

---

Devin Ryan

dryan@postschell.com  
717-612-6052 Direct  
717-731-1985 Direct Fax  
File #: 140074

November 8, 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: Richard Minnick v. PPL Electric Utilities Corporation**  
**Docket No. F-2022-3036257**

Dear Secretary Chiavetta:

Attached please find the Preliminary Objections of PPL Electric Utilities Corporation in response to the Complaint of Richard Minnick in the above-referenced proceeding. Copies are being provided per the Certificate of Service.

Respectfully submitted,



Devin Ryan

DR/kl  
Attachment

cc: Certificate of Service

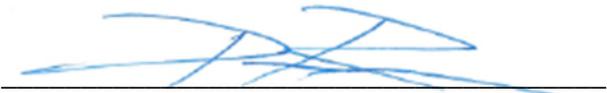
**CERTIFICATE OF SERVICE**

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 ONLY**

Richard Minnick  
40 Hashagen Drive  
Drums, PA 18222  
[Rickmin13@gmail.com](mailto:Rickmin13@gmail.com)

Date: November 8, 2022



---

Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Richard Minnick,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. F-2022-3036257
	:	
PPL Electric Utilities Corporation	:	
	:	
Respondent.	:	
	:	

---

**NOTICE TO PLEAD**

---

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)  
Megan Rulli (ID # 331981)  
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)  
[mrulli@postschell.com](mailto:mrulli@postschell.com)

Date: November 8, 2022

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Richard Minnick,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. F-2022-3036257
	:	
PPL Electric Utilities Corporation	:	
	:	
Respondent.	:	
	:	

---

**PRELIMINARY OBJECTIONS OF  
PPL ELECTRIC UTILITIES CORPORATION TO THE  
COMPLAINT OF RICHARD MINNICK**

---

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 Richard Minnick (“Complainant”) be dismissed in its entirety 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 October 19, 2022, PPL Electric was served with the above-captioned Complaint. In the Complaint, the Complainant alleges that: (1) his electric generation supplier (“EGS”) terminated its contract with Complainant before its expiration date; and (2) the EGS failed to provide sufficient notice of its intent to terminate that contract. (Complaint ¶ 4.)

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 and with prejudice as against PPL Electric 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, *i.e.*, the EGS at issue. Additionally, for the reasons explained below, 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). Finally, if the Commission does not dismiss the Complaint in its entirety, PPL Electric respectfully requests that the portion of the Complaint pertaining to a request for monetary compensation be dismissed pursuant to Section 5.101(a)(2) of the Commission’s regulations because a request for damages constitutes impertinent matter. 52 Pa. Code § 5.101(a)(2).

## **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.

6. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. See *Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. See *Stilp*, at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998).

### **III. PRELIMINARY OBJECTIONS**

#### **A. PRELIMINARY OBJECTION NO. 1 – THE COMPLAINANT HAS FAILED TO JOIN A NECESSARY PARTY**

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

8. The Complaint should be dismissed because the Complainant has failed to join a necessary party.

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

10. According to the Complaint and following further investigation by PPL Electric, the Complainant was a shopping customer who received competitive electric generation supply service from an EGS, Planet Energy (Pennsylvania) Corp. d/b/a RITERATE ENERGY (“Planet Energy”), during the time period in question. (*See* Complaint ¶¶ 2, 4.)

11. The Complainant named Planet Energy as respondent to the Complaint. The Complainant did not name PPL Electric as respondent to the Complaint. (*See* Complaint ¶ 2.)

12. The Complainant alleges that Planet Energy “did not honor [his] contract” to supply electricity and “terminated [his] agreement without notification.” (Complaint ¶ 4.) Further, the Complainant alleges that he was not aware of the termination of his contract by Planet Energy until after the fact, when PPL Electric notified him of the change in his electric service. (Complaint ¶ 4.)

13. The Complaint centers around two allegations: (1) a claim that Planet Energy terminated its contract with the Complainant before the contract’s expiration date; and (2) a claim that Planet Energy failed to provide sufficient notice of its intent to terminate that contract. (Complaint ¶ 4.)

14. As relief, the Complainant requests that Planet Energy honor his original contract, make the Complainant “whole,” and provide monetary “compensation for time and effort.” (Complaint ¶ 5.)

15. Here, Planet Energy is a necessary party to this proceeding, given that the Complainant’s allegations and requested relief pertain directly to Planet Energy.

16. The Commission’s determination in this case could affect Planet Energy because Planet Energy provided electric generation supply service to the Complainant during the period relevant to the Complaint, and the allegations in the Complaint are against Planet Energy.

17. As such, without Planet Energy, the Commission cannot resolve the dispute or award relief concerning the Complainant’s contract with Planet Energy.

18. Based on the foregoing, the Complainant has failed to join a necessary party, *i.e.*, Planet Energy, in this proceeding. Therefore, the Complaint should be dismissed in its entirety and with prejudice as against PPL Electric, pursuant 52 Pa. Code § 5.101(a)(5).

**B. PRELIMINARY OBJECTION NO. 2 – THE COMPLAINT IS LEGALLY INSUFFICIENT AND SHOULD BE DISMISSED WITH PREJUDICE AS AGAINST PPL ELECTRIC BECAUSE THE COMPLAINT FAILS TO ALLEGE ANY VIOLATIONS BY PPL ELECTRIC**

19. PPL Electric incorporates by reference Paragraphs 1 through 18 as if fully set forth herein.

20. The Complaint is legally insufficient and should be dismissed with prejudice as against PPL Electric because the Complaint fails to allege any violations by PPL Electric.

21. As a matter of law, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa PUC 196, 1990 Pa. PUC LEXIS 19, at \*8 (Order entered Feb. 8, 1990) (citing *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976)).

22. When “the Complaint fails to state a claim against the named respondent upon which the Commission may grant relief,” the Complaint is “insufficient as to substance,” and the “Respondent is entitled to judgment as a matter of law.” *Stabley v. Phila. Gas Works*, Docket No. F-2010-2186368, 2010 Pa. PUC LEXIS 231, at \*6 (July 29, 2010) (Initial Decision), *adopted without modification*, (Order entered Oct. 1, 2010); *see Coggins v. UGI Cent. Penn Gas Inc.*, Docket No. C-2012-2312796, 2012 Pa. PUC LEXIS 1497 (Sept. 10, 2012) (Initial Decision), *adopted without modification*, (Order entered Nov. 9, 2012).

23. The Complainant named Planet Energy as the Respondent in the Complaint. The Complainant did not name PPL Electric as a Respondent in the Complaint. (*See* Complaint ¶ 2.)

24. After reasonable investigation, PPL Electric has determined the Complainant was a shopping customer who received competitive electric generation supply service from an EGS, *i.e.*, Planet Energy, during the time period in question. (*See* Complaint ¶¶ 2, 4; PPL Electric Answer to Complaint ¶ 4.)

25. The Complaint raises two claims: (1) Planet Energy terminated its contract with the Complainant before the contract’s expiration date; and (2) Planet Energy failed to provide sufficient notice of its intent to terminate its contract with the Complainant. (Complaint ¶ 4.)

26. PPL Electric has no knowledge of or authority over the terms and conditions of the contract between the Complainant and Planet Energy, and PPL Electric is not a party to that contract.

27. The Complaint does not allege that PPL Electric violated the Public Utility Code, the Commission’s regulations, a Commission order, or the Company’s Commission-approved tariff.

28. Therefore, the Complainant has failed to state a claim against PPL Electric upon which the Commission may grant relief. *See Rok*, 527 A.2d at 214; *Stilp*, 910 A.2d at 781.

29. Accordingly, the Complaint should be dismissed in its entirety and with prejudice as against PPL Electric.

**C. PRELIMINARY OBJECTION NO. 3 – THE COMPLAINANT’S REQUEST FOR DAMAGES SHOULD BE DISMISSED BECAUSE THE COMMISSION HAS NO POWER TO AWARD DAMAGES**

30. PPL Electric incorporates by reference Paragraphs 19 through 29 as if fully set forth herein.

31. If not dismissed in its entirety with prejudice as against PPL Electric, the portion of the Complaint requesting damages should be dismissed because the Commission cannot award damages.

32. It is well-established that the Commission does not have authority to order a public utility to pay damages, as requested by the Complainant. *See DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595, 596-97 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371, 375 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791, 794-95 (Pa. 1977).

33. In the Complaint, the Complainant requests that he be “made whole” and be awarded “compensation for time and effort on [his] part.” (Complaint ¶ 5.)

34. Here, the Complainant’s request for damages is impertinent matter “in the sense that it is irrelevant to [the] cause of action” because the Commission lacks authority to award damages. *See Stoner v. PPL Elec. Utils. Corp.*, Docket No. C-2013-2385588, p. 3 (Nov. 14, 2013 (order sustaining preliminary objections). Indeed, requests for damages are regularly stricken from complaints as being impertinent matter. *See, e.g., id.* at pp. 3, 5; *Powell v. Verizon Pa., Inc.*, Docket No C-2011-226876, 2011 Pa. PUC LEXIS 652, at \*8-9, 16-17 (Dec. 21, 2011), *adopted by Comm’n*, 2012 PA. PUC LEXIS 374 (Order Entered Mar. 1, 2012); *J.E. Culbertson Co. v. Pa.*

*Elec. Co.*, Docket No. C-2010-2204947, 2011 Pa. PUC LEXIS 781, at \*8-9, 12 (Feb. 4, 2011),  
*adopted by Comm'n*, Docket No. C-2010-2204947 (Order Entered Apr. 8, 2011).

35. Therefore, consistent with longstanding Commission precedent, the Complainant's request for damages is impertinent matter and should be stricken from his Complaint pursuant to 52 Pa. Code § 5.101(a)(2).

**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 pursuant to 52 Pa. Code § 5.101(a)(4) and (5) or, alternatively, that the Complainant's request for damages be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(2).

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)  
Megan E. Rulli (ID # 331981)  
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)  
[mrulli@postschell.com](mailto:mrulli@postschell.com)

Date: November 8, 2022

Attorneys for PPL Electric Utilities Corporation