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File #: 2507/140074

February 23, 2012

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: Ronald Fedora v. PPL Electric Utilities Corporation
Docket No. C-2011-2272188

Dear Secretary Chiavetta:

Enclosed please find the Motion of PPL Electric Utilities Corporation for Partial Judgment on the Pleadings for the above-referenced proceeding. Copies will be provided as indicated on the certificate of service.

Respectfully Submitted,

Christopher T. Wright

CTW/skr

Enclosures

cc: Certificate of Service
Honorable Ember Jandebour

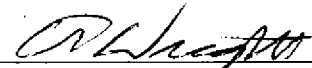
CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have 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

Ronald Fedora
480 Laurel Drive
Summit Hill, PA 18250

Date: February 23, 2012



Christopher T. Wright


**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ronald Fedora,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2011-2272188
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE §§ 5.102(b) AND 5.103(c), 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: February 23, 2012

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ronald Fedora,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2011-2272188
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

**MOTION OF PPL ELECTRIC UTILITIES CORPORATION
FOR PARTIAL JUDGMENT ON THE PLEADINGS**

TO ADMINISTRATIVE LAW JUDGE
EMBER S. JANDEBEUR:

AND NOW comes PPL Electric Utilities Corporation (“PPL Electric”) and files this Motion for Partial Judgment on the Pleadings pursuant to Section 5.102 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.102, and requests that certain claims in the above-captioned Complaint be summarily dismissed for lack of subject matter jurisdiction. In support thereof, PPL Electric states as follow:

I. INTRODUCTION AND BACKGROUND

1. PPL Electric furnishes electric service to approximately 1.4 million customers throughout its certificated service territory, which includes all or portions of twenty-nine counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania. PPL Electric is a “public utility” and an “electric distribution company” as

defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 102, 2803.

2. PPL Electric owns approximately 5,000 miles of transmission lines operating at 69 kV (kilovolts) or higher, approximately 375 substations with a capacity of 10 MVA (megavolt amperes) or more, and approximately 43,000 miles of distribution lines operating at less than 69 kV.

3. Pursuant to Chapters 15 and 28 of the Public Utility Code, PPL Electric has a statutory obligation to provide safe, efficient, and reasonable service and facilities, and to make all repairs or improvements in or to such service or facilities as necessary for the accommodation, convenience, and safety to its customers. PPL Electric is further required to provide reasonably continuous service without unreasonable interruptions or delay. PPL Electric is subject to penalties if it does meet these statutory obligations.

4. Complainant Ronald Fedora ("Complainant") is a residential customer of PPL Electric with a service address of 480 Laurel Drive, Summit Hill, Carbon County, Pennsylvania 18250.

5. On October 31, 2011, Complainant filed the above-captioned Complaint with the Commission.

6. PPL Electric was served with the Complaint by a Secretarial Letter dated November 10, 2011.

7. The Complaint alleges claims of trespass and safety on private land. Specifically, the Complaint avers that PPL Electric's distribution poles and guy wires allegedly are located on Complainant's private property, and that Osrose Utilities Services, Inc., acting on behalf of PPL

Electric, treated and maintained the distribution poles allegedly located on Complainant's private property. (See Complaint ¶¶ 4-5.)

8. The Complaint requests that the distribution poles be removed from his property and that PPL Electric pay actual damages to "satisfy [Complainant] financially for all trespassing, etc. as to make [Complainant] whole." (See Complaint ¶¶ 4-5.)

9. On November 30, 2011, PPL Electric filed an Answer to the Complaint asserting, among other things, that the Commission lacks subject matter jurisdiction over the trespass claims raised and relief sought in the Complaint.

10. By Prehearing Order dated January 23, 2012, the Honorable Administrative Law Judge Ember S. Jandebeur ("ALJ") scheduled an initial hearing in this matter for April 2, 2012.

11. On January 27, 2012, representatives from PPL Electric met with Complainant in an effort to address and resolve the issues asserted in the Complaint. The parties have been unable to fully resolve this matter at this time.

12. For the reasons set forth below, the Commission is without subject matter jurisdiction over the trespass claims and relief sought in the Complaint. Therefore, PPL Electric is herein requesting that the trespass claims and request for monetary damages be dismissed. PPL Electric is not requesting to dismiss the allegations in the Complaint related to safety or any other claims that are properly within the subject matter of the Commission.

13. Contemporaneously herewith, PPL Electric filed a Motion to Stay the Hearing Date pending the disposition of this Motion for Partial Judgment on the Pleadings. The full and final disposition of this Motion will dictate the issues, claims, and evidence to be addressed at the hearing.

II. STANDARD FOR JUDGMENT ON THE PLEADINGS

14. Section 5.102 of the Commission's regulations provides the Commission's standard of review for a request for judgment on the pleadings:

(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).

15. 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 Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993).

16. The Complaint pending before Your Honor raises certain issues and seeks relief that, as a matter of well-settled law, is beyond the Commission's subject matter jurisdiction. A hearing on such issues and claims for relief would be a fruitless exercise. For these reasons, as more fully explained below, the trespass claim and request for monetary damages in the above-captioned Complaint should be dismissed.

III. ARGUMENT

17. PPL Electric incorporates by reference Paragraphs 1 through 16, *supra*, as though set forth fully herein.

18. The distribution poles in question were installed within the public right-of-way in or about 1965. Upon information and belief, Complainant acquired his interest in the subject property on or about 1989, approximately 34 years after the distribution poles were originally installed.

19. The Complainant alleges that PPL Electric's distribution poles and guy wires are located on private land that is not subject to an easement agreement, right-of-way agreement, or occupancy permit. The Complainant therefore request that the distribution facilities be removed.

20. These specific allegations in the Complaint relate to questions involving an alleged trespass and whether the utility facilities are located pursuant to a valid easement or right-of-way.

21. The Commission only has those duties, powers, and responsibilities as expressly, or by necessary implication, given to it by the General Assembly. *Jennifer Tomb v. Pennsylvania Electric Company*, Docket No. C-2008-2036378, 2008 Pa. PUC LEXIS 994 (December 8, 2008) (citing *Rogoff v. The Buncher Company*, 395 Pa. 477, 151 A.2d 83 (1959)). The Commission must act within, and cannot exceed, its jurisdiction. Further, jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 427 Pa. 81, 235 A.2d 602 (1967).

22. The Commission clearly has stated that it is without subject matter jurisdiction to adjudicate questions involving trespass and whether utility facilities are located pursuant to valid easement or right-of-way agreements. *See, e.g., Boczar v. PPL Electric Utilities Corp.*, Docket No. C-20016332 (February 10, 2003); *Samuel Messina v Bell Atlantic-Pennsylvania, Inc.*,

Docket No. C-00968225, 1998 Pa. PUC LEXIS 190 (September 23, 1998); *Lou Amati/Amati's Service Station v. West Penn Power Company and Bell Atlantic - Pennsylvania, Inc.*, Docket No. C-00945842 (October 25, 1995) (the Commission ruled that questions involving trespass and whether utility facilities are located pursuant to valid easements are exclusively within the jurisdiction of the Courts of Common Pleas). Indeed, the Pennsylvania Supreme Court held that the Commission does not have the necessary jurisdiction to determine the scope and validity of an easement. *Fairview Water v. Pa. P.U.C.*, 509 Pa. 384, 502 A.2d 162 (1985)

23. The allegations in the Complaint related to whether the distribution poles are located pursuant to valid easement or right-of-way agreements is a matter that is exclusively within the jurisdiction of the Courts of Common Pleas. Consequently, Complainant's trespass claim must be dismissed for lack of Commission jurisdiction.

24. The Complaint also requests monetary damages. However, the Commission does not have the authority to order a public utility to pay monetary damages. See *Diane M. Hamilton and Eva J. Hamilton v. Verizon Pa., Inc.*, Docket No. C-2009-2135715, 2010 Pa. PUC LEXIS 234 at *8 (July 28, 2010) (Finalized Initial Decision) (citing *DeFrancesco v. Western Pennsylvania Water Co.*, 499 Pa. 374, 453 A.2d 595 (1982); *Elkin v. Bell of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980); *Feingold v. Bell of Pa.*, 477 Pa. 1, 383 A.2d 791 (1977)). Consequently, Complainant's claim for monetary damages must be dismissed.

25. For these reasons, Complainant's trespass claim and request for monetary damages should be dismissed.

IV. CONCLUSION

26. PPL Electric incorporates by reference Paragraphs 1 through 25, *supra*, as though set forth fully herein.

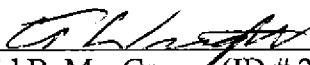
27. The scope of the Commission's jurisdiction over matters raised in the Complaint is well-settled. The Commission lacks subject matter jurisdiction over questions involving trespass, whether utility facilities are located pursuant to valid easement or right-of-way agreements, and whether Complainant is entitled to monetary damages. A hearing on Complainant's trespass claim and request for monetary damages would be a fruitless exercise.

28. For these reasons, Complainant's trespass claim and request for monetary damages should be dismissed. All other claims that are properly within the subject matter of the Commission, including allegations related to safety, should continue to be litigated as appropriate and necessary.

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Honorable Administrative Law Judge Ember S. Jandebeur enter an order dismissing the trespass claim and request for monetary damages in the above-captioned Complaint.

Respectfully submitted,

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