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File #: 140074

December 17, 2013

VIA HAND DELIVERY

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: Edward J. Leonard v. PPL Electric Utilities Corporation
Docket No. C-2013-2359971

Dear Secretary Chiavetta:

Enclosed for filing are the Objections of PPL Electric Utilities Corporation to the Requests for Deposition of Edward J. Leonard in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Jessica R. Rogers

JRR/jl

Enclosures

cc: Honorable David A. Salapa
Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Edward J. Leonard,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2013-2359971
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent	:	

**OBJECTIONS OF PPL ELECTRIC UTILITIES CORPORATION
TO THE REQUESTS FOR DEPOSITION OF EDWARD J. LEONARD**

TO ADMINISTRATIVE LAW JUDGE DAVID A. SALAPA:

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby files these Objections to the requests for deposition of Edward J. Leonard (“Complainant”), pursuant to 52 Pa. Code § 5.343(f). PPL Electric received a copy of a letter request dated December 9, 2013, which was addressed to Asplundh Tree Expert Co. (“Asplundh”), one of the Company’s vegetation management contractors, requesting to depose four individuals. In addition, counsel for PPL Electric received electronic correspondence from the Complainant on December 10, 2013, asking when the Company’s Regional Forester was available for deposition. These requests do not appear to comply with the requirements for the notice of taking of deposition under 52 Pa. Code § 5.343. However, PPL Electric recognizes that the Complainant is *pro se* and, therefore, may not fully understand the requirements of the procedural regulations adopted by the Pennsylvania Public Utility Commission (“Commission”). PPL Electric is therefore treating the Complainant’s “requests” as formal notices of depositions. Consistent with 52 Pa. Code § 5.343(f), PPL Electric is herein filing these Objections to the Complaint’s request for the

scheduling of depositions. For the reasons described below, the Complaint's request for the scheduling of depositions should be denied. In support thereof, PPL Electric states as follows:

I. INTRODUCTION

1. On April 26, 2013, the Pennsylvania Public Utility Commission ("Commission") served on PPL Electric the Complaint which initiated this proceeding. Although the Complaint raises several issues, its principal focus is on the manner in which PPL Electric's contractor pruned one particular Norwegian spruce tree and the sufficiency of the notice provided prior to pruning. The tree had been pruned as part of PPL Electric's vegetation management program. The primary purpose of the Company's vegetation management program is to ensure reliable service to its customers by reducing the likelihood that trees will come into contact with PPL Electric's distribution lines and cause service outages.

2. PPL Electric timely answered the Complaint on May 16, 2013.

3. On July 22, 2013, the Complainant served his first two sets of discovery requests, which were comprised of a set of 109 interrogatories and requests for admissions and a set of seven very broad requests for production of documents.

4. On August 14, 2013, PPL Electric provided voluminous materials in response to these discovery requests.

5. A telephonic prehearing conference was held on August 22, 2013, with Administrative Law Judge David A. Salapa ("ALJ") presiding.

6. On September 13, 2013, PPL Electric provided additional material to the Complainant in response to information requests contained in an "informal" motion to compel from Complainant dated August 21, 2013.

7. On September 20, 2013, the Complainant served a second set of information requests. This second set of requests included 27 questions, many of which had numerous subparts.

8. PPL Electric responded to Complainant's second set of discovery requests on October 15, 2013.

9. On December 10, 2013, the Complainant inquired in an email to PPL Electric's counsel as to when PPL Electric's Regional Forester, Earl Burnside, would be available for deposition. A copy of the electronic correspondence is attached to this Objection as "Appendix A." No notice of taking of deposition was served on the Company for Mr. Burnside.¹

10. On December 11, 2013, PPL Electric received a letter from the Complainant requesting to depose three Asplundh Tree Expert Company ("Asplundh") employees and one former employee of Asplundh.² Neither Asplundh, nor the individuals identified in the letter, are parties to this proceeding.³

11. The Complainant's letter requests that the depositions be conducted during the week of December 16, 2013. A copy of this correspondence is attached to this Objection as "Appendix B."

12. A hearing in this matter is set for January 7, 2014.

¹ Pursuant to the Commission's regulations, notice of a party's deposition request must in writing and served on the active party and the presiding officer, as well as meeting the other requirements identified in 52 Pa. Code § 5.343. PPL Electric was not served with a notice that conformed to the requirements in Section 5.343. Further, it is unclear whether the Complainant's request was served on the ALJ as required by Section 5.343. Complainant's electronic request to the Company fails to comply with the notice requirements of Section 5.343.

² The Complainant requested to depose Keith Carrier, John Stonelake, Jeffrey Compton, and Randy Bilyew. However, Mr. Bilyew is no longer an employee of Asplundh. Complainant was made aware of this in an interrogatory response served on October 15.

³ In addition to the requirements associated with deposing a party found in Section 5.343(a), a subpoena is required for non-party depositions. Complainant has not requested a subpoena.

13. PPL Electric herein files these Objections to the Complainant's deposition requests. As explained below, the Complainant's requests are unduly burdensome, untimely, procedurally deficient, and entirely unnecessary. Therefore, the Objections should be sustained and Complainant's requests for deposition should be denied.

II. OBJECTIONS

A. GENERAL OBJECTIONS

14. Complainant has requested to depose one of the Company's employees and other individuals associated with the vegetation work done on his property in March of 2013. Complainant's requests to both PPL Electric and to Asplundh should be rejected for three general reasons. First, Complainant's notice is procedurally deficient. Second, Complainant's notice is untimely coming less than a month before the hearing scheduled in this case. Third, Complainant's depositions will not have a useful impact on the proceeding because PPL Electric intends to present those individuals with information pertinent to the Complaint as witnesses at the hearing, and they will be fully available to respond to any and all relevant and non-objectionable questions.

15. Complainant's notice is procedurally deficient. Section 5.343 of the Commission's regulations provide the proper form of notice for depositions. Notice must be given 20 days in advance, and should be provided in writing to the party and to the presiding officer. 52 Pa. Code § 5.343(a). Notice should state the time and place of the taking of deposition. 52 Pa. Code § 5.343(b). In addition, notice must include a brief statement of the matters for which inquiry is being made. 52 Pa. Code § 5.343(c). The forms of notice provided by Complainant, which PPL Electric has included with this filing as Appendices A and B, do not conform to the Commission's regulations. Were the Complainant to have served these in a more

timely fashion, this issue could have been cured. However, Complainant's notices are also untimely.

16. Complainant's notices are untimely, and that untimeliness was entirely within Complainant's control. Complainant's letters were dated December 9 and 10, 2013, respectively. Thus, under Section 5.343(a), the earliest a deposition could have been scheduled would have been December 30, 2013. A deposition on December 30, 2013 would provide only 4 business days between the date of the deposition and the date of the hearing. Even if notice were considered proper as of December 9, it is unlikely there would be sufficient time for a court reporter to prepare a transcript. Further, depositions at this point in the proceeding serve no meaningful purpose that could not otherwise be accomplished by cross-examining the witnesses at hearing.

17. Complainant has been aware of the five individuals he has requested to depose for many months, and could have provided timely notice of deposition prior to December 9 and 10. Complainant has been aware of Mr. Burnside, PPL Electric's Regional Forester, and Mr. Carrier, Asplundh's regional manager, since he first contacted the Company to discuss his objection to the trimming, prior to filing his Formal Complaint. Complainant was provided the names of all of the Asplundh employees who were involved with the vegetation work on his property in the interrogatory responses served on August 14, 2013. He was provided resume, education, and training information for Mr. Burnside on October 15, 2013, and for Mr. Carrier, Mr. Compton, and Mr. Stonlake on October 25, 2013. Complainant also was informed on October 15, 2013, that Mr. Bilyew no longer works for Asplundh. Complainant has had knowledge of these individuals since August 14, 2013, and delayed taking depositions for four months.

18. Further, Complainant indicated at the prehearing conference on August 15, 2013, that he would depose certain potential witnesses. In particular, Complainant stated that “they have identified in their interrogatory two people. The same two foremen for each of the trees involved at issue.” Tr. at 17. Thus, Complainant knew as early as August 15, 2013, that he intended to depose the Company’s foremen, Mr. Compton and Mr. Stonelake; however, Complainant failed to take any action to depose these individuals until 29 days before the hearing. Complainant’s delay has made depositions in this proceeding inappropriate. Complainant’s request is untimely and he cannot claim that he did not know the individuals he intended to depose in time to provide adequate notice.

19. As the ALJ noted in the prehearing conference on August 22, depositions are unusual in Commission proceedings. Tr. at 19. At the prehearing, Complainant was provided with the opportunity to avoid the need for depositions entirely through the filing of written direct testimony. Complainant refused that option, but stated at the prehearing that if he was unable to “do the depositions, the cross examination may go longer.” Tr. 26. Thus, according to Complainant’s own statement, the impact of his inability to take depositions would only be that his cross-examination may be longer than it would if he had deposed the witnesses. There is no reason to unduly burden the Company, Asplundh, and the identified individuals, when the only meaningful benefit that may result from the depositions at this point in the proceeding is the truncation of cross-examination.

20. There also is no meaningful benefit of deposing witnesses at this late stage of the proceeding. If the Complainant were permitted to depose witnesses at this stage of the proceeding, he will not have time to conduct additional discovery based on such depositions. Further, given the time needed to obtain transcripts of the depositions and the upcoming

holidays, it is unlikely that Complainant would obtain copies of the transcripts in time to be used at or useful for hearing.

21. Moreover, PPL Electric will present at hearing Mr. Burnside, Mr. Carrier, and Mr. Compton. Complainant will have the opportunity to cross-examine these witnesses at the hearing and ask the very same relevant and non-objectionable questions he would have asked during depositions. Further, the Company has already responded to numerous discovery requests and produced a substantial number of documents relating not just to these individuals, but to the factual information that Complainant would likely have asked about in deposition. Clearly, the Complainant has not been deprived of the ability to adequately prepare his case. Under these circumstances, the witnesses and the Company should not be penalized for Complainant's failure to request depositions in a more timely manner.

22. Therefore, for these general reasons, PPL Electric's objection to the requests for deposition of the Complainant should be sustained.

B. DEPOSITION OF MR. BURNSIDE IS NOT APPROPRIATE.

23. In addition to the arguments in Section II.A, which are incorporated as though fully set forth herein, the Complainant has known about Mr. Burnside's involvement with this case since March of 2013, *i.e.*, before the Formal Complaint was filed. Further, in the interrogatory process, Complainant asked for background information regarding Mr. Burnside's training and experience, and is aware that Mr. Burnside was the Company witness providing the responses to many of Complainant's interrogatories. Complainant cannot claim that he did not know Mr. Burnside's identity and has therefore been deprived of an opportunity to timely depose Mr. Burnside.

24. Importantly, Mr. Burnside will be available at the hearing for in-person cross-examination. Further, as Mr. Burnside has sponsored the Company's interrogatory responses

throughout this proceeding, the Complainant has already been given copious information on the subject matter of Mr. Burnside's testimony and his position on the issues in this proceeding. Therefore, no purpose is served by submitting Mr. Burnside to deposition at this late stage of the proceeding when, as indicated previously in this Objection, the Complainant can ask the very same relevant and non-objectionable questions at the hearing that he would have asked during depositions.

C. THE REQUESTS FOR DEPOSITION TO ASPLUNDH ARE INAPPROPRIATE.

25. Asplundh is not a party to this proceeding, and therefore does not have any obligation to voluntarily submit to depositions. Pursuant to Section 5.343(a), a subpoena is required for all non-party depositions. No subpoenas have been served on Asplundh at this time.

26. Much like Mr. Burnside, Complainant has been aware of Mr. Carrier's involvement with this proceeding since the outset of his Formal Complaint. However, Complainant did not seek to depose Mr. Carrier until December 9, 2013, despite having been provided information regarding his education and training in October. For Mr. Compton and Mr. Stonelake, Complainant indicated on August 22, 2013, that he intended to depose at least one, if not both, of these witnesses. However Complainant did not undertake to depose the witnesses for more than four months. It would be grossly unfair to allow Complainant to disrupt the work schedule of these individuals with a mere week's notice, which is exactly what he has requested in his notice of deposition, when he had many months to undertake his depositions.

27. Also similar to Mr. Burnside, Mr. Carrier and Mr. Compton will be available at the hearing for cross-examination. Thus, the Complainant will have the opportunity to ask these witnesses the very same relevant and non-objectionable questions at the hearing that he would have asked during depositions.

28. Finally, with regard to Mr. Bilyew, not only is Asplundh not obligated to make him available for deposition due to the improper notice provided by the Complainant, but Asplundh has no ability to require Mr. Bilyew to appear for depositions. Mr. Bilyew is no longer an employee of Asplundh. Therefore, a subpoena to Mr. Bilyew directly would be necessary in order to compel him to appear.

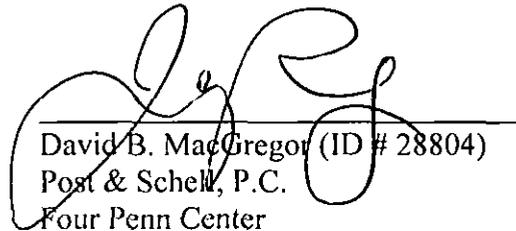
29. Furthermore, the Complainant has failed to comply with Section 5.343(f), 52 Pa. Code § 5.343(f), which provides that a “notice of deposition which is served upon a nonparty must state that the nonparty may file objections within 10 days of service and identify the persons—names and addresses—to whom the objections shall be sent.” However, the Complainant’s letter does not contain such a statement. Therefore, the Complainant has not complied with Section 5.343(f). Thus, the Complainant’s deposition requests are procedurally deficient because he failed to subpoena the non-parties and to comply with Section 5.343(f).

30. In sum, the Complainant’s requests for deposition are procedurally deficient, unduly burdensome, untimely, and unnecessary and PPL Electric’s Objections should be sustained.

III. CONCLUSION

WHEREFORE, PPL Electric objects to Edward J. Leonard's requests for deposition and respectfully requests that Administrative Law Judge David A. Salapa sustain PPL Electric's Objections and enter an appropriate order directing that the Complainant's requests for deposition be denied.

Respectfully submitted,



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Of Counsel:
Post & Schell, P.C.

Date: December 17, 2013

Attorneys for PPL Electric Utilities
Corporation

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Appendix "A"

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2013 DEC 17 PM 2:23

PA PPT
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Rogers, Jessica

From: NetInsight-Leonard <system4@earthlink.net>
Sent: Tuesday, December 10, 2013 1:05 PM
To: Rogers, Jessica
Subject: RE: Leonard v. PPL Electric

Dear Ms. Rogers:

Yesterday I sent you two signed originals of the non-disclosure agreement. Please sign and return one to me. As you will see when you receive the copies, the cover letter suggests Friday around 11 am for the first (and I hope last) review of the documents.

Even if for some unlikely reason, you do not receive the documents, I can bring one with me for on the spot signature. Friday would also be a good time to look at any PPL "proprietary" documents. Email me the non-disclosure if needed, BUT

please use the format you used in your discovery request to me, MS Office "compatibility" format (.doc).

The format that you used for the last non-disclosure is used with the newer MS Office (.docx), and imposes some conversion issues for those not using Office 2007.

Please reply by email regarding Friday 11 am.

Also, when is Mr. Burnside available for deposition?

E.J. Leonard

From: Rogers, Jessica [<mailto:JRogers@PostSchell.com>]
Sent: Thursday, December 05, 2013 12:08 PM
To: system4@earthlink.net
Subject: Leonard v. PPL Electric

Mr. Leonard,

Attached is the non-disclosure agreement. Please sign it and return it to me. Once we have a fully executed agreement, we can schedule a time for you to review the documents produced by Asplundh.

Thank you, and please let me know if you have any questions.

This message is from the law firm Post & Schell, P.C. . This message and any attachments may contain legally privileged or confidential information, and are intended only for the individual or entity identified above as the addressee. If you are not the addressee, or if this message has been addressed to you in error, you are not authorized to read, copy, or distribute this message and any attachments, and we ask that you please delete this message and attachments (including all copies) and notify the sender by return e-mail or by phone at 215-587-1000. Delivery of this message and any attachments to any person other than the intended recipient(s) is not intended in any way to waive confidentiality or a privilege. All personal messages express views only of the sender, which are not to be attributed to Post & Schell, P.C., and may not be copied or distributed without this statement.

Appendix “B”

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December 9, 2013

VIA CERTIFIED MAIL WITH RETURN RECEIPT

Asplundh Tree Expert Company
708 Blair Road
Willow Grove, PA 19019

**RE: Edward J. Leonard v. PPL Electric Utilities Corporation
Docket No. C-2013-2359971**

Dear Sir or Madam:

This address has been provided by PPL in the above referenced matter, for direct contact regarding Discovery, including Depositions of at least the following Asplundh employees:

- Mr. Keith Carrier
- Mr. John Stonelake
- Mr. Jeffery Compton
- Mr. Randy Bilyew

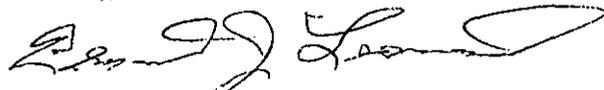
They should bring with them any material they usually have with them in the field when they are engaged in pruning operations for PPL Electric Utilities (PPL), including especially any information related to estimating the growth of tree branches, plus qualification related information for their position in the company and their job related to the property involved in this matter.

If you would like to suggest a location within the Bethlehem or Allentown area for Depositions, I will be happy to accommodate your preference for that location. Otherwise, the pruning work property location on Weil Street in Bethlehem will be the deposition address to appear on any subpoenas. Also, if you would like to suggest dates during the week of December 16-20, 2013, and a starting time around 9:00-10:00 am, I would also find that amenable.

Please also provide a name, email address and telephone number for the contact person in this matter, and the address for subpoena service for each of the above individuals. My contact information is:

Edward J Leonard	610-868-6412
736 Weil St.	system4@earthlink.net
Bethlehem, PA 18015	

Sincerely,



Edward J. Leonard

December 9, 2013

VIA CERTIFIED MAIL WITH RETURN RECEIPT

Secretary of the Pennsylvania Public Utility Commission
Ms. Rosemary Chiavetta
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, Pennsylvania 17120

**RE: Edward J. Leonard v. PPL Electric Utilities Corporation
Docket No. C-2013-2359971**

Dear Madam Secretary:

Enclosed is provided a Certificate of Service for Complainant's Request directly to Asplundh Tree Expert Company, subcontractor to PPL, for Discovery in the above matter, including Depositions and documents for Depositions.

Sincerely,



Edward J. Leonard

cc Paul E Russell, Esq.
Jessica R. Rogers, Esq.
Enclosures: Letter to Asplundh

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Complainant's Request directly to Asplundh Tree Expert Company, subcontractor to PPL, for Discovery in the above matter, has been served in accordance with the requirements of 52 PA Code S. 1.54 (relating to service by participant).

VIA CERTIFIED MAIL WITH RETURN RECEIPT

**PPL Services Corporation
Attention: Paul E. Russell, Esq.
Office of General Council
2 North Ninth Street
Allentown, PA 18101**

**Post and Schell PC
Attention: Jessica R. Rogers, Esq.
17 North Second Street, 12th Floor
Harrisburg, PA 17101**

Date: December 9, 2013


Edward J. Leonard

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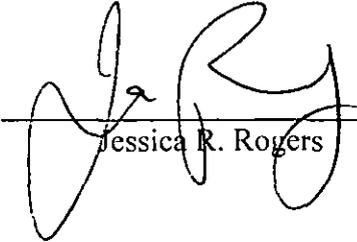
CERTIFICATE OF SERVICE

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 E-MAIL AND HAND DELIVERY

Edward J. Leonard
736 Weil Street
Bethlehem, PA 18015

Date: December 17, 2013



_____ Jessica R. Rogers

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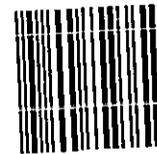
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Edward J Leonard
736 Weil Street
Bethlehem, PA 18015



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Post & Schell P.C.
Attention: Jessica R. Rogers, Esq.
17 North Second Street, 12th Floor
Harrisburg, PA 17101

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