

EUGENE P. TEMPESTA, ESQ.

600 Challedon Ct., Cranberry Twp. PA 16066

attorneytempesta@msn.com

412-901-7487

April 11, 2024

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

RE: NCP Group LLC v. Inspire Energy Holdings, LLC; docket # C-2024-3045836

Dear Secretary Chiavetta:

Enclosed for electronic filing, please find NCP Group LLC's Responses to Inspire Energy Holdings, LLC's Preliminary Objections to the Complaint in the above referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ Eugene P. Tempesta

Eugene P. Tempesta, Esq.

PA Atty ID#82046

Ph: 412-901-7487

Email: attorneytempesta@msn.com

600 Challedon Ct.

Cranberry Twp PA 16066

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NCP Group LLC,	:	
Complainant	:	
	:	Docket No. C-2024-3045836
	:	
v.	:	
	:	
Inspire Energy Holdings, LLC	:	
Respondent	:	

**NPC GROUP, LLC’S RESPONSE TO PRELIMINARY OBJECTION
FILED BY INSPIRE ENERGY HOLDINGS, LLC AS TO NPC GROUP, LLC’S COMPLAINT**

NPC Group, LLC, by and through its counsel, Eugene P. Tempesta, Esquire, hereby submits this response to the preliminary objections submitted by Inspire Energy Holdings, LLC, as follows:

Procedural History:

1. The Complainant is NPC Group, LLC (“NPC”); its Complaint was filed on Jan. 28, 2024.
2. The Respondent is Inspire Energy Holdings, LLC (“Inspire”); it filed Preliminary Objections.
3. Inspire is an electric generation supplier.
4. NCP is a customer of Inspire.
5. Factual Background:

NCP entered into a 12 month agreement with Inspire in December 2021. In December 2022, this contract renewed for an additional 12 month term, which provided electricity at a fixed rate of \$104.99 per month for the period ending December 2023.

In June 2023, Inspire, sent NCP a notice, which informed NCP of a contract renewal, which was out of cycle per the contract between NCP and Inspire, and the notice did not indicate any noticeable change to the contract.

Starting in October 2023, Inspire billed/invoiced NCP through FirstEnergy on a per kilowatt hour basis rather than the contractually obligated fix rate of \$104.99 per month; this led to a billing of an unreasonably high \$0.128 per kilowatt hour.

This rate change was not permitted under the agreement as we were in a contract for a specified period of time that had not expired. Further, this conduct by Inspire was disallowed as Inspire failed to properly notify NCP of Inspire's intent to change the rates upon contract expiration.

NCP requested billing corrections to reflect the contractual rate. Further, NCP alleges intentional inappropriate practices.

NCP never received any information from Inspire or from anyone regarding what the Inspire rate change would be. It was not until after the rate change was in effect for multiple weeks, that NCP became aware of the new rate(s). Accordingly, NCP never received any appropriate Notice, despite numerous requests of Inspire from NCP to obtain a copy of the proper Notice that showed the rate change.

Response to Preliminary Objection – Lack of Jurisdiction

6. Pursuant to the very caselaw cited by Inspire Energy Holdings, LLC (“Inspire”), the Public Utilities Commission (“PUC”) does indeed have jurisdiction and authority to determine whether a registered utility violated PUC regulations by charging a customer in contradiction to a written disclosure. *Blue Pilot Energy, LLC. v. Pennsylvania Public Utilities Commission*, 241 A.3d 1254, 1261 (Pa. Cmwlth. 2020) (stating "While the PUC has no obvious authority to vindicate private contractual rights in this area, it has unquestionable authority to ensure that Blue Pilot meets its obligation to comply with PUC regulations.")
7. Further, the PUC Complaint Form asserts that the PUC has jurisdiction and authority to determine whether a registered utility engaged in violations such as overcharging customers and the PUC can order billing refunds. Please see PUC Complaint Form, Section 5, Page 3
8. While Inspire may wish to categorize the present proceeding as a contractual dispute, this matter involves the change of rates by an EGS to a consumer. Pursuant to 52 Pa. Code §54.1 et seq., Inspire is required to provide certain information regarding charges and billing to all customers, regardless of whether the customer is residential and small business customers or large commercial or industrial customers.
9. Since providing information regarding rates for electricity consumed is subject to the regulations of the PUC, as evidenced above, the PUC clearly has jurisdiction over this formal complaint.

10. The fact that NPC may also have a related contractual dispute does not negate the PUC's jurisdiction.
11. As noted in *Blue Pilot, infra*, the fact that the PUC regulations and private contractual rights may be related does not diminish the PUC's authority to enforce its own regulations.
12. Inspire further asserts that this formal complaint should be dismissed as NPC was not represented by an attorney at the time the complaint was lodged.
13. Contents of formal complaints to the PUC are governed by 52 Pa. Code § 5.22, which does not state an attorney is required to be identified if the complainant is a corporation.
14. As the PUC has jurisdiction over this matter, the objections contained in paragraphs 9 through 31 of Inspire's Preliminary Objections should be overruled.

Response to Preliminary Objection – Lack of Factual and Legal Specificity

15. In paragraph 32 through 41 of Inspire's Preliminary Objections, Inspire seeks dismissal of the formal complaint for failing to allege specificity regarding facts and law to support the complaint.
16. Pursuant to 52 Pa. Code § 5.101(e), preliminary objections alleging insufficient specificity may be addressed by an amended pleading.
17. Further, an answer to a preliminary objection alleging insufficient specificity is not required until further directed by the presiding officer or the Commission. 52 Pa. Code § 5.101(e)(1).
18. Accordingly, the remedy for any alleged lack of specificity clearly is not dismissal of the entire complaint; rather, the remedy is to file an amended formal complaint if the PUC deems it necessary.
19. Accordingly, Inspire's Preliminary Objections at paragraphs 32 through 41 should be overruled.

Conclusion

Because, the PUC has appropriate authority and jurisdiction to grant relief, including correcting matters and granting refunds, the Lack of Jurisdiction Preliminary Objection should be overruled.

To the contrary of the Respondent's Preliminary Objections, Complainant has stated allegations with specificity. Further, the Respondent, Inspire knew or should have known through the contract entered into by the parties herein, that Inspire was inappropriately and excessively charging/billing/invoicing the Complainant herein. Finally, if there is insufficient specificity, the Commission, not the Respondent, has the authority to require a more specific allegation. Accordingly, the Preliminary Objection of Legal Insufficiency and Insufficient Specificity should be overruled.

Finally, although not required, the Complainant is represented by an Attorney; so, the Preliminary Objection of failure to be adequately represented should be overruled.

Respectfully Submitted,

/s/ Eugene P. Tempesta

Eugene P. Tempesta, Esq.

PA Atty ID# 82046

600 Challedon Ct.

Cranberry Twp Pa 16066

Ph: 412-901-7487

Email: attorneytempesta@msn.com

Counsel for NCP Group, LLC

Date: April 11, 2024

Verification

I, Daniel Romanowski, am the Chief Operating Officer for NCP Group, LLC, and I hereby state that the facts set forth in the foregoing Responses to the Preliminary Objections are true and correct to the best of my knowledge, information and belief and that I expect NCP Group to show the same in any hearing held on this matter. I understand that the statements herein are made subject to penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

April 11, 2024

By: /s/ ***Daniel Romanowski***

Daniel Romanowski, COO
NCP Group LLC

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the attached Responses upon the Persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email Only

Honorable Charles E. Rainey, Jr.
Chief Administrative Law Judge
PA Public Utility Commission
PO Box 3265
Harrisburg PA, 17105-3265
bobbwillia@pa.gov

Deanne O'Dell, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market t., 8th Floor
Harrisburg, PA 17101
dodell@eckertseamans.com
Counsel for Inspire Energy Holdings, LLC

Bryce R. Beard, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market t., 8th Floor
Harrisburg, PA 17101
bbeard@eckertseamans.com
Counsel for Inspire Energy Holdings, LLC

Dated: April 11, 2024

/s/ Eugene P. Tempesta

Eugene P. Tempesta, Esq.
PA Atty ID#82046
Ph: 412-901-7487
Email: attorneytempesta@msn.com