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February 4, 2022

Via Electronic Filing

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

Re: Lucy & Cassandra Scipio v. PECO Energy Company & Liberty Power Holdings LLC;
Docket No. F-2020-3022548

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Motion to Dismiss of Liberty Power Holdings LLC in the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Sarah C. Stoner

Sarah C. Stoner

Enclosure

cc: Honorable F. Joseph Brady (fbrady@pa.gov) w/ enc.
Athena DelVillar (sdelvillar@pa.gov) w/ enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing **Motion to Dismiss** 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 E-mail

Lucy & Cassandra Scipio

Khadijah Scott, Esq.
PECO Energy Company
2301 Market Street
23rd Floor
Philadelphia, PA 19103
khadijah.scott@exeloncorp.com

Stephen Gibelli, Esq.
General Counsel
Liberty Power Corporation
2100 W. Cypress Creek Rd., Suite 130
Fort Lauderdale, FL 33309
sgibelli@libertypowercorp.com

Date: February 4, 2022

Sarah C. Stoner

Sarah C. Stoner, Esquire
Counsel for
Liberty Power Holdings LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lucy & Cassandra Scipio,	:	
	Complainant	: Docket No. F-2020-3022548
		:
v.		:
		:
PECO Energy Company &		:
Liberty Power Holdings LLC		:
	Respondents	:

NOTICE

TO: Parties of Record

You are hereby notified to file a written response to the enclosed **Motion to Dismiss** of Liberty Power Holdings LLC (“Liberty Power”) within 20 days of the date of service hereof, or judgment may be entered against you.

All responses must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Liberty Power Holdings LLC and where applicable, the Administrative Law Judge presiding over the issue.

File with:

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

With an electronic copy to:

Deanne M. O’Dell, Esquire
Sarah C. Stoner, Esquire
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Sarah C. Stoner

Sarah C. Stoner, Esquire

Date: February 4, 2022

Counsel for
Liberty Power Holdings LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lucy & Cassandra Scipio,	:	
Complainants	:	Docket No. F-2020-3022548
	:	
v.	:	
	:	
PECO Energy Company &	:	
Liberty Power Holdings LLC,	:	
Respondents	:	

**LIBERTY POWER HOLDINGS LLC'S
MOTION TO DISMISS FORMAL COMPLAINT**

Pursuant to 52 Pa. Code § 5.103, Liberty Power Holdings LLC (“Liberty Power”) submits this Motion to Dismiss the Formal Complaint of Lucy & Cassandra Scipio (“Motion”). As discussed more fully below, Liberty Power seeks the dismissal of the Formal Complaint as Liberty Power filed a voluntary petition for bankruptcy under Chapter 11 of Title 11 of the United States Code after the filing of the Formal Complaint and is in the process of ceasing all operations with the oversight of the Bankruptcy Court. As a practical matter, Liberty Power has no resources or ability to comply with any Commission ordered remedy that involves credits or payments and Liberty Power no longer has the employees and technical resources that may be necessary to perform certain actions with regard to billing and other customer services.

In support of this Motion, the Liberty Power avers as follows:

1. Lucy & Cassandra Scipio (“Complainants”) filed a Formal Complaint against Liberty Power with the Pennsylvania Public Utility Commission (“Commission”). In their Formal Complaint, the Complainants claim that incorrect charges are on their bill. Formal

Complaint at ¶ 4. The Complainants request that the Commission order a reduction in their bill. *Id.* at ¶ 5. The Complainants also make claims regarding deceptive marketing. *Id.* at ¶ 5.

2. As indicated in Liberty Power's Answer, the Complainants enrolled with Liberty Power and, after receiving two bills from PECO Energy Company, contacted Liberty Power and requested that Liberty Power terminate their contract. The contract was terminated by Liberty Power and a termination fee was not charged. Answer at ¶ 3.

3. No hearing has been scheduled in this matter as of this date.

4. On April 20, 2021, Liberty Power filed a voluntary petition for bankruptcy under Chapter 11 of Title 11 of the United States Code. Since that date, Liberty Power has been in the process of winding down its business operations in Pennsylvania and elsewhere.

5. Liberty Power filed a Suggestion of Bankruptcy in this matter on April 23, 2021.

6. Liberty Power's bankruptcy is now pending in the United States Bankruptcy Court for the Southern District of Florida, Case No. 21-13797-PDR.

7. On May 14, 2021, Liberty Power filed with the Commission information regarding its Pennsylvania operations pursuant to 52 Pa. Code § 54.34 at Docket Number A-110175.

8. On July 16, 2021, consistent with the requirements of the bankruptcy proceeding, Liberty Power issued a notice to its customers informing them of its intent to sell all or substantially all of its assets to another legal entity. Included with the letter was the approved notice of Debtors' Intent to Assume and Assign contracts as approved by the bankruptcy court.

9. On September 13, 2021, a Sale Order was entered in the bankruptcy proceeding that approved the sale of certain assets of Liberty Power to NRG Energy, Inc.

10. Upon the sale of all its assets, Liberty Power intends to cease all operations.

11. The filing of the bankruptcy stays, among other things, the initiation or continuation of judicial, administrative, or other actions or proceedings against the debtor Liberty Power or any act to obtain possession of or exercise control over the property of Liberty Power. In accordance with Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a), the filing of a petition in Bankruptcy Court operates as an automatic stay of judicial and administrative proceedings against the debtor. The Formal Complaint in this proceeding was filed on October 5, 2020, before Liberty Power filed for bankruptcy and, therefore, the operation of Section 362(a) would act as a stay of continuing this proceeding.

12. While there is an exception to the automatic stay provision as contained in Section 362(b)(4) of the Bankruptcy Code, 11 U.S.C. § 362(b)(4) regarding actions involving exercise of police and regulatory power, the exception does not apply to this proceeding. The police and regulatory power exception to the automatic stay applicable in bankruptcy proceedings states as follows:

(b) The filing of a petition under section 301, 302, or 303 of this title ... does not operate as a stay—

...

(4) ... of the commencement or continuation of an action or proceeding by a governmental unit ... to enforce such governmental unit's ... police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power.

13. The plain text of Section 362(b)(4) reflects that it applies only where “(i) the action is brought by the government, and (ii) the action seeks to vindicate the public interest, as opposed to a specific individual’s or entity’s rights.”¹

14. Courts have held that the Section 362(b)(4) exception should be narrowly construed and apply to the enforcement of laws affecting health, welfare, morals, and safety, and should not permit continuation of governmental actions to protect pecuniary interest in property of the debtor or the estate.²

15. The Formal Complaint in this matter falls outside the police and regulatory power exception of Section 362(b)(4), as it: (i) was not initiated by a governmental agency and (ii) is not in furtherance of the public interest, but rather is to benefit the pecuniary interests of the Complainants.

16. More specifically, the Formal Complaint was filed by Lucy & Cassandra Scipio on October 5, 2020, and Complainants are asking the Commission to order a reduction in their bill. Formal Complaint at ¶ 5. The Commission did not initiate the Complaint and no other agencies or statutory advocates have intervened in this matter. The requested bill reduction is to benefit the pecuniary interests of the Complainant and is not in furtherance of the public interest. The Complainants also make claims regarding deceptive marketing, which could lead only to a civil penalty or impact on licensure. Formal Complaint at ¶ 5.

¹ *U.S. Int’l Trade Comm’n v. Jaffe*, 433 B.R. 538, 543 (E.D. Va. 2010); see also *In re Edison Mission Energy*, 502 B.R. 830, 837 (Bankr. N.D. Ill. 2013) and *E.E.O.C. v. McLean Trucking Co.*, 834 F.2d 398, 401-02 (4th Cir. 1987).

² Norton Bankruptcy Law and Practice § 43:19. Governmental, police, or regulatory power (Code § 362(b)(4)(William L. Norton III, 3 ed. rev. January 2022).

17. As Liberty Power is going out of business and the Bankruptcy Court approved the sale of its customer accounts, Liberty Power cannot issue any remedy in this matter. The Bankruptcy Court has sole jurisdiction over Liberty Power's estate, and any remedy that involves credits or payments from the estate must be approved by the Bankruptcy Court.

18. To the extent that the Commission would grant relief to the Complainant that involves something other than credits or payments from the Bankruptcy estate, it may be impossible for Liberty Power to comply with such an Order because it no longer has the employees and technical resources that may be necessary to perform certain actions with regard to billing and other customer services. While the Commission has the authority to suspend or revoke Liberty Power's license and impose a civil penalty,³ Liberty Power is going out of business as part of its bankruptcy proceeding making the pursuit of any civil penalty by the Commission impractical.

19. Based on the foregoing, Liberty Power respectfully requests that the Commission dismiss the formal complaint against Liberty Power in this matter with prejudice.

³ 52 Pa. Code § 54.42.

WHEREFORE, Liberty Power Holdings LLC respectfully requests that the Commission (a) dismiss the Complaint as against Liberty Power with prejudice; and, (b) grant any other relief deemed appropriate.

Respectfully submitted,

Sarah C. Stoner

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Date: February 4, 2022

Counsel for
Liberty Power Holdings LLC

Verification

I, Stephen Gibelli, am General Counsel for Liberty Power Corporation, and I hereby state that the facts set forth in the foregoing Motion to Dismiss are true and correct to the best of my knowledge, information and belief and that I expect Liberty Power Holdings LLC to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to sworn falsification to authorities).

Date: 2/4/2022

Stephen Gibelli

Stephen Gibelli, Esq.
General Counsel
Liberty Power Corporation