

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Waterco Springs, LLC	:	
	:	
v.	:	C-2022-3036860
	:	
PPL Electric Utilities Corporation	:	

**PETITION OF COMPLAINANT WATERCO SPRINGS, LLC
TO REOPEN THE RECORD**

Pursuant to 52 Pa. Code § 5.571, Complainant Waterco Springs, LLC (“**Waterco**”) hereby respectfully requests that the record be reopened in the above-captioned proceedings for the limited purposes of: (1) requesting the issuance of a subpoena directed to PPL Electric Utilities Corporation (“**PPL**”) for a recording (“**Recording**”) of a June 30, 2022 phone call (“**Phone Call**”) between the parties that PPL’s primary witness described in her hearing testimony; and (2) holding a supplemental hearing for purposes of playing the Recording to resolve the underlying factual question of whether PPL provided an account number to Waterco in the Phone Call and/or for questioning about the destruction of the Recording.

BACKGROUND

1. On November 17, 2022, Waterco filed a Formal Complaint (“**Complaint**”) with the Pennsylvania Public Utility Commission (“**Commission**”) against PPL regarding an administrative error in billing.
2. The crux of the matter relates to, *inter alia*, PPL’s alleged failure to provide Waterco with a PPL account number prior to the issuance of PPL’s first bill.
3. A telephonic hearing (“**Hearing**”) was held in this matter on October 18, 2023.¹

¹ References to the Notes of Testimony therefrom are hereinafter cited with reference to “10/18/2023 N.T.”

4. At the Hearing, PPL witness Dana Brunner testified that she provided Mr. Aframian with a PPL account number during the Phone Call—despite having no specific recollection of doing so and not remembering details of the Phone Call. *See* 10/18/2023 N.T. at 95:4-24; 99:19 – 100:3.

5. The testimony established that there was a Recording of the Phone Call in question, but PPL did not present it as evidence. 10/18/2023 N.T. at 93:1 – 94:14.

6. Ms. Brunner testified that she did not listen to the Recording, as she was not allowed. 10/18/2023 N.T. at 104:13-18.

7. Yet Ms. Brunner testified that her supervisor—who did not appear and testify at the Hearing—allegedly did listen to the Recording. 10/18/2023 N.T. at 95:8 – 98:15.

8. While testimony as to the supervisor’s alleged analysis of the Recording was stricken, through such testimony, PPL conceded that the Recording was readily available and reviewed by PPL, but not produced. 10/18/2023 N.T. at 95:8 – 99:17.

9. Mr. Aframian testified that PPL did not provide Waterco with the new account number and indicated that Waterco would need to wait until it received its first bill to get its account number. 10/18/2023 N.T. at 20:6-13.

10. Presiding Officer Chad L. Allensworth, Administrative Law Judge, issued an Initial Decision (“**Decision**”) on January 25, 2024, in favor of PPL and rejecting Waterco’s claim that PPL did not timely provide a new account number. Decision at 13, 16.

11. In ruling against Waterco, Judge Allensworth concluded that Ms. Brunner’s testimony was more credible than Mr. Aframian’s opposing testimony regarding the content of the Phone Call. *Id.*

12. The record in this matter closed on October 30, 2023.

ARGUMENT

13. Pursuant to 52 Pa. Code § 5.571 (Reopening prior to a final decision), at any time after the record is closed but prior to a final decision, a party may file a petition to reopen the proceeding for the purpose of taking additional evidence. 52 Pa. Code § 5.571(a).

14. A petition to reopen must set forth clearly the facts constituting grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. 52 Pa. Code § 5.571(b).

15. The presiding officer may reopen the proceeding for reception of further evidence if there is reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, the reopening of the proceeding. 52 Pa. Code § 5.571(d).

16. Further, 52 Pa. Code § 5.431 permits additional matter to be relied upon and accepted into the record for good cause shown upon motion. 52 Pa. Code § 5.431(b).

17. Here, Waterco only learned at the Hearing that the Recording of the Phone Call actually existed.

18. The Decision resolved the question of whether PPL gave Waterco an account number during the Phone Call based on a credibility determination. Decision at 13.

19. Since PPL has confirmed that a recording of the actual phone call at issue, i.e., the Recording, exists, the best evidence of what was stated during the Phone Call is the Recording, and the record should be reopened so that a subpoena may be issued to PPL to produce the Recording.

20. Making the Recording part of the record will remove the need to resolve the matter on credibility issues as the Recording will conclusively establish what was, and was not, said during the Phone Call.

21. The Phone Call occurred June 30, 2022, and the Complaint was filed on November 17, 2022, not even six (6) months after the Phone Call.

22. To the extent that PPL argues that it destroyed the Recording, such destruction is spoliation, given that only a short period of time passed between the Phone Call and Waterco’s filing the Complaint, and certainly given that any destruction of the Recording after the Complaint’s filing was improper.

23. For the foregoing reasons, Waterco respectfully requests that the record in this matter be reopened, a subpoena be issued to PPL to produce the Recording at a supplemental hearing, or face questions about the circumstances of the destruction of the Recording.

WHEREFORE, Waterco respectfully requests that this Petition be granted and the record reopened for the limited purposes of (1) issuing a subpoena to PPL for the production of the Recording; and (2) holding a supplemental hearing to play the Recording for purposes of resolving the factual question of whether PPL provided an account number to Waterco in the Phone Call and/or answer questions about the potential destruction of the Recording.

Respectfully submitted,

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By: 
Daniel R. Utain, Esquire,
Counsel for Waterco Springs, LLC

Date: February 14, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing “Petition of Complainant Waterco Springs, LLC to Reopen the Record” were served on the date stated below, on the following via electronic mail, to the addressees stated below, at the addresses stated below:

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By: 
Daniel R. Utain, Esquire, Counsel for Waterco Springs, LLC

Date: February 14, 2024