
Nicholas A. Stobbe

nstobbe@postschell.com
717-612-6033 Direct
717-731-1985 Direct Fax
File #: 203783

January 31, 2024

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: Andrew Seifert v. PPL Electric Utilities Corporation
Docket No. C-2023-3044487

Dear Secretary Chiavetta:

As directed by the January 30, 2024 Order Denying Respondent's Preliminary Objection and Joining Clean Sky Energy as Indispensable Party ("Order"), enclosed is a copy of the Order on behalf of PPL Electric Utilities Corporation ("PPL Electric"). The enclosed Order is marked "Appendix A."

Copies are being provided per the Certificate of Service, consistent with the directive of Ordering Paragraph No. 4 of the Order.

Respectfully,



Nicholas A. Stobbe

NAS/dmc
Attachments

cc: The Honorable Arlene Ashton (*via email; w/attachment*)
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 EMAIL AND FIRST-CLASS MAIL

Andrew Seifert
301 S Main Street
Forest City, PA 18421
Seifertandrew97@gmail.com

Andy Beauchamp
Chief Regulatory and Compliance Officer
Titan Gas, LLC, d/b/a CleanSky Energy
3355 W Alabama, Ste 500
Houston, TX 77098
Email: abeauchamp@cleanskyenergy.com

Date: January 31, 2024



Nicholas A. Stobbe

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andrew Seifert	:	
	:	
v.	:	C-2023-3044487
	:	
PPL Electric Utilities Corporation	:	

**ORDER DENYING RESPONDENT’S PRELIMINARY OBJECTION AND
JOINING CLEAN SKY ENERGY AS INDISPENSABLE PARTY**

On November 29, 2023, Andrew Seifert (Complainant or Mr. Seifert) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (Respondent or PPL). In the Complaint, Mr. Seifert alleged that his electric service was switched to CleanSky Energy without his consent and that PPL did not properly assist him in addressing the electric supply overcharges.

On December 19, 2023, PPL filed an Answer and New Matter denying all material allegations. PPL avers that:

Complainant received electric generation supply service from CleanSky¹ between July 27, 2021, and June 28, 2023. PPL Electric received an enrollment notice from CleanSky on July 16, 2021, which required the Company to switch the Complainant from PPL Electric’s default service to CleanSky’s competitive generation service. On July 22, 2021, PPL Electric sent the Complainant a confirmation letter verifying his selection of CleanSky. On June 23, 2023, PPL Electric received a notification from CleanSky advising PPL Electric that the Complainant cancelled his EGS agreement with CleanSky. As required, subsequently, PPL Electric sent the Complainant a letter informing him that it removed CleanSky as his

¹ In New Matter, PPL indicates “CleanSky [Energy] 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.” In support of its position, PPL cites *Application of Titan Gas LLC dba Titan Gas and Power for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier of Retail Electric Power*, Docket No. A-2016-2530633 (Order entered May 19, 2016). Titan Gas LLC was granted permission to change the name on its license to provide electric generation services, as a supplier, to Titan Gas, LLC d/b/a/ Titan Gas and Power d/b/a CleanSky Energy d/b/a Clean Sky Energy. *Id.* (Secretarial Letter issued May 28, 2020). It is referred to herein as Clean Sky.

EGS on June 28, 2023. . . Since June 28, 2023, the Complainant has been a default service customer of PPL Electric.

In addition, PPL contends that the Complainant's concerns with the prices or rates charged by CleanSky should be directed to and addressed by CleanSky. The Answer was accompanied by a Notice to Plead informing the Complainant that he could file a reply to the New Matter within 20 days after the date of service, i.e. January 8, 2024.

On December 19, 2023, PPL filed Preliminary Objection to the Complaint, requesting that the Complaint be dismissed in its entirety pursuant to Commission regulation 5.101(a)(5) due to nonjoinder of a necessary party, Clean Sky. Preliminary Objection ¶ 3; 52 Pa. Code § 5.101(a)(5).

On January 23, 2024, the Commission issued a Motion Judge Assignment Notice assigning me as the presiding officer in this proceeding. The Preliminary Objection was accompanied by a Notice to Plead informing the Complainant that he could file a reply to the Preliminary Objection within 10 days after the date of service, i.e. December 29, 2023. However, December 29, 2023, was a Sunday, therefore, the reply was due by Monday, December 30, 2023.

Commission records reflect no filing by the Complainant in response to the Answer or the Preliminary Objection.

For the reasons set forth below, the Preliminary Objection is denied and CleanSky is joined as an indispensable party.

DISCUSSION

Preliminary Objection

Commission regulations permit the filing of preliminary objections. 52 Pa.Code §§ 5.101(a)(1)-(7). Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

Commission regulations provide:

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically 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.
- (7) Standing of a party to participate in the proceeding.

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Dep't*

of Auditor General, et al v. SERS, et al., 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Bd.*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

A preliminary objection can be granted only if recovery or relief is not possible after all of the Complainant's averments in the complaint are viewed as true for purposes of deciding the preliminary objection, using only those facts specifically admitted.

In the present case, the Complainant checked boxes on the Complaint Form indicating that he was being threatened with termination of service, incorrect charges on his bill and reliability, safety, or quality problems with his service.

In response, the Respondent denied any wrongdoing related to the electrical service provided to the Complainant's residence. The Respondent acknowledged that it had issued termination notice and bills to the Complainant but contends that its actions were proper. PPL also denied that the Complainant is experiencing reliability, safety, or quality problem with his service from PPL Electric.

As noted above, the Respondent seeks dismissal of the Complaint in its entirety because the Complaint fails to join a necessary party. Summarizing its position, Respondent argues that without CleanSky, the Commission cannot resolve the dispute or award relief concerning: (1) the Complainant's switch from PPL Electric's default service to CleanSky; and (2) charges incurred by the Complainant while receiving competitive electric generation service from CleanSky. Preliminary Objection ¶18.

Initially, I note the Complaint Form, which was completed by the Complainant by hand reflects certain inconsistencies and ambiguities in the Complaint.² For example, the Complainant wrote “PPL Electric Utilities” in response to item 2 “Name of utility or company.”³ However, the Complainant’s responses to items 4 and 7 relating to requested relief and prior utility contact, directly mention or indirectly reference CleanSky. While this ambiguity lends support to Respondent’s position that CleanSky is a necessary party, it also underscores the need for a hearing to allow the self-represented Complainant to further explain his position and the factual basis for the Complaint. See *Carlock v. The United Telephone Company of Pennsylvania*, *Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F 00163617 (Order entered July 14, 1993). It would be precipitous to conclude “with certainty” that the law will permit no recovery without such a hearing. See *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).

In addition, certain language in the Answer and Preliminary Objection undermines that Respondent’s argument that the law will permit no recovery. Indeed, in both documents, the Respondent concedes that it may have some potential liability for at least some of the allegations and claims made in the Complaint.

For example, the Respondent contends that “*certain* allegations in the Complaint are unrelated to electric distribution or default generation supply service provided by PPL Electric” [and that] *a significant portion* of the Complaint centers around the rates charged to the Complainant by the Complainant’s prior electric generation supplier . . . CleanSky. Answer ¶ 3 (emphasis added). Similarly, in the Preliminary Objection, the Respondent argues that “[*m*]ost of the issues raised in the Complaint pertain to the rates charged for the competitive electric

² Commission records do not reflect an entry of appearance on behalf of the Complainant. Thus, the Complainant appears to be proceeding in this matter *pro se*.

³ The instruction for item 2 reads “Provide the full name of the utility or company about which you are complaining. The name of your utility company is on your bill.” There instruction refers to utility or company, in the singular, there is no indication that more than one service provider may be listed.

generation supply service provided by CleanSky as well as a claim that the Complainant did not consent to receiving electric generation supply service from CleanSky.” Preliminary Objection ¶ 11(emphasis added). Respondent’s use of the words “certain allegations,” “a significant portion,” and “most of the issues” reflect and acknowledge the possibility of its liability for some of those issues. The amount of any such liability is also in dispute, as the Respondent disagrees with the amount at issue, contending that the Complainant overstates the amount in the Complaint. Answer ¶ 5.

In sum, Respondent’s concession that it may have some liability based on the allegations and claims in the Complaint and its dispute as to the amount of the claims, preclude the conclusion that the law will permit no recovery from the Respondent. Therefore, the Preliminary Objection will be denied and the Complaint will not be dismissed.⁴

Indispensable Party

While the Preliminary Objection will be denied, I find merit in Respondent’s argument that CleanSky is a necessary party to this proceeding. As noted above, Respondent argues that “without CleanSky, the Commission cannot resolve the dispute or award relief concerning: (1) the Complainant’s switch from PPL Electric’s default service to CleanSky; and (2) charges incurred by the Complainant while receiving competitive electric generation service from CleanSky.” Preliminary Objection ¶ 18. See also, Preliminary Objection ¶¶ 2, 7-17.

Based on the current record, I conclude that CleanSky is an indispensable party to this action.

In Pennsylvania, “an indispensable party is one whose rights are so directly connected with and affected by litigation that he must be a party of record to protect such rights, and his absence renders any order or decree of court null and void for want of jurisdiction.” *Columbia Gas Transmission Corp. v. Diamond Fuel Co.*, 464 Pa. 377, 379 (Pa. 1975). Failure to join an indispensable party goes to the court’s jurisdiction and, if not raised by the parties, should

⁴

The joinder of CleanSky as a party to the proceeding also renders the Preliminary Objection moot.

be raised *sua sponte*. *Posel v. Redevelopment Authority of Philadelphia*, 71 Pa. Commw. 115, 121 (1983). The Pennsylvania Supreme Court has established that “the basic inquiry in determining whether a party is indispensable concerns whether justice can be done in the absence of a third party... In order to make the analysis, however, one must refer to the nature of the claim and the relief sought.” *Cry, Inc. v. Mill Service, Inc.*, 536 Pa. 462, 486-489 (Pa. 1994). Adopting the criteria articulated in *Mechanicsburg Area School District v. Kline*, 494 Pa. 476, 481 (Pa. 1981), the court’s test for determining indispensability involved “at least” the following considerations:

1. Do absent parties have a right or interest related to the claim?
2. If so, what is the nature of that right or interest?
3. Is that right or interest essential to the merits of the issue?
4. Can justice be afforded without violating the due process rights of absent parties?

With regard to the first factor, the allegations raised in the Complaint implicate CleanSky’s services and practices (enrollment, billing, cancellation of services, etc.). Therefore, CleanSky has a right or interests to the claim and must be allowed to present a defense to the allegations raised by the Complainant.

In addition, CleanSky has a stake in the outcome because of the potential for violations to be found regarding PPL’s services and practices.

Although the Complainant did not consistently name CleanSky as the company providing service on the Complaint Form, he clearly named CleanSky in the Complaint and, as the energy supplier, CleanSky’s interest is essential to the merits of the case.

Finally, given that CleanSky’s services and practices are directly involved in this matter, the failure to join CleanSky would violate the due process rights of the Complainant, CleanSky and the Respondent.

The application of the test for determining indispensability as set forth by the Pennsylvania Supreme Court supports finding that CleanSky should be joined as indispensable party in this matter. Its role and participation in this case are essential.

Therefore, CleanSky will be joined as an indispensable party to this proceeding. It will be given twenty (20) days from the date of this order to file an answer to the Complaint. A prehearing order will be issued to all parties.

In the interim, the parties are reminded that Commission policy promotes settlements. 52 Pa. Code §5.231(a). The parties are encouraged to commence settlement discussions amongst themselves for this proceeding as early as possible. Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. If the parties reach an agreement on all issues, a formal hearing will not be necessary. The parties are also reminded that the presiding officer may participate in settlement discussions upon agreement of all parties. 52 Pa.Code § 5.223(c); *see also*, 52 Pa.Code § 5.231(c).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by PPL Electric Utilities Corporation is denied.
2. That Titan Gas, LLC d/b/a/ Titan Gas and Power d/b/a CleanSky Energy d/b/a Clean Sky Energy is formally joined to this proceeding at Docket Number C-2023-3044487 as an indispensable party.

3. That Titan Gas, LLC d/b/a/ Titan Gas and Power d/b/a CleanSky Energy d/b/a Clean Sky Energy file an answer to the Complaint filed in this matter within twenty (20) days of the date of this order.

4. That PPL Electric Utilities Corporation will provide copies of this Order to Titan Gas, LLC d/b/a/ Titan Gas and Power d/b/a CleanSky Energy d/b/a Clean Sky Energy.

5. That the parties are encouraged to pursue settlement discussions.

Date: January 30, 2024

_____/s/
Arlene Ashton
Administrative Law Judge