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File #: 140074

December 9, 2013

VIA ELECTRONIC FILING

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: Joseph D. Orach v. PPL Electric Utilities Corporation
Docket No. C-2013-2393163

Dear Secretary Chiavetta:

Enclosed for filing, is the Preliminary Objection of PPL Electric Utilities Corporation for the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Jessica R. Rogers

JRR/jl
Enclosures

cc: Certificate of Service

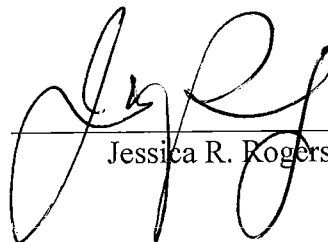
CERTIFICATE OF SERVICE

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 FIRST CLASS MAIL

Joseph Orach
1028 Passer Road
Coopersburg, PA 18036

Date: December 9, 2013



Jessica R. Rogers

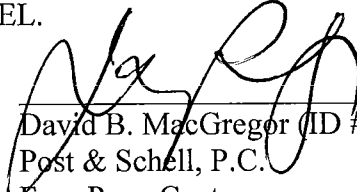
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph D. Orach,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No C-2013-2393163
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.61 and 52 PA. CODE § 5.101, YOU MAY ANSWER THE ENCLOSED PRELIMINARY OBJECTION WITHIN TEN (10) 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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Allentown, PA 18106
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Of Counsel:

Post & Schell, P.C.

Date: December 9, 2013

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Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph D. Orach,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No C-2013-2393163
	:	
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”) 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. Complainant Joseph D. Orach (“Complainant”) is a customer residing at the property located at 1028 Passer Road, Coopersburg, Pennsylvania 18036.

5. PPL Electric holds and maintains a right-of-way, pursuant to a valid and irrevocable right-of-way and easement, upon a portion of Complainant’s property. The right-of-way contains a 500 kV transmission line that is maintained and operated by PPL Electric.

6. On November 19, 2013, Complainant filed the above-captioned Complaint with the Commission.

7. The Complaint alleges claims associated with the valid and irrevocable right-of-way and easement by and between PPL Electric and Complainant’s predecessors in interest. The Complainant avers that PPL Electric has attempted to exercise the rights it clearly has based upon the plain language of the grant of right-of-way and easement.

8. The Complainant requests injunctive relief and that the Commission nullify the existing valid and irrevocable right-of-way and easement, and require the Company to renegotiate a new right-of-way and easement. (*See* Complaint ¶ 5).

9. On December 9, 2013, 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.

10. 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.

II. 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 § 5.101(a).

12. PPL Electric’s preliminary objection is 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. Complainant’s stated claims concern property rights and arise from the interpretation of a right-of-way and easement agreement with PPL Electric, which are within the exclusive jurisdiction of the Courts of Common Pleas. Thus, the Complaint should be dismissed.

13. 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.

III. ARGUMENT

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

15. 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.

16. 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).

17. 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.

18. The allegations contained in the Complaint relate to property rights and the interpretation of a valid right-of-way and easement, a copy of which has been produced for the Commission's review as "Appendix A" hereto. These matters, particularly the interpretation of the right-of-way and easement, are exclusively within the jurisdiction of the Courts of Common Pleas. Consequently, Complainant's claim must be dismissed for lack of Commission jurisdiction.

19. The Complainant has stated disputes regarding real property and the interpretation of a valid grant of right-of-way and easement, 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).

IV. CONCLUSION

20. PPL Electric incorporates by reference Paragraphs 1 through 19, *supra*, as though set forth fully herein.

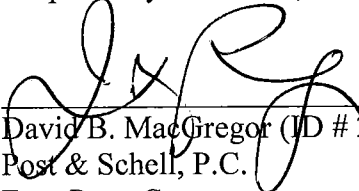
21. The scope of the Commission's jurisdiction over the matters raised in the complaint is well-settled. The Commission lacks subject matter jurisdiction over questions involving claims associated with private property rights and the interpretation of a valid right-of-way and easement.

22. 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
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Of Counsel:

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Date: December 9, 2013

Attorneys for PPL Electric Utilities Corporation

Appendix “A”

HOSENSACK-QUARRY LINE

75

15 27

KNOW ALL MEN BY THESE PRESENTS, That We, PAUL J. BATT and MAUD B. BATT,

his wife, of 223 Callowhill Street, Philadelphia, Pennsylvania in consideration of the sum of One Dollar (\$1.00) to us paid at the date hereof, by PENNSYLVANIA POWER & LIGHT COMPANY, the receipt whereof is hereby acknowledged,

and in consideration of the further sum of TEN THOUSAND AND NO/100

(\$10,000.00) Dollars to be paid to us when the rights hereby granted are exercised by the said Company, do hereby, for ourselves and our heirs, executors, administrators and assigns, irrevocably grant and convey unto the said PENNSYLVANIA POWER & LIGHT COMPANY, its successors and assigns, 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 and assigns, upon, across, over, under and along strips of land 150 feet in width, said strips being a part of the property which we own, or in which we have any interest

in the TOWNSHIP of SPRINGFIELD, 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 and assigns, may at any time interfere with the construction, reconstruction, maintenance or operation of the said electric lines, poles, towers, wires, cables or other fixtures and apparatus; or menade 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; Pennsylvania Power & Light Company hereby agrees to indemnify and save harmless the Grantor and defend them against any and all claims for liability for any injury, including death or damages, to any persons or property occurring in, on or about the right-of-way or any part thereof, excepting, however, the acts, omissions and negligence of Grantors, their agents, contractors, servants or employees.

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 and assigns, that no house, barn or other structure, or inflammable or explosive materials of any kind, shall be built or stored on said strips of land, and that the said Company, its successors and assigns, shall not be limited in its or their enjoyment of the rights hereby granted to such electric lines, poles, towers, wires, cables, fixtures and apparatus as may be first constructed on said strips of land, but that the said Company, its successors and assigns, shall have, at all times in the future, the right to construct, operate and maintain, and from time to time to reconstruct additional electric lines, poles, towers, wires, cables, fixtures and apparatus upon, across, over, under or along the said strips of land.

GRID # 61869200 43054
F&L CO. CORPORATE FILES



The easement area will be across a portion of Lots No. 2 and No. 10 of final plan property of Paul J. Batt, Springfield Township, County of Bucks, Pennsylvania as surveyed by George Reid Nevells and dated October 12, 1970.

It is understood and agreed that any trees cut outside of right-of-way area would be those that if they should fall would come within 5 feet of conductors.

It is also understood and agreed the above consideration shall be paid within 60 days of the date hereof.

WITNESS our hands and seals this 21st day of January 1971

Signed, sealed and delivered in the presence of:

Paul J. Batt (SEAL)

Maud B. Batt (SEAL)

Accepted this 27th day of January 1971

PENNSYLVANIA POWER & LIGHT COMPANY
By: George W. Ferguson
Chief, Right-of-Way

RECEIVED 2-23 1971 of PENNSYLVANIA POWER & LIGHT COMPANY, the sum of Ten Thousand and No/100 (10,000.00) Dollars, in full payment of the further consideration above mentioned.

Paul J. Batt
Maud B. Batt

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF CHESTER)

On this 21st day of JANUARY 1971, before me, a Notary Public for the Commonwealth aforesaid, commissioned for and residing in the STATE of PENNSYLVANIA County of CHESTER came the above named: PAUL J. BATT and MAUD B. BATT, his wife 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

Springfield Journalist-Jop
PAID Rhine J. Miller
Wm. Miller

Shelley D. Anocenti
Notary Public
My Commission Expires Aug. 25, 1973
Chester County, Pennsylvania

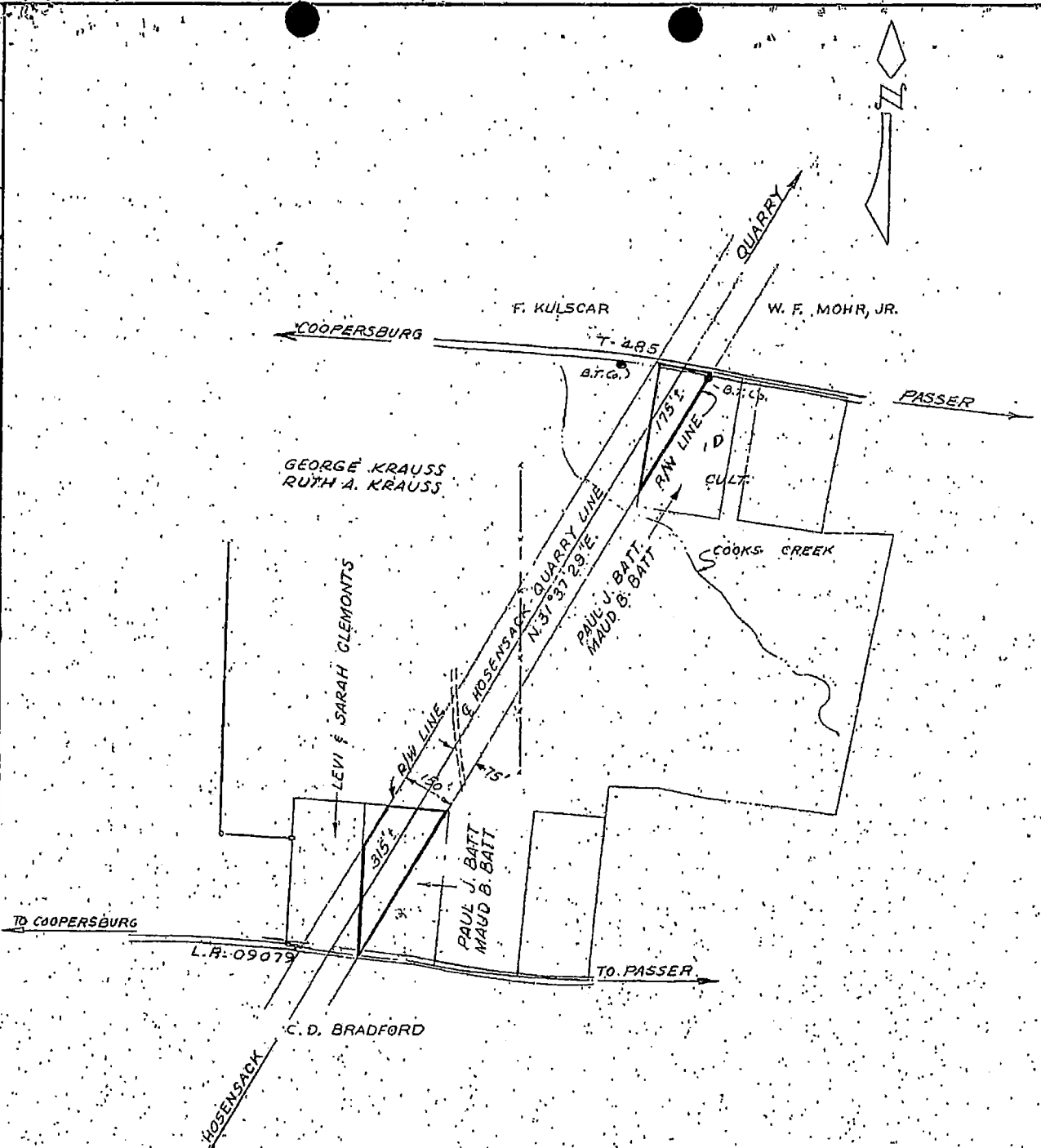
RECORDED in the Office for Recording of Deeds in and for _____ County, in Book _____ Page _____ etc.

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

Recorder

MICHAEL BAKER, JR., INC.
 Consulting Engineers Rochester, Pennsylvania
 Approved: *William D. Baker* C.M.A.
 REL *Jan 24 5*

NO.	DATE	ER.	REVISION	BY	CH.	SPONS'D.	APPR.
1	11/21/70	120973	REVISED PROPERTY LINES AND E TRAVERSE				



HOSENSACK-QUARRY LINE
 PLAN SHOWING ELECTRIC LINE RIGHT OF WAY OVER PROPERTY OF
 PAUL J. BATT AND MAUD B. BATT
 SPRINGFIELD TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA

Scale 1" = 400'
 APPROVED

H. W. Wright

Date 10/6/67
 TRANSMISSION AND
 DISTRIBUTION ENGINEER

PENNSYLVANIA POWER & LIGHT COMPANY
 ALLENTOWN, PENNSYLVANIA

ER120973-102

BOOK 1995 PAGE 751

LA-68349-1

APR 21 1971

BUCKS COUNTY SS.
RECORDED IN THE RECORDER'S
OFFICE OF SAID COUNTY IN
Deed BOOK 1995
AT PAGE 748 &c.
WITNESS MY HAND AND SEAL OF
OFFICE April 21st, 19 71

George M. [Signature]

RECORDER OF DEEDS

APR 21 1971
MAIL
0:07:16:9

pe

18

BOOK 1995 PAGE 752