

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Laurie and Anthony Conway	:	
	:	
v.	:	F-2024-3049426
	:	
PPL Electric Utilities Corporation	:	

ORDER DENYING PRELIMINARY OBJECTIONS

HISTORY OF THE PROCEEDING

On May 14, 2024, Laurie and Anthony Conway (Complainants) filed a Formal Complaint (Complaint) against PPL Electric Utilities Corporation (PPL) in which they allege that PPL uses deceptive billing practices and intimidates customers by issuing conflicting bills. By way of relief, Complainants seek to have their bills recalculated and for PPL to stop sending deceptive e-mails for billing.

On June 26, 2024, PPL filed an Answer with New Matter and Preliminary Objections (POs), properly accompanied by a Notice to Plead. In its Answer, PPL denied the material allegations in the Complaint. In its New Matter, PPL alleged that Complainants were enrolled with NextEra Energy Services Pennsylvania, LLC (NextEra) as their electricity supplier from January 7, 2022, through February 9, 2024, and that certain allegations in the Complaint are unrelated to the electric distribution or default generation supply service provided by PPL.

In its POs, PPL argues that the Complaint should be dismissed in its entirety on the basis that Complainants failed to join Nextera as an indispensable party. It argues that many of the issues raised in the Complaint pertain to the rates charged by NextEra for electric generation supply service. It further argues that the Complaint includes a claim that Complainants did not consent to or were coerced into receiving electric generation supply

service from NextEra. PPL argues that NextEra is an indispensable party to this proceeding and that Complainant's failure to join the company requires dismissal of the Complaint in its entirety.

The deadline for submitting responses to PPL's New Matter and POs has passed with no responses having been filed by Complainants. On July 31, 2024, a Motion Judge Assignment Notice was issued which assigned this proceeding to me. The POs are ripe for disposition.

DISCUSSION

Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-000935435 (July 18, 1994). When considering the preliminary objection, the Commission must determine "whether the law says with certainty, based on well-pleaded factual averments . . . that no recovery or relief is possible. *P. J. S. v. Pa. State Ethics Commission*, 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)." *Dept. of Auditor General, et al. v. State Employees' Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003).

The rules regarding preliminary objections are as follows:

§ 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.

* * *

52 Pa. Code § 5.101(a).

In reviewing preliminary objections, only the facts in the pleadings filed by the nonmoving party can be presumed to be true in order to determine whether recovery is possible. *Pennsylvania State Lodge, Fraternal Order of Police v. Dept. of Conservation & Natural Resources*, 909 A2d 413 (Pa.Cmwlt. 2006) aff'd, 492 Pa. 304, 924 A.2d 1203 (2007).

The reviewing authority will accept as true the well-pled averments set forth in the Complaint, and all inferences reasonably deducible therefrom. "In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and, where any doubt exists as to whether the preliminary objections should be sustained, the doubt must be resolved in favor of overruling the preliminary objections. *Corman, et al. v. The National Collegiate Athletic Association*, 74 A.2d 1149 (Pa.Cmwlt. 2013), 2013 Pa. Commw. LEXIS 353.

PPL cites 52 Pa.Code § 5.101(a)(5), failure to join an indispensable party, as the basis for its POs. In their Complaint, the Conway's allege as follows:

PPL uses very deceptive billing practices by coercing customers into selecting alternative providers unknowingly. They further intimidate customers by emailing bills for a lower amount due, then a few days later emails a higher amount due which is very alarming.

I would like to have my bills recalculated using PPL standard rates instead of the outside supplier rates for my usage during the time I was unaware of my energy supplier.

I would also like for PPL to stop sending deceptive emails for billing that is causing me alarm and stress.

In its POs, PPL states, as noted above, that the Complainants received competitive electric generation supply service from NextEra between January 7, 2022, and February 9, 2024. PPL then argues, “[m]any of the issues raised in the Complaint pertain to the rates charged for the competitive electric generation supply service provided by NextEra as well as a claim that the Complainants did not consent to or were coerced into receiving electric generation supply service from NextEra.” PPL POs, ¶12. It further states, “[m]uch of the Complaint hinges on the alleged rates charged by NextEra to the Complainants during their enrollment with NextEra between January 7, 2022, and February 9, 2024.” PPL POs, ¶17. PPL argues, “. . . without NextEra, the Commission cannot resolve the dispute or award relief concerning the charges incurred by the Complainants while receiving competitive electric generation service from NextEra.” PPL POs, ¶19.

I disagree with PPL that resolution of this case will be determined by the rates charged by NextEra. The Complainants allege (1) that PPL uses deceptive billing practices by coercing customers into selecting alternative electricity suppliers, and (2) that PPL intimidates customers by e-mailing bills for a lower amount then subsequently e-mailing bills for a higher amount. Nowhere in the Complaint do the Complainants challenge the rates charged by NextEra or allege that NextEra’s charges are improper or illegal. I believe the allegations against PPL raised by the Complainants may be addressed and resolved without input from or the participation of NextEra. I emphasize here, however, that the issues in this proceeding will be limited to these two allegations against PPL. If, in fact, it is the Complainants’ intention to challenge as somehow improper or illegal the rates charged by NextEra, they will need to either amend the Complaint filed in this proceeding or file a new Formal Complaint directly against NextEra wherein they identify NextEra as a Respondent and assert specific allegations against it.

Finally, I note that the Complainants request in their Complaint that their bills be recalculated to reflect the standard rates charged by PPL, rather than the rates charged by the outside supplier, during the relevant time period. To the extent, if any, that this relief is

ultimately granted by the Commission, the calculation may be made by applying PPL's rates to the Complainants' usage during the relevant time period. Again, this calculation can be made without the need for NextEra's participation.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by PPL Electric Utilities Corporation in response to the Formal Complaint filed by Laurie and Anthony Conway at Docket No. F-2024-3049426, are denied.

2. That if Complainants intend to amend their Formal Complaint in this proceeding to raise specific allegations against NextEra Energy Services Pennsylvania, LLC, they must do so within 20 days of the date of this order.

Dated: August 6, 2024

_____/s/
Steven K. Haas
Administrative Law Judge

**F-2024-3049426 - LAURIE AND ANTHONY CONWAY v. PPL ELECTRIC UTILITIES
CORP**

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