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File #: 140074

November 27, 2013

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: Jeffrey and Diana Smith v. PPL Electric Utilities Corporation
Docket No. C-2013-2390683

Dear Secretary Chiavetta:

Enclosed please find the Preliminary Objections of PPL Electric Utilities Corporation to the Complaint of Jeffrey and Diana Smith in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Jessica R. Rogers

JRR/skr
Enclosure

cc: Certificate of Service

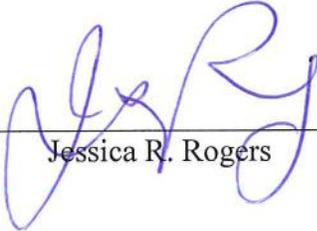
**CERTIFICATE OF SERVICE
(Docket No. C-2013-2390683)**

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 E-MAIL AND FIRST CLASS MAIL

Jeffrey and Diana Smith
1660 Upper Ridge Road
Pennsburg, PA 18073

Date: November 27, 2013



Jessica R. Rogers

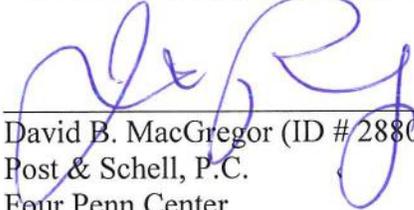
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeffrey and Diana Smith,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2013-2390683
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.61, YOU MAY ANSWER THE ENCLOSED PRELIMINARY OBJECTION 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
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Phone: 610-774-4254
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Of Counsel:

Post & Schell, P.C.

Jessica R. Rogers (ID # 309842)
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17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
Phone: 717-731-1970
Fax: 717-731-1985
E-mail: jrogers@postschell.com

Date: November 27, 2013

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeffrey and Diana Smith,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2013-2390683
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

PRELIMINARY OBJECTION OF PPL ELECTRIC UTILITIES CORPORATION

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”), by and through its attorneys, hereby files this Preliminary Objection, pursuant to the Regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Commission dismiss, in its entirety, the above-captioned Complaint.

In support thereof, PPL Electric states as follows:

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

4. Complainants Jeffrey and Diana Smith (“Complainants”) are customers residing at the property located at 1660 Upper Ridge Road, Pennsburg, PA 18073.

5. PPL Electric holds and maintains a right-of-way, pursuant to valid right-of-way and easement agreements, upon a portion of Complainants’ property. The right-of-way contains a 69 kV transmission line which is operated by PPL Electric and provides service to approximately 5,100 customers in Bucks and Montgomery Counties.

6. On November 7, 2013, Complainants filed the above-captioned Complaint with the Commission.

7. The Complaint alleges trespass, property damage, and other claims associated with the valid and irrevocable right-of-way and easement agreements by and between PPL Electric and Complainants’ predecessors in interest. The Complainants aver that PPL Electric has attempted to extend the property rights associated with the right-of-way, trespassed and caused other damage to their property. (*See* Complaint ¶ 4).

8. The Complainants request compensatory damages and what would effectively be injunctive relief. (*See* Complaint ¶ 5).

9. On November 27, 2013, PPL Electric filed an Answer and New Matter to the Complaint, admitting in part and denying in part the factual basis of the Complainants' allegations.

10. For the reasons set forth below, the Commission is without subject matter jurisdiction over the property and trespass claims set forth in the Complaint. The Commission also lacks authority to grant compensatory damages. Therefore, PPL Electric requests that the Complaint be dismissed.

II. PRELIMINARY OBJECTION

11. Complainants' claims should be dismissed. First, they are not within the jurisdiction of the Commission. Complainants' stated claims concern property rights and arise from the interpretation of right-of-way and easement agreements with PPL Electric, which are within the exclusive jurisdiction of the Courts of Common Pleas. Second, the Commission lacks the authority to grant compensatory damages. Thus, the Complaint should be dismissed because the Commission lacks jurisdiction over the issues identified by the Complainants in their Complaint and lacks authority to grant the requested relief.

III. STANDARD OF REVIEW

12. 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 § 5.101(a).

13. PPL Electric's preliminary objections are filed pursuant to 52 Pa. Code § 5.101(a)(1), because the Complainant has alleged issues that are outside the scope of the Commission's jurisdiction, and pursuant to 52 Pa. Code § 5.101(a)(4), because the Complainant has requested relief that cannot be granted by the Commission.

14. 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. Commonwealth*, 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. ARGUMENT

15. PPL Electric incorporates by reference Paragraphs 1 through 14 as if fully set forth herein.

A. The Allegations in the Complaint Exceed the Commission's Subject Matter Jurisdiction.

16. 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; disputes which would be within the jurisdiction of the Commission. Instead, the specific allegations are focused exclusively on averments that the Complainants' property rights have been violated as a result of PPL Electric's actions.

17. 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. Pa. Elec. Co.*, Docket No. C-2008-2036378, 2008 Pa. PUC LEXIS 994, at *4 (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. W. Pa. Water Co.*, 499 Pa. 374, 453 A.2d 595 (1982).

18. The Commission has determined that it is not the proper forum for resolving property rights controversies. *Boczar v. PPL Elec. Utils. Corp.*, Docket No. C-20016332 (Order entered February 10, 2003); *Henry and Julie Dengler v. Metro. Edison Co.*, Docket No. C-2009-2112197, 2009 Pa. PUC LEXIS 167 (Oct. 16, 2009); *Guy and Virginia Mauro v. Pa. Elec. 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. Metro. Edison Co.*, Docket No. C-00004110 (July 3, 2003); *Fiorillo v. PECO Energy Co.*, Docket No. C-00971088 (Sept. 15, 1999). In *Boczar*, the Complainant alleged that the utility was not authorized to place electric facilities on his property. The Commission noted that the utility produced right-of-way agreements for the facilities in

question and concluded that it was without jurisdiction to determine property rights concerning the agreements.

19. The allegations contained in the Complaint relate to property rights and the interpretation of valid right-of-way and easement agreements, copies of which have been produced for the Commission's review as "Attachment A" and "Attachment B" hereto. These matters, particularly the interpretation of the right-of-way and easement agreements, are exclusively within the jurisdiction of the Courts of Common Pleas. Consequently, Complainants' claim must be dismissed for lack of Commission jurisdiction.

20. Furthermore, certain allegations in the Complaint relate to questions involving an alleged trespass. The Commission has clearly stated that it is without subject matter jurisdiction to adjudicate questions involving trespass. *See, e.g., 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). Those portions of the Complaint should be dismissed.

21. The Complainants have stated disputes regarding real property and the interpretation of valid right-of-way and easement agreements, which are clearly outside the Commission's subject matter jurisdiction. Therefore, the Commission should grant the Company's preliminary objection pursuant to 52 Pa. Code § 5.101(a)(1).

B. The Complainants' Request for Relief is Legally Insufficient.

22. In addition, the Complainants request compensatory damages for their alleged personal and property damage. However, the Commission does not have the authority to order a public utility to pay compensatory 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. W. Pa. 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)). A request for compensatory damages in a Formal Complaint should be struck from the complaint, and the utility's preliminary objection should be sustained on that issue. See *Stoner v. PPL Elec. Utils. Corp.*, Docket No. C-2013-2385588 (Nov. 14, 2013). Consequently, Complainants' claim for compensatory damages must be dismissed, as the Commission is without authority to grant the relief which the Complainants seek.

23. The Complainants have requested relief which is legally insufficient because the relief cannot be granted by the Commission. The Complaint should be dismissed pursuant to 52 Pa. Code § 5.101(a)(4).

V. **CONCLUSION**

24. PPL Electric incorporates by reference Paragraphs 1 through 23, *supra*, as though set forth fully herein.

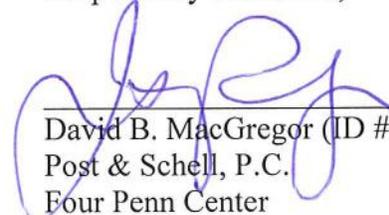
25. The scope of the Commission's jurisdiction over the matters raised and its authority to grant the relief requested in the Complaint are well-settled. The Commission lacks subject matter jurisdiction over questions involving claims associated with private property rights and the interpretation of right-of-way and easement agreements and lacks the authority to grant compensatory damages.

26. Accordingly, the Commission should enter an order, pursuant to 52 Pa. Code § 5.101, dismissing the above-captioned Complaint.

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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Post & Schell, P.C.

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E-mail: jrogers@postschell.com

Date: November 27, 2013

Attorneys for PPL Electric Utilities Corporation

ATTACHMENT “A”

148

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF MONTGOMERY } SS:

On this 20th day of APRIL 1950, before me, a Notary Public for the Commonwealth aforesaid, commissioned for and residing in the CITY of ALLENTOWN, County of LEHIGH, came the above named JOSEPH KAUFEMAN AND DOROTHEA KAUFEMANN and acknowledged the foregoing instrument to be THEIR act and deed, and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.



G. Blair Cunningham
Notary Public

My commission expires Jan. 7/1951

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF MONTGOMERY } SS:

On this _____ day of _____ 19____, before me, a Notary Public for the Commonwealth aforesaid, commissioned for and residing in the _____ of _____, County of _____, came the above named _____ and acknowledged the foregoing instrument to be _____ act and deed, and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

Notary Public

My commission expires _____

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF _____ } SS:

On this _____ day of _____ 19____, before me, a Notary Public for the Commonwealth aforesaid, commissioned for and residing in the _____ of _____, County of _____, came the above named _____ and acknowledged the foregoing instrument to be _____ act and deed, and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

Notary Public

My commission expires _____

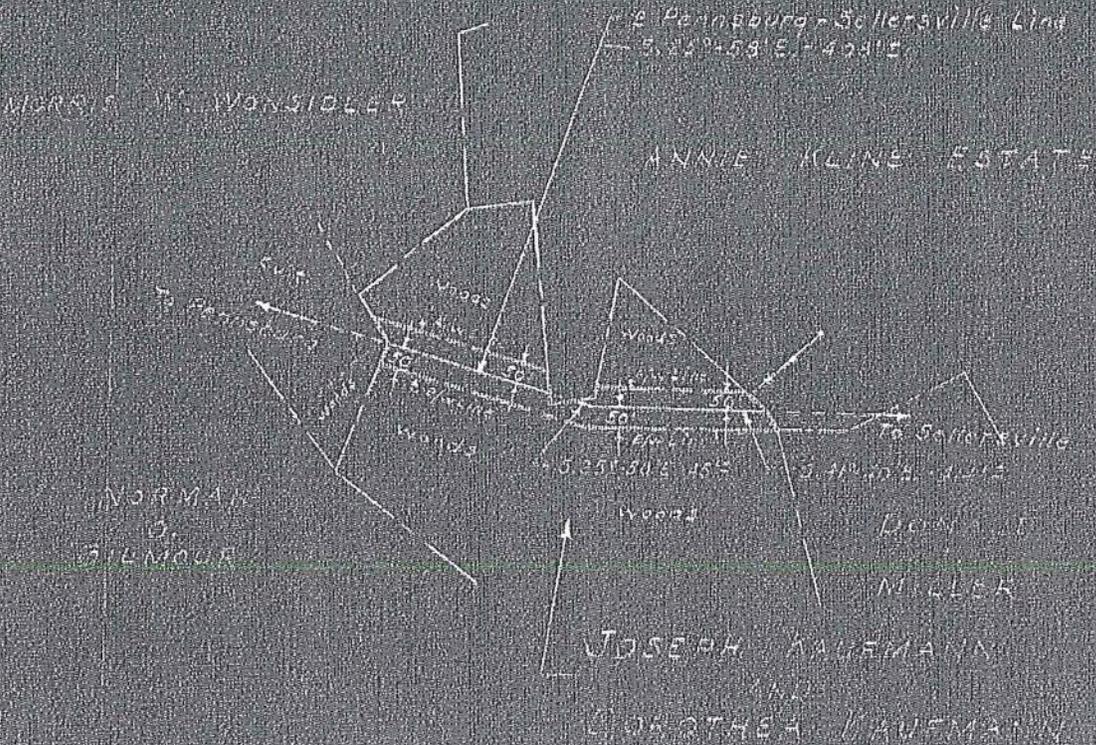
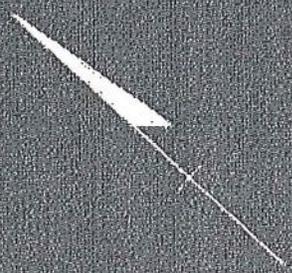
Recorded in the Office for Recording of Deeds in and for _____ County,
in _____ Book _____ Page _____, etc.

WITNESS my hand and seal of Office this _____ day of _____ 19____

Recorder

From MONTGOMERY COUNTY REC'D
To: JOSEPH KAUFEMANN
TRACTS #2-4-3-6-9-3-4-7-12 MONTGOMERY CO.
SHEETS LATER CO.
DB 1522 Pa. 72

MILFORD TWP.
BUCKS CO., PA.



PENNSBURG - SELLERSVILLE LINE
 PLAN SHOWING ELECTRIC LINE RIGHT OF WAY OVER PROPERTY OF
 JOSEPH KAUFMANN AND GOROTHEA KAUFMANN,
 MILFORD TWP., BUCKS CO., PA.
 SCALE: 1" = 400'

AUGUST 1, 1950

APPROVED *F. W. Fisher* TRANSMISSION ENGINEER
 PENNSYLVANIA POWER & LIGHT COMPANY
 ALLENTOWN, PA.

LA-34956-0

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2004-10-996

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BUCKS COUNTY S. S.

Recorded in the Office for Recording of Deeds, &c.
in and for Bucks County, in _____ Deed _____ Book 956
Page 147 &c. Witness my hand and seal of Office
Doylestown, Pa. Aug. 17th A. D. 1950.

J. Harold Jamison Recorder

BUCKS COUNTY S. S.

Recorded in the Office for Recording of Deeds, &c.
in and for Bucks County, in _____ Deed _____ Book #940
Page 160 &c. Witness my hand and seal of Office
Doylestown, Pa. April 29th, A. D. 1950.

J. Harold Jamison Recorder

*R. Record Off.
2110
2402*

P.F.

ENTERED AUG 17 1950
ENTERED APR 29 1950

ATTACHMENT “B”

PP&L Form 100-19 (Rev.)

WEST ALLENTOWN 370 PENNSYLVANIA POWER & LIGHT COMPANY SELLERSVILLE 66KV LINE

95

Know all Men by these Presents, That WE JOHN KLINE (SINGLE) AND HIS SISTER CARRIE THOMAS (WIDOW) OF MILFORD TOWNSHIP, BUCKS Co, PA. HEIRS OF ANNA KLINE, & ENOS KLINE.

in consideration of the sum of One Dollar (\$1.00) to U.S. paid at the date hereof by PENNSYLVANIA POWER & LIGHT COMPANY, the receipt whereof is hereby acknowledged, and in consideration of the further sum of Two HUNDRED \$ 200.00 Dollars to be paid to U.S. when the rights hereby granted are exercised by the said Company, do hereby, for

OURSELVES, OUR heirs, executors, administrators and assigns, irrevocably grant and convey unto the said PENNSYLVANIA POWER & LIGHT COMPANY, its successors, assigns, and lessees, the right to construct, operate and maintain, and from time to time to reconstruct its electric lines, including such poles, towers, cables and wires above and under the surface of the ground, fixtures and apparatus as may be from time to time necessary for the convenient transaction of the business of the said Company, its successors, assigns and lessees, upon, across, over, under and along a strip of land 50 feet in width, THRU CLEARED LAND AND 100' FR IN WIDTH THRU WOODLAND said strip being a part of the property which WE own, or in which WE have any interest in the TOWNSHIP of MILFORD, County of

BUCKS, Commonwealth of Pennsylvania, and upon, across, over, under and along the roads, streets and highways adjoining the said property, as shown on the plan hereto attached and made a part hereof, including the right of ingress and egress to and from the said lines at all times for any of the purposes aforesaid, together with the right to set and maintain the necessary guy and brace poles or towers and anchors, and to attach thereto the necessary guy wires; also the right to cut down, trim, remove, and to keep cut down and trimmed by mechanical means or otherwise, any and all trees, brush or other undergrowth on said strip of land or adjoining the same which in the judgment of the said Company, its successors, assigns or lessees, may at any time interfere with the construction, reconstruction, maintenance or operation of the said lines, poles, towers, wires, cables or other fixtures and apparatus, or menace the same, and in connection therewith, the right to remove, if necessary, the root systems of said trees, brush or other undergrowth, and to spray said brush and undergrowth with chemicals for their removal and control; and in consideration of the said payments do hereby release and quitclaim the said PENNSYLVANIA POWER & LIGHT COMPANY, its successors, assigns and lessees, of and from any and all damages, loss or injury that may be at any time caused by or result from the construction, reconstruction, operation and maintenance of the said lines, or the cutting down, trimming or removal of any and all trees, brush or other undergrowth on said premises.

And, further, in consideration of said payments, WE do hereby covenant and agree for OURSELVES and OUR heirs, executors, administrators, and assigns, to and with the said PENNSYLVANIA POWER & LIGHT COMPANY, its successors, assigns and lessees, that no house, barn or other structure, or inflammable or explosive materials of any kind, shall be built or stored on said property within a distance of fifty (50) feet from either side of the said strip of land, and that the said Company, its successors, assigns or lessees, shall not be limited in its or their enjoyment of the rights hereby granted to such poles, towers, wires, cables, fixtures and apparatus as may be first constructed on said strip of land, but that the said Company, its successors, assigns or lessees, shall have, at all times in the future, the right to construct, operate and maintain, and from time to time to reconstruct additional poles, towers, wires, cables, fixtures and apparatus upon, across, over, under or along the said strip of land.

ANY DAMAGE TO CROPS OR FENCES DURING CONSTRUCTION OR MAINTENANCE SHALL BE PAID FOR AT MARKET VALUE.

GRD # 64173 \$ 2910
PP&L CO - CORPORATE FILES

WITNESSETH

Witness, OUR hands and seals this 18th day of APRIL 1950, Signed, sealed and delivered in the presence of:

G. B. C. Cunningham

John Kline (SEAL)

Carrie Thomas (SEAL)

(SEAL)

(SEAL)

(SEAL)

Received August 14, 1950, of PENNSYLVANIA POWER & LIGHT COMPANY the sum of Two hundred (200.00) Dollars, in full payment of the further consideration above mentioned.

John Kline
Carrie Thomas

✓ 95

571

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF BUCKS } ss:

On this 18th day of APRIL 1950, before me, a Notary Public for the Commonwealth aforesaid, commissioned for and residing in the CITY of ALLENTOWN, County of LEHIGH, came the above named JOHN KLINE RMD and CARRIE THOMAS and acknowledged the foregoing instrument to be THEIR act and deed, and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

[Signature]
Notary Public

My commission expires Jan. 7/1951



COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF LEHIGH } ss:

On this _____ day of _____ 19____, before me, a Notary Public for the Commonwealth aforesaid, commissioned for and residing in the _____ of _____, County of _____, came the above named _____ and acknowledged the foregoing instrument to be _____ act and deed, and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

Notary Public

My commission expires _____

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF _____ } ss:

On this _____ day of _____ 19____, before me, a Notary Public for the Commonwealth aforesaid, commissioned for and residing in the _____ of _____, County of _____, came the above named _____ and acknowledged the foregoing instrument to be _____ act and deed, and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

Notary Public

My commission expires _____

Recorded in the Office for Recording of Deeds in and for _____ County,
in Book _____ Page _____, etc.

WITNESS my hand and seal of Office this _____ day of _____ 19____

Recorder

[Circular notary seal for Lehigh County, Pennsylvania, Notary Public, James King, expires Jan 7 1951]

573

BUCKS COUNTY S. S.

Recorded in the Office for Recording of Deeds, &c.
in and for Bucks County, in _____ Deed _____ Book #956
Page 570 &c. Witness my hand and seal of Office
Doylestown, Pa., August 22nd, A. D. 1950.

J. Harl Jamison Recorder

BUCKS COUNTY S. S.

Recorded in the Office for Recording of Deeds, &c.
in and for Bucks County, in _____ Deed _____ Book #940
Page 154 &c. Witness my hand and seal of Office
Doylestown, Pa., April 29th, A. D. 1950.

J. Harl Jamison Recorder

52222
OK to Record
2400

J. P. ...

ENTERED AUG 22 1950

ENTERED APR 29 1950