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File #: 204719

October 16, 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: Douglas Smith v. PPL Electric Utilities Corporation  
Docket No. C-2024-3046013**

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Dear Secretary Chiavetta:

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

Respectfully submitted,



Peter J. Kramer

PJK/dmc  
Attachments

cc: The Honorable Gail M. Chiodo (*via email; w/attachments*)  
Office of Special Assistant (*via email; w/attachments*)  
Certificate of Service

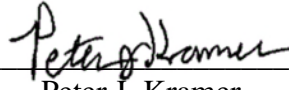
**CERTIFICATE OF SERVICE**

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 EMAIL AND FIRST-CLASS MAIL**

Douglas Smith  
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Das7754@yahoo.com

Date: October 16, 2024

A handwritten signature in black ink, appearing to read "Peter J. Kramer", is written over a horizontal line.

Peter J. Kramer

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Douglas Smith,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3046013
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

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**EXCEPTIONS OF PPL ELECTRIC UTILITIES CORPORATION TO THE  
INITIAL DECISION**

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Dated: October 16, 2024

Attorneys for PPL Electric Utilities Corporation

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## **I. INTRODUCTION AND BACKGROUND**

On February 5, 2024, PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) was served with the Formal Complaint of Douglas Smith (“Complainant”) filed with the Pennsylvania Public Utility Commission (“Commission”). In the Complaint, the Complainant alleges that after his discussions with several PPL customer service representatives he hired and paid an electrician to have his garage electrified, following which PPL connected service to his garage. However, Mr. Smith alleges that he cannot afford to charge his vehicle because PPL bills him a different rate for service to his garage than the residential rate PPL Electric charges him for service to his home. Mr. Smith alleges that PPL Electric never informed him he would be charged a commercial rate, and had he known this he would not have spent thousands of dollars to have his garage electrified or requested connection. (Complaint ¶¶ 4–5.) As relief, the Complainant states that he would pay a “reasonable rate” for service to his garage, which should be the residential rate, or an EV rate, but not the commercial rate. Alternatively, the Complainant wanted reimbursed by PPL for the monies he paid to the electrician to have his garage electrified.

On September 26, 2024, the Commission issued Administrative Law Judge Gail M. Chiodo’s (“ALJ”) Initial Decision (“ID”), sustaining in part and dismissing in part the Complaint. More specifically, the ID dismissed the Complaint to the extent that it claimed PPL Electric billed the Complainant incorrectly or not in accordance with its non-residential rate as defined in the Company’s Commission approved Tariff, rate schedule GS-1. However, the ID sustained the Complaint to the extent that it alleged PPL Electric provided the Complainant unreasonable service under 66 § Pa.C.S. 1501 by not informing him that he would be charged on the GS-1 rate schedule prior to the Complainant having his garage electrified and new service connected. As for relief, the ID ordered the Company to pay a \$1,000 civil penalty (ID at 37-38.).

PPL Electric files Exceptions to limited portions of the ID, namely: (1) the finding that the Complainant did satisfy his burden of proof that the Company provided unreasonable service under 66 § Pa.C.S. 1501; and (2) the imposition of a civil penalty of \$1,000 against PPL Electric. The ID's finding that the Company provided unreasonable service lacks evidentiary and legal support and should not be adopted by the Commission. Further, the ID's purported justification for the \$1,000 civil penalty lacks evidentiary and legal support and should not be adopted by the Commission.

For these reasons, and as explained in more detail below, PPL Electric respectfully requests that the Commission grant these Exceptions and modify the ID accordingly.

## **II. EXCEPTIONS**

### **A. EXCEPTION NO. 1: THE COMMISSION SHOULD REVERSE THE ID'S FINDING THAT THE COMPANY PROVIDED UNREASONABLE SERVICE**

The Commission should reverse the ID's finding of unreasonable service under 66 § Pa.C.S. 1501 because the finding lacks factual and legal support and should not be adopted by the Commission.

The Complainant contacted the Company in May of 2022 to install service at his garage. (Tr. 24.). The record evidence shows the Complainant did not consider connecting the newly electrified garage to the meter at his home, despite the Company asking him about the concept. Indeed, the Complainant stated connecting to his house meter "was never under my consideration" but was only "brought up later by some other people" and potentially "it was one of my contacts with customer service." (Tr. 24-25.). These statements by the Complainant refute the notion that the Complainant was seeking advice from the Company but rather support the view that he was requesting a specific service, a new second meter at his garage. The Company followed through with his request and installed a second meter, billing him appropriately on the GS-1 rate schedule.

(ID at 36.). A utility may charge its customers in accordance with its lawful tariffed rates. 66 Pa.C.S. § 1302. A utility tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers and the public. 66 Pa.C.S. § 1303.

The Company's Tariff, its provisions, and rate schedules are publicly available documents available for each customer like the Complainant to review. The Complainant requested a specific service be installed, namely a second meter at his garage, and was billed on the proper non-residential GS-1 rate schedule (ID at 36.). It should be incumbent on the customer to be knowledgeable on the needs of each new service request and any applicable Tariff provisions or rate schedules. If the Complainant wanted the Company's "guidance" in designing the new garage meter connection, the record evidence does not show it. (Tr. 17.). The ID's reasoning for finding a "lack of transparency" is summarized in stating that "even if Mr. Smith read the tariff, he could not have been reasonably expected to definitively conclude that the GS-1 rate schedule would apply to his garage service . . .<sup>1</sup>" (ID at 24.). If Mr. Smith did not understand the Tariff, the Company could have answered his questions or addressed any of his concerns. There cannot be a "lack of transparency" where all material terms are publicly available in the Company's Tariff, and the Tariff is followed appropriately. Therefore, the Company did not provide unreasonable service by not informing the Complainant of the rate schedule he would be billed on before connecting service, when that information is publicly available.

Furthermore, the ID's purported justification for a finding of unreasonable service lacks legal support. While finding the Complainant was properly billed on the GS-1 rate schedule, the

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<sup>1</sup> The ID continues: ". . . when he was not a business, he did not have any customers, he sought to install an EV charging station for his personal use in his home garage, and the possibility of the application of a commercial rate was never mentioned in his numerous contacts or meetings with PPL representatives. It is reasonable that a customer in Mr. Smith's situation would consider himself a residential customer based upon the actual usage and location of the property. Although, as discussed above, actual use is not necessarily the factor relied upon for rate schedule classification . . ."

ID found that “actual use is not the factor relied upon for rate schedule classification.” (ID at 17.). Commission precedent involving similarly situated property owners who raised the same issue of related to billing supports the position that the Complainant was billed correctly on the GS-1 rate schedule.<sup>2</sup> However, the ID could not find similar Commission precedent that involved a utility providing unreasonable service. Indeed, the ID stated “research has not revealed a prior Commission decision with like circumstances as the instant case to use as a guidance.” On the one hand, Commission precedent shows similar customers like the Complainant had been properly billed on the appropriate GS-1 rate schedule after Commission review, while on the other, the ID shows no support from Commission precedent for a finding of unreasonable service.

However, previous Commission precedent does support no requirement for utilities to provide rate schedules proactively to customers.<sup>3</sup> In *Kanowicz v. PPL Electric Utilities Corporation*, the Complainant decided to install electricity in his detached garage to provide power to a hot tub/swimming pool recreation area.<sup>4</sup> The Complainant determined that it was less expensive to install a second meter than to run wiring from his primary residential meter to the recreational area, and accordingly, contacted PPL Electric to request service to the detached garage.<sup>5</sup> The Complainant questioned why when he called to request an additional meter be installed at his garage, it was not explained to him that this service would be billed at a non-residential rate. He asserted PPL Electric should have mailed him a copy of its tariff or included bill inserts explaining the different rate schedules to customers.<sup>6</sup> The Commission found the

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<sup>2</sup> See *Hubler v. PPL Elec. Utils. Corp.* No. c-2014-2418167, Initial Decision, Mar. 27, 2015 at 8 (Final Order entered May 19, 2015); *U.S. Steel Corp. v. Pa. PUC*, 290 A.2d 849 (Pa. Cmwlth. 1978); *Seth McHenry v. PPL Electric Utilities Corp.*, No. F-2015-2474707 (Final Order entered Nov. 20, 2015).

<sup>3</sup> See *Russel Kanowicz v. PPL Elec. Util. Corp.*, No. c-2004-2915, 2005 Pa. PUC Lexis 43, Initial Decision, May 17, 2005, at 2 (Final Order entered Nov. 1, 2005).

<sup>4</sup> *Kanowicz*, at 2.

<sup>5</sup> *Kanowicz*, at 2.

<sup>6</sup> *Kanowicz*, at 10.

Complainant failed to sustain his burden of proving that PPL Electric provided unreasonable service.<sup>7</sup> Specifically, the Initial Decision in *Kanowicz* stated that “neither the Public Utility Code, nor any Commission regulation or Order places an affirmative duty upon a utility to provide rate schedules to customers, as a matter of course, when service is requested<sup>8</sup>.” Accordingly, the Complaint was denied as to any alleged breach of PPL Electric’s duty to provide unreasonable service.<sup>9</sup> *Kanowicz* is comparable to the instance proceeding because Mr. Smith similarly “considered himself a residential customer” and yet, PPL Electric has no affirmative duty to provide rate schedules to customers like the Complainant. (ID at 24.). Like the Complainant in *Kanowicz*, Mr. Smith and his electrical contractor should be responsible in determining the best course of action for the design of the project, and to ask appropriate questions of PPL Electric, if necessary.

Based on the foregoing, PPL Electric respectfully requests that the Commission grant Exception No. 1, reverse the finding of unreasonable service under 66 § Pa.C.S. 1501, and modify the ID accordingly.

**B. EXCEPTION NO. 2: THE COMMISSION SHOULD REVERSE THE ID’S IMPOSITION OF A CIVIL PENALTY BECAUSE THE ID’S PURPORTED JUSTIFICATION FOR THAT CIVIL PENALTY LACKS FACTUAL AND LEGAL SUPPORT**

The Commission should modify the ID to eliminate the imposition of a civil penalty of \$1,000 because the ID’s alleged support of the civil penalty lacks factual and legal support.

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<sup>7</sup> *Kanowicz*, at 14.

<sup>8</sup> *Kanowicz*, at 12, 13. The Initial Decision continues: “Complainant asserts that he would have taken different action had he been advised that the additional service would be billed at a general rate but took no action, prior to requesting service, to discover what rate would apply. Complainant testified that he assumed that a residential rate would apply because the meter was going to be placed on his residential property and also testified that he never inquired as to the applicable rate when he requested the service, nor anytime thereafter, or consulted an electrical contractor.

<sup>9</sup> *Kanowicz*, at 14.

After finding that the Company provided the Complainant with unreasonable service, the ID applied the ten factors (the *Rosi* factors) set forth in the Commission's Policy Statement for evaluating whether a civil penalty should be imposed for violating a Commission order, regulation, or statute. (ID at 32-35.) These factors are: (1) whether the conduct at issue was of a serious nature; (2) whether the resulting consequences of the conduct at issue were of a serious nature; (3) whether the conduct at issue was deemed intentional or negligent; (4) whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (5) the number of customers affected and the duration of the violation; (6) the compliance history of the regulated entity that committed the violation; (7) whether the regulated entity cooperated with the Commission's investigation; (8) the amount of the civil penalty or fine necessary to deter future violations; (9) past Commission decisions in similar situations; and (10) other relevant factors. 52 Pa. Code § 69.1201(c).

The ID found that factors 1, 8, and 10 weighed in favor of a higher penalty, factors 2, 5, 6, 7, and 9 did not apply here, and factors 3 and 4 were neutral when considering imposing a penalty. On these points, the ID erred in applying factors 1, 8, and 10 and imposing, as a result, a civil penalty of \$1,000.

**1. The ID Erred in Finding that the First *Rosi* Factor Weighs in Favor of a Highly Penalty, Because the Conduct was not of a Serious Nature, such as Willful Fraud or Misrepresentation.**

When applying the first *Rosi* factor,<sup>10</sup> the ID found as follows:

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<sup>10</sup> In full, the first *Rosi* factor states:

Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

52 Pa. Code § 69.1201(c)(1).

As discussed above, this is not a case of misquoting a rate or willful fraud. Rather, it is a case of omission on the Company's part to inform the customer which, in this matter, I find somewhat serious in that the Complainant, due to this omission, incurred the costs of thousands of dollars to have his garage electrified, which he says he would not have done had he had known the applicable rate schedule. Therefore, this factor warrants a higher penalty.

(ID at 33.) The ID's finding under the first *Rosi* factor is not supported by evidence of record, principally because no fraud or misrepresentation occurred. Indeed, the correct rate schedule was applied to the Complainant's new account. The ID instead points to an "omission on the Company's part to inform the customer" and that if informed of the rate schedule he would not have electrified his garage. (ID at 33.) It is impossible for PPL Electric to have known the Complainant would not have undertaken the project if he had been placed on a different rate schedule than the proper GS-1. Indeed, the Complainant's first few months of service "were around \$20, which in his view, was consistent with paying 'a few bucks more' for residential service to his garage." (ID at 27.) (Tr 23.). The Complainant reached out to PPL Electric to question his rate only after seeing his bill increase to "\$67". (ID at 27.) (Tr 23.). There was no serious conduct rising to fraud or misrepresentation. Indeed, there was not even an omission. The Company's Tariff is publicly available.

This finding overlooks the un rebutted evidence that no fraud or misrepresentation occurred and should be reversed, such that the first *Rosi* factor weighs in favor of a lower penalty or no penalty.

**2. The ID Incorrectly Found that the Eighth and Tenth *Rosi* Factors Weigh in Favor of a Penalty, Because the Record Demonstrates that a Civil Penalty Is Unnecessary to Deter Future Violations**

The eighth and tenth *Rosi* factors provides as follows:

- (8) The amount of the civil penalty or fine necessary to deter future violations, with consideration of the size of the utility.
- (10) Other relevant factors

52 Pa. Code § 69.1201(c)(8),(10). In applying the eighth and tenth *Rosi* factors together, the ID concluded:

I find it concerning that at no time during the months-long electrification and connection process, which involved numerous contacts between the parties including several CSRs and a technician, was Mr Smith informed that he was not eligible for the residential rate for service to his home garage. The Company knew that Mr. Smith would have to hire an electrician and spend thousands of dollars to have his garage electrified. Therefore, under the circumstances of this case, the Company's silence or omission seems more offensive to me and warrants a higher penalty. Therefore, considering all the factors above, and the totality of the circumstances in the instant case, I find a total civil penalty of \$1,000 appropriate and sufficient to deter future violations of this type.

(ID at 34-35.) The ID's finding under the eighth and tenth *Rosi* factors are not supported by record evidence because no provision of the Public Utility Code, nor any Commission regulation or Order places an affirmative duty upon a utility to provide rate schedules to customers, as a matter of course, when service is requested.<sup>11</sup> Furthermore, no duty is owed to Mr. Smith to furnish him with the Company's Tariff's rate schedules, which are publicly available. Any design of the project should have been directed by Mr. Smith and his electrician. Finally, even if the Company did know that Mr. Smith "would have to hire an electrician and spend thousands of dollars to have his garage electrified," why would that place an affirmative duty on the Company to question Mr. Smith and his electrician or assume a different rate schedule would change his plan? (ID at 34.) No indication in the record indicates Mr. Smith voiced any of these concerns to the Company. (ID at 23-24.) As a result, no violation of the Public Utility Code has occurred, and therefore, no fine is necessary to deter future violations. For these reasons, the ID erred in finding that the eighth and tenth *Rosi* factors weighed in favor of a civil penalty.

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<sup>11</sup> *Kanowicz*, at 12.

Based on the foregoing, PPL Electric respectfully requests that the Commission grant Exception No. 2, reverse the imposition of the \$1,000 civil penalty, and modify the ID accordingly.

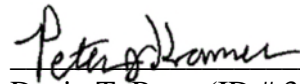
**III. CONCLUSION**

WHEREFORE, the Pennsylvania Public Utility Commission should grant PPL Electric Utilities Corporation's Exceptions and enter a Final Order consistent with these Exceptions that adopts the Initial Decision, as modified, to remove the findings, conclusions, and ordered relief related to: (1) the finding of unreasonable service under 66 § Pa.C.S. 1501 and (2) the imposition of a civil penalty.

Respectfully submitted,

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Dated: October 16, 2024

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