for its own electric usage in the manner the Lease required, and caused damage to the Facility. “These are serious consequences.” [ALJ Dec. at pp. 39-40].

The third factor – whether the violations were intentional or negligent – again supports the ALJ’s decision to impose a civil penalty: “the actions of the Regulatory Supervisor [Worthington] 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.” [ALJ Dec. at p. 40].

Applying *Rossi’s* eighth factor – deterrence – the ALJ concluded that 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.” [Conclusion of Law No. 9, at p. 45]. Ultimate respectfully submits that the ALJ’s civil penalty is fully warranted, but if the Commission was inclined to modify the ALJ’s penalty, the \$4,000 amount should only be increased.

Conclusion

Ultimate Sports Company, Inc. requests that the Commission reject PPL’s Exceptions in their entirety and adopt the ALJ’s Initial Decision and Order in full.

Respectfully submitted,

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Dated: November 8, 2018

Certificate of Service

I certify that I filed Ultimate Sports Company, Inc's attached Reply to PPL Electric Utilities Corporation's Exceptions to the ALJ's September 28, 2018 Initial Decision through the PUC's electronic filing portal, and served the Reply on counsel of record in the manner and to the addresses set forth below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

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