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March 2, 2023

**Via Electronic Filing**

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

Re: Francene Tearpock-Martin v. Frontier Utilities Northeast, LLC  
Docket No. C-2023-3038237

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Preliminary Objections of Frontier Utilities Northeast, LLC with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*Karen O. Moury*  
Karen O. Moury

KOM/lww

cc: Cert. of Service w/enc.

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of Frontier Northeast Utilities, LLC's Preliminary Objections upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

**Via Email Only**

Francene Tearpock-Martin  
56 South Main Street  
Shickshinny, PA 18655  
[ftm@epix.net](mailto:ftm@epix.net)

Hon. Charles E. Rainey, Jr.  
Chief Administrative Law Judge  
PA Public Utility Commission  
400 North Street  
Harrisburg, PA 17120  
[bobbwillia@pa.gov](mailto:bobbwillia@pa.gov)

March 2, 2023

*Karen O. Moury*  
Karen O. Moury, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Francene Tearpock-Martin,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2023-3038237
	:	
Frontier Utilities Northeast, LLC	:	
Respondent	:	

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**NOTICE TO PLEAD**

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TO: Francene Tearpock-Martin  
56 South Main Street  
Shickshinny, PA 18655  
ftm@epix.net  
(electronic mail only)

You are hereby notified that an Answer to the enclosed **Preliminary Objections** of Frontier Utilities Northeast, LLC must be filed within 10 days of the date of service.

All pleadings, such as an Answer to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Frontier Utilities Northeast, LLC, LLC, and where applicable, the Administrative Law Judge presiding over the proceeding.

File with:

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

With an electronic copy to:

Karen O. Moury, Esquire  
Sarah C. Stoner, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
kmoury@eckertseamans.com  
sstoner@eckertseamans.com

Date: March 2, 2023

/s/ Karen O. Moury

Sarah C. Stoner, Esquire

Attorneys for Frontier Utilities Northeast, LLC

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Francene Tearpock-Martin	:	
Complainant	:	
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v.	:	Docket No. C-2023-3038237
	:	
Frontier Utilities Northeast, LLC	:	
Respondent	:	

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**PRELIMINARY OBJECTIONS**

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Pursuant to 52 Pa. Code § 5.101, Frontier Utilities Northeast, LLC (“Frontier Utilities” or “Respondent”) submits these Preliminary Objections to the Complaint of Francene Tearpock-Martin (“Complainant”), which was served on Frontier Utilities by the Pennsylvania Public Utility Commission (“Commission” or “PUC”) on February 13, 2023. Frontier Utilities is licensed as an electric generation supplier (“EGS”) authorized by the Commission to provide electric generation supply services to the public in service territories throughout the Commonwealth of Pennsylvania at Utility Code No. 1216053. The Commission regulates Frontier Communications as a telecommunications provider at Utility Code No. 311250.

By these Preliminary Objections, Frontier Utilities respectfully requests dismissal of the Complaint on the grounds that the Complaint fails to allege that Frontier Utilities has provided any EGS services to the Complainant or engaged in any wrongdoing or unlawful action as an EGS. Rather, the Complaint’s dispute is based on allegations concerning practices of a regulated telecommunications provider, Frontier Communications of Pennsylvania, Inc. (“Frontier Communications”). In further support hereof, Frontier Utilities avers as follows.

## A. Applicable Legal Standards

1. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections.<sup>1</sup> The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Id.*

2. Under Section 5.101(a) of the Commission's regulations, preliminary objections must specifically state the legal and factual grounds relied upon and be limited to the following:

(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; and

(7) Standing of a party to participate in the proceeding.

3. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts.<sup>2</sup> However, the

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<sup>1</sup> 52 Pa. Code § 5.101(a)(1)-(7). *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

<sup>2</sup> *County of Allegheny v. Cmwlth. of Pa.*, 490 A.2d 402 (Pa. 1985).

Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.<sup>3</sup>

4 In deciding the preliminary objections, the Commission must determine whether, based on the well-pleaded factual averments of the party, recovery or relief is possible.<sup>4</sup>

5. Frontier Utilities submits these preliminary objections pursuant to 52 Pa. Code § 5.101(a)(4), based on the legal insufficiency of the Complaint as to its EGS operations. As the Complainant does not allege to have received electric generation services from Frontier Utilities and makes no allegations of any violations of the Commission’s regulations, the Public Utility Code or a Commission Order by Frontier Utilities in providing EGS services, the Complaint must be dismissed as to Frontier Utilities.

**B. Dismissal Based on Legal Insufficiency of Pleading, 52 Pa. Code § 5.101(a)(4)**

6. Section 5.101(a)(4) authorizes dismissal of a complaint when it is legally insufficient. 52 P. Code § 5.101(a)(4).

7. In order to be legally sufficient, a complaint must set forth “an act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has the jurisdiction to administer, or of any regulation or order of the Commission.”<sup>5</sup>

8. The Complaint alleges no violation by Frontier Utilities of the Public Utility Code (“Code”),<sup>6</sup> a Commission regulation or a Commission order. The Complaint further alleges no facts that would support a finding that Frontier Utilities has violated the Code, a regulation or an

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<sup>3</sup> *Stanton-Negley Drug Co. v. Dep’t of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007).

<sup>4</sup> *Department of Auditor General, et al. v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwlth. 1996).

<sup>5</sup> 66 Pa. C.S. § 701 (emphasis supplied).

<sup>6</sup> 66 Pa. C.S. §§ 101 *et seq.*

order. Moreover, the allegations contain no averments relating to the provision of EGS service to the Complainant by Frontier Utilities.

9. Indeed, the Complaint's allegations and relief sought are targeted exclusively at the conduct of Frontier Communications and UGI Utilities, Inc., over which Frontier Utilities has no responsibility or control. For instance, Paragraph 4 of the Complaint alleges damages resulting to property from running fiber optic wires on poles. Paragraph 5 of the Complaint sets forth additional details relating to these practices and specifically references Frontier Communications and UGI.

10. Even when all factual averments set forth in the Complaint are accepted as true, they support only the claim that the Complaint involves electric service. However, they do not show that Frontier Utilities violated the Code, a Commission regulation or Commission order. Therefore, the Complaint should be dismissed against Frontier Utilities without a hearing, which would needlessly consume valuable resources of Frontier Utilities and the Commission.

WHEREFORE, based upon the foregoing, Frontier Utilities respectfully requests that this Commission: (a) grant the Preliminary Objections and dismiss the Complaint in its entirety; (b) deny the relief requested by Complainant; and (c) grant any other relief to Frontier Utilities is deemed to be reasonable and appropriate.

Respectfully submitted,

*/s/ Karen O. Moury*

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Karen O. Moury, Esquire (I.D. No. 36879)

Sarah C. Stoner, Esquire (I.D. No. 313793)

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Date: March 2, 2023

Attorneys for Frontier Utilities Northeast, LLC

## Verification

I, Trish Tylman, am the Manager of Regulatory and Legislative Affairs for NextEra Energy, the parent company of Frontier Utilities Northeast, LLC. I hereby verify that I am authorized to and do make this Verification for NextEra Energy Services Pennsylvania, LLC, and that the facts set forth in the foregoing **Preliminary Objections** are true and correct to the best of my knowledge, information and belief and that I expect 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).

Dated: March 2, 2023

/s/ Trish Tylman  
Trish Tylman  
Manager of Regulatory and Legislative Affairs  
NextEra Energy