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File #: 167945

July 12, 2019

***VIA ELECTRONIC FILING***

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

**Re: Kyle A. Toffey v. PPL Electric Utilities Corporation**  
**Docket No. C-2019-3006931**

Dear Secretary Chiavetta:

Enclosed for filing is the Motion of PPL Electric Utilities Corporation for Protective Order in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Devin Ryan

DTR/vab  
Enclosures

cc: Honorable Elizabeth Barnes (*w/enclosures*)  
Certificate of Service


**CERTIFICATE OF SERVICE**

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

**VIA E-MAIL & REGULAR MAIL**

Kyle A. Toffey  
PO Box 99  
Hamlin, PA 18437  
E-mail: [kyle.toffey@gmail.com](mailto:kyle.toffey@gmail.com)

Date: July 12, 2019

  
Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                                     |   |                           |
|-------------------------------------|---|---------------------------|
| Kyle A. Toffey,                     | : |                           |
|                                     | : |                           |
| Complainant,                        | : |                           |
|                                     | : |                           |
| v.                                  | : | Docket No. C-2019-3006931 |
|                                     | : |                           |
| PPL Electric Utilities Corporation, | : |                           |
|                                     | : |                           |
| Respondent.                         | : |                           |


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**NOTICE TO PLEAD**

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YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.103(c), ANSWERS TO MOTIONS ARE DUE WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. YOUR ANSWERS SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

Kimberly A. Klock (ID # 89716)  
Michael J. Shafer (ID # 205681)  
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[mjshafer@pplweb.com](mailto:mjshafer@pplweb.com)



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Date: July 12, 2019

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|                                     | : |                           |
| Respondent.                         | : |                           |

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**MOTION FOR PROTECTIVE ORDER**

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TO ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby requests that Administrative Law Judge Elizabeth H. Barnes (the “ALJ”) enter a Protective Order in this proceeding pursuant to the provisions of 52 Pa. Code § 5.365(a), and in support thereof represents as follows:

1. On January 7, 2019, PPL Electric was served with the above-captioned Formal Complaint filed by Kyle A. Toffey (“Complainant”) challenging the Company’s planned installation of a new automated metering infrastructure (“AMI”) meter at the Complainant’s service address.

2. The Company timely filed an Answer to the Complainant’s Formal Complaint on January 28, 2019.

3. Proprietary Information within the definition of 52 Pa. Code § 5.365 has been requested during the course of this proceeding, which justifies the issuance of a Protective Order. For example, PPL Electric has requested information that may be considered sensitive or

proprietary, including but not limited to the Complainant's medical records. Treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of such information would not be in the public interest. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365 and in Administrative Law Judge or Pennsylvania Public Utility Commission ("Commission") Orders granting relief pursuant to said regulation.

4. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the confidential information. In applying this standard, relevant factors to be considered include: (1) the extent to which disclosure would cause unfair economic or competitive damage; (2) the extent to which the information is known by others and used in similar activities; (3) the worth or value of the information to the party and to the party's competitors; (4) the degree of difficulty and cost of developing the information; and (5) other statutes or regulations dealing specifically with disclosure of the information. 52 Pa. Code § 5.365(a)(1)-(5).

5. The attached proposed Protective Order defines "Confidential" information in Paragraph 3 of the attached proposed Protective Order as "those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public, or which, if disclosed freely, would subject that party or others to risk of competitive disadvantage or other business injury." This specifically includes "the Complainant's medical records and information."

6. Paragraph 18 of the attached proposed Protective Order protects against overly broad designations of protected information by giving all parties the right to question or challenge the confidential or proprietary nature of the “Confidential” information.

7. Limitation on the disclosure of “Confidential” information will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of this proceeding. The proposed Protective Order balances the interests of the parties, the public, and the Commission.

8. The attached suggested Protective Order sought by PPL Electric will protect against the public disclosure of confidential information while allowing the parties to use such information for purposes of the instant litigation. The proposed Protective Order applies the least restrictive means of limitation that will provide the necessary protections from disclosure.

WHEREFORE, for all the reasons set forth above, PPL Electric Utilities Corporation respectfully requests that Your Honor issue the attached Protective Order.

Respectfully submitted,



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Michael J. Shafer (ID # 205681)  
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Date: July 12, 2019

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| PPL Electric Utilities Corporation, | : |                           |
|                                     | : |                           |
| Respondent.                         | : |                           |

**PROTECTIVE ORDER**

Upon consideration of the Motion for a Protective Order that was filed by PPL Electric Utilities Corporation:

**IT IS ORDERED THAT:**

1. The Motion is hereby granted with respect to all materials and information identified in Paragraphs 2 and 3 below.
2. The materials subject to this Protective Order are all correspondence, documents, data, information, studies, methodologies, and other materials, furnished in this proceeding, which are believed by the producing party to be of a proprietary or confidential nature and which are so designated by being stamped “Confidential.” Such materials will be referred to below as “Proprietary Information.”
3. The parties may designate as “Confidential” those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public, or which, if disclosed freely, would subject that party or others to risk of competitive disadvantage or other business injury. “Confidential” materials shall expressly include the Complainant’s medical records and information.

4. Proprietary Information shall be made available to counsel for the non-producing party, subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross examination, or argument or for settlement discussions in this proceeding. To the extent required for participation in this proceeding, counsel for a non-producing party may afford access to Proprietary Information subject to the conditions set forth herein.

5. Proprietary Information produced in this proceeding shall be made available to the Pennsylvania Public Utility Commission (“Commission”) and its Staff. For purposes of filing, to the extent that Proprietary Information is placed in the Commission’s report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information is placed in the Commission’s testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Protected Information shall be permitted only in accordance with this Protective Order.

6. “Confidential” information may be made available to a “Reviewing Representative” who is a person who has signed a Non-Disclosure Certificate in the form attached as **Appendix A** hereto and who is: (i) an attorney for one of the parties who has entered an appearance in this proceeding; (ii) an attorney, paralegal, or other employee associated for purposes of this proceeding with an attorney described in subparagraph (i); (iii) an expert or an employee of an expert retained by a party for the purpose of advising, preparing for or testifying in this proceeding; (iv) an employee or other representative of a party with significant

responsibility in this proceeding; or (v) a person mutually agreed to by the producing and non-producing parties.

7. No other persons may have access to the Proprietary Information except as authorized by order of the Commission or the Presiding Administrative Law Judge.

8. Proprietary Information shall be treated by non-producing parties subject to this Protective Order and by all Reviewing Representatives in accordance with the certificate attached as **Appendix A** and executed pursuant to Paragraph 10. Information deemed Proprietary Information shall not be used except as necessary for the conduct of this proceeding, nor shall it be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

9. Reviewing Representatives may not use information contained in any Proprietary Information obtained through this proceeding to give any commercial advantage. If a party wishes to designate as a Reviewing Representative a person not described in Paragraph 6 above, the party shall seek agreement from the party providing the Proprietary Information. If an agreement is reached, that person shall be a Reviewing Representative with respect to those materials. If no agreement is reached, the party shall submit the disputed designation to the presiding Administrative Law Judge for resolution.

10. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate, provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's

instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the party asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative.

11. Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

12. None of the parties waive their right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Proprietary Information.

13. The producing party shall designate data or documents as constituting or containing Proprietary Information by stamping the documents "Confidential." Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the parties, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information. The Proprietary Information shall be served in an envelope separate from the nonproprietary materials, and the envelope shall be conspicuously marked "Confidential."

14. The non-producing party will consider and treat the Proprietary Information as within the exemptions from disclosure provided in Section 335(d) of the Public Utility Code, 66 Pa. C.S. § 335(d), as applicable, and is within the definition of "confidential proprietary information" in the Pennsylvania Right-to-Know Law, Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104, until such time as the information is found to be non-proprietary. In the event that any person or entity seeks to compel the disclosure of Proprietary Information, the

non-producing party shall promptly notify the producing party in order to provide the producing party an opportunity to oppose or limit such disclosure.

15. Any public reference to Proprietary Information by a party shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

16. When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

17. Any part of the record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination and argument, and including reference thereto as mentioned in Paragraph 15 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties subject to this Protective Order or pursuant to an order of the Commission.

18. The parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and to question or challenge the admissibility of Proprietary Information. If a party challenges the designation of a document or information as proprietary, the party providing the information retains the burden of demonstrating that the designation is appropriate.

19. The parties shall retain the right to object to the production of Proprietary Information on any proper ground; to refuse to produce Proprietary Information pending the adjudication of the objection; and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order.

20. Within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within 30 days after appeals are finally decided, the non-producing party, upon request, shall either destroy or return to the producing party all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that the non-producing party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the producing party, the non-producing party shall certify in writing to the other party that the Proprietary Information has been destroyed.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Elizabeth H. Barnes

**APPENDIX A**  
**BEFORE THE**  
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                                     |   |                           |
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|                                     | : |                           |
| Respondent.                         | : |                           |

**TO WHOM IT MAY CONCERN:**

The undersigned is a Reviewing Representative of \_\_\_\_\_, a party to this proceeding (“Party”), and is not or has no knowledge or basis for believing that he/she is prohibited from being a “Reviewing Representative of Confidential information” pursuant to Paragraph 6 of the Protective Order. The undersigned has read and understands the Protective Order in the above-referenced proceeding, which Protective Order deals with the treatment of Proprietary Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Protective Order.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Employer