

Karen O. Moury
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November 8, 2019

Via Electronic Filing

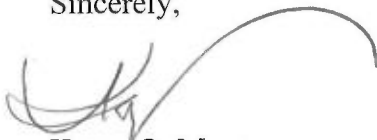
Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: William Trousdale v. PPL Electric Utilities Corp., Clearview Electric, Inc. and
Independence Energy Group, LLC t/a Cirro Energy – Docket No. C-2019-3013711

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Clearview Electric, Inc.'s ("Clearview") Preliminary Objections with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Karen O. Moury

KOM/lww
Enclosure

cc: Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Clearview Electric's Preliminary Objections upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via First Class Mail and Email

William B. Trousdale
3147 Brookfield Rd.
Harrisburg, PA 17109
old45s@hotmail.com

Via First Class Mail

Hon. Charles E. Rainey, Jr.
Chief Administrative Law Judge
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: November 8, 2019



Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Trousdale,
Complainant

v.

PPL Electric Utilities Corp.,
Clearview Electric, Inc. and
Independence Energy Group, LLC t/a
Cirro Energy,
Respondents

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Docket No. C-2019-3013711

NOTICE TO PLEAD

To: William B. Trousdale
3147 Brookfield Rd.
Harrisburg, PA 17109

You are hereby notified that an Answer to the enclosed **Preliminary Objections** of Clearview Electric, Inc. must be filed within 10 days of the date of service.

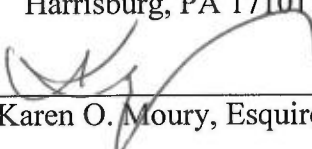
All pleadings, such as an Answer to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Clearview Electric, Inc. and the Office of Administrative Law Judge.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Karen O. Moury, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101



Karen O. Moury, Esquire

Date: November 8, 2019

Attorney for Clearview Electric, Inc.

BEFORE PENNSYLVANIA PUBLIC UTILITY COMMISSION

William Trousdale,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2019-3013711
	:	
PPL Electric Utilities Corp.,	:	
Clearview Electric, Inc. and	:	
Independence Energy Group, LLC t/a	:	
Cirro Energy,	:	
Respondents	:	

**PRELIMINARY OBJECTIONS
OF CLEARVIEW ELECTRIC, INC.**

TO: CHIEF ADMINISTRATIVE LAW JUDGE CHARLES E. RAINEY, JR.:

Pursuant to 52 Pa. Code § 5.101(a)(3) of the regulations of the Pennsylvania Public Utility Commission (“Commission”), Clearview Electric, Inc. (“Clearview”) submits the following Preliminary Objections to the Complaint of William Trousdale (“Complainant”) requesting dismissal of the Complaint. The basis for Clearview’s request is that the Complaint contains insufficient specificity to allow Clearview to ascertain what it is alleged to have done in violation of the Public Utility Code, Commission regulations or Commission order. Clearview is not simultaneously filing an Answer since such is not required until further directed by the presiding officer or the Commission, or unless the Complainant files an Amended Complaint 52 Pa. Code § 5.101(e)(1)-(2). In support of these Preliminary Objections, Clearview states as follows:

I. INTRODUCTION

1. Clearview is an electric generation supplier (“EGS”), licensed by the Commission to supply electricity to retail customers throughout Pennsylvania, at Docket No. A-2010-2152506.

2. The Complaint was served on Clearview by the Commission on October 23, 2019.

3. Through the Complaint, the Complainant describes a delay in having his EGS switched from Clearview to Independence Energy Group, LLC t/a Cirro Energy (“Cirro”).

4. None of the allegations contained in the Complaint appear to be directed at Clearview.

5. Moreover, the Complaint does not request that Clearview be required to grant the Complainant any relief.

6. Therefore, the Complaint against Clearview should be dismissed.

II. ARGUMENT

A. Applicable Legal Standards

7. The Commission’s Rules of Administrative Practice and Procedure permit the filing of preliminary objections.¹ The Commission’s procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Id.*

8. Under Section 5.101(a) of the Commission’s regulations, preliminary objections must specifically state the legal and factual grounds relied upon and be limited to the following:

(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;

¹ 52 Pa. Code § 5.101(a)(1)-(7). *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

(6) Pendency of a prior proceeding or agreement for alternative dispute resolution;
and

(7) Standing of a party to participate in the proceeding.

9. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts.² However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.³

10. In deciding the preliminary objections, the Commission must determine whether, based on the well-pleaded factual averments of the party, recovery or relief is possible.⁴

11. The filing of preliminary objections serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary.⁵

12. If a preliminary objection alleges insufficient specificity in a pleading, an answer is not required until further directed by the presiding officer or the Commission. Alternatively, if an amended pleading is filed in response to a preliminary objection alleging insufficient specificity in a pleading, the preliminary objection will be deemed to be moot.⁶

² *County of Allegheny v. Cmwlth. of Pa.*, 490 A.2d 402 (Pa. 1985).

³ *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007).

⁴ *Department of Auditor General, et al. v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwlth. 1996).

⁵ 66 Pa.C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 557 (Pa. Cmwlth. 1989).

⁶ 52 Pa. Code § 101(e).

B. Insufficient Specificity of Pleading, 52 Pa. Code § 5.101(a)(3).

13. Under Section 5.101(a)(3) of the Commission’s regulations, preliminary objections may be filed against a complaint alleging insufficient specificity of a pleading.⁷

14. Section 701 of the Public Utility Code permits any person to “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.”⁸

15. Under Section 5.22 of the Commission’s regulations, a complaint must contain a clear and concise statement of the act or omission being complained of and a clear and concise statement of the relief sought.⁹

16. To withstand a preliminary objection alleging insufficient specificity, a pleading must contain averments of all the facts that the complaining party will have to prove in order to prevail and enable the responding party to prepare a defense.¹⁰

17. The Complaint in this proceeding does not contain any allegations of wrongdoing by Clearview or seek any relief from Clearview. The gist of the Complaint is that the Complainant was not informed by PPL Electric Utilities Corporation of a change in his account number, which occurred as a result of his move, and that because of the change in his account number, his service with Independence Energy Group, LLC t/a Cirro Energy did not take effect when he expected. The Complaint merely references Clearview as the Complainant’s former EGS and does not allege that any actions of or omissions by Clearview caused the alleged delay.

⁷ 52 Pa. Code § 5.101(a)(3).

⁸ 66 Pa.C.S. § 701.

⁹ 52 Pa. Code § 5.22(a)(4).

¹⁰ *Podolak v. Tobyhanna Tp. Bd. of Supervisors*, 37 A.3d 1283, 1288-89 (Pa. Cmwlth. 2012).

18. Even if all assertions in the Complaint are accepted as true, they do not present a case in which Clearview could be found to have violated any provision of the Public Utility Code, Commission regulations or a Commission order. Further, as to Clearview, the Complaint does not contain a clear and concise statement of the act or omission being complained of and a clear and concise statement of the relief sought. As such, the Complaint does not contain factual averments enabling Clearview to prepare a defense.

19. Since the Complaint does not allege any wrongdoing on the part of Clearview or seek any relief from Clearview, Clearview should not be required to expend resources to file an Answer to the Complaint or participate in a hearing and the further litigation of the Complaint.

IV. CONCLUSION

WHEREFORE, on the basis of the foregoing, Clearview Electric, Inc. respectfully requests dismissal of the Complaint filed by William Trousdale and such other relief as may be deemed appropriate.

Respectfully submitted,



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Eckert Seamans Cherin & Mellott
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Harrisburg, PA 17101
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717.237.6036

Date: November 8, 2019

Attorney for Clearview Electric, Inc.