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Nicholas A. Stobbe

nstobbe@postschell.com  
717-612-6033 Direct  
717-731-1985 Direct Fax  
File #: 140074

March 1, 2022

***VIA ELECTRONIC FILING***

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

**Re: Jayme Gillette v. PPL Electric Utilities Corporation, et al.**  
**Docket No. F-2022-3030797**

Dear Secretary Chiavetta:

Attached are the Preliminary Objections filed on behalf of PPL Electric Utilities Corporation in connection with the above-referenced proceeding. Copies will be provided per the attached Certificate of Service.

Respectfully submitted,



Nicholas A. Stobbe

NAS/kl  
Attachment

cc: 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).

### VIA E-MAIL AND FIRST-CLASS MAIL

Jayne Gillette  
18 Andrew Drive  
Scott Township, PA 18433  
[JFG.POR@gmail.com](mailto:JFG.POR@gmail.com)

Leah Gibbons  
Director, Regulatory Affairs  
Green Mountain Energy Company  
3711 Market Street, Suite 1000  
Philadelphia, PA 19104  
[NERetailRegulatory@nrg.com](mailto:NERetailRegulatory@nrg.com)

Scott Birmingham  
Vice President, Marketing and Regulatory  
Frontier Utilities Northeast LLC  
5120 Woodway Drive, Suite 10015  
Houston, TX 77506  
[scott.birmingham@frontierutilities.com](mailto:scott.birmingham@frontierutilities.com)

Date: March 1, 2022



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Nicholas A. Stobbe

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jayne Gillette,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. F-2022-3030797
	:	
PPL Electric Utilities Corporation, and	:	
Frontier Utilities Northeast LLC	:	
	:	
Respondents.	:	

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**NOTICE TO PLEAD**

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

Kimberly A. Klock (ID # 89716)  
Michael J. Shafer (ID # 205681)  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101  
Phone: 610-774-2599  
Fax: 610-774-4102  
E-mail: [kklock@pplweb.com](mailto:kklock@pplweb.com)  
[mjshafer@pplweb.com](mailto:mjshafer@pplweb.com)



Devin T. Ryan (ID # 316602)  
Nicholas A. Stobbe (ID # 329583)  
Post & Schell, P.C.  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
Phone: 717-731-1970  
Fax: 717-731-1985  
E-mail: [dryan@postschell.com](mailto:dryan@postschell.com)  
[nstobbe@postschell.com](mailto:nstobbe@postschell.com)

Date: March 1, 2022

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jayme Gillette,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. F-2022-3030797
	:	
PPL Electric Utilities Corporation, and	:	
Frontier Utilities Northeast LLC	:	
	:	
Respondents.	:	

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**PRELIMINARY OBJECTIONS OF  
PPL ELECTRIC UTILITIES CORPORATION TO THE  
COMPLAINT OF JAYME GILLETTE**

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AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric”) and hereby files these Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Complaint filed by Jayme Gillette (“Complainant”) be dismissed in its entirety and with prejudice as against PPL Electric. 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 twenty-nine 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 February 9, 2022, PPL Electric was served with the above-captioned Complaint. The issues raised in the Complaint pertain solely to the rates charged for the competitive electric generation supply provided by the Complainant's electric generation suppliers ("EGSs") and a claim that the Complainant "didn't sign up with" his EGSs. (Complaint ¶ 4.) As relief, the Complainant requests reimbursement by the EGSs. (Complaint ¶ 5.) Therefore, the Complainant's requested relief is unrelated to PPL Electric.

3. PPL Electric herein files these Preliminary Objections to the Complaint. For the reasons explained below, PPL Electric respectfully requests that the Complaint be dismissed in its entirety pursuant to Section 5.101(a)(5) of the Commission's regulations, 52 Pa. Code § 5.101(a)(5), due to the nonjoinder of a necessary party. Additionally, PPL Electric respectfully requests that the Complaint be dismissed in its entirety and with prejudice as against PPL Electric for legal insufficiency pursuant to Section 5.101(a)(4) of the Commission's regulations, 52 Pa. Code § 5.101(a)(4).

## 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 OBJECTIONS**

#### **A. THE COMPLAINT FAILS TO JOIN A NECESSARY PARTY**

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

7. According to the Complaint, the Complainant was a shopping customer who received competitive electric generation supply from “3rd party suppliers” during the time period in question. (Complaint ¶¶ 4-5.)

8. The Complainant also alleges that he “did not sign up with” the EGSs who charged him for electric generation supply service over the two-year period at issue in the Complaint. (Complaint ¶ 4.)

9. During the two-year period prior to the Complaint’s filing, the Complainant received electric generation supply service from two separate EGSs.

10. Specifically, the Complainant received electric generation supply service from: (1) Green Mountain Energy Company (“Green Mountain”) from June 10, 2020, to August 5, 2020<sup>1</sup>; and (2) Frontier Utilities Northeast LLC (“Frontier”) from August 5, 2020, to September 23, 2021<sup>2</sup>.

11. The issues raised in the Complaint pertain solely to the rates charged for the competitive electric generation supply service provided by Green Mountain and Frontier as well as a claim that the Complainant “didn’t sign up with” Green Mountain or Frontier. (Complaint ¶¶ 4-5.)

12. As relief, the Complainant requests a “refund” from the “3rd party suppliers.” (Complaint ¶ 5.)

13. However, the Complainant failed to name Green Mountain, *i.e.*, one of those “3rd party suppliers,” as a respondent in the Complaint. (*See* Complaint ¶ 2.)

14. Under Pennsylvania law, “a necessary party is one whose presence, while not indispensable, is essential if the court is to resolve completely a controversy and to render

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<sup>1</sup> Green Mountain is a licensed EGS that is authorized to offer, render, furnish or supply electricity or electric generation services in the Commonwealth of Pennsylvania, including within PPL Electric’s service territory. *See License Application of Green Mountain Energy Company for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier of Retail Electric Power*, Docket No. A-2011-2229050 (Order entered June 10, 2011).

<sup>2</sup> Frontier is a licensed EGS that is authorized to offer, render, furnish or supply electricity or electric generation services in the Commonwealth of Pennsylvania, including within PPL Electric’s service territory. *See License Application of Frontier Utilities Northeast, LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier of Electricity*, Docket No. A-2013-2387060 (Order entered Jan. 9, 2014).

complete relief.” *Pa. Human Relations Comm’n v. Phila. Sch. Dist.*, 651 A.2d 177 (Pa. Cmwlth. 1993) (citation omitted).

15. Here, Green Mountain is a necessary party to this proceeding, given the Complainant’s allegations and requested relief.

16. The Complainant alleges that he did not select either of his “3rd party suppliers,” which includes Green Mountain, and that he should receive a refund from those EGSs. (Complaint ¶¶ 4-5.)

17. Therefore, the Commission’s determination in this case could affect Green Mountain because both Green Mountain and Frontier provided electric generation supply service to the Complainant during the two-year period relevant to the Complaint.

18. As such, without Green Mountain, the Commission cannot resolve the dispute or award relief concerning: (1) the Complainant’s enrollment with Green Mountain; and (2) Green Mountain’s charges for competitive electric generation supply service.

19. Based on the foregoing, the Complainant has failed to join a necessary party, *i.e.*, Green Mountain, in this proceeding. Therefore, the Complaint should be dismissed pursuant 52 Pa. Code § 5.101(a)(5).

**B. THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION AGAINST PPL ELECTRIC**

20. PPL Electric incorporates by reference Paragraphs 1 through 19 as if fully set forth herein.

21. The Complaint avers that the Complainant was a shopping customer who received competitive electric generation supply from “3rd party suppliers” during the time period in question. (Complaint ¶¶ 4-5.)

22. In the Complaint, the Complainant disputes the electric generation supply charges billed to the Complainant, asserting that “over two years [the Complainant] was charged a gouging extra \$300 between two bills from 3rd party suppliers [the Complainant] specifically did not sign up with.” (Complaint ¶ 5.)

23. The Complainant’s cause of action is against the EGSs, not PPL Electric.

24. PPL Electric has no authority over the terms and conditions of the contract between the Complainant and the Complainant’s EGSs, including the rates charged by Green Mountain and Frontier.

25. Nothing in the Complaint alleges that PPL Electric has violated any provision of the Public Utility Code, Commission’s regulations, Commission order, or PPL Electric’s tariff.

26. Further, in the prayer for relief, the Complaint requests a refund of the disputed charges. (Complaint ¶ 5.)

27. The Complainant does not request a refund of any electric distribution charges billed by PPL Electric.

28. Thus, the requested relief only concerns the Complainant’s “3rd party suppliers” (*i.e.*, Green Mountain and Frontier).

29. As such, the instant Complaint is akin to *Graziano Trucking, Inc. v. Direct Energy Services, LLC*, where PPL Electric’s Preliminary Objection to the Complaint was sustained because the “core of the Complaint center[ed] on alleged mis-billing/overbilling by Direct Energy” and, therefore, failed to state any cause of action against PPL Electric. *Graziano Trucking, Inc. v. Direct Energy Services, LLC*, Docket No. C-2015-2465723, pp. 1, 4 (Order Sustaining Preliminary Objection of PPL Electric Utilities Corporation dated July 8, 2015) (“*Graziano*”).

30. Based on the foregoing, the Complainant has failed to state a cause of action against or seek relief from PPL Electric. Therefore, the Complaint should be dismissed in its entirety and with prejudice as against PPL Electric pursuant 52 Pa. Code § 5.101(a)(4).

#### IV. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Complaint be dismissed in its entirety and with prejudice as against PPL Electric Utilities Corporation.

Respectfully submitted,



Kimberly A. Klock (ID # 89716)  
Michael J. Shafer (ID # 205681)  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18101  
Phone: 610-774-2599  
Fax: 610-774-4102  
E-mail: [kklock@pplweb.com](mailto:kklock@pplweb.com)  
[mjshafer@pplweb.com](mailto:mjshafer@pplweb.com)

Devin T. Ryan (ID # 316602)  
Nicholas A. Stobbe (ID # 329583)  
Post & Schell, P.C.  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
Phone: 717-731-1970  
Fax: 717-731-1985  
E-mail: [dryan@postschell.com](mailto:dryan@postschell.com)  
[nstobbe@postschell.com](mailto:nstobbe@postschell.com)

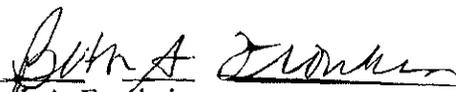
Date: March 1, 2022

Attorneys for PPL Electric Utilities Corporation

## VERIFICATION

I, BETH A. FRONHEISER being the Credit & Collections Manager at PPL Electric Utilities Corporation, 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 PPL Electric Utilities Corporation 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 unsworn falsification to authorities.

February 28, 2022

  
Beth A. Fronheiser