

JOHN R. MARCONI
1209 Grants Place
Denver, PA 17517-8814
(234) 334-9650

September 6, 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 my **RESPONSE TO THE OBJECTION OF PPL ELECTRIC UTILITIES CORPORATION TO THE INTERROGATORIES OF JOHN R. MARCONI (SET I)**. 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.

RECEIVED
2019 SEP - 9 AM 9:47
PA PUC
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John R. Marconi,

Complainant,

v.

PPL Electric Utilities Corporation,

Respondent.

Docket No. **C-2019-3009648**

**RESPONSE TO THE OBJECTION OF PPL ELECTRIC UTILITIES
CORPORATION TO THE INTERROGATORIES OF JOHN R. MARCONI (SET I)**

Now comes John R. Marconi, Complainant in the above-docketed matter (hereinafter referred to as “I”, “ME”, or “MY”) and presents his Response to the *Objection of PPL Electric Utilities Corporation to the Interrogatories of John R. Marconi (Set I)*, filed by PPL Electric Utilities (“PPL”) on or about September 5, 2019, requesting that PPL’s Objection be overruled and that I be granted other specific relief requested herein.

ARGUMENT

1. Interrogatory 33, in my first set of Interrogatories and Requests for Production of Documents to

PPL, requests:

“Please provide any and all communications between PPL (as well as any of its employees and agents) and any third party regarding, discussing, and/or mentioning John Marconi, the Complainant in this matter, from March 1, 2019 to present.”

2. PPL, in its Objection, claims that, to the extent such communications exist, some or all of them are protected by the attorney-client privilege, and concludes in its Objection that it will therefore not be providing copies of any communications that, in its subjective opinion, fall

within said privilege, and instead “will provide a response to Interrogatory 33 that contains copies of other communications, if any, that fall within the scope of the discovery request.”

3. PPL has neither provided with its Objection, nor made any agreement/promise to provide, a privilege log identifying with sufficient specificity the communications that it has found, but is refusing to provide in response to Interrogatory 33, because of a claimed protection of attorney-client privilege.
4. Interrogatory 33 specifically and expressly was limited to communication between PPL (as well as its agents, including counsel) and third parties.
5. In Pennsylvania, it must be recognized “that evidentiary privileges are not favored.” *Commonwealth v. Stewart*, 690 A.2d 195, 197 (Pa. 1997) (observing “[e]xceptions to the demand for every man’s evidence are not lightly created nor expansively construed, for they are in derogation of the search for truth.”). Courts should permit utilization of an evidentiary privilege “only to the very limited extent that . . . excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining the truth.” *Id.* (quoting *In re Grand Jury Investigation*, 918F.2d 374, 383 (3d Cir. 1990)).
6. In Pennsylvania, with limited exceptions for communications with experts for anticipated or pending litigation, the attorney-client privilege is waived if the communications involve third parties. *Joe v. Prison Health Servs., Inc.*, 782 A.2d 24, 31 (Pa. Cmwlth. 2001) (“[O]nce the attorney-client communications have been disclosed to a third party, the privilege is deemed waived.”); *Nationwide Mut. Ins. Co. v. Fleming*, 992 A.2d 65, 68 (Pa. 2010) (recognizing waiver of attorney-client privilege upon disclosure to a third-party).
7. As such, the broad strokes that PPL is attempting to use in protecting various, and potentially numerous, discoverable documents is improper, disingenuous, baseless, and deceptive.

WHEREFORE, for the foregoing reasons, I request that the Commission overrule PPL's Objection, and that:

(a) PPL be compelled to fully respond to John R. Marconi's Interrogatory 33, and supply copies of any and all documents regarding communications with third parties requested therein, except for communications with alleged outside experts hired for the express purpose of assisting PPL in the defense of this case;

(b) For any alleged communications with outside experts and/or agents expressly hired for the purpose of defending PPL in this case, that PPL be ordered to provide a detailed privilege log identifying the communications between PPL and/or its counsel and any such third party, supporting the basis for the alleged privilege, noting:

- The name(s) of the parties sending the communication;
- The names(s), titles and employers of the parties to whom the communication was addressed (including being 'copied on' any such communications);
- The names(s), titles and employers of the parties to whom the communication was forwarded (by physical and/or electronic means);
- The name(s), titles and employers of all parties actually participating in the communications.
- The dates for each such communication, with a basic description of its contents for reference purposes.
- The exact format of the communications (e.g., e-mail, letter correspondence, text message, etc.).

(c) For any alleged communications identified in the privilege log noted above, that the PUC conduct an *in camera* review of those documents to determine whether, in fact and law, the

attorney-client privilege should attach them them as claimed by PPL, or whether they, too, are discoverable and being improperly withheld by PPL.

(d) That the Call-In Telephone Hearing in this case, scheduled for Tuesday, October 1, 2019, be continued until at least thirty (30) days after this discovery dispute is fully resolved.

Respectfully submitted,



John R. Marconi
Complainant

Dated: September 6, 2019

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **RESPONSE TO THE OBJECTION OF PPL ELECTRIC UTILITIES CORPORATION TO THE INTERROGATORIES OF JOHN R. MARCONI (SET D)** has been served upon counsel for Respondent at the following address via email and Regular U.S. Mail this 6th day of September, 2019:

David B. MacGregor, Esq.
Devin T. Ryan, Esq.
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2808
dmacgregor@postschell.com
dryan@postschell.com



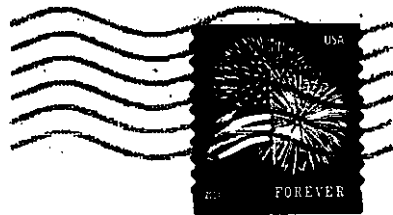
John R. Marconi
Complainant

RECEIVED
2019 SEP -9 AM 9:48
PA PUC
SECRETARY'S BUREAU

John R. Marconi
1209 Grants Pl.
Denver, PA 17517

HARRISBURG PA 171

06 SEP 2019 PM 4 L



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

17105-326565

