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July 8, 2022

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: Jay Larry Moyer v. PPL Electric Utilities Corporation
Docket No. C-2022-3031294

Dear Secretary Chiavetta:

Attached for filing are the Replies of PPL Electric Utilities Corporation to the Exceptions of Jay Larry Moyer in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Devin Ryan

DR/dmc
Attachments

cc: The Honorable Dennis Buckley *(via e-mail)*
Office of Special Assistants (*via e-mail*)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have 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

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Philadelphia, PA 19144
E-mail:gtown73@hotmail.com

Date: July 8, 2022

Devin T. Ryan

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Jay Larry Moyer,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2022-3031294
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

REPLIES OF PPL ELECTRIC UTILITIES CORPORATION TO THE EXCEPTIONS OF JAY LARRY MOYER

PPL Electric Utilities Corporation ("PPL Electric" or the "Company"), pursuant to 52 Pa. Code § 5.535, hereby respectfully submits these Replies to the Exceptions of Jay Larry Moyer ("Complainant"). In his Exceptions, the Complainant disputes Administrative Law Judge Dennis J. Buckley's ("ALJ") Initial Decision dismissing the above-captioned Formal Complaint ("**Fifth Complaint**").[1] As noted by the ALJ, however, the **Fifth Complaint** is the latest in a long line of Formal Complaints filed by the Complainant, raising the same issues about the Company's virtual meter aggregation billing process. Therefore, the **Fifth Complaint** is barred by *res judicata* and should be dismissed with prejudice.

[1] The First and Second Complaints were filed at Docket Nos. C-2011-2273645 and C-2014-2444864, respectively. Both the Commission and the Commonwealth Court denied the Complainant's claims made in the First and Second Complaints about PPL Electric's virtual meter aggregation program and billing processes, and the Pennsylvania Supreme Court denied the Complainant's Petition for Allowance of Appeal. *See Moyer v. PPL Elec. Utils. Corp.*, Docket Nos. C-2011-2273645, C-2014-2444864 (Order entered May 19, 2016), affirmed, *Moyer v. Pa. PUC*, 2017 Pa. Commw. Unpub. LEXIS 167 (Pa. Cmwlth. 2017) ("Moyer I"), *allocatur denied*, *Moyer v. Pa. PUC*, 2017 Pa. LEXIS 2145 (Pa. 2017). Like the First and Second Complaints, the Commission dismissed the Complainant's Third Complaint, which raised issues concerning PPL Electric's virtual meter aggregation billing practices. See *Moyer v. PPL Elec. Utils. Corp.*, Docket No. C-2015-2511904 (Order entered Aug. 8, 2019). As with the First, Second, and Third Complaints, the Commission dismissed the Complainant's Fourth Complaint regarding the Company's virtual meter aggregation billing practices. See *Moyer v. PPL Elec. Utils. Corp*., Docket No. C-2017-2629683 (Order entered October 28, 2021). The Complainant did not appeal the Commission's October 28, 2021 Order dismissing his Fourth Complaint. Thus, the Complainant has had some form of active litigation against PPL Electric in every year since 2011.

For these reasons and as further explained below, PPL Electric respectfully requests that the Pennsylvania Public Utility Commission ("Commission") deny the Complainant's Exceptions, adopt the well-reasoned Initial Decision without modification, and dismiss the **Fifth Complaint** with prejudice.

I. INTRODUCTION

On March 8, 2022, PPL Electric was served with the above-captioned Formal Complaint filed by the Complainant with the Commission. The Complainant is a participant in PPL Electric's virtual meter aggregation program, under which the excess generation produced by his solar generating facilities, if any, is used to offset the usage at his residence. This Formal Complaint is the fifth that the Complainant has filed against PPL Electric regarding the billing process and payments for virtual meter aggregation electric service provided to the Complainant's house and detached solar array. In this **Fifth Complaint** proceeding, the Complainant generally has alleged that PPL Electric failed to provide him with the full retail value of the excess generation produced by his solar facilities.

On March 28, 2022, PPL Electric filed its Answer and New Matter to the **Fifth Complaint** along with a Preliminary Objection to the **Fifth Complaint**.

On or around April 5, 2022, the Complainant filed an Answer to PPL Electric's Answer and Preliminary Objection.

On June 8, 2022, the ALJ issued an Initial Decision ("ID") sustaining, in part, PPL Electric's Preliminary Objection to dismiss the **Fifth Complaint** with prejudice, holding that the **Fifth Complaint** was legally insufficient and an abuse of administrative process.

On June 27, 2022, the Complainant filed Exceptions to the ID.[2]

[2] Exceptions were due within 20 days of the service of the ID on June 8, 2022. Accordingly, the Complainant's Exceptions were due by June 28, 2022. The Company's Replies to Exceptions were due within 10

For the reasons explained in more detail below, the Complainant's Exceptions are without merit, and the Commission should adopt the ALJ's well-reasoned ID without modification and dismiss the **Fifth Complaint** with prejudice as legally insufficient and an abuse of administrative process.

II. REPLIES TO EXCEPTIONS

A. REPLY TO EXCEPTION NO. 1 – THE COMPLAINANT'S ISSUES WITH THE ALJ'S DESCRIPTION OF THE SOLAR PANELS' LOCATION ARE IMMATERIAL

The Complainant alleges that the location of his solar panels is a "defining factor" in this proceeding. (Complainant's Exceptions at 2.) As such, according to the Complainant, the ID erred in noting that the solar panels on the Complainant's property are "affixed to the residence," "on the residence," "on his home," and "on Complainant's home." (Complainant's Exceptions at 3.) According to the Complainant, "[m]isunderstanding these facts yields a host of other errors." (Complainant's Exceptions at 3.)

The ALJ's description of the solar panels' location bears no consequence to the outcome of this case. The Complainant is merely splitting hairs with how he would describe the location of his solar panels with how the ALJ did. Indeed, the Complainant's solar panels are on his property, albeit not physically on his home. The ALJ's description of the solar panels being "on the residence" or "on [the Complainant's] home" are simply short-hand characterizations for the solar panels being on the Complainant's property.

Moreover, the ALJ's findings of fact clearly reflect that understanding that the solar panels have their own separate point of interconnection and are not physically attached to the Complainant's home. Specifically, the ALJ's findings of fact noted that "Complainant receives

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days of the Exceptions due date, *i.e.*, by July 8, 2022. *See* 52 Pa. Code § 1.12(a). Therefore, the Company's Replies to Exceptions are timely filed.

service from PPL at 73 Woods Road, Klingerstown, PA, in part as a customer-generator participating in PPL Electric's virtual meter aggregation program." (ID at 3, Finding of Fact No. 3.) The ALJ also noted that the Complainant has two separate meters: one for his residence and one for his solar facilities. (*See* ID at 7.)

In addition, the Complainant states that the alleged "[m]isunderstanding" of "these facts yields a host of other errors." (Complainant's Exceptions at 3.) Yet, the Complainant fails to identify what "errors" the alleged misunderstanding produced. In actuality, the ALJ's use of the short-hand terminology to describe the Complainant's solar panels had no effect on the outcome of the ID.

For these reasons, the Complainant's Exception No. 1 should be rejected.

B. REPLIES TO EXCEPTIONS NOS. 2, 3, 6, AND 7 – THE ALJ WHOLLY CONSIDERED AND EVALUATED THE COMPLAINANT'S ALLEGATIONS PRESENTED IN THE FIFTH COMPLAINT

The Complainant erroneously claims that the ALJ "fail[ed] to examine the evidence provided in the Complaint" and "ignore[d] the evidence of discrepancies in PPL's own documents as reflected in" the Complainant's "side-by-side comparison" of PPL Electric's full retail rate used to calculate his credits and the Complainant's calculation of the full retail rate. (Complainant's Exceptions at 3-6, 9-10.) He also asserts that the ALJ failed to address the "central" and purportedly "unresolved question" related to the **Fifth Complaint**, which is the "full retail value" that should be used for calculating his credits for excess generation. (Complainant's Exceptions at 3-4, 6, 10.) According to the Complainant, there is no designation, guidelines, or rate schedule that specifies the "per-unit value" that Complainant argues he should receive for his electric generation. (Complainant's Exceptions at 4.)

The ALJ evaluated the entirety of the **Fifth Complaint**, noting how the Complainant contends that "he does not receive full retail value on his monthly electric bills" because PPL

Electric is allegedly using an incorrect full retail rate to calculate his excess generation credits. (ID at 7, 15-17; Complaint ¶ 4.) The ALJ also accurately addressed the Complainant's "side-by-side comparison" set forth in the **Fifth Complaint**. (ID at 7.) Moreover, the ALJ observed that most of the Complainant's Answer to the Company's Preliminary Objection "do[es] not refute PPL's [Electric] invocation of *res judicata* as dispositive of the present Complaint." (ID at 10.) Rather, as the ALJ properly concluded, the "Answer takes the form of the same arguments that Complainant has made in his previous cases which have been previously heard, considered and rejected by the Commission in its previous decisions." (ID at 10.)

Further, the ALJ addressed the Complainant's allegations about the "central question" purportedly raised by the **Fifth Complaint**—the full retail value for his excess generation. (ID at 12-17.) As noted by the ALJ, "the issues presented in this case are identical with those of the previous four Complaints," all of which were "based on Complainant's challenges to virtual meter aggregation and PPL's billing methodology." (ID at 12-13.) Those challenges necessarily involved evaluating the full retail rate used to calculate the excess generation credits owed to the Complainant.

For example, in the Commission's Order dismissing the Fourth Complaint, the Commission found that "record contains substantial evidence to support the conclusion of the ALJ that PPL has provided sufficient detail regarding the billing of the Complainant's host and satellite accounts and has not acted contrary to methods previously approved by the Commission." *Moyer v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2629683, p. 37 (Order entered Oct. 28, 2021) ("*Moyer 4*"). In reaching that conclusion, the Commission expressly relied on the Company's spreadsheet showing that the Complainant's credits were accurately calculated and applied to his account. *Id.*, pp. 37-39. As noted by the Commission, "Column 4"

of that spreadsheet contained "[t]he full retail rate applicable to the residential account (in cents per kWh) used to calculate the value of the excess generation produced by the solar account." *Id.*, p. 38. Therefore, the Commission has already considered whether the Company calculates the Complainant's credits for excess generation using the correct "full retail rate."

Based on the foregoing, the Complainant's Exceptions Nos. 2, 3, 6, and 7 are without merit and should be denied.

C. REPLYL TO EXCEPTION NO. 4 – THE ALJ PROPERLY HELD THAT THE FIFTH COMPLAINT IS BARRED BY *RES JUDICATA*

The Complainant disputes the ALJ's conclusion that the **Fifth Complaint** is barred by *res judicata*, on the alleged ground that his prior Complaint disputed the "methodology" used for calculating his excess generation credits, whereas his current Complaint challenges "the per-unit compensation" used to calculate those credits. (Complainant's Exceptions at 6-7.)

As in Section II.B, *supra*, the Commission expressly reviewed the "per-unit compensation" used to calculate the Complainant's excess generation credits in the prior Complaint proceedings. Even assuming *arguendo* that it did not, the ALJ properly determined that the **Fifth Complaint** is still barred by *res judicata* because the claims and issues related to how the Company calculates the Complainant's excess generation credits were or could have been raised and ruled on in any of the Complainant's previous Complaint proceedings. (ID at 12-15.)

Res judicata, or claim preclusion, prevents a future suit between the same parties on the same cause of action after a final judgment is entered on the merits of the action. *See PMA Ins. Grp. v. Workmen's Comp. Appeal Bd. (Kelley)*, 665 A.2d 538 (Pa. Cmwlth. 1995), *appeal denied*, 1996 Pa. LEXIS 619 (Pa. 1999). *Res judicata* "prohibits parties involved in a prior litigation from subsequently asserting claims in a later action that were raised, or could have

been raised, in the previous adjudication." *Hillgartner v. Port Auth.*, 936 A.2d 131, 141(Pa. Cmwlth. 2007) (quoting *Montella v. Berkheimer Assocs.*, 690 A.2d 802 (Pa. Cmwlth. 1997)). *Res judicata* also "shields parties from the burden of re-litigating claims with the same parties, or parties in privity with the original litigant, and serves to protect the courts from inefficiency and confusion that re-litigation fosters." *Id*. (emphasis added) (citation omitted).

For the doctrine of *res judicata* to apply, a party must demonstrate: (1) identity of issues, (2) identity of causes of action, (3) identity of persons and parties to the action, and (4) identity of the quality or capacity of the parties suing or being sued. *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313, 1316-17 (Pa. Super. 1983).

Here, the ALJ properly concluded the **Fifth Complaint** is barred by *res judicata* because in the four previous Complaints and the instant Complaint: (1) the issues are about PPL Electric's virtual meter aggregation program and billing practices as well as the same electric accounts of the Complainant; (2) the cause of action is a formal complaint involving PPL Electric's virtual meter aggregation billing practices; (3) the parties in the prior action and the instant proceeding are the same (*i.e.*, Jay Larry Moyer and PPL Electric); and (4) the complainant and respondent in the four previous Complaints and instant Complaint are the same and, therefore, have identical quality or capacity. (ID at 12-15.) Furthermore, the ALJ determined that the Complainant failed to raise "a new issue of fact that requires an evidentiary hearing." (ID at 15.) However, "[e]ven if this assertion is accepted as true (as required in ruling on Preliminary Objections), it does not invalidate the application of *res judicata* and dismissal of the Complaint." (ID at 15-16.)

For these reasons, the Complainant's Exception No. 4 lacks merit and should be denied.

D. REPLY TO EXCEPTION NO. 5 – THE ALJ DID NOT IGNORE THE FACT THAT THE COMPLAINANT'S SOLAR FACILITIES HAVE A COMMERCIAL RATE SCHEDULE

The Complainant also contends that the ALJ "ignored" the fact that his solar facilities have been assigned a commercial rate schedule." (Complainant's Exceptions at 8-9.)

This claim completely lacks merit. In fact, the ALJ explicitly quoted the portion of the **Fifth Complaint** where the Complainant stated that his "is the only known system in PPL service area which has no business activity or function, but which is nevertheless designated 'commercial' (GS-1)." (ID at 15.) Therefore, the ALJ did not ignore the fact that the Complainant's solar account is served under a small commercial rate schedule (Rate Schedule GS-1) instead of a residential rate schedule.

Furthermore, the Commission and the Commonwealth Court have previously held that the Complainant's solar account was properly assigned Rate Schedule GS-1 in the First, Second, and Fourth Complaint proceedings. *See Moyer 4*, pp. 63-65. Indeed, in his Exceptions, the Complainant concedes that the Commission reached this finding "in prior litigation." (Complainant's Exceptions at 8.)

Lastly, even assuming *arguendo* that the ALJ ignored the circumstances surrounding the commercial rate schedule assigned to the Complainant's solar account, which he did not, the fact remains that the **Fifth Complaint** is barred by *res judicata* and should be dismissed with prejudice.

Based on the foregoing, the Complainant's Exception No. 5 is without merit and should be rejected.

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, as well as those more fully explained in the well-reasoned Initial Decision of Administrative Law Judge Dennis J. Buckley, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission: (1) deny the Exceptions filed by Jay Larry Moyer; (2) adopt the Initial Decision without modification; and (3) dismiss the Formal Complaint at Docket No. C-2022-3031294 with prejudice as legally insufficient and an abuse of administrative process.

Respectfully submitted,

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Dated: July 8, 2022.

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