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File #: 2507/140074

April 7, 2015

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: Michael Salko, Jr. v. PPL Electric Utilities Corporation
Docket No. C-2015-2472734

Dear Secretary Chiavetta:

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

Respectfully submitted,

Lindsay A. Berkstresser

LAB/skr
Enclosure

cc: Certificate of Service

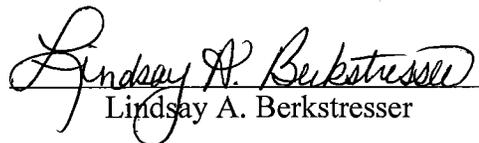
CERTIFICATE OF SERVICE

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 FIRST CLASS MAIL

Michael Salko, Jr.
92 Birch Street
Wilkes-Barre, PA 18702

Date: April 7, 2015


Lindsay A. Berkstresser

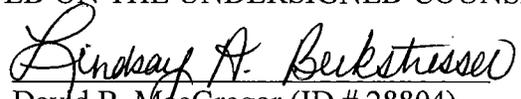
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-------------------------------------|---|---------------------------|
| Michael Salko Jr., | : | |
| | : | |
| Complainant, | : | |
| | : | |
| v. | : | Docket No. C-2015-2472734 |
| | : | |
| PPL Electric Utilities Corporation, | : | |
| | : | |
| Respondent. | : | |

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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Date: April 7, 2015

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| Michael Salko Jr., | : | |
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| Complainant, | : | |
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| v. | : | Docket No. C-2015-2472734 |
| | : | |
| PPL Electric Utilities Corporation, | : | |
| | : | |
| Respondent. | : | |

**PRELIMINARY OBJECTIONS OF
PPL ELECTRIC UTILITIES CORPORATION
TO THE COMPLAINT OF MICHAEL SALKO JR.**

AND NOW, comes PPL Electric Utilities Corporation (“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 Michael Salko Jr., (“Complainant”) be dismissed. 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” (“EDC”), 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. Complainant is a residential customer of PPL Electric with a service address of 92 Birch Street, Wilkes Barre, Pennsylvania 18702.

3. By Secretarial Letter dated March 19, 2015, PPL Electric was served with the above-captioned Complaint. The issue raised in the Complaint relates to PPL Electric's Eligible Customer List ("ECL") Program. Specifically, the Complaint alleges that PPL Electric is going to disclose the Complainant's personal information to others unless the Complainant opts-out of the disclosure, and that PPL Electric's opt-out notice included "propaganda" and "advertisements."

4. On April 7, 2015, PPL Electric filed an Answer to the Complaint asserting, among other things, that (i) PPL Electric's triennial company-wide solicitation for the ECL issued on or about March 4, 2015, is consistent with and fully complies with the Commission's Final Order in *Interim Guidelines For Eligible Customer Lists*, Docket No. M-2010-2183412 (Final Order entered October 23, 2014) (hereinafter, "*Final ECL Order*"), (ii) the Complaint fails to allege a violation of the Public Utility Code, 66 Pa. C.S. §§ 101 *et seq.*, Commission regulation or order, or PPL Electric's Commission-approved tariff, and (iii) the Complainant's requested relief is moot.

5. 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 and mootness to Section 5.101(a)(4) of the Commission's regulations, 52 Pa. Code § 5.101(a)(4).

II. STANDARD OF REVIEW

6. 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.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a).

7. 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 OBJECTION: THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION AGAINST PPL ELECTRIC

A. PRELIMINARY OBJECTION No. 1 - The Complaint Fails as a Matter of Law to State a Claim against PPL Electric Regarding the Opt-Out Method

8. PPL Electric incorporates by reference Paragraphs 1 through 7 as if fully set forth herein.

9. The Complaint requests that PPL Electric not be permitted to use the “opt-out” method and, instead, should be ordered to require customers to “opt-in” to include information

on the ECL. (Complaint ¶¶ 4-5) For the reasons set forth below, the Complaint fails to state a claim upon which relief may be granted.

10. On October 23, 2014, the Commission issued the *Final ECL Order* at Docket No. M-2010-2183412.

11. The Commission's *Final ECL Order* required all EDCs, such as PPL Electric, to perform triennial company-wide solicitations to update their ECLs by the end of the first quarter of 2015. *Id.* at pp. 13, 23. Therein, the Commission explained that "such solicitations will be beneficial in reminding customers of the benefits of the electric ECL and the competitive retail electric market, while also providing customers with the ability to opt-out of including any, or all, of their information." *Id.* at p. 13.

12. The Commission further instructed EDCs to use the "opt-out" approach for customers to exclude some, or all, of their information from the ECL and expressly rejected use of the "opt-in" method. *Id.* at p. 12. The Commission explained that "opting out is an appropriate mechanism, especially with regard to customer information on the ECL." *Id.* at p. 12. The Commission also explained that while customers may have previously opted to exclude some, or all, of their information in previous iterations of the ECL, they must again affirm their preferences. *Id.* at pp. 12-13, 19.

13. Pursuant to the Commission's *Final ECL Order*, on or about March 4, 2015, PPL Electric notified all residential and small commercial and industrial customers that their information (limited to name, service address, billing address, usage information, and account number) would be placed on the ECL for distribution to EGSs unless the customer instructed PPL Electric to withhold their information by "opting out." In the March 4, 2015 ECL opt-out notice, PPL Electric also advised all customers of their right to have their information withheld

from the ECL and provided instructions for requesting that their information be withheld. A true and correct copy of PPL Electric's ECL opt-out notice is attached hereto as Appendix A.

14. The Complaint requests that PPL Electric not provide customer information in the ECL unless the Complainant elects to "opt-in" to the disclosure by requesting that the information be provided. (Complaint ¶ 5) Thus, the Complaint requests that PPL Electric be required to use the "opt-in" method for purposes of the ECL.

15. As explained in Paragraph 12, *supra*, the Commission has previously considered and rejected the "opt-in" method requested by the Complaint. PPL Electric's triennial company-wide solicitation issued on or about March 4, 2015, utilizes the "opt-out" approach for purposes of the ECL and, therefore, is consistent with and fully complies with the Commission's *Final ECL Order*.

16. Based on the foregoing, the Complaint fails as a matter of law to state a claim against PPL Electric regarding the "opt-out" approach for purposes of the ECL. Therefore, the Complaint should be dismissed pursuant 52 Pa. Code § 5.101(a)(4).

B. PRELIMINARY OBJECTION No. 2 - The Complaint Fails to State a Claim against PPL Electric Regarding the Materials Included in the ECL Opt-Out Notice

17. PPL Electric incorporates by reference Paragraphs 1 through 16 as if fully set forth herein.

18. The Complaint alleges that PPL Electric's ECL opt-out notice included "propaganda" and "advertisements." (Complaint ¶ 4) For the reasons explained below, the Complaint has failed to state a claim against PPL Electric regarding the materials included in the ECL opt-out notice.

19. In its October 23, 2014 *Final ECL Order*, the Commission directed electric distribution companies, such as PPL Electric, to include the following information in their

solicitations: (1) what the ECL is; (2) what information is to be included on the ECL; (3) what the more detailed information represents; (4) how this information is to be used by EGSs; (5) how the information is to be safeguarded by EDCs; (6) how widely the information will be disseminated; and (7) the potential benefits to the customers of having their information included on the ECL. *Id.* at pp. 18-19.

20. On or about March 4, 2015, PPL Electric issued its required triennial company-wide solicitation to notify all residential and small commercial customers, including Complainant, that certain information (limited to name, service address, usage information, and account number) would be included on the Eligible Customer Lists (“ECL”) that are provided to electric generation suppliers (“EGSs”) unless the customer “opted-out” and instructed PPL Electric to not include information on the ECL. *See* Appendix A.

21. PPL Electric’s triennial company-wide solicitation issued on or about March 4, 2015, is consistent with and fully complies with the Commission’s *Final ECL Order*, and did not include any “propaganda” or “advertisements” as alleged by the Complainant.

22. Based on the foregoing, the Complaint fails to state a claim against PPL Electric regarding the materials included in PPL Electric’s ECL opt-out notice. Therefore, the Complaint should be dismissed pursuant 52 Pa. Code § 5.101(a)(4).

C. PRELIMINARY OBJECTION No. 3 - The Relief Requested in the Complaint is Moot

23. PPL Electric incorporates by reference Paragraphs 1 through 22 as if fully set forth herein.

24. The Complaint alleges that PPL Electric is going to disclose the Complainant’s personal information to others unless the Complainant opts-out of the disclosure. The Complaint

requests that PPL Electric not be permitted to disclose his information to others. (Complaint ¶ 5)

For the reasons explained below, the relief requested in the Complaint is moot.

25. The Complainant has in fact requested that his information be withheld from the ECL.

26. Following Complainant's request to "opt-out" of the ECL, on February 9, 2015, PPL Electric removed the Complainant's information from the ECL and sent Complainant a letter confirming his decision to withhold his information from the ECL. Attached as Appendix B is a true and correct copy of correspondence from PPL Electric confirming the Complainant's request to opt-out and exclude his customer information from the ECL.

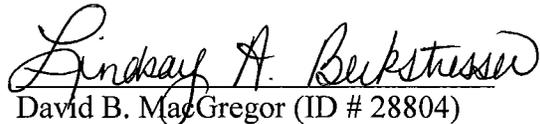
27. At no time following Complainant's request to withhold his information from the ECL was the Complainant's information shared with any EGSs or any other entity outside of PPL Electric.

28. Based on the foregoing, the relief requested in the Complaint is moot. Therefore, the Complaint should be dismissed 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.

Respectfully submitted,



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Of Counsel:

Post & Schell, P.C.

Date: April 7, 2015

Attorneys for PPL Electric Utilities Corporation

