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File #: 140074

September 18, 2017

**VIA HAND DELIVERY**

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: A. Edward Schwartz c/o Raintree Farm Solar v. PPL Electric Utilities Corporation  
Docket No. C-2017-2621826**

Dear Secretary Chiavetta:

Enclosed please find the Preliminary Objections of PPL Electric Utilities Corporation ("PPL Electric") to the Complaint of A. Edward Schwartz c/o Raintree Farm Solar, for filing in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Please note that Appendix B is confidential and, accordingly, is being provided separately in a sealed envelope to the Pennsylvania Public Utility Commission ("Commission"). PPL Electric respectfully requests that the Commission afford Appendix B confidential treatment and place it in a non-public folder.

Respectfully submitted,

Devin Ryan

DTR/jl  
Enclosures

cc: Certificate of Service

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2017 SEP 18 PM 3:48  
PA PUC  
SECRETARY'S BUREAU  
FRONT DESK

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

A. Edward Schwartz c/o Raintree Farm :  
Solar, :  
 :  
 :  
 Complainant, :  
 :  
 v. :  
 :  
 PPL Electric Utilities Corporation, :  
 :  
 Respondent. :

Docket No. C-2017-2621826

**RECEIVED**  
**2017 SEP 18 PM 3:48**  
**PA PUC**  
**SECRETARY'S BUREAU**  
**FRONT DESK**


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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: September 18, 2017

Attorneys for PPL Electric Utilities Corporation



In support thereof, PPL Electric states as follows:

**I. BACKGROUND**

1. 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. 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. By Secretarial Letter dated August 29, 2017, PPL Electric was served with the above-captioned Complaint. In the Complaint, the Complainant alleges that he wants to “reopen” his claim that PPL Electric’s transformer and wires were incapable of taking his production “for the first years of operation.” (Cover Letter to Complaint; *see* Complaint ¶¶ 4-5) The Complainant contends that “after 2 years of production,” he can “now prove that PPL service was not capable of taking [his] production for the first years of operation” due to incorrect sizing of the Company’s electric lines and transformer. (Cover Letter to Complaint; *see* Complaint ¶¶ 4-5)

3. Previously, on or about July 25, 2013, the Complainant filed a Formal Complaint at Docket No. C-2013-2375440 (“First Complaint”)<sup>1</sup> raising the same issues and claims. The Complainant retained counsel after filing the First Complaint, who represented him during the rest of the proceeding. The First Complaint proceeding was fully and finally resolved upon

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<sup>1</sup> A true and correct copy of the First Complaint is attached hereto as **Appendix A**.

execution of a settlement agreement in November 2015,<sup>2</sup> under which PPL Electric agreed to pay the Complainant an agreed-upon amount in exchange for the Complainant forever releasing and relinquishing his rights to bring any claims that were brought or could have been brought in the First Complaint.

4. PPL Electric herein files these Preliminary Objections to the Complaint. For the reasons explained below, the Company respectfully requests that: (1) the Complaint be dismissed in its entirety pursuant to Section 5.101(a)(4) because the Complainant's issues and claims were fully and finally resolved in a previous complaint proceeding at Docket No. C-2013-2375440 pursuant to an executed settlement agreement, and the Complainant waived all rights to file any future complaints about the issues and claims raised in the First Complaint; (2) the Complaint be dismissed in its entirety pursuant to Section 5.101(a)(4) because the statute of limitations has expired with respect to the issues and claims raised therein; and (3) the portion of the Complaint requesting monetary damages be dismissed pursuant to Section 5.101(a)(2) of the Commission's regulations because the Complaint includes a request for damages, which constitutes impertinent matter. *See* 52 Pa. Code § 5.101(a)(2), (4).

## **II. STANDARD OF REVIEW**

5. 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.

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<sup>2</sup> A true and correct copy of the settlement agreement that resolved the First Complaint is attached hereto as **CONFIDENTIAL Appendix B.**

- (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).

6. 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) (“*Stilp*”) (citing *Dep’t of Gen. Servs. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)), *affirmed* 974 A.2d 491 (Pa. 2009). 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), *affirmed*, 962 A.2d 670 (Pa. 2009). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp* at 781.

7. 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) (citation omitted). 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) (quoting *Santiago v. Pa. Nat. Mut. Cas. Ins. Co.*, 613 A.2d 1235, 1238 (Pa. Super. 1992)).

### III. PRELIMINARY OBJECTIONS

#### A. **PRELIMINARY OBJECTION NO. 1 – THE COMPLAINT SHOULD BE DISMISSED BECAUSE IT RE-RAISES ISSUES AND CLAIMS THAT WERE FULLY AND FINALLY RESOLVED IN A PRIOR PROCEEDING**

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

9. The Complaint should be dismissed in its entirety because it attempts to re-raise issues and claims that were previously raised and fully resolved in the First Complaint proceeding at Docket No. C-2013-2375440 pursuant to an executed settlement agreement.

10. In the First Complaint, the Complainant alleged that he was entitled to damages for lost revenue because, according to him, the Company's transformer and electric lines were incorrectly sized. (*See* Appendix A ¶¶ 4-5) Consequently, the Complainant claimed that PPL Electric's distribution system could not take all of the electricity his solar array was generating. (*See id.*) As relief, the Complainant requested that he be compensated for the alleged lost generation and lost renewable energy credits ("RECs") as well as his payments to PPL Electric for electricity. (*See id.* ¶ 5)

11. In the instant Complaint, the Complainant attempts to re-raise the same issues and claims from the First Complaint. In fact, there is no current issue about which he is complaining. (*See* Cover Letter to Complaint) (stating that "PPL has installed the correct wires & transformer and my system is working the way it should"). Rather, the Complainant wants to "reopen" his previous claim that the Company's transformer and wires were incapable of taking his production "for the first years of operation." (Cover Letter to Complaint; *see* Complaint ¶¶ 4-5) "[A]fter 2 years of production," he avers that he can now prove that the Company's facilities were improperly sized and incapable "of taking [his] production for the first years of operation." (Cover Letter to Complaint; *see* Complaint ¶¶ 4-5) Further, he alleges that he is entitled to all

lost revenue and “all moneys that [he] paid PPL for [its] electric[ity],” including his payments to PPL Electric for electricity, his alleged loss of RECs, and attorneys’ fees. (Cover Letter to Complaint; *see* Complaint ¶ 5)

12. All of these issues and claims were fully and finally resolved in the First Complaint proceeding when the parties executed a settlement agreement and PPL Electric filed a certificate of satisfaction on November 18, 2015,<sup>3</sup> to which the Complainant never objected.

13. Under the settlement, PPL Electric paid the Complainant an agreed-upon amount in exchange for him forever releasing and relinquishing his rights to bring any claims that were brought or could have been brought as a part of the First Complaint. (*See* Appendix B) In other words, the Complainant has no right to “reopen” his claim against PPL Electric, as he seeks to do through the instant Complaint.

14. Importantly, the Complainant was represented by counsel throughout the First Complaint proceeding, including when the parties executed the settlement agreement and PPL Electric filed the certificate of satisfaction. (*See* Appendix A ¶ 8; Cover Letter to Complaint) Accordingly, the Complainant presumably knew and was apprised of what rights he would be releasing by executing the settlement agreement and by not objecting to the certificate of satisfaction. If he had any questions or was confused about his obligations under the settlement, he had the opportunity to consult with his attorney.

15. Moreover, in December 2015, PPL Electric paid the Complainant the agreed-upon amount pursuant to the settlement agreement. By virtue of the instant Complaint, the Complainant wants to retain the benefit of the settlement agreement from the First Complaint proceeding and to re-litigate the issues and claims raised in the First Complaint.

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<sup>3</sup> A true and correct copy of the certificate of satisfaction at Docket No. C-2013-2375440 is attached hereto as **Appendix C**.

16. Although the Complainant may now be unhappy with his decision to settle the First Complaint, he is bound by the settlement agreement's terms. Therefore, he has no right to re-raise the issues and claims from the First Complaint proceeding.

17. Thus, the Complainant is prohibited from bringing the instant Complaint and raising, for the second time, issues and claims concerning the interconnection between the Complainant's solar array and PPL Electric's electric distribution system.

18. For these reasons, the instant Complaint should be dismissed because it re-raises issues and claims that were fully and finally resolved in the First Complaint proceeding.

WHEREFORE, PPL Electric respectfully requests that the above-captioned Complaint be summarily dismissed in its entirety and with prejudice pursuant to 52 Pa. Code § 5.101(a)(4).

**B. PRELIMINARY OBJECTION NO. 2 – THE COMPLAINT SHOULD BE DISMISSED BECAUSE IT IS BARRED BY THE STATUTE OF LIMITATIONS**

19. PPL Electric incorporates by reference Paragraphs 1 through 18 as if fully set forth herein.

20. The Complaint should be dismissed because it is barred by the three-year statute of limitations. *See* 66 Pa. C.S. § 3314(a).

21. Section 3314(a) of the Public Utility Code states, in pertinent part, that “no prosecutions on account of any matter or thing mentioned in this part . . . shall be maintained unless brought within three years from the date at which the liability therefor arose.” *Id.* In other words, the complaint must be brought within three years of when the alleged wrongful conduct occurred. *See Suburban E. Tires, Inc. v. Pa. PUC*, 582 A.2d 727, 729 (Pa. Cmwlth. 1990).

22. Here, the Complainant installed a solar facility in approximately 2009 and modified the installation in 2012. After the Complainant experienced some issues in having his solar generation accepted onto PPL Electric's system, the Company replaced the conductors connecting its facilities to the Complainant's system and also replaced the nearest transformer in 2010. These improvements resolved the issues associated with the original system. Subsequently, when the Complainant modified the installation in 2012, a similar problem occurred. PPL Electric again investigated the problem in March and April of 2013. In May of 2013, PPL Electric again replaced the transformer. PPL Electric has not replaced any of the facilities at issue since May 2013.

23. Accordingly, the latest that any alleged wrongful conduct could have occurred was May 2013, when PPL Electric replaced the transformer. Thus, the statute of limitations expired in May 2016.

24. Furthermore, as mentioned above, there is no current issue with his service. (*See* Cover Letter to Complaint) The Complainant claims that his "system is working the way it should" and that "after 2 years of production of [his] 45.5 kWhr system," he "can now prove that PPL service was not capable of taking [his] production for the first years of operation." (Cover Letter to Complaint) As a result, the Complainant concedes that for the last two years, his system has been working properly. Therefore, to the extent that any of his claims are not barred by the statute of limitations or the executed settlement agreement, he cannot litigate any of these claims that arose within the past two years or over three years ago. Thus, he would be limited to litigating claims that arose between August 18, 2014, and August 18, 2015.

25. Based on the foregoing, the instant Complaint should be dismissed because the statute of limitations has expired.

WHEREFORE, PPL Electric respectfully requests that the above-captioned Complaint be summarily dismissed in its entirety and with prejudice pursuant to 52 Pa. Code § 5.101(a)(4).

**C. PRELIMINARY OBJECTION NO. 3 – THE COMPLAINANT’S REQUEST FOR DAMAGES SHOULD BE DISMISSED BECAUSE THE COMMISSION HAS NO POWER TO AWARD DAMAGES**

26. PPL Electric incorporates by reference Paragraphs 1 through 25 as if fully set forth herein.

27. To the extent that the Complaint is not dismissed in its entirety for the reasons set forth above, the portion of the Complaint requesting damages should be dismissed because the Commission cannot award damages.

28. In the Complaint, the Complainant requests that the Company to pay him for all lost revenue and “all moneys that [he] paid PPL for [its] electric[ity]” because the Company allegedly installed incorrectly-sized facilities to interconnect his solar array. (Complaint ¶ 5)

29. It is well-established that the Commission does not have the authority to order a public utility to pay damages, as requested by the Complainant. *See DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595, 596-97 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371, 375 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791, 794-95 (Pa. 1977).

30. Here, the Complainant’s request for damages is impertinent matter “in the sense that it is irrelevant to [the] cause of action” because the Commission lacks authority to award damages. *See Stoner v. PPL Elec. Utils. Corp.*, Docket No. C-2013-2385588, p. 3 (Nov. 14, 2013) (order sustaining preliminary objections). Indeed, requests for damages are regularly stricken from complaints as being impertinent matter. *See, e.g., id.* at pp. 3, 5; *Powell v. Verizon Pa., Inc.*, Docket No. C-2011-2264876, 2011 Pa. PUC LEXIS 652, at \*8-9, 16-17 (Dec. 21, 2011), *adopted by Commission*, 2012 Pa. PUC LEXIS 374 (Order Entered Mar. 1, 2012); *J.E.*

*Culbertson Co. v. Pa. Elec. Co.*, Docket No. C-2010-2204947, 2011 Pa. PUC LEXIS 781, at \*8-9, 12 (Feb. 4, 2011), *adopted by Commission*, Docket No. C-2010-2204947 (Order Entered Apr. 8, 2011).

31. Notably, the Complainant previously sought damages in the First Complaint. (See Appendix A ¶ 5) The Company filed preliminary objections, and the Complainant's request for damages was stricken as impertinent matter. See *Schwartz v. PPL Elec. Utils. Corp.*, Docket No. C-2013-2375440, pp. 2-5 (Sept. 4, 2013) (Interim Order Granting in Part, Denying in Part Preliminary Objection).<sup>4</sup>

32. Therefore, as in the previous complaint proceeding, the Complainant's request for damages is impertinent matter and should be stricken from his Complaint pursuant to 52 Pa. Code § 5.101(a)(2).

WHEREFORE, to the extent that the above-captioned Complaint is not dismissed in its entirety, PPL Electric respectfully requests that the Complaint's request for damages be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(2).

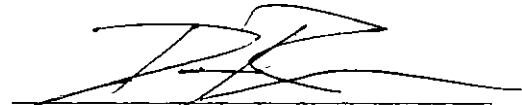
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<sup>4</sup> A true and correct copy of the Interim Order Granting in Part and Denying in Part Preliminary Objection is attached hereto as **Appendix D**.

**IV. CONCLUSION**

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Complaint filed by A. Edward Schwartz c/o Raintree Farm Solar be dismissed in its entirety and with prejudice for the reasons set forth above.

Respectfully submitted,



Kimberly A. Klock (ID # 89716)  
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Of Counsel:

Post & Schell, P.C.

Date: September 18, 2017

Attorneys for PPL Electric Utilities Corporation

## **Appendix "A"**



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

DATE SERVED: JULY 25, 2013

*Filed Due 8/4/13*

*Answer Due 8/14/13*

C-2013-2375440

PPL ELECTRIC UTILITIES CORPORATION  
PAUL E RUSSELL GEN COUNSEL  
TWO N 9<sup>TH</sup> ST  
ALLENTOWN PA 18101-1179

RECEIVED

JUL 31 2013

OFFICE OF  
GENERAL COUNSEL

Dear Mr. Russell:

A complaint has been filed against you before the Pennsylvania Public Utility Commission by A. EDWARD SCHWARTZ. To defend yourself against the claims stated in the following pages, you must act within twenty (20) days by filing in writing with the Commission, either personally or through your attorney, your defenses or objections to the claims stated against you. Or, you may satisfy the complaint by settling the matter with the Complainant and submitting proof of settlement to the Commission within twenty (20) days.

IF YOU FAIL TO ANSWER THE COMPLAINT WITHIN TWENTY (20) DAYS OF THE ABOVE DATE SERVED, THE CLAIMS AGAINST YOU MAY BE DEEMED ADMITTED, THE CASE MAY GO FORWARD IN YOUR ABSENCE, AND A JUDGEMENT MAY BE ENTERED AGAINST YOU BY THE COMMISSION WITHOUT FURTHER NOTICE.

**CUSTOMER OF A UTILITY**

A payment schedule may be prescribed or a termination of utility services may be authorized. You may lose money or property or other rights important to you.

**COMPANY/UTILITY**

An Administrative Law Judge may revoke or suspend any certificate or permit held by you, or impose a fine, or any other appropriate penalty or remedy authorized by the Public Utility Code. You may lose money or property or other rights important to you.

Detailed instructions on how to proceed are contained in the attached pages. You are advised to read them carefully.

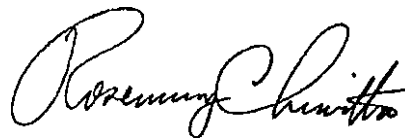
*Service Retained  
(not returned)  
P+S*

July 25, 2013

Unless you are a corporation or other organization, you may proceed without a lawyer. However, if you want a lawyer and do not have one or cannot afford one, the office listed below can tell you where you can get legal help:

Pennsylvania Lawyer Referral Service  
Pennsylvania Bar Association  
P.O. Box 186  
Harrisburg, PA 17108  
(800) 692-7375

Very truly yours,

A handwritten signature in cursive script, reading "Rosemary Chiavetta".

Rosemary Chiavetta  
Secretary

MJS

PENNSYLVANIA PUBLIC UTILITY COMMISSION

COPY

Formal Complaint

C-2013-2375440

Filing this form begins a legal proceeding and you will be a party to the case. If you do not wish to be a party to the case, consider filing an informal complaint.

RECEIVED  
2013 JUL - 5 3: 58  
SECRETARY'S BUREAU

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number:

Name A. EDWARD SCHWARTZ  
Street/P.O. Box RD#4 Box 52 Apt # \_\_\_\_\_  
City DALTON State PA Zip 18414  
County LACKA.

Telephone Number(s) Where We Can Contact You During the Day:

(570) 945 7888 (home) ( ) (mobile)

E-mail Address (optional): RAINTREEFRM@EPIX.NET

Utility Account Number (from your bill) 32101-10001 & 32110010

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name \_\_\_\_\_  
Street/P.O. Box \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

PP&L

PENNSYLVANIA  
JUL 05 2013  
CONSUMER SERVICES  
CAC DIVISION

RECEIVED  
2013 JUL 18 AM 10: 30  
PA.P.U.C.  
SECRETARY'S BUREAU

3. Type of Utility Service

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- ELECTRIC                       WASTEWATER/SEWER  
 GAS                                 TELEPHONE/TELECOMMUNICATIONS (local, long distance)  
 WATER                             MOTOR CARRIER (e.g. taxi, moving company, limousine)  
 STEAM HEAT

4. Reason for Complaint

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. Your complaint may be dismissed without a hearing if you do not provide specific information.

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.
- Other (explain).

PP&L replaced 3 different transformers till I hope they have solved their problems. waiting my electric into their lives.

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

I WANT TO BE PAID FOR LOSS OF GENERATION, LOSS OF REC'S PAYMENTS & LOSS OF MY PAYMENTS TO PPL FOR HAVING TO PAY THEM FOR POWER FROM THEIR GRID WHEN MY SYSTEMS WOULD HAVE KEPT ME OFF OF THEIR GRID!  
GUARANTEE ON MY ELECTRIC SOLAR SYSTEM BECAUSE THEIR SYSTEM WOULDN'T TAKE WHAT I PRODUCED! POSSIBLY PAYMENT FOR MY 2nd SOLAR SYSTEM WHICH I INSTALLED NOT KNOWING THEIR SYSTEM WAS @ FAULT!

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. Protection from Abuse

Has a court granted a "Protection from Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection for Abuse order to this Formal Complaint form.

7. Prior Utility Contact

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

They keep telling us that is out of their hands &  
Do NOT TELL us (who @ PPL) who to contact  
This has been going on since Dec. 2009

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name Atty. Jill Spott

Street/P.O. Box \_\_\_\_\_

City Clark's Summit State Pz Zip 5872600

Area Code/Phone Number 570 - 5872600

E-mail Address (if known) \_\_\_\_\_

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

9. Verification and Signature

You must sign your complaint. Individuals filing a Formal Complaint must print or type their name on the line provided in the verification paragraph below and must sign and date this form in ink. If you do not sign the Formal Complaint, the PUC will not accept it.

**Verification:**

I A. Edward Shroy, 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).

A. Edward Shroy 7/12/13  
(Signature of Complainant) (Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification must be signed by an authorized officer or authorized employee. If the Formal Complaint is not signed by one of these individuals, the PUC will not accept it.

**10. Filing**

You may electronically file your Formal Complaint with the PUC. To do so, you need to establish an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

If you do not electronically file your Formal Complaint, mail the completed form (along with any attachments) to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 <sup>nd</sup> Floor Harrisburg, Pennsylvania 17120
---	--

Note: Formal Complaints sent by fax or e-mail will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint for your records.

S.

Mr & Mrs Schwartz  
RQ4 Box 52  
Lay Lake Road  
Dalton PA 18414



PENNA Public Utility Comm.  
P.O. Box 3265  
HARRISburg, PA.  
17105-3265

20

**Appendix “B”**

**(CONFIDENTIAL)**

**(Provided Separately in Sealed Envelope)**

## **Appendix “C”**



17 North Second Street  
12th Floor  
Harrisburg, PA 17101-1601  
717-731-1970 Main  
717-731-1985 Main Fax  
www.postschell.com

---

Jessica R. Rogers

jrogers@postschell.com  
717-612-6018 Direct  
717-731-1985 Direct Fax  
File #: 140074

November 18, 2015

***VIA ELECTRONIC FILING***

*Letter & Certificate of Service Only*

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: A. Edward Schwartz v. PPL Electric Utilities Corporation**  
**Docket No. C-2013-2375440**

Dear Secretary Chiavetta:

Enclosed please find the Certificate of Satisfaction for the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Jessica R. Rogers

JRR/skr  
Enclosure

cc: Honorable Ember Jandebour  
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).

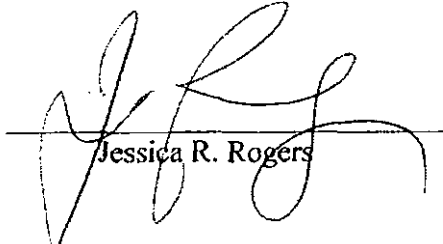
**VIA E-MAIL & FIRST CLASS MAIL**

Jill Spott, Esquire  
108 North Abington Road  
Clarks Summit, PA 18411

**VIA FIRST CLASS MAIL**

A. Edward Schwartz  
RD #4, Box 52  
Dalton, PA 18414

Date: November 18, 2015

  
\_\_\_\_\_  
Jessica R. Rogers

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

A. Edward Schwartz,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2013-2375440
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

---

**CERTIFICATE OF SATISFACTION**

---

Pursuant to Section 5.24(b) of Title 52 of the Pennsylvania Code, 52 Pa. Code § 5.24(b), PPL Electric Utilities Corporation (“PPL Electric”), Respondent in the above-captioned matter, hereby submits this Certificate of Satisfaction. PPL Electric hereby certifies that it has satisfied the Complaint that is the subject of this proceeding and that A. Edward Schwartz (the “Complainant”) has acknowledged his satisfaction to the Respondent.

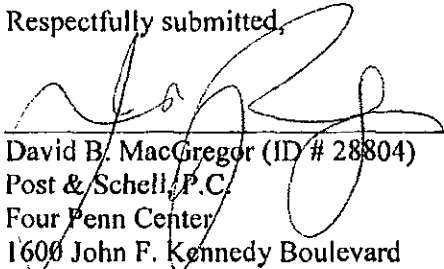
PPL Electric is serving this Certificate of Satisfaction upon the Complainant as evidenced by the attached Certificate of Service. Unless the Complainant objects within ten (10) days of the filing of this Certificate of Satisfaction, the Commission shall withdraw the Complaint and mark the case closed. PPL Electric notes that the Complainant has agreed to waive his objection to the Certificate of Satisfaction as part of the resolution of this proceeding.

Paul E. Russell (ID # 21643)  
Associate General Counsel  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18106  
Phone: 610-774-4254  
Fax: 215-587-1444  
E-mail: perussell@pplweb.com

Of Counsel:

Post & Schell, P.C.

Respectfully submitted,

  
David B. MacGregor (ID # 28804)  
Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2808  
Phone: 215-587-1197  
Fax: 610-774-6726  
E-mail: dmacgregor@postschell.com

Jessica R. Rogers (ID # 309842)  
Post & Schell, P.C.  
17 North Second Street  
12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
Phone: 717-731-1970  
Fax: 717-731-1985  
E-mail: jrogers@postschell.com

Counsel for Respondent PPL Electric  
Utilities Corporation.

DATED: November 18, 2015

## **Appendix “D”**

SEP 06 2013

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

A. Edward Schwartz :  
 :  
 v. : C-2013-2375440  
 :  
 PPL Electric Utilities Corporation :

**INTERIM ORDER  
GRANTING IN PART, DENYING IN PART PRELIMINARY OBJECTION**

Before  
Ember S. Jandebour  
Administrative Law Judge

**HISTORY OF THE PROCEEDINGS**

On or about July 18, 2013, A. Edward Schwartz (Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission against PPL Electric Utilities Corporation (Respondent) alleging that PPL replaced three transformers which caused the Complainant's electricity from his solar system not being accepted into the PPL lines. On August 14, 2013, the Respondent filed an Answer denying the material allegations of the Formal Complaint. On August 14, 2013 the filed Preliminary Objections alleging that the Commission is without jurisdiction to award monetary damages. No response to the Preliminary Objections was received.

**FINDINGS OF FACT**

1. The Complainant is a current customer of the Respondent's and receives electric service at RD #4 Box 52, Dalton, Pennsylvania 18414.

2. The Respondent is a jurisdictional utility providing electric service in Pennsylvania.

#### DISCUSSION

The Commission's Rules of Administrative Practice and Procedure permit the filing of Preliminary Motions. 52 Pa. Code §§ 5.101, 5.103. Commission preliminary motion practice is similar to Pennsylvania civil practice respecting the filing of preliminary objections. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (1994). Commission regulations permit the filing of a preliminary motion questioning the jurisdiction of the Commission. 52 Pa. Code § 5.101(a)(1). Pennsylvania appellate courts have repeatedly held that the Commission is without power to award monetary damages to a private litigant. *Morrow v. Bell Telephone Co. of Pennsylvania*, 479 A.2d 548 (Pa. Super. 1984); *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 521 A.2d 75 (Pa. Cmwlth. 1987); *Ostrov v. I.F.T., Inc.*, 586 A.2d 409 (Pa. Super. 1991).

The correct preliminary objection in this situation is a motion to strike the requested relief as impertinent matter. A prayer for damages which are not legally recoverable in the cause of action pleaded is "impertinent matter" in the sense that it is irrelevant to that cause of action. A preliminary objection in the nature of a motion to strike impertinent matter is the appropriate means to challenge an erroneous prayer for damages. *Hudock v. Donegal Mut. Ins. Co.*, 264 A.2d 668 (Pa. 1970). Under the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code Chapters 1, 3 and 5, the correct preliminary objection is raised under 52 Pa. Code § 5.101(a)(2) by way of a motion to strike the relief requested as impertinent matter.

In the present case, Complainant seeks monetary damages as one form of relief. The Commission is without the power to award such damages. However, while the Commission does not have authority to award damages, *it does not follow that the Commission lacks jurisdiction to hear a complaint that seeks damages*. If such a complaint alleges a violation of the Public Utility Code, and if the allegations are established by the evidence presented at a hearing, an Administrative Law Judge and the Commission might conclude that the utility violated 66 Pa. C.S. § 1501 by

failing to provide safe and adequate service. Although the Commission would not be able to award damages, it may decide to impose a fine or other penalty upon the utility. See, *Seidel v. Ralph G. Smith, Inc.*, 49 Pa. PUC 557, 1975 Pa. PUC LEXIS 7 (1975); *Robert Attianese and Michele Attianese v. Santoro Enterprises, Inc., t/d/b/a Thomas Gerrity Movers and Storage and Paul Arpin Van Lines, Inc.*, Docket No. A-00113019C0203 (October 14, 2003), Opinion and Order adopted March 4, 2004, entered March 11, 2004, 2004 Pa. PUC LEXIS 19.

Additionally, in a complaint against a public utility that seeks monetary damages arising from a failure to provide safe, adequate, reasonable or efficient service, the Supreme Court has approved of a bifurcated procedure.

The question of the PUC's jurisdiction was before us recently in *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383, A.2d 791 (1977) and *Elkin v. Bell Telephone Co. of Pennsylvania*, 491 Pa. 123, 420 A.2d 371 (1980). In *Feingold*, we held that the courts of common pleas have original jurisdiction to hear suits against public utilities for damages arising from failure to provide adequate service. 477 Pa. at 10, 383 A.2d at 795. See also, *Elkin*, 491 Pa. at 130, 420 A.2d at 375. In *Elkin* we further defined the parameters of our holding in *Feingold*. *Elkin* involved an action challenging the adequacy of a complainant's telephone service, and this Court there approved of a bifurcated procedure for certain situations, whereby the issue of liability is decided initially by the PUC, after which the court of common pleas considers the issue of damages where appropriate. *Elkin*, 491 Pa. at 134, 420 A.2d at 377.

Thus, service issues are first decided by the Commission, and then a Magisterial District Judge or a Court of Common Pleas may consider the issue of damages. *DeFrancesco v. Western Pa. Water Co.*, 453 A.2d 595 (Pa. 1982). The Commission clearly has jurisdiction to determine whether the Respondent rendered reasonable and adequate service to the Complainant.

Granting the Respondent's motion to strike the relief requested as impertinent matter is appropriate under the circumstances. Therefore, as a matter of law, that portion of the Complainant's Formal Complaint requesting monetary damages is dismissed.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this Complaint. 66 Pa. C.S. § 701.

2. As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa. C.S. § 332(a).

3. As a matter of general principle, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. Pub. Util. Comm'n 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. Pub. Util. Comm'n 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (1990), *alloc. den.*, 602 A.2d 863 (1992).

4. Pennsylvania appellate courts have repeatedly held that the Commission is without power to award monetary damages to a private litigant. *Morrow v. Bell Telephone Co. of Pennsylvania*, 479 A.2d 548 (Pa. Super. 1984); *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 521 A.2d 75 (Pa. Cmwlth. 1987); *Ostrov v. I.F.T., Inc.*, 586 A.2d 409 (Pa. Super. 1991).

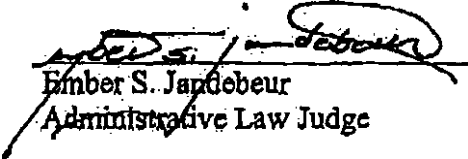
5. Service issues are first decided by the Commission, and then a Magisterial District Judge or a Court of Common Pleas may consider the issue of damages. *DeFrancesco v. Western Pa. Water Co.*, 453 A.2d 595 (Pa. 1982).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection of PPL Electric Utilities Corporation is granted in part and denied in part.
2. That portion of the Formal Complaint filed by A. Edward Schwartz requesting monetary damages is stricken as impertinent matter.
3. That portion of the Formal Complaint alleging service issues will be set for mediation.

  
Amber S. Jandobeur  
Administrative Law Judge

Date: September 4, 2013

C-2013-2375440 - A EDWARD SCHWARTZ v. PPL ELECTRIC UTILITIES CORP

A EDWARD SCHWARTZ  
RD #4 BOX 52  
DALTON PA 18414  
570-945-7888

JESSICA R ROGERS ESQ  
POST & SCHELL PC  
17 NORTH SECOND STREET  
12TH FLOOR  
HARRISBURG PA 17101-1601  
717-731-1970



**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**

A. Edward Schwartz  
Raintree Farm Solar  
RD #4, Box 52  
Dalton, PA 18414  
E-mail: [raintreefrm@epix.net](mailto:raintreefrm@epix.net)

Date: September 18, 2017



Devin T. Ryan

RECEIVED  
2017 SEP 18 PM 3:48  
PA PUC  
SECRETARY'S BUREAU  
FRONT DESK