

Gary A. Jeffries  
Senior Counsel



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September 1, 2009

**By eFiling**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Dusan Grmusa v. Dominion Retail, Inc.: Docket No. C-2009-2124359**

**RESPONDENT'S PRELIMINARY OBJECTION**

Dear Secretary McNulty:

On behalf of Dominion Retail, Inc., the Respondent in the above-referenced matter, enclosed via eFiling please find the PRELIMINARY OBJECTION OF DOMINION RETAIL, INC. in the above-referenced proceeding. The original paper version of this pleading will follow by U.S. Mail.

Pursuant to 52 Pa. Code §5.101(b), an answer to a preliminary objection shall be filed within 10 days of the date of service of the objection.

Please note that Respondent is also filing this date in the instant docket an ANSWER AND NEW MATTER to the subject complaint.

A copy of this filing is also being served upon Complainant this date by first-class U.S. Mail.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Gary A. Jeffries  
Senior Counsel

cc: Dusan Grmusa, 3150 Jacks Run Road, White Oak, PA 15131-2510

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DUSAN GRMUSA	)	
	)	
Complainant	)	
	)	
v.	)	Docket No. C-2009-2124359
	)	
DOMINION RETAIL, INC.	)	
	)	
Respondent	)	

PRELIMINARY OBJECTION OF  
DOMINION RETAIL, INC.

By even date hereof, the Respondent, Dominion Retail, Inc. ("DR") filed its ANSWER AND NEW MATTER in the above-captioned proceeding. That pleading is hereby incorporated by reference.

Now comes DR and files this Preliminary Objection, pursuant to 52 Pa. Code §5.101, seeking the dismissal of the Complaint on the basis that the Complaint fails to invoke the Commission's jurisdiction and is insufficient as to substance.

Commission preliminary objection practice is similar to Pennsylvania civil practice regarding the filing of preliminary objections.<sup>1</sup> A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt.<sup>2</sup> The Commission has adopted this standard.<sup>3</sup>

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<sup>1</sup> Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

<sup>2</sup> Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991)

Section 701 of the Public Utility Code<sup>4</sup> allows any person, having an interest in the subject matter, to file a formal complaint in writing with the Commission setting forth any act or thing done or omitted to be done *by any public utility* in violation, or claimed violation, of any law which the Commission has jurisdiction to administer or of any regulation or order of the Commission. (Emphasis added).

The instant complaint raises non-jurisdictional issues against a non-jurisdictional entity and therefore should be dismissed for lack of jurisdiction and insufficiency as to substance. The essence of the matter raised in the Complaint concerns the Complainant's assertion that DR, as an electricity generation supplier, has breached its private contract with Complainant by charging him more than allowed under the contract and as such should pay him a "refund" and be "fined and/or punished to provide justice, according to federal and state rules, for me and all others who have been through this experience". (Complaint, at ¶5).

Respectfully, DR submits that the Commission is without jurisdiction to order DR to provide a refund to Complainant or to grant the other requested relief. The Commission lacks authority to interpret or adjudicate private contracts between electricity generation suppliers and customers. Only courts of competent jurisdiction have such authority. Indeed, the Commission has not extended its jurisdiction over electricity generation suppliers such as DR beyond those activities set forth in §2809(e) of the Public Utility Code.<sup>5</sup> Complainant's request for action by the Commission vis-à-vis DR is not within the scope of the listed §2809(e) activities. Therefore,

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<sup>3</sup> Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988).

<sup>4</sup> 66 Pa. C.S. §701

<sup>5</sup> 66 Pa.C.S. §2809(e). In regulating the service of electric generation suppliers, the Commission shall impose requirements necessary to ensure that the present quality of service provided by electric utilities does not deteriorate,

dismissal of the subject Complaint for failure of jurisdiction and insufficiency as to substance is clearly warranted and free from doubt.

Finally, the Complaint should be dismissed without a hearing. The Commission's rules recognize that a hearing is not necessary in every formal complaint brought before it. Those rules provide that "[t]he filing of a formal complaint entitles the complainant to a formal hearing before the Commission, *except that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.*" 52 Pa. Code §5.21(d) (emphasis added). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy, or discretion.<sup>6</sup> DR submits that the issues raised against it in this proceeding are issues of law, not fact. Accordingly, no hearing on this issue is needed.

**NOTICE TO PLEAD: Pursuant to 52 Pa. Code §5.101(b) an answer to a preliminary objection shall be filed within 10 days of the date of service of the objection.**

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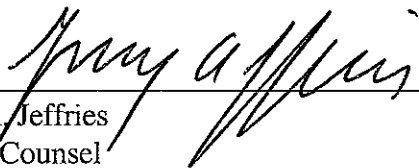
including assuring that adequate reserve margins of electric supply are maintained and assuring that 56 Pa. Code Ch. 56 (relating to standards and billing practices for residential service) are maintained.

<sup>6</sup> *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 563 A.2d 557 (Pa. Cmwlth. 1989).

IN WITNESS WHEREOF, Respondent, DR, respectfully submits its  
PRELIMINARY OBJECTION and requests the Commission grant the relief requested.

DOMINION RETAIL, INC.

DATED: September 1, 2009

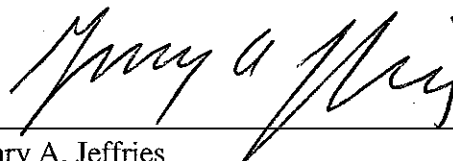
By:   
\_\_\_\_\_  
Gary A. Jeffries  
Senior Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant).

Dusan Grmusa  
3150 Jacks Run Road  
White Oak, PA 15131-2510

Dated this 1<sup>st</sup> day of September, 2009.

A handwritten signature in cursive script, appearing to read "Gary A. Jeffries", is written over a horizontal line.

Gary A. Jeffries  
501 Martindale Street, Suite 400  
Pittsburgh, PA 15212

