

# Stevens & Lee

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July 13, 2021

VIA ELECTRONIC MAIL

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**RE: 600 Scranton LLC v. Pennsylvania-American Water Company  
Docket No. C-2021-3024207**

**600 Scranton, LLC v. PPL Electric Utilities Corporation  
Docket No. C-2019-3014952**

Dear Secretary Chiavetta:

Enclosed please find Pennsylvania-American Water Company's Response in Opposition to 600 Scranton, LLC's Motion to Consolidate the proceedings in the above-captioned matters. A copy has been served in accordance with the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

STEVENS & LEE



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Timothy K. McHugh

Enclosure

cc: Administrative Law Judge Dennis J. Buckley  
Certificate of Service



Property. In its Complaint, the Complainant alleged that: 1) PAWC was threatening to shut off its service; 2) there were incorrect charges on its bill; and 3) it is having a reliability, safety or quality problem with its water service. The Complaint requested that PAWC provide the Complainant with: 1) diagrams, blueprints or plans of the now defunct Lackawanna County Industrial Development Authority's Project that existed on or was planned for the Complainant's property; 2) high-quality leak-detection equipment; and 3) the ability to forego paying its water bill in order to install a new service pipe in the event a leak is detected. On March 10, 2021, PAWC filed an Answer to the Complaint at Docket Number C-2021-3024207. PAWC denied both the Complainant's allegations and the relief it requested in the Complaint.

On June 7, 2021, the presiding Administrative Law Judge ("ALJ") issued the Initial Prehearing Order setting an Initial Prehearing Conference beginning at 10 a.m. on June 16, 2021. The parties each submitted Prehearing Conference Memorandum on June 15, 2021, and the Prehearing Conference took place on June 16, 2021. At the Prehearing Conference, counsel for PAWC made an oral Motion for Clarification of the Scope of the Proceeding. Complainant's counsel concurred and PAWC's Motion was granted by the presiding ALJ. That same day, the presiding ALJ issued an Order directing the parties to file a Supplemental Prehearing Conference Memorandum to help define the scope of the proceeding and identify which issues the Commission should consider. On June 23, 2021, the Complainant submitted its Supplemental Prehearing Conference Memorandum. PAWC submitted its Supplement Prehearing Conference Memorandum on June 25, 2021. PAWC submitted its Reply to Complainant's Supplemental Prehearing Conference Memorandum on July 1, 2021, as required by the June 16, 2021 Order. That same day, Complainant filed its Motion to Consolidate this proceeding with a completely unrelated proceeding initiated by its Formal Complaint filed against an Electric Distribution Company, PPL Electric Utilities Corporation ("PPL") at Docket Number C-2019-3014952 ("PPL Complaint").

The Complainant filed a Formal Complaint with the Commission against PPL on or around December 13, 2019. In its PPL Complaint, Complainant disputes a termination of electric service caused by a billing dispute pertaining to the rate it should have been billed under PPL's tariff. Complainant apparently alleged that it was not provided proper notice prior to the termination of electric service at the Property.<sup>1</sup> The Order Limiting the Scope of Proceeding issued by the presiding ALJ on March 10, 2020 limited the scope of the proceeding in the PPL Complaint to the following:

1. The allegation that PPL assigned 600 Scranton an incorrect rate, that allegedly being Rate LP-4 RTP, and any alleged violation of default service provider requirements, if relevant;
2. Billing disputes, particularly the lawfulness of a recalculation of the rate charged to 600 Scranton for the period of July 1, 2017 to March 10, 2020 from LP-4 RTP to the PPL Basic Rate LP-4; and
3. Whether PPL complied with the regulations of the Commission and provisions of PPL's tariff relative to termination notices.

*600 Scranton LLC v. PPL Electric Utilities Corporation, Order Limiting the Scope of Proceedings*, Docket No. C-2019-3014952 (Order entered March 10, 2020).

The Second Prehearing Order issued by the presiding ALJ on August 4, 2020 further narrowed the issues in the PPL Complaint proceeding to:

1. Whether PPL is billing 600 Scranton correctly under PPL's tariff; and
2. Whether PPL has provided safe, adequate and reasonable service pursuant to the Public Utility Code and 66 Pa.C.S. § 1501, principally related to whether a Notice of Termination of Service was provided as required by the Commission's regulations.

*600 Scranton LLC v. PPL Electric Utilities Corporation, Second Prehearing Order*, Docket No. C-2019-3014952 (Order entered August 4, 2020).

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<sup>1</sup> PAWC was not served with nor has it reviewed the PPL Complaint. PAWC's understanding of the PPL Complaint comes solely from Complainant's Motion to Consolidate the two proceedings, the Order Limiting the Scope of Proceeding issued by ALJ Buckley on March 10, 2020, and the Second Prehearing Order issued by ALJ Buckley on August 4, 2020. These Orders are available on the Commission's website at Docket Number C-2019-3014952.

## **II. OPPOSITION TO COMPLAINANT’S MOTION TO CONSOLIDATE**

Section 5.81(a) of the Commission’s regulations provides that “[t]he Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.” 52 Pa. Code § 5.81(a).

The Commission should dismiss the Complainant’s Motion to Consolidate because the two proceedings involve separate utility services provided for by two different public utilities.

Furthermore, the circumstances and allegations at issue are unique to each proceeding. While there is a general claim of whether the two utilities have provided safe, adequate and reasonable service to the Complainant pursuant to 66 Pa.C.S. § 1501, claiming that there is a common issue of law in both cases is specious at best. Any combined proceeding would only entangle isolated issues and further complicate and delay resolution of these matters.

### **A. The Two Proceedings Involve Separate and Unique Facts**

The facts related to the PPL Complaint are entirely unrelated to Complaint filed by Complainant against PAWC. As stated in the Complainant’s Motion to Consolidate, the PPL Complaint alleges that PPL permitted “an unauthorized employee of the bankrupt previous owner of the premises, while still in bankruptcy, to order electric service for [Complainant] at the highest possible electric rate, then delayed billing for 4 months, after [Complainant] paid the first electric bill in August 2017.” *See* Motion to Consolidate, p. 2. It continues that PPL’s billing practices in January 2018 denied Complainant the opportunity to track “demand and usage to reduce energy consumption.” *Id.* In addition, it alleges that PPL ignored or denied Complainant’s request to conduct an audit of Complainant’s onsite equipment and usage “pursuant to Act 129 Energy Conservation Law.” *Id.* Finally, it concludes by stating that PPL did not adhere to its policy or

tariff provisions with regards to the “practice of requiring tenants to agree to Complainant’s request to have tenants separately metered.” *Id.* The PPL Complaint makes no explicit mention of or implicit reference to PAWC or water service provided by PAWC to Complainant.

In its Complaint against PAWC, Complainant only discusses an “alleged” leak in its water service pipe at the Property and that the meter was to be tested on February 15, 2021. Despite PAWC’s efforts to inform it that there was a leak in Complainant’s customer-side service pipe, it believed that it was not Complainant’s water service pipe that was leaking, but that of the owner of a former project at the Property. In its Motion to Consolidate, Complainant explains further that “[e]vidence will show there was a maze of water pipes underground on the premises funded by” a prior owner of the Property. *Id.* While it eventually acknowledged the existence of the leak in its customer-side service pipe, Complainant states that it was in the process of installing a new service pipe when water erupted through the floor of one of its tenants. *Id.* There is no mention of PPL or electrical service provided by PPL to the Property.

The two proceedings have no similarities other than Complainant’s involvement. The Motion to Consolidate should be denied because the underlying Complaints for both proceedings are factually separate. Any effort to combine them would very likely cause undue delay and result in unnecessary costs while preparing for and litigating these matters. The issues germane to each proceeding are uniquely distinct and would require different evidence in order to litigate such. Consolidation would unduly delay a hearing and resolution for each proceeding and would create a disorderly and unwieldy record.<sup>2</sup> Furthermore, consolidating these proceedings would unnecessarily complicate any efforts to settle the individual Complaints, if possible, since they deal with entirely different issues. Such a result is contrary to the Commission’s policy to encourage

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<sup>2</sup> See, e.g., *Pennsylvania Public Utility Commission Bureau of Transportation and Safety v. Adamo Limousine, Inc., Order Consolidating Proceedings*, Docket Nos. C-2010-2180666 and C-2011-2262621 (Order entered November 18, 2011).

settlements. *See* 52 Pa. Code § 5.231.

**B. The Two Proceedings Are Legally Distinct**

The presiding ALJ limited the legal issues involved in the PPL Complaint to two issues. First, it must be determined whether PPL correctly billed Complainant in accordance with the rates set forth in PPL's tariff.<sup>3</sup> There is no similar allegation against PAWC that it was charging Complainant for water service at a rate contrary to its Commission-approved tariff. Next is whether PPL was providing "safe, adequate, and reasonable service" to Complainant. While both proceedings involve this general legal requirement to provide "safe, adequate, and reasonable service" pursuant to Section 1501 of the Public Utility Code, the presiding ALJ clarifies that in the PPL Complaint this "principally relate[s] to whether a Notice of Termination of Service was provided as required by the Commission's regulations."<sup>4</sup> Notice requirements prior to terminating a customer's service are separately addressed by the Commission's regulations and are irrelevant to the Complaint filed by Complainant against PAWC.

Application of the arguments above demonstrates that consolidation is not appropriate in this instance. Therefore, Complainant's Motion to Consolidate should be dismissed because the two proceedings do not involve a common question of fact or law and granting such would cause unnecessary costs or delay.

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<sup>3</sup> *See* 600 Scranton LLC v. PPL Electric Utilities Corporation, Second Prehearing Order, Docket No. C-2019-3014952 (Order entered August 4, 2020).

<sup>4</sup> *Id.*

WHEREFORE, in light of the above, PAWC respectfully requests that Complainant's Motion to Consolidate be denied.

Respectfully submitted,



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