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File #: 2507/140074

April 2, 2014

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: David A. Seace v. PPL Electric Utilities Corporation and American Power & Gas of
Pennsylvania LLC
Docket No. C-2014-2409875**

Dear Secretary Chiavetta:

Enclosed please find the Preliminary Objections of PPL Electric Utilities Corporation to the Complaint of David A. Seace in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Christopher T. Wright

CTW/skr
Enclosure

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 FIRST CLASS MAIL

David A. Seace
799 Forest Lane
Dauphin, PA 17018

American Power & Gas of Pennsylvania LLC
Attention: Lucia Austin
411 Cleveland Street
Clearwater, FL 33755

Date: April 2, 2014


Christopher T. Wright

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David A. Seace,	:	
Complainant,	:	
	:	
v.	:	
	:	Docket No. C-2014-2409875
PPL Electric Utilities Corporation, and	:	
American Power & Gas of Pennsylvania	:	
LLC	:	
Respondents:	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY FILE AN ANSWER TO THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTIONS MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

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dryan@postschell.com

Date: April 2, 2014

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David A. Seace,	:	
Complainant,	:	
	:	
v.	:	
	:	Docket No. C-2014-2409875
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PPL Electric Utilities Corporation, and	:	
American Power & Gas of Pennsylvania	:	
LLC	:	
Respondents.	:	

**PRELIMINARY OBJECTIONS OF
PPL ELECTRIC UTILITIES COMPANY
TO THE COMPLAINT OF DAVID A. SEACE**

AND NOW, comes PPL Electric Utilities Company (“PPL Electric”) and hereby files Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Complaint filed by David A. Seace (“Complainant”) be dismissed as against PPL Electric. In support thereof, PPL Electric states as follows:

I. BACKGROUND

1. PPL Electric furnishes electric distribution, transmission, and default supply services to approximately 1.4 million customers throughout its certificated service territory, which includes all or portions of twenty-nine counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania. PPL Electric is a “public utility,” an “electric

distribution company,” and a “default service provider” as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 102, 2803.

2. On March 13, 2014, PPL Electric was served with the above-captioned Complaint. The issues raised in the Complaint pertain to: (i) the rates charged for the competitive electric generation supply provided by American Power & Gas of Pennsylvania LLC (“AP&G”); (ii) AP&G’s advertising practices; and (iii) the time it takes to switch to a different electric generation supplier (“EGS”) or to default generation supply service provided by PPL Electric.

3. PPL Electric herein files these Preliminary Objections to the Complaint. For the reasons explained below, PPL Electric respectfully requests that the Complaint be dismissed in its entirety as against PPL Electric for legal insufficiency pursuant to Section 5.101(a)(4) of the Commission’s regulations, 52 Pa. Code § 5.101(a).

II. STANDARD OF REVIEW

4. Pursuant to the Commission’s regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

52 Pa. Code § 5.101(a) (emphasis added).

5. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwlth.*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (citing *Dep't of Gen. Serv. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005); accord *Complaint of Nat'l Fuel Gas Distrib. Corp. and Petition for an Order to Show Cause*, Docket No. P-00072343 (December 26, 2007).

However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007). For preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery, and any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

III. PRELIMINARY OBJECTIONS

A. PRELIMINARY OBJECTION NO. 1 – The Complaint Fails to State a Cause of Action against PPL Electric Regarding the Rates Charged by the EGS

6. PPL Electric incorporates by reference Paragraphs 1 through 5 as if fully set forth herein.

7. The Complaint avers that the Complainant was a shopping customer that received competitive electric generation supply from AP&G during the time period in question. (Complaint ¶¶ 2 and 4.)

8. AP&G is a licensed EGS that is authorized to offer, render, furnish or supply electricity or electric generation services in the Commonwealth of Pennsylvania, including within PPL Electric's service territory. *See License Application American Power & Gas of Pennsylvania, LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier of Electricity*, Docket No. A-2013-2355561 (July 16, 2013).

9. The Complaint alleges that the rates charged by AP&G for electric generation supply increased during the billing period in question. (Complaint ¶¶ 4 and 5.)

10. The Complainant's cause of action related to the rates charged for the competitive electric generation supply provided by AP&G is against AP&G, not PPL Electric.

11. The allegations in the Complaint regarding the rates charged for the competitive electric generation supply provided by AP&G are entirely unrelated to electric distribution, electric transmission, default generation supply service, or any other services provided by PPL Electric. PPL Electric has no authority over the terms and conditions of the contract between the Complainant and AP&G, including the rates charged by AP&G.

12. Further, in the prayer for relief, the Complaint requests that the rates charged by AP&G during the time in question be reduced, and that the bills issued for the time period in question be adjusted to reflect the requested reduction. (Complaint ¶ 5.) The Complainant seeks relief solely from AP&G. Therefore, the relief requested by the Complaint is entirely unrelated to PPL Electric.

13. Based on the foregoing, the Complaint has failed to state a cause of action against PPL Electric regarding the competitive electric generation supply provided by AP&G and, therefore, the Complaint should be dismissed as against PPL Electric pursuant 52 Pa. Code § 5.101(a)(4).

B. PRELIMINARY OBJECTION NO. 2 – The Complaint Fails to State a Cause of Action against PPL Electric Regarding the Advertising Practices of the EGS

14. PPL Electric incorporates by reference Paragraphs 1 through 13 as if fully set forth herein.

15. The Complaint avers that the Complainant was a shopping customer that received competitive electric generation supply from AP&G during the time period in question. (Complaint ¶¶ 2 and 4.)

16. The Complaint alleges that AP&G's advertising practices were "distracting." (Complaint ¶ 5.)

17. The Complainant's cause of action related to the advertising practices of AP&G is against AP&G, not PPL Electric.

18. The allegations in the Complaint regarding the advertising practices of AP&G are entirely unrelated to electric distribution, electric transmission, default generation supply service, or any other services provided by PPL Electric. PPL Electric has no authority over the advertising practices of AP&G.

19. Further, in the prayer for relief, the Complaint requests that certain the advertising practices of AP&G be stopped. (Complaint ¶ 5.) The Complainant seeks relief solely from AP&G. Therefore, the relief requested by the Complaint is entirely unrelated to PPL Electric.

20. Based on the foregoing, the Complaint has failed to state a cause of action against PPL Electric regarding the advertising practices of AP&G and, therefore, the Complaint should be dismissed as against PPL Electric pursuant 52 Pa. Code § 5.101(a)(4).

C. PRELIMINARY OBJECTION NO. 3 - The Complaint Fails to State a Cause of Action Against PPL Electric Regarding Switching Timeframes

21. PPL Electric incorporates by reference Paragraphs 1 through 20 as if fully set forth herein.

22. The Complaint avers that there is a lag in the time it takes for PPL Electric to switch a customer to a different EGS or to default generation supply. (Complaint ¶ 4.)

23. Depending on the customer's next meter read date, PPL Electric currently switches customers requesting a different EGS or default service within 11 to 40 days of the customer's request.

24. PPL Electric's current switching timeframes reflect changes made as a part of the Commission's Retail Markets Investigation, which reduced the switching timeframe by five days from 16 to 45 days. *See Interim Guidelines Regarding Standards For Changing a Customer's Electricity Generation Supplier*, Docket No. M-2011-2270442 (Final Order October 25, 2012).

25. PPL Electric's current switching timeframes were approved by Secretarial Letter issued on July 1, 2013, at Docket No. M-2011-2270442.

26. In the prayer for relief, the Complainant requests that the regulatory requirements regarding the time it takes to switch to a different EGS or to default generation supply service be amended or modified to reduce the switching timeframe. (Complaint ¶¶ 4 and 5.)

27. PPL Electric has no authority to adopt or otherwise change the current regulatory requirements regarding the switching timeframe.

28. Further, PPL Electric, as a public utility subject to the Public Utility Code and the regulatory jurisdiction of the Commission, is required to comply with the statutory provisions of the Public Utility Code and the Commission's valid and properly promulgated regulations that are in effect during the time period in question.

29. To the extent that the Complainant seeks to amend or modify the current regulatory requirement, the Complainant's remedy is to seek relief from the appropriate legislative and regulatory bodies that have authority to adopt and implement the requested changes.

30. On March 18, 2014, the Commission issued the *Proposed Rulemaking: Standards for Changing a Customer's Electricity Generation Supplier*, at Docket No. L-2014-2409383. The Complainant's concerns regarding switching timeframes will be addressed by the Commission's *Proposed Rulemaking*.

31. Accordingly, the Complaint has failed to state a cause of action against PPL Electric regarding the switching timeframes and, therefore, the Complaint should be dismissed as against PPL Electric pursuant 52 Pa. Code § 5.101(a)(4).

IV. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Complaint be dismissed in its entirety and with prejudice as against PPL Electric Utilities Corporation.

Respectfully submitted,

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Date: April 2, 2014

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