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September 28, 2018

VIA ELECTRONIC FILING

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

Re: Joyce and Thomas Fedusa v. Knox Energy Cooperative Association, Inc.; Docket
No. C-2018-3004342; **KNOX ENERGY COOPERATIVE ASSOCIATION,
INC.'S PRELIMINARY OBJECTION TO THE FORMAL COMPLAINT
OF JOYCE AND THOMAS FEDUSA**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Knox Energy Cooperative Association, Inc.'s Preliminary Objection to the Formal Complaint of Joyce and Thomas Fedusa in the above-referenced proceeding. Hard copies will follow in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

Todd S. Stewart
Counsel for
Knox Energy Cooperative Association, Inc.

BRB/jld
Enclosure
cc: Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party). This document has been filed electronically on the Commission's electronic filing system and served via overnight mail on the following:

VIA FIRST CLASS

Joyce and Thomas Fedusa
102 Deer Drive
New Kensington, PA 15068



Todd S. Stewart

Dated: September 28, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOYCE AND THOMAS FEDUSA

Complainant,

v.

KNOX ENERGY COOPERATIVE
ASSOCIATION, INC.

Respondent.

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Docket No. C-2018-3004342

NOTICE TO PLEAD

You are hereby advised that, pursuant to 52 Pa. Code § 5.61, you may file a response within ten (10) days of the attached preliminary objections. Any response must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Knox Energy Cooperative Association, Inc., and where applicable, the Administrative Law Judge presiding over the issue.

File with:
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

Respectfully submitted,



Todd S. Stewart (PA ID No. 75556)
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Harrisburg, PA 17101
Tel: (717) 236-1300
tsstewart@hmslegal.com

*Attorneys for Respondent Knox Energy Cooperative
Association, Inc.*

Dated: September 28, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOYCE AND THOMAS FEDUSA

Complainant,

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KNOX ENERGY COOPERATIVE
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Docket No. C-2018-3004342

**KNOX ENERGY COOPERATIVE ASSOCIATION, INC.
PRELIMINARY OBJECTIONS TO FORMAL
COMPLAINT OF JOYCE AND THOMAS FEDUSA**

Pursuant to 52 Pa. Code § 5.101, Respondent Knox Energy Cooperative Association, Inc. (“Knox”) submits these Preliminary Objections to Joyce and Thomas Fedusa’s August 29, 2018 Formal Complaint (Complaint) in the above captioned proceeding and requests the Complaint be dismissed.

I. INTRODUCTION

1. **Lack of Jurisdiction.** Pursuant to 52 Pa. Code § 5.101(a)(1), the Complaint should be dismissed in its entirety because the Commission lacks jurisdiction to entertain complaints by third parties against non-public utilities. The Commission as a regulatory body only has the powers that the General Assembly grants to it. *See, e.g., W. Pennsylvania Water Co. v. Pennsylvania Pub. Util. Comm’n*, 370 A.2d 337, 339 (Pa. 1977) (Administrative agencies are creatures of the legislature and have only those powers which have been conferred by statute.).

2. The Commission only has jurisdiction to adjudicate complaints by third parties against *public utilities*. 66 Pa. C.S. § 701. (emphasis added). The Complaint does not aver that

Knox is a public utility or provide facts that would show Knox is a public utility, and Knox is in fact not a public utility. The Commission itself certified that, effective August 17, 2016, Knox is not a public utility and authorized abandonment through a certificate of public convenience. See **Appendix A**.

II. ARGUMENT

A. Legal Standard

3. The Commission's regulations allow a respondent to file preliminary objections to a complaint. 52 Pa. Code § 5.101. Preliminary motion practice before the Commission is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, PUC Docket No. C-00935435 (July 18, 1994) (citing Pa. R.C.P 1017). A preliminary objection in civil practice seeking dismissal of a pleading will be granted where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979).

4. In determining whether to sustain preliminary objections, all well-pleaded material, factual averments and all inferences fairly deducible therefrom are presumed to be true. *Marks v. Nationwide Ins. Co.*, 762 A.2d 1098, 1099 (Pa. Super. Ct. 2000), *appeal denied*, 788 A.2d 381 (Pa. 2001). The pleaders' conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion should not be considered to be admitted as true. *Id.* The preliminary objections should be sustained if, based on the facts averred by the plaintiff, the law says with certainty that no recovery is possible. *Soto v. Nabisco, Inc.*, 32 A.3d 787, 790 (Pa. Super. Ct. 2011), *appeal denied*, 50 A.3d 126 (Pa. 2012).

B. Preliminary Objection: The Commission Lacks Jurisdiction Over the Complaint

5. The Commission as a regulatory body only has the powers that the General Assembly grants to it. *See, e.g., W. Pennsylvania Water Co. v. Pennsylvania Pub. Util. Comm'n*, 370 A.2d 337, 339 (Pa. 1977) (Administrative agencies are creatures of the legislature and have only those powers which have been conferred by statute.). The Commission only has the power to entertain complaints by third parties against “public utilities.”

The commission, *or 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*. Any public utility, or other person, or corporation likewise may complain of any regulation or order of the commission, which the complainant is or has been required by the commission to observe or carry into effect. The Commonwealth through the Attorney General may be a complainant before the commission in any matter solely as an advocate for the Commonwealth as a consumer of public utility services. The commission may prescribe the form of complaints filed under this section.

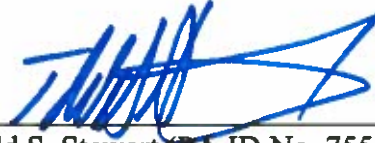
66 Pa. C.S. § 701 (emphasis added).

6. Respondent is not a public utility and the Complaint does not allege public utility status. Thus, jurisdiction does not exist for any claim or contention subject to the Pennsylvania Public Utility Code, 66 Pa.C.S. §§101 *et. seq.* governing regulation of public utilities. The Complaint should be dismissed for lack of jurisdiction.

III. CONCLUSION

WHEREFORE, Knox respectfully requests the Complaint be dismissed in its entirety.

Respectfully submitted,



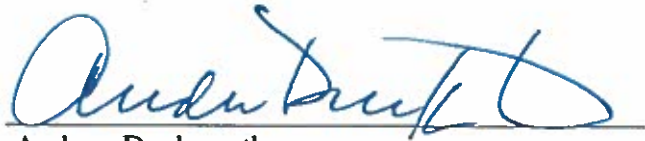
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*Attorneys for Respondent Knox Energy Cooperative
Association, Inc.*

Dated: September 28, 2018

VERIFICATION

I, Andrew Duckworth, certify that I am the authorized agent of Knox Energy Cooperative Association, Inc., and that in this capacity I am authorized to, and do make this Verification on their behalf, that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief, and that Knox Energy Cooperative Association, Inc., expects to be able to prove the same at any hearing that may be held in this matter. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.



Andrew Duckworth
Knox Energy Cooperative Association, Inc.

DATED: September 28, 2018

APPENDIX A

PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN THE MATTER OF : A-2015-2478270

Application of Orwell Natural Gas Company for the abandonment of all customers in the Borough of Bruin, Butler County, Armstrong County, Jefferson County and Clarion County, Pennsylvania, for natural gas services provided by Utility Pipeline, Ltd. and Knox Energy Cooperative Association, Inc.

Effective Date: August 17, 2016

The Pennsylvania Public Utility Commission hereby certifies that after an investigation and/or hearing, it has, by its report and order made and entered, found and determined that the granting of the application is necessary or proper for the service, accommodation, convenience and safety of the public and hereby issues to the applicant this **CERTIFICATE OF PUBLIC CONVENIENCE** evidencing the Commission's approval.

In Witness Whereof, The PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused these presents to be signed and sealed, and duly attested by its Secretary at its office in the city of Harrisburg this 17th day, of August, 2016.


Secretary