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Nicholas A. Stobbe

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File #: 140074

January 10, 2023

***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: Lashawn Lucke v. PPL Electric Utilities Corporation**  
**Docket No. C-2022-3036581**

Dear Secretary Chiavetta:

Attached for filing is the Motion for Summary Judgment on behalf of PPL Electric Utilities Corporation in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully,



Nicholas A. Stobbe

NAS/kl  
Attachment

cc: The Honorable Dennis J. Buckley (*w/attachment; via email*)  
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 FIRST-CLASS MAIL AND E-MAIL**

Lashawn Lucke  
237 Market Street  
Moscow, PA 18444  
Luckeamy1029@gmail.com

Date: January 10, 2023



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Nicholas A. Stobbe

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lashawn Lucke,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2022-3036581
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

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**NOTICE TO PLEAD**

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YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.102(b), YOU MAY ANSWER THE ENCLOSED MOTION WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. YOUR ANSWER SHOULD 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.



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Date: January 10, 2023

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lashawn Lucke,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2022-3036581
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

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**MOTION OF PPL ELECTRIC UTILITIES CORPORATION FOR  
SUMMARY JUDGMENT**

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**TO ADMINISTRATIVE LAW JUDGE DENNIS J. BUCKLEY:**

AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric” or the “Company”), by and through its attorneys, Post & Schell, P.C., and files this Motion for Summary Judgment pursuant to Sections 5.102 and 5.103 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code §§ 5.102-5.103, and Rules 1035.1 through 1035.5 of the Pennsylvania Rules of Civil Procedure, Pa. R.C.P. Nos. 1035.1-1035.5, and respectfully requests that the above-captioned Complaint filed by Lashawn Lucke (“Complainant”) be summarily dismissed in its entirety and with prejudice.

As explained herein, the Complaint should be summarily dismissed because the Commission cannot grant the Complainant’s requested relief. Through the Complaint, the Complainant requests a payment agreement with the Company. However, the Complainant is no longer a customer of PPL Electric. Therefore, PPL Electric is unable to offer, and the Commission cannot require, a new payment agreement between PPL Electric and the Complainant because the

Complainant is not a customer of the Company, nor has the Complainant applied for service with the Company since his former account was closed.

For these reasons, and as explained in more detail below, PPL Electric respectfully requests that Administrative Law Judge Dennis J. Buckley (the “ALJ”) grant this Motion for Summary Judgment and summarily dismiss the instant Complaint in its entirety and with prejudice. In support thereof, PPL Electric states as follows:

**I. BACKGROUND AND PROCEDURAL HISTORY**

1. PPL Electric is a “public utility,” an “electric distribution company” and a “default service provider” as defined in Sections 102 and 2803 of the Public Utility Code, 66 Pa. C.S. §§ 102, 2803.

2. By Secretarial Letter dated November 7, 2022, PPL Electric was served with the above-captioned Complaint. In the Complaint, the Complainant argues that the Company has threatened to shut off his electric service and requests a payment agreement to pay off his arrearage balance. (Complaint ¶¶ 4-5).

3. On November 28, 2022, PPL Electric filed an Answer to the above-captioned Complaint. In its Answer, the Company admitted that it had threatened to terminate service at the Complainant’s former service address, however, denied that the Complainant was entitled to a new payment agreement as the Complainant had defaulted on prior payment agreements with the Company and was no longer a customer of PPL Electric.

4. On December 5, 2022, the Commission issued an Initial Call-in Telephone Hearing Notice, assigning Administrative Law Judge Dennis J. Buckley (the “ALJ”) to the above-captioned proceeding and scheduling the Evidentiary Hearing for January 31, 2023, at 10:00 a.m.

5. On December 14, 2022, the ALJ issued a Prehearing Conference Order confirming,

among other things, that the Evidentiary Hearing in this proceeding is scheduled for January 31, 2023.

## **II. STANDARD FOR SUMMARY JUDGMENT**

6. Section 5.102 of the Commission's regulations provides the Commission's standard of review for a request for summary judgment:

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

(2) *Standard for grant or denial in part.* The presiding officer may grant a partial summary judgment if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law on one or more but not all outstanding issues.

52 Pa. Code § 5.102(d)(1)-(2).

7. Similarly, Rule 1035.2 of the Pennsylvania Rules of Civil Procedure sets forth the following:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa. R.C.P. No. 1035.2.

8. The Commission is granted discretion to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing. *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993).

### III. ARGUMENT

#### A. **PPL ELECTRIC IS ENTITLED TO JUDGMENT AS A MATTER OF LAW BECAUSE THE COMMISSION CANNOT GRANT THE COMPLAINANT'S REQUESTED RELIEF**

9. PPL Electric incorporates by reference Paragraphs 1 through 8 as if fully set forth herein.

10. In the Formal Complaint, the Complainant has requested that PPL Electric provide him with a payment agreement. (Complaint ¶¶ 4-5).

11. As explained in the Company's Answer, on November 4, 2022, the Company closed the Complainant's electric service account after a new connection was issued for the same address under a different customer's name. (Answer ¶ 4).

12. As of the date of this writing, the Complainant does not have an active account with PPL Electric.

13. Section 1405(a) of the Public Utility Code states as follows:

(a) General rule. — The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. [T]he commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

66 Pa. C.S. § 1405(a).

14. Section 1403 of the Public Utility Code defines "Customer" as:

A natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested. The term includes a person who, within 30 days after service termination or discontinuance of service, seeks to have service reconnected at the same location or transferred to another location within the service territory of the public utility.

66 Pa. C.S. § 1403.

15. Section 1403 of the Public Utility Code defines “Applicant” as:

A natural person not currently receiving service who applies for residential service provided by a public utility or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested. The term does not include a person who, within 30 days after service termination or discontinuance of service, seeks to have service reconnected at the same location or transferred to another location within the service territory of the public utility.

66 Pa. C.S. § 1403.

16. The Complainant has not been a “Customer” of PPL Electric since November 4, 2022.

17. Additionally, the Complainant has not applied for residential electric utility service from PPL Electric since his account was closed on November 4, 2022, and, therefore, is not currently considered an “Applicant.”

18. It is well-established that non-customers are not entitled to payment agreements with a public utility. *See Reynolds v. Phila. Gas Works*, 2012 Pa. PUC LEXIS 512, at \*13, Docket No. C-2010-2195218 (Initial Decision issued Mar. 1, 2012) (“[Complainant’s] complaint must be dismissed as failing to meet the burden of proof in this matter because she is not entitled to have a payment agreement as a non-customer.”), *made final without further Commission action* (Final Order entered May 1, 2012); *see also Kutz v. UGI Utils., Inc.*, 2011 Pa. PUC LEXIS 29, at \*10, Docket No. C-2010-2214107 (Initial Decision issued Sept. 6, 2011) (“If the Complainant is not a

‘customer,’ the Commission is not authorized to establish a payment arrangement between her and the Respondent.”), *adopted without modification* (Order entered Nov. 10, 2011); *Ramsey v. PECO Energy Co.*, 2010 Pa. PUC LEXIS 2533, Docket No. C-2009-2138088 (Initial Decision issued May 28, 2010), *adopted without modification* (Order entered Dec. 2, 2011).

19. Here, no genuine issue of material fact exists as to whether the Complainant is a “customer” or “applicant” of PPL Electric under the Public Utility Code. He is neither a customer nor an applicant.

20. Accordingly, under Section 1405 of the Public Utility Code, the Commission is not authorized to establish a payment agreement between PPL Electric and the Complainant.

21. Thus, as a payment agreement is the Complainant’s only requested relief in the Complaint, the entirety of the Complaint is rendered moot and should be dismissed with prejudice.

**IV. CONCLUSION**

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Honorable Administrative Law Judge Dennis J. Buckley enter an Order granting the Motion for Summary Judgment in favor of PPL Electric Utilities Corporation and dismissing the Complaint with prejudice.

Respectfully submitted,



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Date: January 10, 2023

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.

January 10, 2023

  
Beth A. Fronheiser