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May 28, 2019


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

Re: *John R. Marconi v. PPL Electric Utilities Corporation*
Docket No. C-2019-3009648

Dear Secretary Chiavetta:

Enclosed for filing is the *Answer of John R. Marconi to the Preliminary Objections of PPL Electric Utilities Corporation*. A copy of same is being provided to counsel for PPL, via email and Regular U.S. Mail, as indicated in the Certificate of Service.

Respectfully submitted,



John R. Marconi
Complainant

cc: David B. MacGregor, Esq.
Devin T. Ryan, Esq.

does not violate the law, namely, “declaring the applicable section of PPL's tariff . . . void withing sixty (60) days of the PUC order, within such time PPL must submit new and proper billing standards.” (Id.) In short, the requested relief for the identified underlying alleged illegality is very clear, as noted above, and should be set for a hearing before the Commission on the merits. The PUC is free to accept, modify or reject the latter-discussed suggested *method of curing* the defect, at its discretion and within the limits of the law. It is wrong and disingenuous of PPL to suggest that attacking the *method of curing* the defect can, or should, form a basis for rejecting the underlying claim on the merits, in toto.

Disagreeing with a requested method of curing an illegal practice does not mean that the underlying illegality should be ignored. Instead, it means that the adjudicating body (here, the Commission) must simply fashion a better method to correct the illegal practice. And for a highly-regulated electric utility like PPL to even suggest that the Commission somehow lacks the ability or jurisdiction to fashion such relief, if an illegal practice is indeed found, is disturbing.

Furthermore, in addressing the introductory paragraph of PPL's objections, the Commission should not dismiss MY Complaint as (1) it does not request relief that cannot be granted in this proceeding, (2) it does not fail to join necessary parties, and (3) no other EDC's are necessary for the adjudication of the Complaint (and therefore, MY standing in regards to any other EDC's is not relevant in this claim).

SPECIFIC ANSWERS TO PPL'S ENUMERATED PRELIMINARY OBJECTIONS:

1. Admitted.
2. Admitted that PPL transmits and distributes electricity to many customers in its service territory. I lack knowledge and information about the exact number of PPL's customers or the extent of its service territory in order to be able to reasonably admit or deny the assertions regarding same contained in this paragraph.
3. I lack knowledge and information sufficient to reasonably admit or deny when PPL was served

with the Complaint.

4. PPL's request to have the Complaint dismissed for the stated reasons should be overruled and denied, as will be addressed below.
5. Admitted that 52 Pa. Code Section 5.101(a) is accurately cited, but it is Denied that any such cited language is applicable to this claim to cause it to be in part, or in whole, dismissed.
6. Admitted that the case law is accurately identified and cited, but it is Denied that any such case law is relevant or applicable to this claim to cause it to be in part, or in whole, dismissed.
7. See Answer to Paragraph 6, above.
8. I incorporate by reference my Answers to Paragraphs 1 through 7, above, as if fully rewritten here.
9. Denied. PPL is incorrect in stating that MY requested relief cannot be granted. As noted in the introductory paragraphs, above, PPL incorrectly focuses on a requested *method* of curing the allegedly illegality with reasonable haste once it has been determined by the Commission, instead of the actual underlying requested relief (on the merits) of declaring PPL's current residential distribution billing practice to be improper and illegal. Even if, *arguendo*, the Commission were to agree with PPL by finding that the requested method of curing the illegality (i.e., having PPL submit new and proper billing standards that comport with the law within sixty (60) days after the Commission's Order) is not a proper or realistic cure, I have no objection to the Commission modifying or rejecting that requested curative measure in order to conform with applicable PUC regulations and justice. Certainly, PPL cannot deny that if the Commission, after a full hearing on the merits, finds that PPL's billing practices are, in fact, illegal, something has to then occur to bring its billing practices back into conformance with the law. Whatever those potential curative methods may be, they would not, in any way, affect the underlying core issue presented to, and to be determined by, the Commission in my Complaint

– whether the current residential billing practice of PPL is and improper and illegal.

As such, the requested *method* of relief is wholly separate and independent from the underlying, overarching issue of billing legality, and has no therefore has no bearing whatsoever on the Commission's ultimate determination on that issue. To suggest that the underlying requested relief, and the requested method of curing same, are dependent and inseparable, is factually and logically incorrect. Rejecting the latter does not negate, or effect, the decision on the former.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted in part, Denied in part. Although PPL correctly cites to *MY Memorandum in Support of Complaint Dated 4/23/19* (“Memorandum”), it is incorrect to state that said language expressly encapsulates the relief that I already suggested in the main body of my handwritten Complaint. Again, this is MY Memorandum in support of the Complaint that I filed, and it is clearly noted on page 4 of said Memorandum that such is my “Suggested Resolution”. I will reiterate that the core issue in this proceeding, as clearly identified in my Complaint and supporting Memorandum, is the issue of whether PPL's residential billing practice is improper and illegal in that its distribution charges, in part, contain a direct nexus with generation usage (i.e., electric consumption). That is the crux of this case on the merits. The additional language is clearly a method of finding a solution to the problem once the alleged illegality has been formally recognized by the Commission. I certainly will not say that I am “not interested” in the method of correcting the problem, once the illegality has been formally determined, but the method is by far and inferior concern to me in comparison with the prerequisite finding that the

alleged illegality exists. I have no objection to leaving the methods and means of curing the defect to the Commission, PPL, industry experts, and other recognized interested parties.

15. See Answer to paragraphs 14, above.
16. See Answer to paragraph 14, above. Further responding, the quoted language (i.e., concerning the *stare desisis* effect of a decision finding illegality in PPL's billing practice on other EDCs with similar tariff language) is merely pointing out the obvious potential future legal effect of a decision against PPL on the merits. It is neither necessary for the Commission to address that language in any order issued in this specific claim, nor is it any way a bar to the Commission issuing an order in this specific claim. The cited *stare desisis* language is in no way an argument presented on the merits of the underlying claim, and should not be used by PPL as a shield to prevent a ruling on the merits. This is why said language was merely included as a footnote in the Memorandum in support of my Complaint.
17. Denied. PPL has not presented any legal or logical arguments in its objections contained in paragraphs 8 through 17 that would in any way justify a dismissal of MY Complaint.
18. Denied. The requested relief in MY Complaint does not conflict with Section 1309 of the Public Utility Code. First, as noted above, PPL disingenuously confuses MY actual requested relief on the merits (i.e., that the Commission declare PPL's residential billing practice as improper and illegal) with MY suggested *method* of achieving a corrected, legal billing practice with reasonable haste after such a determination has been reached (i.e., the submission of new tariff language that comports with the Commission's Order and the law within sixty days after said Order). PPL is not only attempting to place the figurative cart before the horse, but attempting to make the cart (which is the purpose for the horse being present in the first place) magically disappear from view altogether. And, to that end, with such repeated arguments solely focusing on the "sixty day" methodology language, instead of the merits of the core issue

of billing illegality expressed in MY underlying Complaint and requested relief, PPL is clearly just beating a dead horse.

Furthermore, the suggested method of curing the problem that I present, once PPL's billing practices have, on the merits, been formally recognized as improper and illegal, does not conflict with Section 1309. In fact, it can be read as being in full harmony with Section 1309. In MY Complaint, I note that after a decision on the merits has been reached by the Commission (arguably, in MY favor), the Commission should then move forward with reasonable haste in obtaining a correct billing practice by “declaring the applicable section of PPL's tariff . . . void within sixty (60) days of the PUC order, within such time PPL must submit new and proper billing standards.” (Formal Complaint, Paragraph 5). In MY Memorandum, I further note that as a *suggested* resolution that “PPL [should] be ordered to submit new tariff language that comports with the PUC's order and the law with that sixty-day time frame, breaking any and all connections between distribution charges and generation usage for residential customers.” (Memorandum, page 4).

Nothing in Section 1309 precludes the Commission from ordering an EDC to draft appropriate modifications to its tariff language to comport with new rates and guidelines set forth in a Commission order based on the resolution of a formal complaint, or setting forth a time period in which the EDC shall comply with same. I was merely attempting to be accommodating to both the Commission and PPL by suggesting a 60-day window within which appropriate residential billing language would be redrafted and submitted to the Commission (similar to the 60-day period contained in Section 1308(a) of the Public Utility Code for voluntary changes in rates), so that appropriate discussion and attention could be applied to same before it is accepted and included in a final order. PPL desires to use MY suggested accommodation towards it and the Commission as an argument against MY entire Complaint,

and that should not be permitted.

Since the Commission's authority is very broad in crafting an order that grants MY requested relief and sets forth a framework for PPL to comply with the law, it would appear that PPL is making an argument against its own best interests by stating that the Commission should not permit a sixty-day period for discussion and compliance, but instead set new rates and associated billing language immediately in its order. I respectfully leave the methods, means and time-lines in which PPL must comply with the law, once a determination against it has been reached, within the discretion of the Commission, recognizing its authority over same.

19. Admitted that this is an accurate citation to Section 1309(a).
20. See Answer to paragraph 18, above.
21. See Answer to paragraph 18, above. Further responding, PPL mischaracterizes my suggested method of curing the problem as stating that (1) the Commission should *immediately* declare the tariff residential billing language as void, and (2) PPL must then submit new language within sixty days after the order. Instead, my suggestion was that (1) the Commission declare that the tariff residential billing language *will become* void within [i.e., after the close of] sixty days from the date of the order, and (2) within such time frame PPL must submit new suggested language that comports with the order. Additionally, it is interesting to note that in any final Commission order finding in MY favor on the underlying merits, PPL does not believe that it is permitted to have, nor apparently desires, any sort of time 'window' within which to try and draft appropriate conforming language, or discuss same with the Commission, but instead believes that the Commission must immediately set the new conforming rates and practices for PPL in its order.
22. Admitted that PPL correctly cites to language contained in Section 1309. Further responding, it is Denied that the Commission cannot not issue an interim order making a finding on the issue

of whether the residential billing practices are illegal or not. If the finding is in favor of PPL, the finding would be a final order. If the finding is against PPL, it can be an interim order, and further investigation may then take place, in duration as determined by the Commission and governed by Section 1309(b), for the Commission to make a determination and issue a final order setting new rates.

Furthermore, Section 1309(b) states (with some exceptions) that the Commission should issue a “final decision and order” within nine (9) months from, inter alia, the filing of a complaint. As such, it does not address or bar the authority of the Commission to issue interim orders.

23. See Answer to paragraph 18, above. Furthermore, it is Admitted that the new rate(s), as determined by the Commission, would be contained in the *final* order (which does not preclude interim orders being issued in the resolution of this claim).
24. Denied. The parties hereto only need to fully litigate one core issue, encapsulated simply as: *Whether the residential billing practice followed by PPL runs afoul of the law by creating a direct, inappropriate nexus with generation usage (consumption)*. That issue may be resolved after the close of discovery, and result (if the Commission decides in MY favor) in an interim order noting same. PPL is confusing a finding that its billing rate scheme is illegal (as is being requested in MY Complaint) instead of a 'mere' finding that the amounts being charged are unjust and/or unreasonable. Once the prerequisite of illegality is found in the claim *sub judice*, a solution certainly would need to occur thereafter to correct same. It then becomes a matter between PPL and the regulatory experts at the Commission to conduct a thorough investigation on what the new residential billing scheme should be to comport with the law (ensuring a clear break between distribution and generation charges), and further make a determination as to the reasonableness of new rates to be set. After that investigation is completed, preferably within

the nine month period set forth in Section 1309(b), the Commission may then issue its final decision and order. There is absolutely no burden on ME, once the illegality is proven, to try and determine what the new, legally-comporting rate(s) should be. That is clearly beyond my expertise, ability, and financial resources to try and prove, and it is outrageous and improper for PPL to even suggest that I would have such a burden once I have proven my underlying claim on the merits.

25. Denied. Again, as noted in MY Answer to Paragraph 24, above, there would be absolutely no burden on ME, once the illegality is proven, to then try and determine what the new, legally-comporting rate should be. That is clearly beyond my expertise, ability, and financial resources to try and prove, and it is outrageous and improper for PPL to even suggest that I would have such a burden once I have proven my underlying claim on the merits. And to further suggest that I would be responsible for producing a very expensive “cost of service study”, as well as provide “supporting [expert] testimony” on same is outrageous, and is directed to shutting down a hearing on this matter by threatening extensive litigation, costs, and associated burdens on ME for challenging PPL's allegedly illegal billing practices. PPL's argument, in a nutshell, is as follows: “Well, even if could prove that our billing practices and associated charges are illegal, you would never be able to afford the extreme costs of then having to then prove what the new residential rates should be, and how they are reasonable – so the Commission should just dismiss your Complaint now in favor of the status quo.” This argument shows the lengths that PPL will go to in order to quash a hearing on the merits in this claim. It certainly warrants, at the very least, overruling and denying PPL's ridiculous, baseless objection.

26. See Answer to Paragraph 25, above. Further responding, and as noted in MY Answer to Paragraph 24, above, the Commission may conduct a thorough investigation into the reasonableness of any new rates, before it sets them, after the current rate scheme is found to be

illegal. The issue of setting new reasonable rate(s) does not even become a ripe issue until such time that the present residential billing practice and associated charges are determined to be illegal. This may require that PPL provide various accounting information to the Commission identifying and/or substantiating, inter alia, its gross revenues, customer base information, and direct and indirect operational cost for transmitting and distributing electricity throughout its service territory. It is clear that PPL is mandated to keep certain accounts and records in compliance with, inter alia, 57 Pa. Code Section 56.231, 57 Pa. Code Sections 57.41 through 57.47, and 57 Pa. Code 71.1 through 71.9. From these various documents, the Commission will be able to ascertain the reasonable *distribution charges* that PPL can legally charge, in consideration of how that term is defined in 57 Pa. Code Section 54.2:

Distribution charges—Basic service charges for delivering electricity over a distribution system to the home or business from the transmission system. These charges include basic service under §56.15(4) (relating to billing information) and universal service, as applicable.

27. Denied. This is not a standard (voluntary) rate case. Although other parties may have various interests in what the new rates and associated charges will be, once the old rate scheme has been declared illegal, those interests do not override the overarching interest in correcting, with all reasonable haste, the current illegal distribution collection scheme employed by PPL.
28. Denied. See Answer to Paragraphs 18 through 27, above.
29. Denied. It is neither mandated, nor necessary, to provide any notice of this proceeding to any other EDC in Pennsylvania. The mere fact that some, or all, other EDCs in Pennsylvania *may* have similar residential billing language in their approved tariffs, which *may* be negatively affected by decision against PPL in the present matter, does not give them any automatic right to notice of this case. This case is solely between ME and PPL, where there exists the privity of EDC and customer, expressly concerns only PPL's tariff, and does not involve any other EDC.
30. It is Admitted that I point out that a negative decision against PPL in this case should have a

stare decisis effect on other EDCs in Pennsylvania which have similarly-worded tariffs, as to the legality of their residential distribution rate scheme, but they are not parties to this case, and I am not requesting a review of (let alone a Commission order issuing a ruling upon) any other EDC's tariff. Most importantly, these other EDCs are not necessary in this case in order for the Commission to reach a decision on the "legality" question at issue. In similar fashion, in a lawsuit involving the interpretation of a contractual clause in a particular insurance carrier's policy, a court does not require that the Plaintiff/policyholder provide notice to every insurance carrier that does business in the Commonwealth that has (or may have) similar contractual language that may be, through application of the doctrine of *stare decisis*, negatively affected if the Defendant Insurance Carrier's language is found to be illegal, or otherwise unenforceable against the Plaintiff. That same logic applies in this claim. Other EDCs may have a tangential interest in the outcome of this matter, but do not have a direct interest in same. It therefore is not necessary to provide notice to any or all of them. PPL is certainly free to make any or all other such EDCs in the Commonwealth aware of this claim, if it so desires.

31. See Answer to Paragraph 30, above. Further responding, no other EDCs are directly involved in this claim, and are not having their respective tariffs reviewed or ruled upon. Additionally, as such, PPL does not have standing to speak on behalf of other (third party) EDCs in Pennsylvania which may, or may not, be negatively affected by a decision against PPL in this matter. They are not parties to this action, and PPL has no right to attempt to speak on their behalf in order to bolster its attempt to avoid having this claim heard on the merits.
32. Denied. See Answer to Paragraph 31, above.
33. Denied. See Answer to Paragraph 31, above.
34. I incorporate by reference MY Answers to Paragraphs 1 through 33, above, as if fully rewritten here.

35. Denied.

36. Denied. Other EDCs with similarly-worded residential billing language in their respective tariffs are not necessary parties to this action merely because they may, at some point, “be affected by the disposition of this proceeding”. PPL's reference to *Schneider v. Pa. PUC*, 479 A.2d 10 (1984) is misplaced. *Schneider* merely stands for the proposition that administrative agencies, like the Public Utility Commission, are required to provide due process to the actual parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. More instructive on which, if any, third parties are necessary (indispensable) parties to a particular litigation are the Pennsylvania Rules of Civil Procedure and Pennsylvania case law interpreting same.

Rule 2227 of the Pennsylvania Rules of Civil Procedure defines compulsory joinder as follows:

Rule 2227. Compulsory Joinder

(a) Persons having only a joint interest in the subject matter of an action must be joined on the same side as plaintiffs or defendants.

Pa.R.C.P. 2227(a).

“In Pennsylvania, an indispensable party is one whose rights are so directly connected with and affected by litigation that [the entity] must be a party of record to protect such rights[.]” *Columbia Gas Transmission Corp. v. Diamond Fuel Co.*, 464 Pa. 377, 379 (1975). See also *CRY, Inc. v. Mill Service, Inc.*, 536 Pa. 462, 468 (1994) (stating same). Significantly, not all parties or entities related to an action are “indispensable” parties. *Corman v. Nat’l Collegiate Athletic Association*, 74 A.3d 1149 (Pa.Cmwlt. 2013).

A leading case on this issue is the Pennsylvania Supreme Court case of *City of Philadelphia v. Commonwealth*, 575 Pa. 542, 568 (2003), which held that the petitioners’ failure to join all

parties who were potentially affected by challenged legislation (as being unconstitutional) did not deprive Supreme Court of jurisdiction to review merits of petitioners' claims; requiring participation of all parties having any interest which could be potentially affected would be impractical; the legislation at issue purports to alter rights and obligations of numerous persons, but achieving justice is not dependent upon participation of all of those persons; and that substantial justice can be done without joining any parties other than those who are presently participating in litigation). The Court found, in its well-reasoned opinion, that:

“The present case exemplifies another basis for construing Section 7540(a) of the Declaratory Judgments Act subject to reasonable limitations: if that provision were applied in an overly literal manner in the context of constitutional challenges to legislative enactments containing a wide range of topics that potentially affect many classes of citizens, institutions, organizations, and corporations, such lawsuits could sweep in hundreds of parties and render the litigation unmanageable. It is true that all such parties would be affected, at least incidentally, by a declaration that the statute in question is unconstitutional. Here, for example, a declaration invalidating Act 230 would have some effect upon: all police officers within the Commonwealth; various entities affected by the new powers conferred upon the Parking Authority; individuals and corporations associated with the taxi or limousine industries; redevelopment authorities throughout the Commonwealth, as well as the many contractors hired or potentially hired by such authorities; arbitrators involved in arbitration related to Philadelphia police and firefighters; and many more. However, requiring the joinder of all such parties would undermine the litigation process.”

(Id. at 568-69).

The Court went on to positively cite to a Wisconsin Supreme Court case that recognized the difficulty of construing statutory language (there, identical to that contained in Pennsylvania's Declaratory Judgments Act) in the context of a facial constitutional challenge to a local ordinance.

That Wisconsin Supreme Court noted:

We do not construe the statute as requiring that where a declaratory judgment as to the validity of a statute or ordinance is sought, every person whose interests are affected by the statute or ordinance must be made a party to the action. If it were so construed, the valuable remedy of declaratory judgment would be rendered impractical and indeed often worthless for determining the validity of legislative enactments, either state or local, since such enactments commonly affect the interests of large numbers of people. *Town of Blooming Grove v. City of Madison*, 81 N.W.2d 713, 717 (Wis. 1957) (citing *White House Milk Co. v. Thomson*, 81 N.W.2d 725 (Wis. 1957)).

(Id. at 569)

Here, other EDCs in Pennsylvania *may* have an interest in the outcome of this litigation, *if* their respective tariffs contain residential billing practices that are similarly worded to the language at issue in PPL's tariff. However, to the extent that such interests exist, they are merely *incidental* to this case. Their specific tariffs, and the specific language contained in any of them, are not at issue in this case. They would not be directly affected by an order against PPL in this case – specifically, they would not be ordered to do, or not do, anything in regards to their tariff or practices. That may occur in future hearings specifically regarding them, but that potential future occurrence is not relevant for the purposes of resolving this claim. Furthermore, their presence in this litigation would not add any value on the underlying merits, as their arguments (i.e., their combined interest in maintaining the legality of the tariff language at issue) would be merely duplicative of PPL's arguments on the core issue in the matter *sub judice*, and overall would make a reaching a resolution of this claim unmanageable. As such, no other EDC is a necessary, indispensable party to this claim.

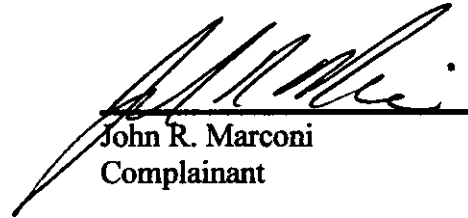
37. Admitted in part, and Denied in part. While I acknowledge that I mentioned the potential *stare decisis* effect of a negative ruling against PPL in this matter, I was merely pointing out a legal reality. This was elaborated in my Answers to Paragraphs 16 and 30, above. PPL is incorrect in somehow suggesting that I am requesting (or intending) that the Commission specifically address the *stare decisis* effect on other EDCs, and/or make a finding against any other EDC, in its final order in this claim.

38. It is admitted that no other EDC was named as a party in MY Complaint. I am not in privity with any other EDC in Pennsylvania in regards to the distribution of my electric service, and charges for same.

39. Denied for the reasons stated in Answer to Paragraphs 35 through 38, above.
40. I incorporate by reference MY Answers to Paragraphs 1 through 39, above, as if fully rewritten here.
41. Denied. I am only challenging the residential distribution rates and associated charges of PPL; I made no claim in MY Complaint against any other EDC; and I am not requesting that the Commission take any action, or issue and order regarding, any other EDC in this proceeding. For PPL to suggest otherwise is absolutely, and unequivocally, incorrect. As such, the argument of PPL is inapplicable and should be overruled and denied outright.
42. It is admitted that PPL correctly quotes applicable case-law language regarding standing. Further replying, I state that since I am only bringing MY Complaint against PPL, which is the actual EDC providing electric distribution service to my residence, and with which I am in privity, I have unquestionable standing to proceed with MY Complaint against it. My standing, or lack of same, against any other EDCs in the Commonwealth of Pennsylvania is not relevant in this claim.
43. See Answer to Paragraph 42, above.
44. See Answer to Paragraph 42, above.
45. Admitted.
46. Admitted. Further replying, and as noted in Answer to Paragraph 41, above, I have not, and am not, bringing a challenge to the billing practices (or any other practices) of any other EDC in Pennsylvania as part of MY subject claim. As such, PPL's entire argument in this regard is erroneous and misplaced, and should be overruled and denied outright.

WHEREFORE, I request that the Commission overrule and deny all of PPL's Preliminary Objections, and permit this claim to proceed on the merits.

Respectfully submitted,



John R. Marconi
Complainant

Dated: May 28, 2019

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **ANSWER OF JOHN R. MARCONI TO THE PRELIMINARY OBJECTIONS OF PPL ELECTRIC UTILITIES CORPORATION** has been served upon counsel for Respondent at the following address via email and Regular U.S. Mail this 28th day of May, 2019:

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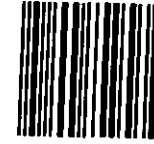
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