

PLEASE DOCKET

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCUMENT
FOLDER

Linda L. David

v.

C-20055501

PPL Electric Utilities Corporation
and
South Whitehall Township (Joined as an
Indispensable Party)
and
City of Allentown (Joined as an
Indispensable Party)

SECRET
2005 JUN -8 11:13:18
P. U. C.

**ORDER DENYING THE PRELIMINARY OBJECTIONS OF SOUTH WHITEHALL
TOWNSHIP AND GRANTING THE MOTION OF PPL ELECTRIC UTILITIES
CORPORATION TO JOIN SOUTH WHITEHALL TOWNSHIP AUTHORITY AS AN
INDISPENSABLE PARTY**

History of the Proceeding

On October 26, 2005, Linda L. David (Complainant) filed a formal complaint against PPL Electric Utilities Corporation¹ (PPL) with the Pennsylvania Public Utility Commission (Commission). Complainant alleges that she experiences vibrations and electrical impulses from the water pumping station that is located 200 feet from her home. Complainant alleges that the vibrations and electrical impulses are felt in her home to such an extent that she is awakened at night with burns on her face, arms and legs.

On November 21, 2005, PPL filed an answer and new matter. It also filed on that date, a motion to dismiss the complaint on the ground that the Commission lacks subject matter jurisdiction. In the alternative, PPL moved that South Whitehall Township and the Allentown Water Authority be joined as indispensable parties.

¹ Complainant also named South Whitehall Township and Allentown Water Authority as Respondents. However, the Commission's Secretary's Bureau only served the complaint on PPL.

By order dated March 9, 2006, the chief administrative law judge found that:

Respondent [PPL] is obligated to provide safe service to the public. Assuming the factual allegations of the Complaint are true, and without any other admitted facts, the issue of whether Respondent service to the pumping station is causing a safety concern to a member of the public, specifically Complainant, remains a contested question of fact. Accordingly, Respondent's motion to dismiss is denied.

She also found that:

The [South Whitehall] Township and the [Allentown Water] Authority are clearly indispensable parties to this case. The operation of the equipment (the pumping station) which appears to be the center of this controversy is solely controlled by either the Township or the Authority on a neighboring property. Clearly, any order issued by the Commission will affect the Township and Authority's interests and rights such that any proceeding in this matter cannot be properly adjudicated without their presence and participation.

In her ordering paragraphs she stated:

1. That the Motion to Join an Indispensable Party filed by PPL Electric Utilities Corporation at Docket No. C-20055501 is granted.
2. That the Motion to Dismiss filed by PPL Electric Utilities Corporation at Docket No. C-20055501 is denied.
3. A copy of this Order, the original Complaint and all subsequent correspondence and pleadings shall be served on South Whitehall Township and the Allentown Water Authority.
4. That South Whitehall Township and the Allentown Water Authority shall file responsive pleadings to the Complaint within twenty (20) days of the date of this order.
5. That this Complaint be set for hearing.

In an answer filed on April 3, 2006, the City of Allentown averred that there is no legal entity named Allentown Water Authority, and that it does not own, operate or maintain a water pumping station in the vicinity of Complainant's property. And in an answer dated May 3, 2006, the City of Allentown averred that it provides water and service to Complainant's property.

On April 11, 2006, Notice of a Prehearing Conference by telephone was issued. The telephonic Prehearing Conference was scheduled for May 15, 2006.

On May 1, 2006, South Whitehall Township filed preliminary objections.² In its preliminary objections, South Whitehall Township stated that the water pumping station is operated by South Whitehall Township Authority, a separate entity. South Whitehall Township argued that the Commission lacks jurisdiction over this matter, and that the proper forum is the court of common pleas.

On May 2, 2006, I issued a Prehearing Conference Order directing the parties to submit prehearing conference memoranda by May 11, 2006.

On May 10, 2006, PPL filed an answer and new matter to South Whitehall Township's preliminary objections. Also on that date, PPL filed a motion to join South Whitehall Township Authority as an indispensable party. Under cover letter dated May 12, 2006, South Whitehall Township filed a reply to PPL's new matter.³

Complainant, PPL, the City of Allentown and South Whitehall Township all submitted prehearing conference memoranda in advance of the telephonic prehearing conference. The telephonic prehearing conference was held as scheduled on May 15, 2006. During the course of the prehearing conference I directed counsel for South Whitehall Township,

² South Whitehall Township did not submit to me a copy of its preliminary objections. After learning about the preliminary objections, I obtained a copy from the Commission's offices in Harrisburg. At the prehearing conference held on May 15, 2006, South Whitehall Township was directed to submit to me copies of all filings it makes with the Commission.

³ South Whitehall Township also failed to submit to me a copy of its reply to PPL's new matter.

who said that he would likely also be serving as counsel for South Whitehall Township Authority, to file on behalf of South Whitehall Township Authority, a timely answer pursuant to the Commission's regulations, to PPL's motion to join South Whitehall Township Authority as an indispensable party⁴. Tr. 12-13, 15, 46. South Whitehall Township Authority however, failed to file with the Commission and submit to me a timely answer to PPL's motion.

Toward the conclusion of the prehearing conference, I stated that a second telephonic prehearing conference would be scheduled. Tr. 41, 46. By Notice dated May 17, 2006, the parties were informed that a second telephonic prehearing conference is scheduled to be held on July 27, 2006.

Discussion

I. South Whitehall Township's Preliminary Objections

South Whitehall Township argues that it should be dismissed as a party to this case because: (1) the water pumping station is operated by South Whitehall Township Authority, a separate entity; and (2) the Commission lacks jurisdiction in this matter.

In its preliminary objections, South Whitehall Township stated that South Whitehall Township Authority operates the pumping station. And at the prehearing conference, counsel for South Whitehall Township stated that South Whitehall Township Authority also owns the pumping station. Tr. 12. However, as counsel for PPL pointed out at the prehearing conference, it is not clear what control, if any, South Whitehall Township has and/or exercises over the operation of the pumping station. Tr. 13-14. If South Whitehall Township has or exercises any control over the operation of the pumping station, then its interests and rights would surely be affected by any order issued by the Commission in this proceeding. Therefore,

⁴ I also note that PPL's motion was accompanied by a "Notice to Plead" addressed to South Whitehall Township Authority at its municipal building address. I further note that PPL's certificate of service indicates that the motion was served on both South Whitehall Township Authority and counsel for South Whitehall Township.

any proceeding in this matter cannot be properly adjudicated without South Whitehall Township's presence and participation.

In regard to South Whitehall Township's second argument, the chief administrative law judge has already ruled that the Commission has jurisdiction over the issue of whether PPL's service to the pumping station is causing a safety concern to a member of the public, specifically Complainant.

For all of the foregoing reasons, South Whitehall Township's Preliminary Objections are denied.⁵

2 PPL's Motion to Join South Whitehall Township Authority as an Indispensable Party

In its Motion, PPL noted that South Whitehall Township stated in its Preliminary Objections that South Whitehall Township Authority operates the pumping station. PPL also noted that the chief administrative law judge stated in her order that the operator of the pumping station must be joined as an indispensable party because its interests and rights would be affected by any order issued by the Commission in this proceeding. PPL therefore asserts that South Whitehall Township Authority should be joined as an indispensable party in this case. South Whitehall Township failed to timely file with the Commission and submit to me an answer to PPL's Motion.

I agree with PPL that South Whitehall Township Authority, as the operator of the pumping station, must be joined as an indispensable party. Any order issued by the Commission in this proceeding will affect South Whitehall Township Authority's interests and rights. Therefore, any proceeding in this matter cannot be properly adjudicated without South Whitehall Township Authority's presence and participation. Consequently, I grant PPL's Motion to join South Whitehall Township Authority as an indispensable party in this case.

⁵ During the telephonic prehearing conference I indicated that I was denying South Whitehall Township's Preliminary Objections. Tr. 46-47. This memorializes that denial.

THEREFORE

IT IS ORDERED:

1. That the Preliminary Objections of South Whitehall Township are denied.
2. That the motion of PPL Electric Utilities Corporation to join South Whitehall Township Authority as an indispensable is granted.
3. That South Whitehall Township Authority is joined as an indispensable party to the proceeding. That unless South Whitehall Township Authority informs me and the Commission otherwise, service of documents to South Whitehall Township Authority shall be made to

Anthony R. Sherr, Esquire
Mayers, Mennies & Sherr, LLP
3031 Walton Road
P.O. Box 1547
Blue Bell, PA 19422-0440

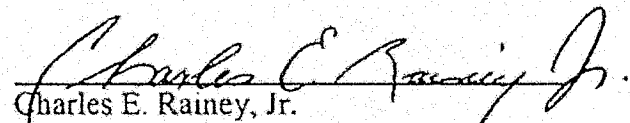
South Whitehall Township Authority
4444 Walbert Avenue
Allentown, PA 18104

4. That the caption in this case be amended to include South Whitehall Township Authority as a respondent along with PPL Electric Utilities Corporation, the City of Allentown and South Whitehall Township.
5. That South Whitehall Township Authority file with the Commission, serve on the parties, and submit to me, an answer to the complaint (a copy of which is attached to this order) within twenty (20) days after the date of this order.

6. That by July 13, 2006, South Whitehall Township Authority serve on the parties and submit to me a prehearing conference memorandum that addresses the matters raised in my prehearing conference order dated May 2, 2006 (a copy of which is attached to this order).

7. That by July 13, 2006, Linda L. David, PPL Electric Utilities Corporation, South Whitehall Township and the City of Allentown, serve on the parties and submit to me, an updated prehearing conference memorandum

8. That all parties are expected to participate in the second telephonic prehearing conference scheduled for July 27, 2006 at 10:00 a.m.


Charles E. Rainey, Jr.
Administrative Law Judge

Date: June 6, 2006

Linda L. David v. PPL Electric Utilities Corporation and South Whitehall Township (Joined as
as Indispensable Party) and City of Allentown (Joined as an Indispensable Party)
Docket Number C-20055501

SERVICE LIST

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2922 W. Fairview Street
Allentown, PA 18103

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Post & Schell
17 North Second Street
12th Floor
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Assistant City Solicitor
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Lehigh Valley, PA 18002-0830

South Whitehall Township
444 Walbert Avenue
Allentown, PA 18104



ORIGINAL

MAYERS, MENNIES & SHERR, LLP

ATTORNEYS AT LAW

ANTHONY R. SHERR
tsherr@mmsllp.com

June 21, 2006

James J McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RECEIVED
2006 JUN 26 7:10:45

RE: Linda L. David v. South Whitehall Township, et al.
Docket No. C-20055501

Dear Mr. McNulty

Enclosed please find an original and four copies of Respondent, South Whitehall Township Authority's Answer to Complainant's Complaint with New Matter, which I ask that you have filed with the Commission and return a time-stamped copy to me in the enclosed self-addressed stamped envelope.

Thank you for your courtesies in this regard

Very truly yours,

ANTHONY R. SHERR

ARS/cz

Enclosure

cc Honorable Charles E. Rainey, Jr
Anthony D. Kanagy, Esquire
Martin J. Danks, Esquire
Linda L. David

DOCUMENT
FOLDER

128

ORIGINAL

2005 JUN 26 11:10:45

SECRETARY'S BUREAU

TO ALL PARTIES:
YOU ARE HEREBY NOTIFIED
TO FILE A WRITTEN RESPONSE TO THE
ENCLOSED NEW MATTER WITHIN
TWENTY (20) DAYS FROM SERVICE
HEREOF OR A JUDGMENT MAY BE
ENTERED AGAINST YOU

Anthony R. Sherr

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MAYERS, MENNIES & SHERR, LLP
BY ANTHONY R. SHERR, ESQUIRE
IDENTIFICATION NO. 44603
3031 WALTON ROAD, BUILDING A
SUITE 330, P.O. BOX 1547
BLUE BELL, PA 19422
(610) 825 0300

ATTORNEY FOR: DEFENDANT

LINDA L. DAVID,
Complainant,

v

SOUTH WHITEHALL AUTHORITY, et. al
Respondent,

COMPLAINT DOCKET
NO C-20055501

**DOCUMENT
FOLDER**

**DEFENDANT, SOUTH WHITEHALL AUTHORITY'S ANSWER TO
PLAINTIFFS' COMPLAINT WITH NEW MATTER
AND NEW MATTER PURUSANT TO § 2252(d)**

NOW COMES Defendant, South Whitehall Authority, by and through its authorized counsel of record, Mayers, Mennies & Sherr, LLP, and in response to Plaintiff's Complaint incorporates herein by reference all pleadings and other motions it has filed or will file in this matter and further states as follows:

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JUN 28 2006

1 Denied After reasonable investigation, answering Defendant lacks sufficient information or knowledge so as to be able to form a belief as to the truth of these averments and therefore same are denied and strict proof thereof is demanded at the time of trial.

2 Denied After reasonable investigation, answering Defendant lacks sufficient information or knowledge so as to be able to form a belief as to the truth of these averments and therefore same are denied and strict proof thereof is demanded at the time of trial.

3 Denied After reasonable investigation, answering Defendant lacks sufficient information or knowledge so as to be able to form a belief as to the truth of these averments and therefore same are denied and strict proof thereof is demanded at the time of trial.

4 These allegations are denied as conclusions of law. By way of further response and to the extent that these allegation are deemed to be factual, after reasonable investigation, answering Defendant lacks sufficient information or knowledge so as to be able to form a belief as to the truth of these averments and therefore same are denied and strict proof thereof is demanded at the time of trial.

5 These allegations are denied as conclusions of law. By way of further response and to the extent that these allegation are deemed to be factual, after reasonable investigation, answering Defendant lacks sufficient information or knowledge so as to be able to form a belief as to the truth of these averments and therefore same are denied and strict proof thereof is demanded at the time of trial.

6 Denied After reasonable investigation, answering Defendant lacks sufficient information or knowledge so as to be able to form a belief as to the truth of these averments and therefore same are denied and strict proof thereof is demanded at the time of trial.

7 Denied After reasonable investigation, answering Defendant lacks sufficient information or knowledge so as to be able to form a belief as to the truth of these averments and therefore same are denied and strict proof thereof is demanded at the time of trial.

8 Denied After reasonable investigation, answering Defendant lacks sufficient information or knowledge so as to be able to form a belief as to the truth of these averments and therefore same are denied and strict proof thereof is demanded at the time of trial.

9. No allegation is made in this paragraph, and as such, no responsive pleading is required.

10. No allegation is made in this paragraph, and as such, no responsive pleading is required.

WHEREFORE, Defendant, South Whitehall Authority demands judgment in its favor and against all other parties, plus interest and costs in this action, including but not limited to reasonable attorney's fees incurred in defending this action, plus such other relief as this Commission deems just and proper.

NEW MATTER

South Whitehall Authority, by and through its authorized counsel of record, Mayers, Mennies & Sherr, LLP, hereby raises as New Matter, pursuant to 52 Pa. Code § 5.62, the following:

11. Paragraphs 1 through 10 of Answering Defendants' Answer are incorporated herein by reference as though fully set forth at length.

12. Plaintiff(s) claims are barred and/or limited due to plaintiff's assumption of the risks involved.

13. If Plaintiff(s) sustained injury or damage, said injury or damage being specifically denied by answering defendant, said injury or damage was caused by the negligence, carelessness and/or recklessness of others over whom answering defendant(s) exercised no control.

14. If Plaintiff(s) sustained injury or damage, said injury or damage being specifically denied by answering defendant, said injury or damage was caused by the intervening and superseding actions of others over whom answering defendant exercised no control.

15. South Whitehall Authority has no duty to act and, therefore cannot be held liable under the allegations of Plaintiff's Complaint.

16. South Whitehall Authority did not have notice of an alleged dangerous condition, or in the alternative if such notice was provided, South Whitehall Authority did not have sufficient time or resources to correct such dangerous condition, if it is assumed that South Whitehall Authority had

duty to correct such dangerous condition, and if it is assumed that such dangerous condition existed.

17 Plaintiff's injuries, as alleged, were caused by other persons or parties that were contributory and/or intervening and/or superseding causes of Plaintiff's alleged injuries.

18. Plaintiff's action is barred by the Doctrine of Comparative Negligence, 42 Pa C.S. §7102

19 Plaintiff fails to state a claim upon which relief can be granted against South Whitehall Authority

20 Defendant, South Whitehall Authority incorporates herein by reference as more fully set forth, the New Matter asserted by other Defendants to this matter.

21 Plaintiffs' causes of action are barred by the applicable Statute of Limitations.

22 Plaintiff's claims are barred pursuant to 42 Pa.C.S. §5522.

23 If the Plaintiff suffered any injuries as alleged which injuries are specifically denied, they were caused solely and primarily by Plaintiff's own carelessness, recklessness and negligence.

24 The PPUC lacks jurisdiction over the subject matter.

25 The Commission may not award the damages Complainant seeks

WHEREFORE Defendant, South Whitehall Authority demands judgment in its favor and against all other parties, plus interest and costs in this action, including but not limited to reasonable attorney's fees incurred in defending this action, plus such other relief as this Commission deems just and proper.

NEW MATTER PURSUANT TO RULE 2252(d)

26 Defendant's Answers of Plaintiff's Complaint in Paragraphs 1 through 23 are incorporated herein by reference as though fully set forth at length.

27. The incident as plead, if true, was caused by the negligence of Plaintiff and/or Defendants, PPL Electric Utilities Corporation and Allentown Water Authority, as more fully set forth within the Complaint, which is incorporated herein by reference without admission or adoption.

28. If Plaintiff proves her damages as alleged, which damages are specifically denied,

Defendants, PPL Electric Utilities Corporation and Allentown Water Authority, would be liable over to Defendant, South Whitehall Authority for contribution and/or indemnity

WHEREFORE, Defendant, South Whitehall Authority demands judgment in its favor and against all other parties, plus interest and costs in this action, including but not limited to reasonable attorney's fees incurred in defending this action, plus such other relief as this Commission deems just and proper

MAYERS, MENNIES & SHERR, LLP

BY:




ANTHONY R. SHERR, ESQUIRE
Attorney for Respondent
South Whitehall Township Authority

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VERIFICATION

I, Anthony R. Sherr, Esquire, hereby state that I am counsel for Defendant, South Whitehall Township Authority in this action and verify that the statements made in the foregoing Answer to Complainant's Complaint with New Matter are true and correct to the best of my knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. §4094 relating to unsworn falsification to authorities

BY: 
ANTHONY R. SHERR, ESQUIRE
Attorney for Respondent
South Whitehall Township Authority

2025 JUN 26 11:10:45
SELBERT COUNTY CLERK

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MAYERS, MENNIES & SHERR, LLP
BY ANTHONY R. SHERR, ESQUIRE
IDENTIFICATION NO. 44603
3031 WALTON ROAD, BUILDING A
SUITE 330, P O. BOX 1547
BLUE BELL, PA 19422
(610) 825-0300

ATTORNEY FOR DEFENDANT

LINDA L. DAVID,
Complainant,

COMPLAINT DOCKET
NO. C-20055501

v.

SOUTH WHITEHALL TOWNSHIP
et al,

CERTIFICATE OF SERVICE

I, Cheryl Zeigler, hereby certify that on the 21st day of June 2006, a true and correct copy of Respondent, South Whitehall Township Authority's Answer to Complainant's Complaint with New Matter was served via first class, regular mail, postage prepaid upon the following:

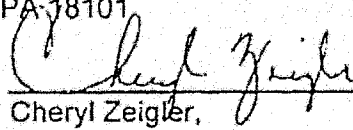
Administrative Law Judge Charles E. Rainey, Jr.
1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130

Linda L. David
2922 W. Fairview Street
Allentown, PA 18103

Anthony D. Kanagy, Esquire
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601

Martin J. Danks, Esquire
Assistant City Solicitor
City of Allentown
435 Hamilton Street, Room 519
Allentown, PA 18101

BY:



Cheryl Zeigler,
Legal Assistant to Anthony R. Sherr

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JUN 26 11:10:45



DOCUMENT FOLDER

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www.postschell.com

Anthony D. Kanagy
akanagy@postschell.com
717-612-6034 Direct

July 13, 2006

ORIGINAL

VIA HAND DELIVERY

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
PO Box 3265
Harrisburg, PA 17105-3265

2006 JUL 13 P 11 4: 06
SECRETARY'S BUREAU

RE: Linda L. David v. PPL Electric Utilities Corporation and
South Whitehall Township (Joined as an Indispensable Party) and
City of Allentown (Joined as an Indispensable Party)
Docket No. C-20055501

Dear Secretary McNulty:

Enclosed, for filing, are an original and three (3) copies of the Updated Prehearing Memorandum of PPL Electric Utilities Corporation in the above-referenced proceeding.

As indicated on the enclosed certificate of service, copies have been served on the parties in the manner indicated.

Respectfully submitted,

Anthony D. Kanagy

ADK/skr

DOCUMENT FOLDER

DOCUMENT FOLDER

Enclosures

cc: Certificate of Service
Honorable Charles E. Rainey Jr.

53

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA FEDERAL EXPRESS

Linda L. David
2922 W. Fairview Street
Allentown, PA 18103

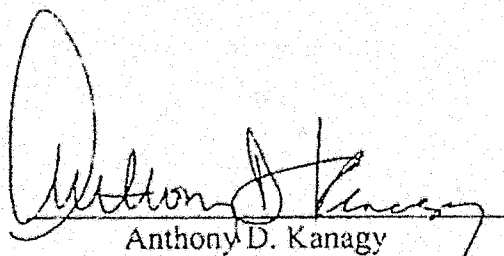
VIA FEDERAL EXPRESS AND EMAIL

Martin J. Danks, Esquire
Assistant City Solicitor
City of Allentown
435 Hamilton Street, Suite 519
Allentown, PA 18101

Anthony R. Sherr, Esquire
Mayers, Mennies & Sherr
3031 Walton Road
P.O. Box 1547
Blue Bell, PA 19422-0440

SECRETARY'S BUREAU
JUL 13 PM 4:06

Date: July 13, 2006



Anthony D. Kanagy

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 JUL 13 P11 L: 07
SECRETARY'S BUREAU

Linda L. David	:	
	:	
v.	:	
	:	
PPL Electric Utilities Corporation	:	
and	:	Docket No. C-20055501
South Whitehall Township (Joined as an	:	
Indispensable Party)	:	
and	:	
City of Allentown (Joined as an	:	
Indispensable Party)	:	

**UPDATED PREHEARING MEMORANDUM OF
PPL ELECTRIC UTILITIES CORPORATION**

TO ADMINISTRATIVE LAW JUDGE CHARLES E. RAINEY, JR.

PPL Electric Utilities Corporation ("PPL Electric") hereby submits this Updated Prehearing Conference Memorandum in compliance with the Order issued by Administrative Law Judge Charles E. Rainey, Jr. (the "ALJ") on June 6, 2006.

I. INTRODUCTION

An overview of this proceeding was provided in PPL Electric's original Prehearing Memorandum submitted on May 10, 2006. PPL Electric does not have an update to this section.

II. SETTLEMENT DISCUSSIONS

No settlement negotiations have been conducted to date, although PPL Electric stands ready to discuss settlement with the Complainant. As explained in PPL Electric's First Prehearing Memorandum, PPL Electric does not believe that settlement is likely given that the crux of Ms. David's complaint involves a water pumping station that is not owned, operated or controlled by PPL Electric. Moreover, given that the water pumping station is owned by either the South Whitehall Township or the South Whitehall Township Authority, the Commission

does not have jurisdiction over the pumping station or service from the pumping station. 66 Pa. C.S. § 1501, *See also, Ernest Renda Contracting Co., Inc. v. Commonwealth*, 516 Pa. 325, 532 A.2d 416 (1987).

III. DISCOVERY

At the Initial Prehearing Conference, the Parties conducted an informal discovery session with Ms. David. Based upon the outcome of the Second Prehearing Conference, additional discovery may be necessary, especially to determine what testimony and witnesses, including potential expert witnesses, Ms. David intends to present. PPL Electric notes that the South Whitehall Township has served Interrogatories and Requests for Production of Documents on Ms. David.

PPL Electric further notes that on June 30, 2006, PPL Electric conducted additional voltage tests at Ms. David's residence. PPL Electric sent the results of these tests to Ms. David on June 30, 2006.

IV. ADMISSIONS OR STIPULATIONS

The parties have made no admissions or stipulations.

V. FACTUAL ISSUES

A description of the factual issues was provided in PPL Electric's original Prehearing Memorandum submitted on May 10, 2006. PPL Electric does not have an update to this section.

VI. LEGAL ISSUES

A description of the factual issues was provided in PPL Electric's original Prehearing Memorandum submitted on May 10, 2006. PPL Electric does not have an update to this section.

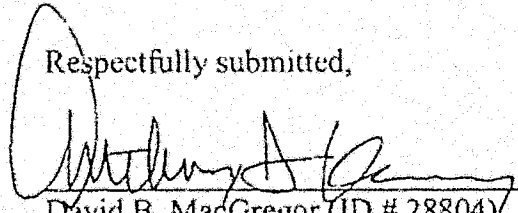
VII. WITNESSES

PPL Electric anticipates presenting the testimony of Kristie M. Rippke in this proceeding. Ms. Rippke is employed by PPL Electric and is a Support Engineer, Field Services. Ms. Rippke will testify to the results of the tests conducted at Ms. David's residence and the adequacy, reliability and safety of PPL Electric's service to Ms. David and the pumping station. PPL Electric reserves the right to call additional witnesses if necessary.

VIII. SCHEDULE

PPL Electric concurs with the schedule proposed by the South Whitehall Township and the South Whitehall Township Authority in this proceeding. Under their proposed schedule, Complainant would submit her testimony on or about September 28, 2006. Other parties' testimony would be approximately 60 days later, with hearings 20 days thereafter and briefing to follow.

Respectfully submitted,



David B. MacGregor (ID # 28804)
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Fax: 717-731-1985
E-mail: akanagy@postschell.com

Paul E. Russell (ID # 21643)
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Office of General Counsel
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Fax: 610-774-6726
E-mail: perussell@pplweb.com

Of Counsel:

Post & Schell, P.C.

Date: July 13, 2006

Attorneys for PPL Electric Utilities Corporation

ORIGINAL



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www.postschell.com

Anthony D. Kanagy
akanagy@postschell.com
717-612-6034 Direct

July 14, 2006

VIA HAND DELIVERY

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
PO Box 3265
Harrisburg, PA 17105-3265

ORIGINAL

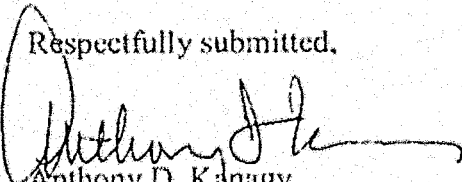
**RE: Linda L. David v. PPL Electric Utilities Corporation and
South Whitehall Township (Joined as an Indispensable Party) and
City of Allentown (Joined as an Indispensable Party)
Docket No. C-20055501**

Dear Secretary McNulty:

Enclosed, for filing, are an original and three (3) copies of the Reply of PPL Electric Utilities Corporation to New Matter of South Whitehall Township Authority in the above-referenced proceeding.

As indicated on the enclosed certificate of service, copies have been served on the parties in the manner indicated.

Respectfully submitted,


Anthony D. Kanagy

ADK/skr

Enclosures

cc: Certificate of Service
Honorable Charles E. Rainey Jr.

DOCUMENT
FOLDER

SECRETARY'S BUREAU
JUL 14 2006 11 01 AM '06

34

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Linda L. David

v.

PPL Electric Utilities Corporation
and
South Whitehall Township (Joined as an
Indispensable Party)
and
City of Allentown (Joined as an
Indispensable Party)

DOCUMENT
FOLDER

Docket No. C-20055501

ORIGINAL

REPLY OF
PPL ELECTRIC UTILITIES CORPORATION
TO NEW MATTER OF SOUTH WHITEHALL TOWNSHIP AUTHORITY

TO ADMINISTRATIVE LAW JUDGE CHARLES E. RAINEY:

PPL Electric Utilities Corporation ("PPL Electric") hereby replies, pursuant to 52 Pa. Code § 5.63, to the New Matter contained in South Whitehall Township Authority's ("Township Authority's) Answer that was filed on or about June 21, 2006 in the above-captioned proceeding

On October 26, 2005, Ms. David filed the above-captioned Complaint against PPL Electric, the South Whitehall Township ("Township") and the City of Allentown. On November 21, 2005, PPL Electric filed an answer to Ms. David's complaint and also filed a Motion to Dismiss the complaint, or in the alternative join the Township and the City of Allentown as indispensable parties

On March 9, 2006, Chief Administrative Law Judge Veronica A. Smith issued an Order denying PPL Electric's Motion to Dismiss and granting PPL Electric's request to join the Township and the City of Allentown as indispensable parties.

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On or about April 27, 2005, the Township filed Preliminary Motions arguing that the Commission should dismiss the Complaint for lack of jurisdiction and that the Township had been improperly joined as an indispensable party.

On May 10, 2006, PPL Electric filed an Answer and New Matter to the Township's Preliminary Motions. PPL Electric agreed that the Commission does not have jurisdiction to decide this case, but based on the pleadings to date, disagreed that the Township had been properly joined. PPL Electric also filed a Motion to Join the Township Authority as an indispensable party.

On or about May 12, 2006, the Township filed a Reply generally denying the averments contained in PPL Electric's May 10, 2006 Answer.

On June 6, 2006, Administrative Law Judge Charles E. Rainey (the "ALJ") issued an order joining the Township Authority as an indispensable party. The ALJ also ordered the Township Authority to file an Answer to the Complaint within twenty days.

On or about June 21, 2006, the Township Authority filed an Answer to the above-captioned Complaint. The Township Authority's Answer contains new matter.

Pursuant to 52 Pa. Code § 5.63, PPL Electric hereby responds to the new matter contained in the Township Authority's Answer.

RESPONSE TO NEW MATTER

11. Paragraph No. 11 of the Answer incorporates responses to the Complaint and does not constitute new matter.

12. Paragraph No. 12 of the Answer is a conclusion of law to which no response is required.

13. Paragraph No. 13 contains averments regarding injuries sustained by the Complainant. PPL Electric does not have sufficient information to confirm or deny these averments, and therefore, they are denied. However, PPL Electric specifically denies any inference that it caused any injury or damage to the Complainant.

14. Paragraph No. 14 contains averments regarding injuries sustained by the Complainant. PPL Electric does not have sufficient information to confirm or deny these averments, and therefore, they are denied. However, PPL Electric specifically denies any inference that it caused any injury or damage to the Complainant.

15. Paragraph No. 15 of the Answer is a conclusion of law to which no response is required.

16. Paragraph No. 16 of the Answer contains averments regarding the Authority's notice of the alleged dangerous condition. PPL Electric does not have sufficient information to confirm or deny these averments and this information is not reasonably available to PPL Electric. Therefore, these averments are denied.

17. Paragraph No. 17 contains averments regarding injuries sustained by the Complainant. PPL Electric does not have sufficient information to confirm or deny these averments, and therefore, they are denied. However, PPL Electric specifically denies any inference that it caused any injury or damage to the Complainant.

18. Paragraph No. 18 of the Answer is a conclusion of law to which no response is required.

19. Paragraph No. 19 of the Answer is a conclusion of law to which no response is required.

20 Paragraph No. 20 of the Answer states that it incorporates New Matter asserted by other Defendants in this proceeding. The Paragraph does not specifically state which New Matter is incorporated. Therefore, the averments contained in Paragraph No. 20 are denied.

21 Paragraph No. 21 of the Answer is a conclusion of law to which no response is required.

22 Paragraph No. 22 of the Answer is a conclusion of law to which no response is required.

23 Paragraph No. 23 contains averments regarding injuries sustained by the Complainant. PPL Electric does not have sufficient information to confirm or deny these averments, and therefore, they are denied.

24 Paragraph No. 24 of the Answer is a conclusion of law to which no response is required.

25 Paragraph No. 25 of the Answer is a conclusion of law to which no response is required.

In the concluding Paragraph of this section, the Township Authority requests costs and fees from other Parties in this proceeding. The Township Authority's request for costs and fees should be denied. The Commission is a creature of statute, and only has those powers which are expressly conferred upon it by the legislature or which arise by necessary implication. *Vertis Group, Inc v PA PUC*, 840 A.2d 390, 400-401 (Pa. Cmwlth. 2004) (citing *Feingold v. Bell of PA*, 477 Pa. 1, 383 A.2d 791 (1977)). There is no authority in the Public Utility Code that would allow the Commission to award attorney's fees. Moreover, the Commonwealth Court has expressly held that the Commission does not have the authority to award attorney's fees. *Duquesne v PA PUC*, 117 Pa. Cmwlth. 28, 543 A.2d 196 (1988). Likewise, the Commission

does not have the authority to award costs to a party. *PA PUC v. Duquesne Light Co.*, 61 Pa PUC 485 (Order entered May 16, 1986).

26. Paragraph No. 26 of the Answer incorporates prior responses made by the Township Authority in its Answer. As such, PPL Electric incorporates its prior responses provided above.

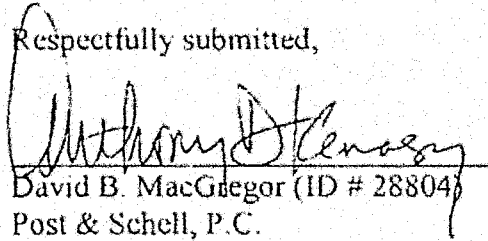
27. The averments of Paragraph No. 27 are denied. If Complainant's allegations are determined to be true, they were not caused by the negligence of PPL Electric.

28. The averments of Paragraph No. 28 are denied. If Complainant proves her damages, PPL Electric is not liable to the Township Authority for contribution or indemnity. In addition, the Commission does not have the authority to award damages.

In its concluding Paragraph, the Township Authority makes requests for relief to which no response it required. However, PPL Electric notes that, as explained above, the Commission does not have the authority to award costs or fees to the Township Authority.

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the South Whitehall Township Authority's New Matter be denied, consistent with the responses provided above.

Respectfully submitted,



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Date: July 14, 2006

Attorneys for PPL Electric Utilities Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

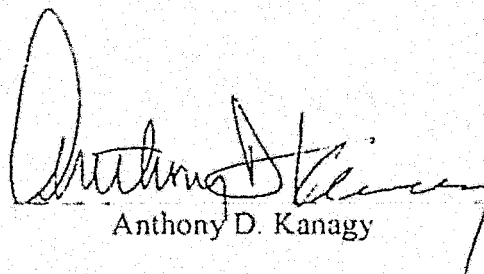
VIA FIRST CLASS MAIL

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