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File #: 140074

December 19, 2016

***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: J. Jude Bervinchak v. PPL Electric Utilities Corporation**  
**Docket No. C-2016-2577527**

Dear Secretary Chiavetta:

Enclosed for filing are the Preliminary Objections of PPL Electric Utilities Corporation to the Complaint of J. Jude Bervinchak, in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DTR/jl  
Enclosures

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 E-MAIL & FIRST CLASS MAIL**

J. Jude Bervinchak  
825 Christine Lane  
Lancaster, PA 17601  
E-mail: vrebs44@gmail.com

Date: December 19, 2016



Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

J. Jude Bervinchak,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2016-2577527
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	


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**NOTICE TO PLEAD**

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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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Of Counsel:

Post & Schell, P.C.

Date: December 19, 2016

*Attorneys for PPL Electric Utilities Corporation*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

J. Jude Bervinchak,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2016-2577527
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

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**PRELIMINARY OBJECTIONS OF  
PPL ELECTRIC UTILITIES CORPORATION  
TO THE COMPLAINT OF J. JUDE BERVINCHAK**

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AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) 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 J. Jude Bervinchak (“Complainant”) be dismissed in its entirety. The Complaint challenges the installation of a smart meter at the Complainant’s residence. However, PPL Electric is required by law to install smart meters throughout its service territory, and no exemption to this requirement exists. Therefore, the Complaint is legally insufficient and should be dismissed in its entirety.

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 29 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. By Secretarial Letter dated November 29, 2016, PPL Electric was served with the above-captioned Complaint. The issues raised in the Complaint concern the forthcoming installation of a smart meter at the Complainant’s residence. (Complaint ¶ 4.)

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 pursuant to Section 5.101(a)(4) of the Commission’s regulations because the Complaint is legally insufficient. *See* 52 Pa. Code § 5.101(a)(4).

## **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.
- (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) (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. Commonwealth*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (citing *Dep't of Gen. Servs. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)). 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). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

6. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. *See Stilp*, at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998).

7. Moreover, an evidentiary hearing is not necessary to resolve questions of law, policy, or discretion. *See Dee-Dee Cab, Inc. v. Pa. PUC*, 817 A.2d 593, 598 (Pa. Cmwlth. 2003) (citation omitted), *appeal denied*, 836 A.2d 123 (Pa. 2003).

### **III. PRELIMINARY OBJECTIONS**

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

9. By way of background, Act 129 of 2008 (“Act 129”) requires each electric distribution company (“EDC”) to file a smart meter procurement and installation plan (“Smart Meter Plan”) under which it will install smart meters throughout its service territory. *See* 66 Pa.C.S. § 2807(f). Specifically, Act 129 states the following, in pertinent part:

(1) Within nine months after the effective date of this paragraph, electric distribution companies shall file a smart meter technology procurement and installation plan with the commission for approval. The plan shall describe the smart meter technologies the electric distribution company proposes to install in accordance with paragraph (2).

(2) Electric distribution companies shall furnish smart meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

66 Pa.C.S. § 2807(f) (emphasis added).

10. Pursuant to Section 2807(f), PPL Electric filed and obtained Commission approval of its current Smart Meter Plan.<sup>1</sup> Under the Smart Meter Plan, the Company will replace its existing meter system with a smart meter system that complies with the Public Utility Code and the Commission's *Smart Meter Implementation Order*<sup>2</sup> by 2021. *2015 SMP Order*, at pp. 8-11.

11. The Complainant challenges PPL Electric's plan to install a smart meters at the Complainant's residence. (Complaint ¶ 4.) Although PPL Electric has not notified the Complainant of a forthcoming termination of service, the Complainant wants to prevent termination of service if the Complainant refuses to allow the Company to install the smart meter. (Complaint ¶¶ 4-5.) For relief, the Complainant seeks to opt-out of receiving a smart

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<sup>1</sup> PPL Electric filed its initial Smart Meter Plan on August 14, 2009, at Docket No. M-2009-2123945. However, the Commission found that the Plan did not meet all of the requirements under Act 129. *See Petition of PPL Electric Utilities Corp. for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123945 (Order Entered June 24, 2010). Ultimately, PPL Electric filed a modified Smart Meter Plan that was approved by the Commission and is currently effective. *See Petition of PPL Electric Utilities Corporation for Approval of Its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2014-2430781 (Order Entered Sept. 3, 2015) ("*2015 SMP Order*").

<sup>2</sup> *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order Entered June 24, 2009) ("*Smart Meter Implementation Order*").

meter, requests that an analog meter be installed instead, and asks the Commission to order PPL Electric not to terminate service when the Complainant refuses the smart meter. (Complaint ¶ 5.) The Complaint must be dismissed because it is legally insufficient and requests relief that cannot be granted.

12. As explained previously, PPL Electric is required by the Public Utility Code and the Company's Commission-approved Smart Meter Plan to install the smart meter opposed by the Complainant. Nothing in the Public Utility Code, the Commission's orders and regulations, or PPL Electric's Smart Meter Plan allows a customer to opt-out of a smart meter installation. In fact, the Commission has repeatedly held that there is no exemption to the smart meter requirement. *Starr v. PECO Energy Co.*, Docket No. C-2015-2516061, at p. 11 (Order Entered Sept. 1, 2016) (footnote omitted) (“[The Commission has] rejected similar claims that the installation of smart meters is not mandatory or that an opt-out is permissible under Act 129 and [the Commission's] Orders pertaining to implementation of the statute”). Moreover, although PPL Electric has not terminated the Complainant's service, the Public Utility Code, the Commission's regulations, and the Company's Commission-approved tariff expressly permit the Company to terminate service if it is prevented from replacing a customer's meter. *See* 66 Pa.C.S. § 1406(a)(4) (stating that “[f]ailure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading” is grounds for terminating service); 52 Pa. Code § 56.81(3) (stating the same); Rule 10(B)(2)(g), Supp. No. 194, Electric Pa. P.U.C. No. 201, Third Revised Page No. 14A. There are no exceptions to these provisions for when a customer challenges the installation of a smart meter. Therefore, the Commission cannot grant the relief requested and allow the Complainant to opt out of the smart meter installation.

13. Further, it is appropriate to dismiss the Complaint without an evidentiary hearing. The Complainant has failed to plead any facts or evidence in support of the request that PPL Electric be prohibited from installing a smart meter and from terminating service if the Complainant refuses the smart meter installation.

14. The Company recognizes that the Complainant is appearing *pro se* and that the Commission generally permits *pro se* complaints to proceed to evidentiary hearings. *See, e.g., Carlock v. The United Tele. Co. of Pa.*, Docket No. F-00163617 (Order Entered July 14, 1993). However, in cases such as this one, a hearing will not change the fact that the Commission cannot grant the relief requested and allow the Complainant to opt out of the smart meter installation. *See Starr*, at p. 13 (granting preliminary objections and dismissing *pro se* complaint that requested an opt-out of a smart meter installation). The Commission is bound to enforce Act 129's mandate that all EDCs, including PPL Electric, install smart meters throughout their service territories. Further, PPL Electric has express authority under the Public Utility Code, the Commission's regulations, and its tariff to terminate the Complainant's service if the Complainant prevents the Company from installing the smart meter. Thus, the Complaint is legally insufficient and should be dismissed.

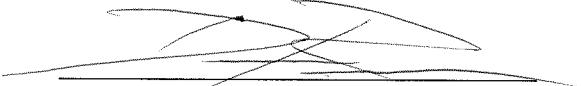
15. Based on the foregoing, the Complainant has failed to state a cause of action against PPL Electric upon which relief may be granted. Therefore, the Complaint should be dismissed in its entirety pursuant 52 Pa. Code § 5.101(a)(4).

V. 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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Of Counsel:

Post & Schell, P.C.

Date: December 19, 2016

*Attorneys for PPL Electric Utilities Corporation*

**VERIFICATION**

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF LEHIGH

I, Philip J. Walnock, hereby state that the facts above set forth 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 made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

  
\_\_\_\_\_  
PHILIP J. WALNOCK