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November 7, 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: Jay Larry Moyer v. PPL Electric Utilities Corporation
Docket No. C-2017-2629683

Dear Secretary Chiavetta:

Enclosed please find the Preliminary Objections of PPL Electric Utilities Corporation to the Complaint of Jay Larry Moyer for filing 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

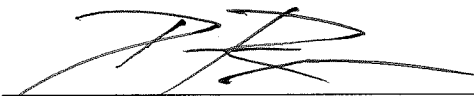
**CERTIFICATE OF SERVICE
(Docket No. C-2017-2629683)**

I hereby certify that true and correct copies of the foregoing have 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 AND FIRST CLASS MAIL

Jay Larry Moyer
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E-mail:gtown73@hotmail.com

Date: November 7, 2017



Devin T. Ryan


**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jay Larry Moyer,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2017-2629683
	:	
PPL Electric Utilities Corporation,	:	
Respondent	:	

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 ELECTRIC UTILITIES CORPORATION.

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Date: November 7, 2017

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jay Larry Moyer, Complainant	:	
	:	
v.	:	Docket No. C-2017-2629683
	:	
PPL Electric Utilities Corporation, Respondent	:	

**PRELIMINARY OBJECTIONS OF
PPL ELECTRIC UTILITIES CORPORATION
TO THE COMPLAINT OF JAY LARRY MOYER**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric”) and hereby files these 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 request for damages in the above-captioned Complaint (“Fourth Complaint”) filed by Jay Larry Moyer (“Complainant”). As explained herein, the Commission does not have authority to award damages. Therefore, requests for damages are properly stricken from complaints as impertinent matter.

For these reasons, and as explained more detail below, PPL Electric respectfully requests that the ALJ grant these Preliminary Objections and summarily dismiss the Fourth Complaint’s request for damages. In support thereof, PPL Electric states as follows:

I. BACKGROUND

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

2. PPL Electric furnishes electric distribution, transmission, and provider of last resort electric 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.

3. PPL Electric is and has been an active supporter of alternative energy within the Commonwealth. To date, PPL Electric has approximately 6,296 (approved and pending) net metering customers and approximately 107 virtual net metering customers on its system.

4. On October 18, 2017, PPL Electric was served with the above-captioned Fourth Complaint, which raises issues related to the Company's virtual meter aggregation program and billing processes.¹

5. PPL Electric herein files these Preliminary Objections to the Fourth Complaint. For the reasons explained below, PPL Electric respectfully requests that the Commission summarily dismiss the Fourth Complaint's request for damages because such relief cannot be granted by the Commission.

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 The First and Second Complaints were filed at Docket Nos. C-2011-2273645 and C-2014-2444864. Both the Commission and the Commonwealth Court denied the Complainant's claims made in the First and Second Complaints about PPL Electric's virtual meter aggregation program and billing processes, and the Pennsylvania Supreme Court denied the Complainant's Petition for Allowance of Appeal. See *Moyer v. PPL Electric Utilities Corp.*, Docket Nos. C-2011-2273645, C-2014-2444864 (Order Entered May 19, 2016) ("*Moyer*"); *Moyer v. Pa. PUC*, Docket No. 882 C.D. 2016 (Pa. Cmwlth. 2016) ("*Moyer Appeal*"); *Moyer v. Pa. PUC*, Docket No. 235 MAL 2017 (Pa. 2017) (denying Petition for Allowance of Appeal). Moreover, still pending before Administrative Law Judge Dennis J. Buckley (the "ALJ") is the Complainant's Third Complaint at Docket No. C-2015-2511904. In that proceeding, PPL Electric filed a Motion for Summary Judgment on May 22, 2017, seeking to dismiss the Third Complaint because it re-raises the issues decided in the First and Second Complaint proceeding. The Company's Motion for Summary Judgment remains pending.

- (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).

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 (Dec. 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 OBJECTIONS

A. PRELIMINARY OBJECTION No. 1 – The Complainant’s Request for Damages Should Be Dismissed Because the Commission Has No Power to Award Damages

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

9. In the Fourth Complaint, the Complainant requests, among other things, the following relief:

1. PPL Electric, having claimed “error” in its initial approval of my renewable system under virtual meter aggregation, shall a) approve the expansion of my generating system to a size not exceeding the limit for residential service (50k); and b) pay to me in advance \$40,000 (Forty thousand dollars) for the cost of converting my PV system to physical meter aggregation by a qualified (NABCEP) contractor of my choosing. (See a proposal, attached, for the 2011 cost of such a conversion, on which the requested payment above is based (with interest); and c) approve interconnection of the expanded facility by direct wiring (physical meter aggregation) to the meter that serves my house; and d) reimburse me for all out-of-pocket expenses which I incurred in litigating the Complaints related to my PV renewable system; and e) confirm, in writing, when conversion is completed, that my expanded PV system is fully qualified and approved for net metering.

Or, alternatively,

2. PPL, having claimed “error” in its approval of my current generating system as a virtual meter aggregation facility, shall a) pay to me, in cash, the sum of \$50,000; and b) approve the expansion of my existing GS-1 renewable system to a generating capacity not to exceed statutory limits; and c) approve the expanded system as a stand-alone, physical meter aggregation system; and d) apply the existing (independent load) waiver to the expanded system; and e) provide me, on an annual basis, with a spreadsheet that reports the meter readings at the end of the Reporting year as well as the total excess kilowatt hours of generation during the year; and f) send to me, on an annual basis, by check at my lawful address, an amount calculated at the full retail rate for all of the excess kilowatt hours that may be generated at the expanded facility.

(Complaint ¶ 5) (emphasis added).

10. 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).

11. 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).

12. Therefore, 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, PPL Electric respectfully requests that the Complainant's request for damages be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(2).

IV. CONCLUSION

WHEREFORE, for the reasons set forth above, PPL Electric Utilities Corporation respectfully requests that the request for damages in the above-captioned Formal Complaint be dismissed pursuant 52 Pa. Code § 5.101(a)(2).

Respectfully submitted,

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Date: November 7, 2017

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