

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Bradley Whitlock	:	
	:	
v.	:	C-2016-2526939
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Joel H. Cheskis  
Administrative Law Judge

**INTRODUCTION**

This decision grants a preliminary objection filed by an electric distribution company and dismisses a formal complaint filed by a consumer who complained about a possible route for a transmission line that the company is considering constructing but for which it has not yet filed an application. The complaint will be dismissed without prejudice because it is not ripe since the application for the transmission line has not yet been filed and the proposed route has not yet been selected.

**HISTORY OF THE PROCEEDING**

On January 22, 2016, John Bradley Whitlock filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL), Docket Number C-2016-2526939. In his complaint, Mr. Whitlock averred that PPL seeks to put a new power line very close to his home and horse barn. Mr. Whitlock averred that PPL should re-conductor the existing lines so they do not disrupt people that live near the proposed route. Mr. Whitlock also averred that PPL never made residents aware of their

intentions. Mr. Whitlock also complained that the route proposed by his home should not be an option among the other routes proposed. Mr. Whitlock requested that PPL re-conductor the existing line and not add an additional line, or not choose the proposed route by his home.

The formal complaint was served on PPL electronically by the Commission's Secretary.<sup>1</sup>

On February 22, 2016, PPL filed an answer to Mr. Whitlock's complaint. In its answer, PPL admitted or denied the various averments made by Mr. Whitlock in his complaint. In particular, PPL admitted that it announced a proposal to build a new 69 kilovolt (kv) transmission line between the planned new Williams Grove 230-69 kv substation in Upper Allen Township and the existing Carlisle Barracks 69 kv tap in Silver Spring Township. PPL added, however, that the proposed line is beyond the Commission's jurisdiction and not ripe for disposition. PPL further provided that the potential impacts of the transmission line will be thoroughly reviewed in conjunction with the selection of a route for the project, which includes seeking input from nearby residents regarding the proposed route. PPL also denied that it did not notify or advise landowners of the proposed project and also denied that it may use the existing transmission lines instead of building the proposed project. PPL requested that Mr. Whitlock's complaint be dismissed.

Also on February 22, 2016, PPL filed preliminary objections in response to Mr. Whitlock's complaint. In the preliminary objections, which were accompanied by a notice to plead, PPL averred that, on or about December 3, 2015, the Company announced a proposal to build a new 69 kv transmission line between Upper Allen Township and Silver Spring Township. PPL averred that it provided significant public outreach and has engaged potentially affected landowners as the planning process develops. PPL added that, given the size of the proposed transmission line, the Commission is without jurisdiction over the relief requested in the complaint. PPL also noted that, even if the Commission had jurisdiction over the issues

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<sup>1</sup> PPL has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702, and has agreed to electronic service instead under the Commission's Waiver of 702 program. Service is listed in the Audit History of the Commission's docketing system for this case as having been effected on February 2, 2016.

raised in the complaint, the complaint is premature and not ripe. As a result, PPL filed preliminary objections averring that the complaint be dismissed in its entirety for lack of jurisdiction and legal insufficiency.

Mr. Whitlock's answer to PPL's preliminary objections was due no later than March 7, 2016. 52 Pa.Code §§ 5.101(f)(1), 1.12(a), 1.56(a)(1) and (b). Mr. Whitlock did not file an answer to PPL's preliminary objections.

On March 25, 2016, the Commission issued a Motion Judge Assignment Notice indicating that I am responsible to resolve any issues which may arise during the preliminary phase of this proceeding. The record in this proceeding closed on March 25, 2016 when the Motion Judge Assignment Notice was issued.<sup>2</sup>

PPL's preliminary objections are now ready for disposition. For the reasons discussed below, PPL's preliminary objections will be granted and Mr. Whitlock's complaint will be dismissed.

#### FINDINGS OF FACT

1. The Complainant in this case is John Whitlock.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. The service address is 133 Brindle Road, Mechanicsburg, PA.
4. On January 22, 2016, Mr. Whitlock filed a formal complaint against PPL.

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<sup>2</sup> On April 6, 2016, PPL filed a letter to provide a status update on the potential 69 kv transmission line that is the subject of the complaint, noting that PPL issued a public notice on March 21, 2016 announcing the cancellation of the proposed line. Commission regulations, however, do not allow for any filings following an answer to a preliminary motion. As a result, the letter will not be considered as part of this decision.

5. On February 22, 2016, PPL filed an answer to Mr. Whitlock's formal complaint.
6. On February 22, 2016, PPL filed preliminary objections.
7. Mr. Whitlock did not file an answer to PPL's preliminary objections.

### DISCUSSION

Section 5.101 of the Commission's Rules of Administrative Practice and Procedure provides for the filing of preliminary objections. 52 Pa.Code § 5.101. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (Equitable). Section 5.101(a) provides:

- (a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:
  - (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.
  - (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

(7) Standing of a party to participate in a proceeding.

52 Pa.Code § 5.101(a)(1)-(7).

For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A.2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to Mr. Whitlock and should dismiss the complaint only if it appears that Mr. Whitlock would not be entitled to relief under any circumstances as a matter of law. Equitable, supra; *see also*, Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources, 406 A.2d 1020 (Pa. 1979).

Furthermore, administrative agencies, like the Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. Schneider v. Pa. Pub. Util. Comm'n., 479 A.2d 10 (1984). Where there are no disputed questions of fact and the issue to be decided is purely one of law or policy, a case may be disposed of without resort to an evidentiary hearing. Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm'n., 817 A.2d 593 (Pa. Cmwlth 2003). The Commission may dismiss a complaint without a hearing if a hearing is not necessary or in the public interest. 66 Pa.C.S. § 703(b); 52 Pa.Code § 5.21(d).

In this case, PPL has argued, in part, that Mr. Whitlock's complaint should be dismissed because it is legally insufficient. A preliminary objection based on legal insufficiency is referred to as a demurrer. Preliminary objections in the form of a demurrer will be sustained only in cases which are free and clear of doubt and where dismissal is clearly warranted by the record. Community Life Support Systems, Inc., et al. v. Commonwealth of Pennsylvania, 689 A.2d 1014, 1017 (Pa. Cmwlth. 1997). Any doubt must be resolved in favor of overruling a demurrer. Id.; *see also*, Hoffman v. Misericordia Hospital of Philadelphia, 439 Pa. 501, 267 A.2d 867 (1970) ("the question presented by the demurrer is whether on the facts averred, the law states with certainty that no recovery is possible").

When accepting as true every well plead material fact averred by Mr. Whitlock, as well as every reasonable inference from those facts, and viewing the complaint in the light most favorable to Mr. Whitlock, it appears that “PPL is considering a new power line that would be within 100 meters of [Mr. Whitlock’s] home and horse barn” and that the route is one of three routes being proposed.

In support of its preliminary objection that Mr. Whitlock’s complaint is premature and not ripe, PPL noted that the transmission line project referenced in the complaint is still in the planning stage and that the Company is evaluating the proposed project, including the possible alternative routes for the project. PPL added that no final decision regarding the project has been made and that depending on PPL’s final evaluation, Mr. Whitlock’s concerns may become moot. PPL averred that the complaint should be dismissed without prejudice. PPL added that it intends to continue to seek input from nearby residents during the public outreach process regarding, among other things, the proposed route and its potential impacts to existing land use and denied that it did not notify or advise landowners of the project. Mr. Whitlock did not refute the averments made by PPL in its preliminary objection.

PPL’s preliminary objection will be granted and Mr. Whitlock’s complaint will be dismissed. The fact that PPL may file an application with the Commission seeking to construct a new transmission line, and one of the proposed routes may impact Mr. Whitlock, does not give rise to an actionable complaint. PPL is correct that Mr. Whitlock’s complaint is not ripe. Ripeness is a prerequisite to judicial review. To be ripe, an actual case or controversy must exist. Treski, et al. v. Kemper National Insurance Companies, 674 A.2d 1106, 1113 (Pa.Super 1996). A case must be ripe for adjudication before it can be heard. Woods Schools v. Dept. of Education, 514 A.2d 686 (Pa.Cmwlth 1986). There must be actual, palpable injury before a case will be ripe for adjudication. Concerned Taxpayers v. Commonwealth of Pa., 382 A.2d 490 (Pa.Cmwlth 1978). Hypothetical or abstract questions are precluded. Raezer v. Raezer, 236 A.2d 513 (1968). This requirement applies with equal force to formal proceedings before administrative agencies. Process Gas Consumers Group v. Pa. Pub. Util. Comm’n., 480 A.2d

1273 (Pa.CmwltH 1984). PPL is correct that Mr. Whitlock's complaint should be dismissed because it is not ripe.

In general, it is only when the application is filed and a specific route has been selected that a complaint would be filed. Even so, the appropriate procedural method in such an instance is to file a protest to the application. Doing so will afford Mr. Whitlock an opportunity to be heard regarding his objections. There is no need for a hearing now because PPL has not yet filed an application with the Commission to have the transmission line approved. Furthermore, there is no need for a hearing because PPL has not yet determined among three possible routes which route the proposed transmission line will, in fact, take. It is possible that PPL will either 1) not file the application for approval of the transmission line, or 2) if an application is filed, not choose the route that comes near Mr. Whitlock's home. There is no controversy and no relief that can be provided to Mr. Whitlock at this juncture. The complaint, however, will be dismissed without prejudice. To the extent that PPL determines to file an application for the proposed transmission line and that transmission line affects Mr. Whitlock, he will be free to file another complaint in opposition to the transmission line, or express any objection in the proceeding involving the approval of the transmission line.

Finally, PPL also argued that Mr. Whitlock's complaint should be dismissed due to lack of Commission jurisdiction. As the complaint will be dismissed because it is not ripe, PPL's jurisdictional argument is moot and will not be considered in this decision.

As such, even when accepting as true all well pleaded material facts of the nonmoving party, as well as every reasonable inference from those facts, and viewing the complaint in the light most favorable to Mr. Whitlock, it appears that Mr. Whitlock would not be entitled to relief under any circumstances as a matter of law. PPL's preliminary objection will be granted and Mr. Whitlock's complaint will be dismissed.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Equitable Small Transportation Intervenor v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

3. Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. 52 Pa.Code § 5.101(a)(1)-(7).

4. Preliminary objections must state specifically the legal and factual grounds relied upon and be limited to the following: (a) lack of Commission jurisdiction or improper service of the pleading initiating the proceeding; (b) failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter; (c) insufficient specificity of a pleading; (d) legal insufficiency of a pleading; (e) lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action; (f) pendency of a prior proceeding or agreement for alternative dispute resolution; or (g) Standing of a party to participate in a proceeding. 52 Pa.Code § 5.101(a)(1)-(7).

5. For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A.2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988).

6. For purposes of disposing of preliminary objections, the Commission must view the complaint in this case in the light most favorable to the complainant and should dismiss

the complaint only if it appears that the complainant would not be entitled to relief under any circumstances as a matter of law. Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources, 406 A.2d 1020 (Pa. 1979).

7. A preliminary objection based on legal insufficiency is referred to as a demurrer and will be sustained only in cases which are free and clear of doubt and where dismissal is clearly warranted by the record. Community Life Support Systems, Inc., et al. v. Commonwealth of Pennsylvania, 689 A.2d 1014, 1017 (Pa. Cmwlth. 1997).

8. Any doubt when resolving a preliminary objection based on legal insufficiency must be resolved in favor of overruling a demurrer. Hoffman v. Misericordia Hospital of Philadelphia, 439 Pa. 501, 267 A.2d 867 (1970).

9. Due process is provided when the parties are afforded notice and the opportunity to appear and be heard. Schneider v. Pa. Pub. Util. Comm'n., 479 A.2d 10 (1984).

10. Where there are no disputed questions of fact and the issue to be decided is purely one of law or policy, a case may be disposed of without resort to an evidentiary hearing. Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm'n., 817 A.2d 593 (Pa. Cmwlth 2003).

11. The Commission may dismiss a complaint without a hearing if a hearing is not necessary or in the public interest. 66 Pa.C.S. § 703(b); 52 Pa.Code § 5.21(d).

12. To be ripe, an actual case or controversy must exist. Treski, et al. v. Kemper National Insurance Companies, 674 A.2d 1106, 1113 (Pa.Super 1996).

13. A case must be ripe for adjudication before it can be heard. Woods Schools v. Dept. of Education, 514 A.2d 686 (Pa.Cmwlth 1986).

14. There must be actual, palpable injury before a case will be ripe for adjudication. Concerned Taxpayers v. Commonwealth of Pa., 382 A.2d 490 (Pa.Cmwlth 1978).

15. Hypothetical or abstract questions are precluded. Raezer v. Raezer, 236 A.2d 513 (1968).

16. The ripeness requirement applies with equal force to formal proceedings before administrative agencies. Process Gas Consumers Group v. Pa. Pub. Util. Comm'n., 480 A.2d 1273 (Pa.Cmwlth 1984).

17. PPL's preliminary objection should be granted because Mr. Whitlock's complaint is not ripe.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objection filed by PPL Electric Utilities Corporation on February 22, 2016 at Docket Number C-2016-2526939 is hereby granted.

2. That the formal complaint filed by John Bradley Whitlock against PPL Electric Utilities Corporation on January 22, 2016 at Docket Number C-2016-2526939 is hereby dismissed without prejudice.

3. That this matter be marked closed.

Date: April 11, 2016

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/s/  
Joel H. Cheskis  
Administrative Law Judge