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File #: 167945

September 29, 2017

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: Donna Bervinchak v. PPL Electric Utilities Corporation
Docket No. C-2016-2572824

Dear Secretary Chiavetta:

On September 6, 2017, Donna Bervinchak ("Complainant") filed a "Notice of Default" with the Pennsylvania Public Utility Commission. Since the pleadings are now closed, PPL Electric Utilities Corporation ("PPL Electric") submits that the "Notice of Default" should properly be treated as a motion for summary judgment filed pursuant to 52 Pa. Code § 5.102.

Enclosed for filing is the Answer of PPL Electric to the Complainant's Motion for Summary Judgment, in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "DR" with a large flourish underneath.

Devin Ryan

DTR/jl
Enclosures

cc: Honorable Elizabeth Barnes
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

Donna L. Bervinchak
3645 Marietta Avenue, Apt. 1
Lancaster, PA 17601
E-mail: donna_bervinchak@yahoo.com

Date: September 29, 2017



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Donna Bervinchak,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2016-2572824
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION
TO THE COMPLAINANT'S
MOTION FOR SUMMARY JUDGMENT**

TO ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:

Pursuant to 52 Pa. Code §§ 5.61 and 5.102(b), PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby files this Answer to the “Notice of Default” filed by Donna Bervinchak (“Complainant”) on September 6, 2017. In the Notice, the Complainant avers that the Company was advised in previous correspondence of the alleged harm a new smart meter would cause her and of her request not to have a new smart meter installed, which are the same claims she set forth in her Formal Complaint. *See* Notice of Default; Complaint ¶¶ 4-5. She claims that the Company has by “default” conceded to not installing the smart meter. *See* Notice of Default. The Notice further states that if the Company disagreed, it must respond within 10 days.¹ *See id.*

¹ The Complainant cannot unilaterally change the due date for responses to dispositive motions. Section 5.102(b) of the Commission’s regulations provides that answers to motions for summary judgment are due within 20 days of the date of service of the motion. 52 Pa. Code § 5.102(b). Because the Complainant served the Company via first class mail, an additional three days is added to the due date for responsive motions. *See* 52 Pa. Code § 1.56(b).

Since the pleadings are now closed, PPL Electric submit that the Complainant's Notice should properly be treated as a Motion for Summary Judgment filed pursuant to 52 Pa. Code § 5.102. As explained below, the Complainant has failed to meet the standard for summary judgment. Therefore, the "Notice of Default" should be denied.

I. ANSWER

1. Admitted in part and denied in part. It is admitted that the Complainant has previously sent correspondence to PPL Electric reiterating the claims made in the Complaint about the Company's new smart meters. It is strictly denied that the Company is in "default" or that the Complainant is otherwise entitled to judgment as a matter of law. The Complainant has failed to meet the standard for summary judgment and, therefore, her Motion for Summary Judgment should be denied.

Section 5.102 of the Commission's regulations provides the Commission's standard of review for a request for summary judgment:

- (1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

52 Pa. Code § 5.102(d)(1) (emphasis added).²

Here, the Complainant has failed to meet the standard for summary judgment because there are genuine issues of material fact. PPL Electric was served with the above-captioned Complaint on October 26, 2016, in which she requested that the Commission order the Company not to install its new smart meter for alleged health reasons and not to terminate her service if she

² A hearing is necessary to resolve disputed questions of fact. See *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993).

refused the Company access to replace her current smart meter. PPL Electric subsequently filed an Answer on November 15, 2016, disputing that its new smart meter raises any health concerns and averring that the Company is legally required to install the smart meter. Further, the Company noted that although it has not terminated the Complainant's service, PPL Electric is expressly permitted to terminate service if it is prevented from replacing the existing smart meter. *See* 66 Pa. C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3) (stating the same). PPL Electric has never conceded or otherwise changed its position regarding the Complainant's claims. Therefore, the parties continue to dispute whether the Complainant can opt out of the smart meter installation, whether the new smart meter raises any health concerns, and whether PPL Electric can terminate service if the Complainant does not provide access to the current meter.

In addition, nothing entitles the Complainant to judgment as a matter of law by "default," as alleged by the Complainant. The Complainant has the burden of proof to establish that the Company violated a provision of the Public Utility Code, a Commission regulation, or a Commission order. *See* 66 Pa. C.S. §§ 332(a), 701. PPL Electric filed an Answer to her Complaint, in which the Company disputed that it committed any violation and that the Complainant is entitled to the relief requested. Indeed, the Company has neither conceded that it agrees with the Complainant's allegations nor stipulated to any facts that would support a finding of any violation. Therefore, the Company is not in "default," and the Complainant cannot meet her burden of proof at this point in the proceeding. Accordingly, such issues will have to be resolved at the evidentiary hearing scheduled in this matter.

Based on the foregoing, there are material issues of fact, and the Complainant is not entitled to judgment as a matter of law.

WHEREFORE, PPL Electric respectfully requests that the Complainant's Motion for Summary Judgment, termed as a "Notice of Default," be denied.

II. CONCLUSION

For the reasons set forth above, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge Elizabeth H. Barnes deny the Motion for Summary Judgment, entitled "Notice of Default," filed by Donna Bervinchak.

Respectfully submitted,



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Of Counsel:

Post & Schell, P.C.

Date: September 29, 2017

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