



17 North Second Street  
12th Floor  
Harrisburg, PA 17101-1601  
717-731-1970 Main  
717-731-1985 Fax  
www.postschell.com

Jessica R. Rogers

jrogers@postschell.com  
717-612-6018 Direct  
717-731-1985 Fax  
File #: 2507/140074

May 21, 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

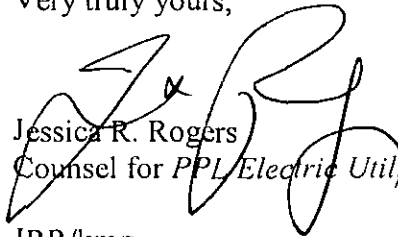
**RE: Megan Mohn v. PPL Electric Utilities Corporation  
Docket No. C-2012-2301470**

**PRELIMINARY OBJECTION**

Dear Secretary Chiavetta:

Enclosed is the Preliminary Objection of PPL Electric Utilities Corporation in the above-referenced proceeding. As indicated by the certificate of service, a copy has been provided to Ms. Mohn in the manner indicated.

Very truly yours,

  
Jessica R. Rogers  
Counsel for PPL Electric Utilities Corporation

JRR/kmg  
Enclosures  
cc: Certificate of Service

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

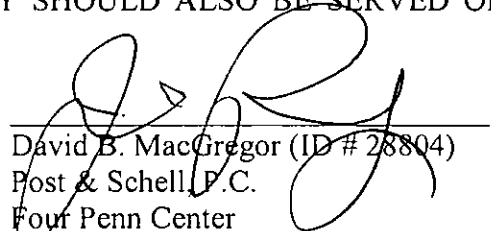
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Megan Mohn, :  
 :  
Complainant, :  
 :  
v. : Docket No. C-2012-2301470  
 :  
PPL Electric Utilities Corporation, :  
 :  
Respondent. :

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.

Paul E. Russell (ID # 21643)  
Associate General Counsel  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18106  
Phone: 610-774-4254  
Fax: 215-587-1444  
E-mail: perussell@pplweb.com

  
David B. MacGregor (ID # 28804)  
Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2808  
Phone: 215-587-1197  
Fax: 610-774-6726  
E-mail: dmacgregor@postschell.com

Of Counsel:

Post & Schell, P.C.

John H. Isom (ID # 16569)  
Jessica R. Rogers (ID # 309842)  
Post & Schell, P.C.  
17 North Second Street  
12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
Phone: 717-731-1970  
Fax: 717-731-1985  
E-mail: jisom@postschell.com  
jrogers@postschell.com

Date: May 21, 2012

Attorneys for PPL Electric Utilities Corporation



(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 reasonably necessary for the accommodation, convenience, and safety of its customers.

4. Complainant Megan Mohn (“Complainant”) is a residential customer of PPL Electric with a service address of 356 Sand Hill Road, Conestoga, Lancaster County, Pennsylvania 17516.

5. On April 30, 2012, Complainant filed the above-captioned Complaint with the Commission.

6. The Complaint alleges property damage and other claims associated with the cutting of timber on a property owned in fee by PPL Electric which adjoins the Complainant’s property. Specifically, the Complainant avers that the timber, which has been left primarily on the property owned in fee by PPL Electric, encumbers the Complainant’s use and enjoyment of her own property, and creates an unsafe condition. (*See* Complaint ¶ 4).

7. The Complainant requested as her only relief the removal of the cut timber. (*See* Complaint p. 7).

8. On May 21, 2012, PPL Electric filed an Answer and New Matter to the Complaint, admitting in part and denying in part the factual basis of the Complainant’s allegations.

9. For the reasons set forth below, the Commission is without subject matter jurisdiction over the property claims set forth in the Complaint. Therefore, PPL Electric requests that the Complaint be dismissed, because it is not within the Commission's jurisdiction.

## **II. PRELIMINARY OBJECTION**

10. Complainant's claim is not within the jurisdiction of the Commission. Complainant's stated claims arise from a property dispute with PPL Electric, which is within the exclusive jurisdiction of the Courts of Common Pleas. Therefore, the Commission lacks jurisdiction over the issues identified by the Complainant in her Complaint, and the Complaint must be dismissed.

## **III. STANDARD OF REVIEW**

11. Pursuant to the Commission's regulations, preliminary objections in response to a Complaint may be filed on several grounds, including:

- (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.

52 Pa. Code § 52.101(a).

12. In ruling on preliminary objections, all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom must be accepted. *Stilp v. Cmwlth.*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) ("*Stilp*"), (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 Why New Mountain Vantage GP, LLC And Others Acting in Concert with It Should Not Be Required to Apply for a Certificate of Public Convenience Approving the Acquisition of Control of Nat'l Fuel Gas Dist. Corp.*, Docket No. P-00072343 (Dec. 26, 2007). Conclusions of law, unwarranted factual inferences, argumentative allegations and expressions of opinion, however, need not be accepted as true. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007). Preliminary objections should be sustained unless it appears with certainty that the law would permit the relief requested under the facts asserted. *Stilp*, at 781.

#### IV. PRELIMINARY OBJECTION

13. PPL Electric incorporates by reference Paragraphs 1 through 12 as if fully set forth herein.

14. The specific allegations in the Complaint do not relate to questions of the safety of the facilities used by PPL Electric to provide electric service or a dispute over the provision of utility service. The specific allegations are focused exclusively on averments that PPL Electric acted beyond the scope of its property rights and that the Complainant's property rights have been violated as a result of PPL Electric's actions.

15. 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 Co.*, Docket No. C-2008-2036378, 2008 Pa. PUC LEXIS 994 (Dec. 8, 2008) (citing *Rogoff v. The Buncher Co.*, 395 Pa. 477, 151 A.2d 83 (1959)). The Commission must act within, and cannot exceed, its jurisdiction. The mere fact that a party to an action is a regulated utility does not automatically confer subject matter jurisdiction upon the Commission. *DeFrancesco v. Western Pennsylvania Water Co.*, 499 Pa. 374, 453 A.2d 595 (1982).

16. The Commission has determined that it is not the proper forum for resolving property rights controversies. *Henry and Julie Dengler v. Metropolitan Edison Co.*, Docket No. C-2009-2112197 (Oct. 16, 2009); *Guy and Virginia Mauro v. Pennsylvania Electric Co.*, Docket No. C-2009-2114087 (July 15, 2010). Rather, such controversies are a matter for a court of general jurisdiction. *Anne E. Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (July 3, 2003); *Fiorillo v. PECO Energy Co.*, Docket No. C-00971088 (Sept. 15, 1999).

17. The only allegations contained in the Complaint relate to property rights. These are matters that are exclusively within the jurisdiction of the Courts of Common Pleas. Consequently, Complainant's claim must be dismissed for lack of Commission jurisdiction.

#### V. CONCLUSION

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

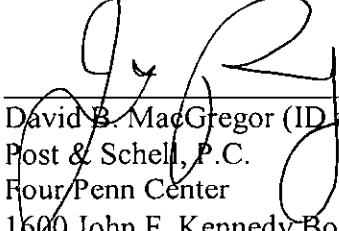
19. The scope of the Commission's jurisdiction over matters raised in the Complaint is well-settled. The Commission lacks subject matter jurisdiction over questions involving claims associated with private property rights.

20. Accordingly, the Commission should enter an order, pursuant to 52 Pa. Code § 5.101(a), dismissing the above-captioned Complaint for lack of subject matter jurisdiction.

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the above-captioned Complaint be dismissed in its entirety.

Respectfully submitted,

Paul E. Russell (ID # 21643)  
Associate General Counsel  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18106  
Phone: 610-774-4254  
Fax: 215-587-1444  
E-mail: perussell@pplweb.com

  
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David B. MacGregor (ID # 28804)  
Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2808  
Phone: 215-587-1197  
Fax: 610-774-6726  
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Phone: 717-731-1970  
Fax: 717-731-1985  
E-mail: jisom@postschell.com  
jrogers@postschell.com

Date: May 21, 2012

Attorneys for PPL Electric Utilities Corporation

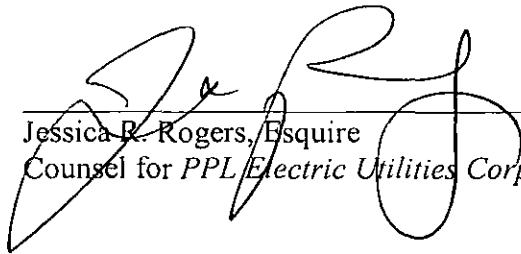
**CERTIFICATE OF SERVICE**

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 REGULAR MAIL**

Megan Mohn  
356 Sand Hill Road  
Conestoga, PA 17516

DATED: May 21, 2012



\_\_\_\_\_  
Jessica R. Rogers, Esquire  
Counsel for *PPL Electric Utilities Corporation*

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