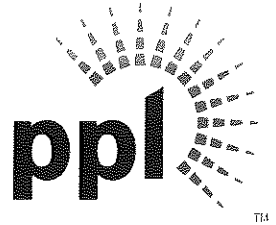


Amy E. Hirkis
Counsel

PPL
Two North Ninth Street
Allentown, PA 18101-1179
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AEHirkis@pplweb.com



E-File

June 5, 2017

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Hampden Township v. PPL Corporation and PPL Electric Utilities Corporation
Docket No. C-2017-2604425

Dear Ms. Chiavetta:

Enclosed for filing on behalf of PPL Corporation ("PPL") and PPL Electric Utilities Corporation ("PPL Electric") is an original of PPL and PPL Electric's Preliminary Objections in the above-captioned proceeding.

Pursuant to 52 Pa. Code § 1.11, the enclosed document is to be deemed filed on June 5, 2017, which is the date it was filed electronically using the Commission's E-filing system.

If you have any questions regarding these comments, please call me at (610)774-4254

Very truly yours,


Amy E. Hirkis

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 FIRST CLASS MAIL

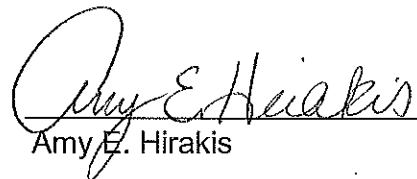
Ms. Tanya J. McCloskey
Office of Consumer
Advocate
555 Walnut Street, 5th
Floor
Harrisburg, PA 17101-
1923

Mr. John R. Evans
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101

Mr. Rick Kanaskie
Bureau of Investigation &
Enforcement
400 North Street, 2nd Floor West
P.O. Box 3265
Harrisburg, PA 17105-3265

Mr. Robert E. Kelly, Jr.
Kelly, Parker & Cohen LLP
5425 Jonestown Rd
STE 103
Harrisburg, PA 17112
Representing Hampden Township

Date: June 5, 2017

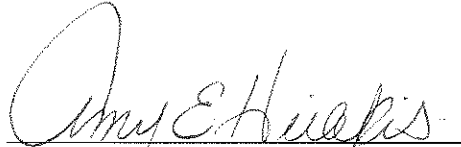

Amy E. Hirakis

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Hampden Township	:	
	:	
v.	:	Docket No. C-2017-2604425
	:	
PPL Corporation and	:	
PPL Electric Utilities Corporation	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY ANSWER 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 FOR PPL CORPORATION AND PPL ELECTRIC UTILITIES CORPORATION.



Kimberly A. Klock (ID #89716)
Amy E. Hirkis (ID #310094)
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Voice: 610-774-5696
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E-mail: kklock@pplweb.com
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Date: June 5, 2017

Counsel for PPL Corporation and PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Hampden Township	:	
	:	
v.	:	Docket No. C-2017-2604425
	:	
PPL Corporation and	:	
PPL Electric Utilities Corporation	:	

**PRELIMINARY OBJECTIONS OF
PPL CORPORATION AND
PPL ELECTRIC UTILITIES CORPORATION**

PPL Corporation and PPL Electric Utilities Corporation (“PPL Electric”) files herewith its Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Commission dismiss the above-captioned Complaint, Petition for Declaratory Order and Request for Expedited Disposition (“Complaint and Petition for Declaratory Order”) of Hampden Township (“Hampden”). PPL Corporation and PPL Electric concurrently filed an Answer and New Matter with the instant Preliminary Objections. In support thereof, PPL Corporation and PPL Electric states as follows:

I. BACKGROUND

1. PPL Electric is a “public utility” and an “electric distribution company” as those terms are defined under the Public Utility Code, 66 Pa.C.S. §§ 102 and 2803, and subject to the regulatory jurisdiction of the Commission. 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.

2. PPL Corporation is the parent holding company of PPL Electric Utilities Corporation. PPL Corporation is not a “public utility” or an “electric distribution company” as defined under the Public Utility Code, 66 Pa.C.S. §§ 102 and 2803.

3. On May 16, 2017, PPL Corporation and PPL Electric were served with the above-captioned Complaint and Petition for Declaratory Order by the Commission.

4. PPL Corporation and PPL Electric herewith file these Preliminary Objections to the Complaint and Petition for Declaratory Order. For the reasons explained below, PPL Corporation and PPL Electric respectfully request that the Complaint be dismissed in its entirety.

II. STANDARD OF REVIEW

5. The regulation at 52 Pa.Code § 5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary and authorizes preliminary objections to be filed in response to a complaint.

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

- (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. 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).

8. 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).

9. 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

First Preliminary Objection: The Complaint and Petition for Declaratory Order do not allege a cause of action that is subject to the Commission's jurisdiction, and therefore should be dismissed for lack of Commission jurisdiction.

10. The Commission, as a creation of the General Assembly, only has the powers and authority granted to it by the General Assembly contained in the Public Utility Code. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

11. The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburg v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945).

12. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992) alloc. denied 637 A.2d 293 (Pa. 1993).

13. The Complaint and Petition for Declaratory Order do not allege that PPL Corporation or PPL Electric violated the Public Utility Code, 66 Pa. C.S. §§ 101 *et seq.*, Commission regulation or order, or PPL Electric's Commission-approved tariff. *See* 66 Pa.C.S. § 701 ("any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, 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").

14. The Complaint and Petition for Declaratory Order plead a cause of action to which the Commission does not have jurisdiction to address, and seeks remedies in which the Commission does not have the power to award.

15. The Complaint and Petition for Declaratory Order attempt to plead a cause of action for conversion of stolen money. *See Chrysler Credit Corporation v Smith*, 434 Pa. Super. 429, 643 A.2d 1098, 1100 (1994) (conversion is a cause of action where the defendant deprives the plaintiff of his right to a chattel or interferes with the plaintiff's use or possession of a chattel without the plaintiff's consent and without lawful justification); *Francis J. Bernhardt, III, P.C. v. Needleman*, 705 A.2d 875, 878 (Pa. Super. 1997) (money may be the subject of a conversion claim under Pennsylvania law).

16. The Commission lacks jurisdiction over Hampden's claim for conversion of stolen money. *See DeFrancesco et al. v. Western Pennsylvania Water Company*, 435 A.2d 614,

616 (Pa. Super. 1981) (the Commission has jurisdiction over “matters involving the reasonableness, adequacy or sufficiency of a public utility's service, facilities or rates”); *American Ins. Co. v. Ford Motor Credit Co.*, 648 A.2d 576, 578-579 (Pa. Super. 1994) (under Pennsylvania law, conversion is a tort claim); *Derek Suggs & Beverly Marell v. The Bell Telephone Company of Pennsylvania*, Docket No. F-00162258, 1993 Pa. PUC LEXIS 86 (Order entered July 15, 1993) (the Commission’s “jurisdiction does not include damage actions that sound in either contract or tort”).

17. The Complaint and Petition for Declaratory Order requests that the Commission “direct and order PPL to return to Hampden the \$546,000 now acknowledged to be property stolen from Hampden;” and “direct and order that PPL return the \$546,000 to Hampden together with interest.” (Complaint ¶¶ 27, 28). The requested remedy sounds of restitution. Restitution is an equitable remedy under which a person is restored to his or her original position prior to loss or injury, or placed in the position he or she would have been, had the breach not occurred. *Black’s Law Dictionary*, 6th Ed., p. 1313.

18. The Commission lacks authority to impose the remedy of restitution on an unwilling party. *Roger McCall v. Pennsylvania Electric Co.*, Docket No. C-2009-2105240, Opinion and Order (entered June 7, 2010).

19. Moreover, the relief sought in the Complaint is a request for monetary damages. The Commission does not have jurisdiction to award monetary damages. See *Diane M. Hamilton and Eva J. Hamilton v. Verizon Pa., Inc.*, Docket No. C-2009-2135715, 2010 Pa. PUC LEXIS 234 at *8 (July 28, 2010) (Finalized Initial Decision) (citing *DeFrancesco v. Western Pennsylvania Water Co.*, 499 Pa. 374, 453 A.2d 595 (1982); *Elkin v. Bell of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980); *Feingold v. Bell of Pa.*, 477 Pa. 1, 383 A.2d 791 (1977)).

20. Wherefore, the Complaint and Petition for Declaratory Order should be dismissed for lack of Commission jurisdiction pursuant to 52 Pa. Code § 5.101(a).

Second Preliminary Objection: The Complaint and Petition for Declaratory Order seeks recovery from a party to which the Commission does not have jurisdiction.

21. PPL Corporation and PPL Electric incorporate herein, as if set at length, paragraphs 1-20 of the instant Preliminary Objections.

22. PPL Corporation is the parent holding company of PPL Electric Utilities Corporation.

23. PPL Corporation is not a “public utility” or an “electric distribution company” as defined under the Public Utility Code, 66 Pa.C.S. §§ 102 and 2803.

24. The Commission’s does not have jurisdiction over entities not covered by the Public Utility Code. *Bethlehem Steel Corp. v. Pennsylvania Public Utility Com'n*, 552 Pa. 134, 713 A.2d 1110 (1998).

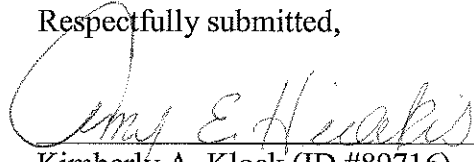
25. As PPL Corporation is not an entity covered by the Public Utility Code, the Commission lacks jurisdiction to hear claims against PPL Corporation.

26. Wherefore, the Complaint and Petition for Declaratory Order filed against PPL Corporation should be dismissed for lack of Commission jurisdiction.

IV. CONCLUSION

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

Respectfully submitted,



Kimberly A. Klock (ID #89716)

Amy E. Hirakis (ID #310094)

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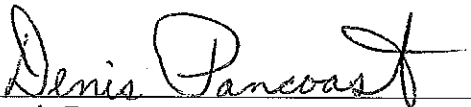
E-mail: ahirakis@pplweb.com

Date: June 5, 2017

Counsel for PPL Corporation and PPL Electric Utilities Corporation

VERIFICATION

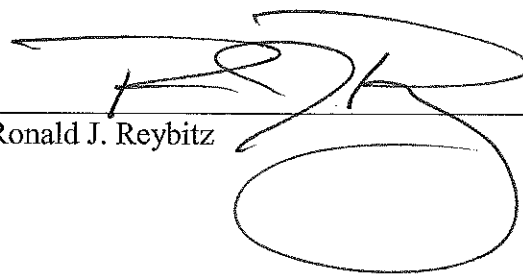
I, Denis Pancoast, Senior Engineer at PPL Electric Utilities Corporation, hereby state that the facts set forth above are true and correct and that I expect PPL Electric Utilities Corporation to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Denis Pancoast

VERIFICATION

I, Ronald J. Reybitz, being Associate General Counsel at PPL Services Corporation, as agent for PPL Corporation, 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 PPL Corporation 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.



Ronald J. Reybitz