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September 4, 2019

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: David and Marella Dias v. PPL Electric Utilities Corporation
Docket No. C-2019-3012220

Dear Secretary Chiavetta:

Encloses for filing is the Preliminary Objection of PPL Electric Utilities Corporation to the Complaint of David and Marella Dias in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DTR/dmc
Enclosures

cc: Honorable Elizabeth Barnes (*w/enclosures*)
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).

FIRST CLASS MAIL

David and Marella Dias
710 Gobin Drive
Carlisle, PA 17013

Date: September 4, 2019

A handwritten signature in black ink, appearing to read "Devin T. Ryan", is written over a horizontal line.

Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David & Marella Dias,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2019-3012220
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY FILE AN ANSWER TO THE ENCLOSED PRELIMINARY OBJECTION WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTION 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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Date: September 4, 2019

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David & Marella Dias,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2019-3012220
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTION OF
PPL ELECTRIC UTILITIES CORPORATION
TO THE COMPLAINT OF DAVID & MARELLA DIAS**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric”) and hereby files this Preliminary Objection, 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 Formal Complaint (“Complaint”) filed by David and Marella Dias (“Complainants”). 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 Commission grant this Preliminary Objection and summarily dismiss the Complaint’s request for damages. In support thereof, PPL Electric states as follows:

I. BACKGROUND

1. 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. 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.

2. By Secretarial Letter dated August 15, 2019, PPL Electric was served with the above-captioned Complaint. The issues raised in the Complaint concern the installation of a new automated metering infrastructure ("AMI") meter at the Complainants' residence, *i.e.*, the replacement of the previous powerline carrier ("PLC") meter with a Radio Frequency ("RF") Mesh meter. (Complaint ¶ 4.) Through the Complaint, Complainants request that the new AMI meter be removed and that the Company "pay [them] back" for any "medical issues" that arise. (Complaint ¶ 5)

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

II. STANDARD OF REVIEW

4. 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.
- (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).

5. 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 (December 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 OBJECTION

A. PRELIMINARY OBJECTION NO. 1 – THE COMPLAINANTS' REQUEST FOR DAMAGES SHOULD BE DISMISSED BECAUSE THE COMMISSION HAS NO POWER TO AWARD DAMAGES

6. PPL Electric incorporates by reference Paragraphs 1 through 5 as if fully set forth herein.

7. In their Formal Complaint, the Complainants request as relief, among other things, that the Company be directed to “pay [them] back” for any “medical issues” that may arise. (Complaint ¶ 5)

8. It is well-established that the Commission does not have the authority to order a public utility to pay damages, as requested by the Complainants. *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).

9. Here, the Complainants' 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).

10. Therefore, the Complainants' request for damages is impertinent matter and should be stricken from their Complaint pursuant to 52 Pa. Code § 5.101(a)(2).

WHEREFORE, PPL Electric respectfully requests that the Complainants' 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: September 4, 2019

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