



Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL: 717 237 6000
FAX: 717 237 6019

Karen O. Moury
717.237.6036
kmoury@eckertseamans.com

December 20, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v.
Discount Power, Inc.; Docket No. M-2021-3022658

Dear Secretary Chiavetta:

On behalf of Discount Power, Inc., enclosed for electronic filing please find a Motion to Strike the Comments filed by PPL Electric Utilities Corporation to the Tentative Order entered on October 28, 2021 in the above-captioned matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ Karen O. Moury

Karen O. Moury

KOM/lww
Enclosure

cc: Cert. of Service w/enc.

Michael L. Swindler, Deputy Chief Prosecutor (*via email – mswindler@pa.gov*)

Daniel Mumford, Office of Competitive Market Oversight (*via email – dmumford@pa.gov*)

Office of Special Assistants (*Word version via email – ra-OSA@pa.gov*)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Discount Power, Inc.'s Motion to Strike Comments of PPL Electric Utilities Corporation upon the person(s) listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email Only

Michael J. Shafer
Senior Counsel
PPL Electric Utilities Corporation
Two North Ninth Street
Allentown, PA 18101-1179
MJShafer@pplweb.com

Kayla L. Rost
Prosecutor
Bureau of Investigation and Enforcement
Pa. Public Utility Commission
400 North Street
Harrisburg, PA 17120
karost@pa.gov

Dated: December 20, 2021

/s/ Karen O. Moury
Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 : Docket No. M-2021-3022658
v. :
 :
Discount Power, Inc. :

NOTICE TO PLEAD

Via Email Only

To: Michael J. Shafer, Esquire
Senior Counsel, PPL
Two North Ninth Street
Allentown, PA 18101-1179
MJShafer@pplweb.com

You are hereby notified to file a written response to the **Motion to Strike** filed by Discount Power, Inc. (“DPI”) within twenty (20) days from the date of service, consistent with 52 Pa. Code §5.61(a) and 5.103(c). Failure to respond to this Motion could result in an Order striking the Comments filed on December 8, 2021. All pleadings, such as Answers to Motions, must be filed with the Secretary of the Pennsylvania Public Utility Commission.

File with:
Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
400 North Street
Harrisburg, PA 17120
<https://efiling.puc.pa.gov/>

With an electronic copy to:
Karen O. Moury, Esquire
Sarah C. Stoner, Esquire
Eckert Seamans Cherin & Mellott, 8th Floor
Harrisburg, PA 17101
kmoury@eckertseamans.com
sstoner@eckertseamans.com

/s/ Karen O. Moury

Karen O. Moury

Date: December 20, 2021

Counsel for Discount Power, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility	:	
Commission, Bureau of Investigation	:	
and Enforcement	:	Docket No. M-2021-3022658
	:	
v.	:	
	:	
Discount Power, Inc.	:	

**DISCOUNT POWER, INC.’S MOTION TO STRIKE
COMMENTS OF PPL ELECTRIC UTILITIES
CORPORATION**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.103, Discount Power, Inc. (“DPI”) files this Motion to Strike the Comments submitted by PPL Electric Utilities Corporation (“PPL” or “Company”) to the Tentative Order entered by the Commission on October 28, 2021. In the Tentative Order, the Commission solicited comments from interested parties concerning the Joint Petition for Approval of Settlement (“Settlement”) filed by DPI and the Commission’s Bureau of Investigation and Enforcement (“I&E”). By this Motion to Strike, DPI respectfully requests that PPL’s Comments be stricken on the grounds that the Company lacks standing to participate in this proceeding and has failed to show that its proposed modifications to the Settlement are necessary in order to ensure that the terms are in the public interest.

I. BACKGROUND

1. On August 27, 2021, I&E and DPI filed the Settlement, along with Statements in Support of the Settlement, requesting the Commission’s approval without modification.

2. The Settlement was the culmination of an Informal Investigation initiated by I&E based on information provided by the Office of Competitive Market Oversight (“OCMO”) relating to allegations of deceptive and misleading telemarketing practices by DPI from 2019 to May 2021.

3. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission’s jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); *see also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutorial in nature to I&E).

4. DPI is an electric generation supplier licensed by the Commission at Docket A-2012-2328004 to supply generation services to retail customers throughout the Commonwealth.

5. By Tentative Order entered on October 28, 2021, the Commission sought comments of interested parties on the Settlement within 25 days of publication in the *Pennsylvania Bulletin*. The Settlement was published in the *Pennsylvania Bulletin* on November 13, 2021, making comments due on or before December 8, 2021.

6. Although PPL filed its Comments on December 8, 2021, the Company did not serve its Comments on the parties until December 10, 2021.

7. By this Motion to Strike, DPI respectfully requests that PPL’s Comments be stricken by the Commission on the basis that the Company lacks standing to participate in this proceeding and the Comments raise issues that are irrelevant to whether the terms of the Settlement are reasonable and in the public interest.

8. In support hereof, DPI further avers below.

II. LEGAL STANDARDS

9. It is the Commission's policy to encourage settlements. 52 Pa. Code § 5.231(a).

10. The focus of inquiry for determining whether a proposed settlement should be approved is whether its terms are in the public interest. *See, e.g., Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. M-2009-2058182 (Order entered November 23, 2009).

11. The Commission's Policy Statement at 52 Pa. Code § 69.1201, which sets forth various factors and standards that are used in evaluating settled cases, is a codification of the Commission's decision in *Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company*, Docket No. C-00092409 (Order entered February 10, 2000). These factors and standards are utilized by the Commission in determining if a proposed civil penalty is appropriate, as well as if an overall proposed settlement is reasonable and its approval is in the public interest. 52 Pa. Code § 69.1201(a). Although the same criteria are used in the evaluation of both litigated and settled cases, they are not applied in as strict a fashion to settled cases, and the parties in settled cases are afforded flexibility in reaching amicable resolutions as long as the settlement is in the public interest. 52 Pa. Code § 69.1201(b).

12. In order to have standing, a person or entity must show that it would be "aggrieved" by an order or other action. *Man O' War Racing Association, Inc. v. State Horse Racing Commission*, 433 Pa. 432, 441, 250 A.2d 172 (1969). A person or entity has standing to participate in a proceeding before the Commission only upon a showing of a direct, immediate and substantial interest in the subject matter of a proceeding. It is not sufficient for a person or entity to assert an abstract interest of all citizens in having others comply with the law. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 191-192, 346 A.2d 269 (1975).

III. ARGUMENT

A. PPL Does Not Have a Direct, Immediate or Substantial Interest in the Subject Matter of this Proceeding.

13. The purpose of this proceeding is for the Commission to determine whether the terms of the Settlement between I&E and DPI are reasonable and in the public interest, thereby warranting approval without modification, as requested by the parties.

14. In its Comments, PPL suggests modifications to the Settlement that address training of agents, record retention, response times to customer inquiries and audits of vendors' sales activities.¹ According to PPL's Comments, it offers these suggestions as a way to strengthen the Commission's oversight and "make future allegations easier to investigate."²

15. Throughout its Comments, PPL repeatedly offers as rationale for these proposed modifications the effect of a supplier's sales and marketing practices on the Company's distribution customers.³ At no time does PPL identify any direct, substantial or immediate interest that the Company has in the outcome of this proceeding.

16. It is well-settled that PPL may not represent the interests of its distribution customers. In *Mid-Atlantic Power Supply Ass'n v. Pa. Public Utility Comm'n*, 746 A.2d 1196, the Pennsylvania Commonwealth Court reviewed a Commission Order establishing electric choice policies pertaining to the sharing of customer information by PECO Energy Company ("PECO") with electric suppliers. Addressing PECO's claim that the Commission's Order did

¹ Pages 6-8 of the PDF. (PPL's Comments do not contain page numbers).

² Page 5 of the PDF.

³ See, e.g., Pages 3-5 of PDF. ("critical...that customers are provided protections," "issues identified...are of significant concern to PPL Electric and its customers," "I&E's investigation into the harm caused by customers," "recent experience with...EGS practices impacting its customers," "unlawful marketing and sales practices...has a significant negative impact on the Company's customers," "Deceptive marketing practices...make it difficult for customers to have a good shopping experience.")

not adequately protect its customers' privacy rights, the Court held that PECO did not have standing because it does not represent the interests of its customers. *MAPSA* at 1200.

17. In addition, the Court in *MAPSA* cited the decision in *Pennsylvania Dental Assoc. v. Commonwealth of Pennsylvania, Department of Health*, 75 Pa. Commw. 7, 461 A.2d 329 (Pa. Cmwlth. 1983), which emphasized that a party may not claim standing to vindicate the rights of a third party who has an opportunity to be heard. Here, despite having an opportunity to do so upon publication of the Settlement in the *Pennsylvania Bulletin*, no consumer or consumer representative proposed that for their protection, the Commission should impose additional requirements on DPI beyond those agreed upon in the Settlement.

18. The policy-driven Comments filed by PPL are in the nature of proposals that a regulator, attorney general or other enforcement agency might make and seek, at most, to assert a common abstract interest of all citizens, which does not afford a person or entity standing.

19. In summary, PPL lacks standing to participate because the Company will not be aggrieved by a Commission order or other action. If the Commission approves the Settlement between I&E and DPI without modification, the decision will have no impact on PPL as an EDC.

B. PPL's Suggested Modifications to the Settlement Are Irrelevant to the Question of Whether the Settlement is in the Public Interest.

20. The modifications to the Settlement proposed by PPL are irrelevant to the issue before the Commission of whether the terms of the Settlement are reasonable and in the public interest. Indeed, PPL does not characterize the modifications as being necessary for the Settlement to satisfy that standard. Rather, PPL suggests additional provisions that it describes as strengthening the Commission's oversight and making "future allegations easier to

investigate.”⁴

21. Given the Commission’s long-standing inquiry into whether the terms of proposed settlements are reasonable and in the public interest, it would be inconsistent to now go beyond that review and determine that imposing additional requirements on an entity would make the terms even stronger. Arguably, any settlement could be strengthened by the addition of other conditions. Starting down a path of modifying settlements to add or enhance certain regulatory obligations is not conducive to the settlement process that the Commission encourages. Moreover, the standard is not whether a settlement is optimal or contains every possible enhancement to the entity’s business practices. The pertinent inquiry is whether the various settlement provisions, when viewed together and against the backdrop of the factors outlined in the Policy Statement, adequately address the allegations investigated by I&E.

22. Additionally, the Company makes these proposals without having any information regarding DPI’s current practices with respect to training, record retention, response times and vendor audits. Of particular note, PPL is proposing that the Commission modify the Settlement to impose requirements on DPI that are more burdensome than the Commission’s regulations on these topics. For example, PPL suggests that DPI’s agents complete annual refresher training on the Commission’s retail competition rules, which is not required by the Commission’s regulations.⁵ 52 Pa. Code § 111.5. On recordkeeping, PPL suggests that this timeframe should be four years when the Commission’s regulations only require records of customer inquiries, disputes and complaints to be retained for six billing cycles.⁶ 52 Pa. Code § 111.13(b). PPL further proposes that DPI be required to process, investigate and be responsive

⁴ Page 5 of the PDF.

⁵ Page 6 of the PDF.

⁶ Pages 7-8 of the PDF.

to a customer inquiry, dispute or complaint within 48 hours,⁷ while the Commission's regulations obligate suppliers to implement an internal process for handling such matters. 52 Pa. Code § 111.13(b).

23. Although PPL characterizes its suggested modifications as being warranted due to DPI's actions, I&E's allegations were not proven. Paragraph 56 explicitly states that the Settlement "represents a compromise of positions and does not in any way constitute a finding or an admission concerning the alleged violations of the Code and the Commission's regulations."

24. Changes of the nature that PPL suggests should be considered in the context of a rulemaking, not in an individual supplier's Settlement with I&E. As the Commission's enforcement arm, I&E negotiated a balanced set of provisions in reaching a Settlement with DPI, which should not be modified on the basis of PPL's comments aimed at changing policies.

III. CONCLUSION

For the reasons set forth above, Discount Power, Inc. respectfully requests that the Commission grant this Motion to Strike the Comments of PPL Electric Utilities.

Respectfully submitted,

Date: December 20, 2021

Karen O. Moury

Karen O. Moury, Esq. (PA ID #36879)
Sarah C. Stoner, Esq. (PA ID #313793)
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
717.237.6000
kmoury@eckertseamans.com
sstoner@eckertseamans.com

⁷ Page 8 of PDF.

Verification

I, Karen O. Moury, state that I am an Attorney of Record for Discount Power, Inc. and that as such I am authorized to make this verification on its behalf. I hereby state that the facts contained in the foregoing Motion are true and correct (or are true and correct to the best of my knowledge, information and belief). I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

December 20, 2021

Karen O. Moury

Karen O. Moury, Esquire