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File #: 201764

February 26, 2024

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: Waterco Springs LLC v. PPL Electric Utilities Corporation
Docket No. C-2022-3036860

Dear Secretary Chiavetta:

Attached for filing is the Answer to the Petition to Reopen the Record on behalf of PPL Electric Utilities Corporation in the above-referenced proceeding. Copies are being provided as indicated on the Certificate of Service.

Respectfully submitted,



Lindsay A. Berkstresser
Principal

LAB/kl
Attachment

cc: The Honorable Chad Allensworth (*via email; w/attachment.*)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Waterco Springs LLC,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2022-3036860
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION TO THE
PETITION OF WATERCO SPRINGS LLC TO REOPEN THE RECORD**

Respondent PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) herein files this Answer to the Petition to Reopen the Record of Complainant Waterco Springs LLC (“Waterco” or the “Complainant”), pursuant to Section 5.571(c) of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.571(c). In its Petition, Complainant seeks to reopen the record to introduce the recording of a phone call between Waterco and the Company’s customer service representative that took place on June 30, 2022 (“Recording”), in an attempt to meet its burden to prove that that PPL Electric incorrectly billed it for electricity at market rate based on an administrative error following its purchase of a property from a prior electric customer, or otherwise violated the Public Utility Code, the Commission’s orders or regulations, or the Company’s Commission-approved tariff. Complainant’s request should be denied because it has failed to demonstrate a material change of fact or law since the conclusion of the hearing on October 18, 2023, and because the record already includes more than enough information for the Commission to reach a decision in this case. Moreover, Complainant’s

alternative relief to hold a hearing in which PPL Electric must “answer questions about the potential destruction of the Recording” is unwarranted considering Complainant’s own failure to conduct discovery in this proceeding. For these reasons, Complainant’s request should be denied. In support thereof, PPL Electric states as follows:

I. BACKGROUND AND PROCEDURAL HISTORY

On November 17, 2022, Complainant, through its Counsel, filed a Formal Complaint alleging that PPL Electric “committed an administrative error in billing that resulted in Complainant losing the fixed rate its predecessor company had for electric service.” (ID at 1-2.) Complainant alleges that PPL Electric failed to: (1) transfer the electric generation contract of its predecessor with Constellation NewEnergy, Inc. (“Constellation”) to Complainant; and (2) provide it with a new account number necessary to place a service contract with electric generation supplier Constellation in its name. (ID at 10.) On December 8, 2022, PPL Electric filed its Answer to the Formal Complaint.

An evidentiary hearing was held on October 18, 2023. At the hearing, the Parties introduced testimony and exhibits in support of their respective positions. The record consists of a 136 page transcript and a total of twelve exhibits. The record was closed on October 30, 2023.

The well-reasoned Initial Decision (“ID”) of Administrative Law Judge Chad L. Allensworth (“ALJ”) was issued by a Secretarial Letter dated January 25, 2024. Therein, the ALJ found that Complainant failed to establish that PPL Electric prevented Waterco Springs from assuming its predecessor’s contract with Constellation. (ID at 12.) The ALJ also found that PPL Electric provided Complainant with its new account number on June 30, 2022. The ALJ therefore concluded that Complainant failed to meet its burden of proof. (ID at 14-15.)

On February 14, 2024, Complainant filed its Exception to the findings and conclusions reached in the ID. On February 26, 2024, PPL Electric filed its Reply to the Exception. The Exception and Reply Exception are currently pending before the Commission for disposition.

Also on February 14, 2024, Complainant filed the Petition to Reopen the Record (“Petition”). Complainant seeks to have the record reopened to: (1) request the issuance of a subpoena directing PPL Electric to produce the Recording; and (2) hold a supplemental hearing for the purpose of admitting the Recording into evidence or, if the Recording does not exist, for the purpose of “questioning [PPL Electric] about the destruction of the Recording.” (Petition, p. 1.) However, Complainant has failed to meet its burden to demonstrate that there has been a material change of fact or law since the conclusion of the hearing that warrants reopening the record, or that good cause otherwise exists to reopen the record.

II. LEGAL STANDARD

The Commission’s Rules of Practice and Procedure permit a party to petition to reopen the record in a proceeding at any time after the record is closed, but before a final decision is issued, for the purpose of taking additional evidence. 52 Pa. Code § 5.571(a). A party that seeks to reopen the record is requesting affirmative relief from the Commission and, therefore, has the burden of proof. 66 Pa. C.S. § 332(a).

In order to meet the burden of proof required to reopen the record for additional evidence, a party must clearly set forth the facts claimed to constitute 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). Where an initial decision has been issued, the Commission may reopen the record “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).

III. ARGUMENT

The issues to be decided in the Exception and Reply to the Exception currently pending before the Commission are whether, because PPL Electric did not present the Recording as evidence during the evidentiary hearing: (1) PPL Electric’s testimony related to the Recording should be excluded from the record based on the Best Evidence Rule; and (2) the ALJ should have drawn an adverse inference that PPL Electric did not provide Complainant with the new account number in the Recording. However, as explained in PPL Electric’s Reply to the Exception, Complainant cannot now raise an untimely objection based on the Best Evidence Rule or rely on an adverse inference as substantial evidence for a finding in its favor. For the reasons explained in PPL Electric’s Reply to the Exception, as well as those more fully explained in the ID, Complainant failed to meet its burden to demonstrate by a preponderance of the evidence that PPL Electric violated the Public Utility Code, the Commission’s regulations or orders, or the Company’s Commission-approved tariff.

In a second attempt to meet its burden, Complainant now seeks to have the record reopened for purposes of introducing the Recording into the record. In addition, Complainant requests a further hearing related to the contents of the Recording or, alternatively, to “question” PPL Electric about the destruction of the Recording. Complainant’s request must be denied for several reasons.

First, Complainant’s Petition to Reopen the Record fails to meet the legal standard required by the Commission’s regulations. Complainant failed to articulate any material change in law. Indeed, there has been no change in the Public Utility Code, the Commission’s regulations, any

Commission order, or PPL Electric's tariff that would have any effect on the admissibility of the Company's evidence related to the Recording.

Further, Complainant failed to demonstrate a material change of fact. Notably, the Petition does not allege that there has been any change in fact regarding the Recording, rather it simply declares that either the Recording exists and should be produced or does not exist and PPL Electric should face sanctions for its destruction. The only change referenced in the Petition is in Complainant's knowledge that the Recording "actually existed." (See Petition at 1.) Complainant's late recognition of a discoverable fact does not constitute a material change of fact warranting reopening the record.

Second, PPL Electric no longer has possession of the Recording, as it was automatically purged on December 30, 2022, pursuant to the Company's Call Recordings Retention Policies ("Retention Policy"). Thus, good cause to reopen the record does not exist because the Recording does not exist. This proceeding produced a robust record that consists of a 136-page transcript and a total of twelve exhibits, including the testimony of three witnesses. Based upon this extensive evidence, the ALJ made proper findings of fact and conclusions of law that are supported by the substantial evidence of record.

Third, under Complainant's theory, the Company's failure to produce as evidence a Recording that was never sought in discovery justifies a further hearing for "questioning" related to that evidence *after* the close of the record. However, Complainant never sought the Recording, policies or records related to the Recording, or any materials from the Company during discovery. In addition, Complainant bears the burden of proof in this proceeding. If the Commission accepts Complainant's theory, PPL Electric would be subject to a further hearing and at risk for sanctions because Complainant failed to take reasonable steps to develop its own case in chief. This is

simply an unfair and impractical standard, particularly where Complainant's own inaction is at fault.

Finally, it would not be in the public interest to reopen the record as requested by Complainant. The Recording that Complainant seeks was automatically destroyed in December 2022 in accordance with the Company's Retention Policy. The Commission can fully decide the issues pending before it without reopening the record to admit "questioning" by Complainant related to the Company's Retention Policy. Reopening the record to entertain arguments related to spoliation of evidence that was never requested would not be a productive use of time and resources for either the Commission or PPL Electric.

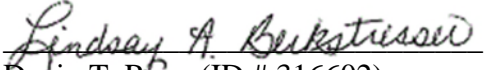
IV. CONCLUSION

Complainant has failed to meet its legal burden to demonstrate a material change of fact or of law that would warrant the time and expense to reopen the record. Crucially, the Recording sought does not exist. For the reasons explained above, Complainant's request to reopen the required should be denied and, for the reasons more fully explained in the ID and PPL Electric's Reply to the Exception, the Commission should deny Complainant's Exception.

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission deny Waterco Spring LLC's Petition to Reopen the Record and adopt the findings and conclusions of the Initial Decision issued by Administrative Law Judge Chad L. Allensworth.

Respectfully submitted,

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Date: February 26, 2024

Attorneys for PPL Electric Utilities Corporation

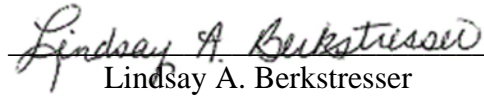
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document 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).

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Date: February 26, 2024


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