

Gary A. Jeffries
Assistant General Counsel



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September 27, 2010

By eFiling

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Jeffrey W. Smiles v. PPL Electric Utilities Corporation: Docket No. C-2010-2186622

PRELIMINARY OBJECTION OF DOMINION RETAIL, INC.

Dear Secretary Chiavetta:

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. d/b/a DOMINION ENERGY SOLUTIONS.

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, counsel for PPL Electric Utilities Corporation, MX Energy, and ALJ David A. Salapa this date by first-class U.S. Mail.

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

Very truly yours,

A handwritten signature in black ink that reads "Gary A. Jeffries".

Gary A. Jeffries
Assistant General Counsel

Enclosures

cc: Jeffrey W. Smiles, 3049 Octagon Street, Sinking Spring, PA 19608
Kimberly G. Krupka, Gross McGinley LLP, 33 South 7th St., PO Box 4060, Allentown, PA 18105
MX Energy, PO Box 8127, Stamford, CT 06905-8127
ALJ David A. Salapa, PA Public Utility Commission, PO Box 3265, Harrisburg, PA 17105-3265

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JEFFREY W. SMILES)	
)	
Complainant,)	
)	
v.)	Docket No. C-2010-2186622
)	
PPL ELECTRIC UTILITIES CORPORATION)	
)	
Respondent)	

PRELIMINARY OBJECTION OF
DOMINION RETAIL, INC d/b/a DOMINION ENERGY SOLUTIONS

By even date hereof, Dominion Retail, Inc. d/b/a DOMINION ENERGY SOLUTIONS (“DES”) filed its ANSWER AND NEW MATTER, which is hereby incorporated by reference.

Now comes DES 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.¹ A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt.² The Commission has adopted this standard.³

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

² 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)

³ Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988).

Section 701 of the Public Utility Code⁴ 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 Complainant fails to allege any particular wrongdoing by or justiciable complaint against DES. Complainant does seemingly hint that DES, as an electricity supplier, has in some manner breached its private contract with Complainant by not selling him electricity at the “promised” price, but does not explicitly accuse DES of such breach.

Respectfully, DES submits that the Commission is without jurisdiction to entertain Complainant’s non-particularized claim that DES breached its contract. 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 DES beyond those activities set forth in §2809(e) of the Public Utility Code.⁵ Therefore, dismissal of the subject Complaint for failure of jurisdiction and insufficiency as to substance is clearly warranted and free from doubt.

⁴ 66 Pa. C.S. §701

⁵ 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, 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.

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.⁶ DES submits that the issues raised against it in this proceeding are issues of law, not fact. Accordingly, no hearing on this issue is needed.

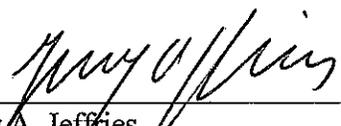
IN WITNESS WHEREOF, DES respectfully submits its

PRELIMINARY OBJECTION and requests the Commission grant the relief requested.

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.

DOMINION RETAIL, INC.

DATED: September 27, 2010

By: 

Gary A. Jeffries
Assistant General Counsel

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

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA)
) SS.
COUNTY OF ALLEGHENY)

I, Gary A. Jeffries, Assistant General Counsel and Assistant Secretary, Dominion Retail, Inc., hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information, and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: September 27, 2010



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).

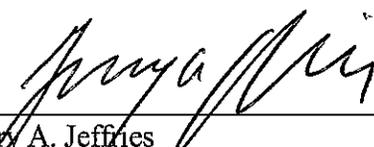
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MX Energy
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Honorable David A. Salapa
Pennsylvania Public Utility Commission
P.O. Box 3265
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Dated this 27th day of September, 2010.



Gary A. Jeffries
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