

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Linda L. David

v.

C-20055501

PPL Electric Utilities Corporation

DOCUMENT  
FOLDER

PREHEARING ORDER

2006 APR 28 AM 9:15  
SECRETARY'S BUREAU

On April 11, 2006, I was assigned to preside over this case. The purpose of this order is to bring to the attention of all parties certain procedural rules, observance of which will serve to "secure the just, speedy and inexpensive determination" of this proceeding. 1 Pa. Code §1.2(a). The parties are directed to comply with the following requirements:

I. Proceedings before the Commission are governed by, inter alia, 52 Pa. Code §1.15, which provides:

§1.15. Extensions of time.

**DOCKETED**  
MAY 03 2006

(b) Except as otherwise provided by statute, requests for continuance of hearings or for extension of time in which to perform an act required or allowed to be done at or within a specified time by this title or by order of the Commission or the presiding officer, shall be by motion in writing, timely filed with the Commission, stating the facts on which the application rests, except that during the course of a proceeding, the requests may be made by oral motion in the hearing before the Commission or the presiding officer. Only for good cause shown, will requests for continuance be considered. The requests should be submitted at least 5 days prior to the hearing date. (Emphasis added.)

In accordance with the foregoing, absent a timely request for continuance for good cause (i.e., no later than 5 days before the scheduled hearing on May 15, 2006), all parties to this proceeding shall be prepared to participate in the scheduled hearing.

2. IF YOU WISH TO OFFER INTO EVIDENCE AT THE HEARING MATERIAL IN THE FORM OF DOCUMENTS (LETTERS, BILLS, CANCELLED CHECKS AND THE LIKE), YOU MUST SEND THREE (3) COPIES OF ALL EXHIBITS YOU INTEND TO PRESENT TO MY OFFICE, AND ONE (1) COPY TO EACH PARTY OF RECORD AT LEAST THREE (3) DAYS PRIOR TO THE HEARING

3. YOU MUST ARRANGE TO HAVE THOSE WHO INTEND TO TESTIFY AS WITNESSES ON YOUR BEHALF PRESENT WITH YOU AT THE TIME SET FOR THE HEARING.

4. **COMPLAINANT:** Please be aware that you have the burden of proof in this proceeding, and must show by a preponderance of the evidence that respondent has violated the Public Utility Code or a regulation or order of the Commission, and that you are entitled to the relief requested in the Complaint. If this burden is not satisfied, the Complaint must be denied as a matter of law. Pursuant to 52 Pa. Code §§1.21 and 1.22, if you are an individual, you may be represented by an attorney or you may represent yourself. **If this is an adversarial proceeding and you are a partnership, corporation, trust, association or governmental agency or subdivision, you must be represented by an attorney.**

5. Please be aware that there often is a delay in my receiving documents filed in Harrisburg. Therefore, serve me directly with any documents that you file in this proceeding.

6. I will emphasize that if you are not available for the hearing and a continuance has not been granted, I will conduct the hearing without you. If you are the complainant, that may mean that the complaint will be dismissed. If you are the respondent, the complaint may be sustained and sanctions imposed, if appropriate, based on the record adduced.

7. PLEASE BE AWARE THAT ALTHOUGH THIS HEARING IS BEING CONDUCTED TELEPHONICALLY FOR THE CONVENIENCE OF THE PARTIES, IT IS A FORMAL HEARING AND WILL BE CONDUCTED IN ACCORDANCE WITH THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE.

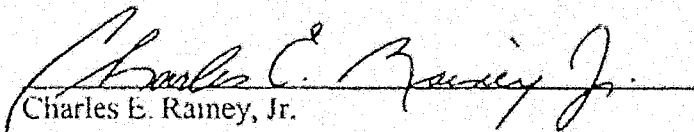
8. The parties are encouraged to informally discuss any of the matters involved in this case prior to the scheduled hearing.

ORDER

The parties shall comply with procedural rules and regulations discussed herein.

Date:

April 24, 2006

  
Charles E. Rainey, Jr.  
Administrative Law Judge

Linda L. David v. PPL Electric Utilities Corporation  
Docket Number C-20055501

SERVICE LIST

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

Anthony D. Kanagy, Esquire  
Post & Schell  
17 North Second Street  
12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601

South Whitehall Township  
444 Walbert Avenue  
Allentown, PA 18104

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



MAYERS, MENNIES & SHERR, LLP

ATTORNEYS AT LAW

2006 APR 28 9:28

ANTHONY R. SHERR  
tsherr@mmsllp.com

SECRETARY'S BUREAU

April 27, 2006

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

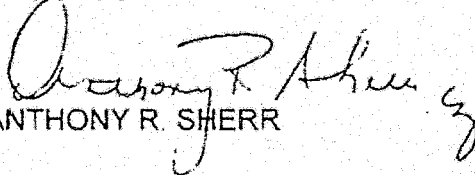
RE: Linda L. David v. South Whitehall Township, et al.  
Docket No. C-20055501

Dear Mr. McNulty:

Enclosed please find an original and three copies of my Entry of Appearance on behalf of Respondent, South Whitehall Township along with an original and three copies of Respondent, South Whitehall Township's Preliminary Motions, which I ask that you have filed with the Commission and return time-stamped copies to me in the enclosed self-addressed stamped envelope

Thank you for your courtesies in this regard.

Very truly yours,

  
ANTHONY R. SHERR

DOCUMENT  
FOLDER

ARS/cz

Enclosure

cc. Luisa T. Chen, Esquire  
Anthony D. Kanagy, Esquire  
Martin J. Danks, Esquire

ORIGINAL

50

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.

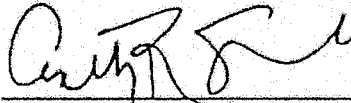
SOUTH WHITEHALL TOWNSHIP,  
Respondent.

ENTRY OF APPEARANCE

Kindly enter my appearance on behalf of Respondent, South Whitehall Township  
in the above-captioned matter.

DOCUMENT  
FOLDER

MAYERS, MENNIES & SHERR, LLP

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

**DOCKETED**  
MAY 09 2006

ORIGINAL

2006 MAY 11 10:56 AM  
RECEIVED - 1  
2006 MAY 11 10:56 AM

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MAYERS, MENNIES & SHERR, LLP  
BY ANTHONY R. SHERR, ESQUIRE  
IDENTIFICATION NO 44603  
3031 WALTON ROAD, BUILDING A  
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(610) 825-0300

ATTORNEY FOR DEFENDANT

\_\_\_\_\_  
LINDA L. DAVID,  
Complainant,

COMPLAINT DOCKET  
NO. C-20055501

v.

\_\_\_\_\_  
SOUTH WHITEHALL TOWNSHIP  
et al,  
Respondent,

CERTIFICATE OF SERVICE

I, Cheryl Zeigler, hereby certify that on the 27<sup>th</sup> day of April 2006, a true and correct copy of Entry of Appearance on behalf of Respondent, South Whitehall was served via first class, regular mail, postage prepaid upon the following:

Luisa T. Chen, Esquire  
**White & Williams**  
1800 One Liberty Place  
Philadelphia, PA 19103-7395

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

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

2006 APR 28 1 51 PM '06  
COMMUNICATIONS SECTION

ORIGINAL

BY. Cheryl Zeigler  
Cheryl Zeigler  
Legal Assistant to Anthony R. Sherr

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2005 MAY 9 9:29

SECRETARY'S BUREAU

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,  
Respondent,

**DOCKETED**  
MAY 09 2006

**DOCUMENT  
FOLDER**

DEFENDANT, SOUTH WHITEHALL TOWNSHIP'S  
PRELIMINARY MOTIONS

NOW COMES Defendant, South Whitehall Township by and through its authorized counsel of record, Mayers, Mennies & Sherr, LLP, hereby files Preliminary Motions pursuant to 52 Pa. Code § 5101. Any and all previous filings by South Whitehall Township are incorporated herein by reference as though set forth fully at length. In support of its Motion, Defendant, South Whitehall Township states as follows.

1 Complainant, Linda L. David commenced this action by filing a Complaint on or about October 26, 2005 with the Pennsylvania Public Utility Commission, against Defendants, PPL Electric Utilities Corporation, Allentown Water Authority and South Whitehall Township.

2 Ms. David's Complaint alleges that Plaintiff has been physically injured by electric current in water pipes near her house. (Comp. at ¶ 5).

3 Plaintiff has previously also alleged damage to her home. See Pennsylvania Office of Attorney General Consumer Complaint Form, attached hereto as Exhibit "1"

4 Under Pennsylvania law, only the Courts of Common Pleas of Pennsylvania have original jurisdiction over private actions leading to potential damage awards. See Poorbaugh v. Pennsylvania Public Utility Commission, 666 A.2d 744 (Pa. Cmwlth. 1995).

5 The Poorbaugh Court found that where the essence of plaintiff's underlying claim is that the utility service failed to prevent an over voltage from its power lines which permitted a dangerous amount of electricity to surge into plaintiff's barn following a power outage and which resulted in a fire that destroyed the barn, the claim belonged in the judicial system and not before the Public Utility Commission. Id.

6 Ms. David's allegations, viewed in the light most favorable to her claim, constitutes a claim for property damage and personal injury.<sup>1</sup>

7 In a controversy where both safety and damages issues will eventually need to be resolved, judicial efficiency and subject matter jurisdiction dictate that such a matter must be heard in a Pennsylvania Court of Common Pleas.

8 Therefore, Ms. David's Complaint fails to state a Complaint for which the PUC can grant relief.

**WHEREFORE**, South Whitehall Township respectfully requests the Pennsylvania Public Utilities Commission dismiss the Complaint for lack of subject matter jurisdiction.

9 South Whitehall Township incorporates paragraphs 1 through 8 of its Preliminary Motions as if set forth fully at length therein.

10 If the Commission determines it has subject matter jurisdiction over this matter, South Whitehall Township alternatively alleges that they have been improperly joined as an indispensable party

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<sup>1</sup> The Pennsylvania Supreme Court has cautioned that courts should not be too hasty in developing a "Dependence" on an agency like the PUC whenever a controversy even remotely falls within that agencies expertise. See Elkin v. Blue Bell Telephone Company of Pennsylvania, 491 Pa. 123, 420 A 2d 371 (1980)

11. An indispensable party is defined as "one whose rights are so connected with the claims of the litigants that no relief can be granted without infringing upon those rights . . ." See, e.g., Pennsylvania School Boards Association, Inc. v. Association of School Administrators, Teamsters Local 502, 696 A 2d 859, 867 (Pa Cmwlth 1997).

12. Here, the Complaint lists South Whitehall Township as a "utility company [her] complaint concerns". (Comp. at ¶ 2.)

13. On March 10, 2006, the PUC granted Respondent PPL Electric Utilities Corporation's Motion to join South Whitehall Township as an Indispensable Party.

14. The PUC's grant was in error.

15. South Whitehall Township is not a utility company, nor does it operate such a company.

16. The Water Pump Station identified in this controversy is operated by South Whitehall Township Authority. (See letter dated, March 4, 2005, attached hereto as Exhibit "2" )

17. South Whitehall Township Authority is a separate entity from South Whitehall Township.

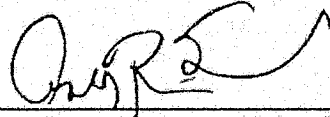
18. South Whitehall Township does not operate any water pumps in the vicinity of Ms. David's home.

19. Thus, South Whitehall Township cannot give Ms. David any remedy for her alleged injuries.

WHEREFORE, South Whitehall Township respectfully requests the Pennsylvania Public Utilities Commission dismiss South Whitehall Township from the matter due because they have been improperly joined.

Respectfully submitted,

MAYERS, MENNIES & SHERR, LLP

BY:   
\_\_\_\_\_  
ANTHONY R. SHERR, ESQUIRE  
Attorney for Defendant  
South Whitehall Township

Dated. April 27, 2005

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  
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(610) 825-0300

ATTORNEY FOR DEFENDANT

\_\_\_\_\_  
LINDA L. DAVID,  
Complainant,

COMPLAINT DOCKET  
NO C-20055501

v

SOUTH WHITEHALL TOWNSHIP  
et al,  
Respondent,

CERTIFICATE OF SERVICE

I, Cheryl Zeigler, hereby certify that on the 27<sup>th</sup> day of April 2006, a true and correct copy of Respondent, South Whitehall Township's Preliminary Motions was served via first class, regular mail, postage prepaid upon the following:

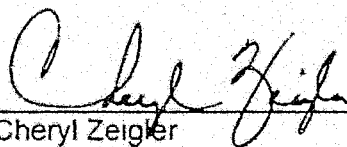
Luisa T. Chen, Esquire  
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Harrisburg, PA 17101-1601

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

ORIGINAL

BY:



Cheryl Zeigler  
Legal Assistant to Anthony R. Sherr

**EXHIBIT "1"**

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

RECEIVED

Please print or type.

C-20055501

OCT 26 2005

1. CUSTOMER NAME (COMPLAINANT)

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Your name, mailing address, county, telephone number, utility account number and service address:

Name LINDA L. DAVID

Street/P.O. Box 2922 W. FAIRVIEW ST. Apt # \_\_\_\_\_

City ALLENTOWN State PA Zip 18103

County LEHIGH

Area Code/HOME Phone 610-740-0637

Area Code/WORK Phone Retired Teacher

Utility Account Number 59690-09000  
(from your bill)

ORIGINAL

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name \_\_\_\_\_

Street/P.O. Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

2. UTILITY NAME (RESPONDENT)

Name of utility company your complaint concerns: PPL

3. TYPE OF UTILITY (check one)

ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER

TELEPHONE  
(local, long distance)

(taxi, moving company, limousine)

SOUTH WHITEHALL  
TOWNSHIP  
ALLENTOWN  
WATER  
AUTHORITY

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4. COMPLAINT (check one)

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.
- Other.  
(explain)

B. State the facts of your complaint.

Include any specific dates, times or places that are important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

A water pumping station has been placed 200' from my home. Vibrations can be felt through the furniture, and electrical impulses. Pumps are not insulated!! 6 AMPS of electricity are running in water pipes. Had private testing done by an electrical engineer

What do you want the Public Utility Commission to do about your complaint? Use additional paper if you need more space.

Someone needs to have the judicial authority to have the township (South Whitehall) and PPL correct the amount of electricity running in the water pipes. Water pumps need to be insulated! One pump runs during the day - vibrations, then, are minimal. Three pumps run after midnight: that's when I'm awakened and burned

burn marks just from sleeping in my own bed.

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution company, an electric distribution company or a water company AND your complaint is about a billing problem, an application for service problem, a termination of service problem or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety?

YES

NO

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES   
(includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

8. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:

I LINDA DAVID hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Linda L. David  
(Signature)

Oct. 18, 2005  
(Date)

9. **LEGAL REPRESENTATION (IF ANY)**

If you are represented by a lawyer in this matter you must provide your lawyer's name, address and telephone number.

Lawyer's Name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Area Code/Phone Number \_\_\_\_\_

10. **FILING**

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

|  |  |
|--|--|
| Secretary<br>Pennsylvania Public Utility Commission<br>P.O. Box 3265<br>Harrisburg, PA 17105 | Secretary<br>Pennsylvania Public Utility Commission<br>400 North Street<br>Commonwealth Keystone Building, 2 <sup>nd</sup> Floor<br>Harrisburg, Pennsylvania 17120 |
|--|--|

Facsimiles and/or electronic filings of the complaint form will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

**Keep a copy of your complaint for your records.**

**EXHIBIT "2"**

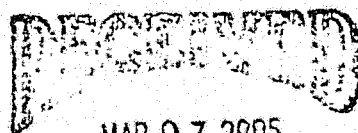
**STEVENS & LEE**  
LAWYERS & CONSULTANTS

190 Brodhead Road  
Suite 200  
P. O. Box 20830  
Lehigh Valley, PA 18002-0830  
(610) 691-7111 Fax (610) 691-7175  
www.stevenslee.com

Direct Dial: (610) 997-5060  
Email: bcm@stevenslee.com  
Direct Fax: (610) 371-8411

March 4, 2005

Ms. Sarah Furedi  
Consumer Protection Agent  
Bureau of Consumer Protection  
Allentown Regional Office  
801 Hamilton Street  
4th Floor  
Allentown, PA 18101



Office of Attorney General

05-0345

Re: Your Inquiry - Linda G. David  
Our Client - South Whitehall Township

Dear Ms. Furedi:

Please be advised that the undersigned represents South Whitehall Township. Your letter of February 22, 2005 has been forwarded to my attention.

So you know, there is no consumer or trade relationship between Ms. David and South Whitehall Township. Moreover, the operator of the Water Pump Station about which Ms. David complains is South Whitehall Township Authority, which also has no trade or consumer relationship with Ms. David, as she is not a customer of the Authority. Accordingly, it is my belief that the Bureau of Consumer Protection does not have jurisdiction over this matter.

Apart from the jurisdictional issue, you should know that the Authority carefully evaluated Ms. David's concerns, and although there is a great deal of empathy by the Board for what she says she is experiencing, there has been absolutely no credible basis for believing that the Authority's Pump Station has anything to do with her alleged problem.

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster  
Scranton • Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION

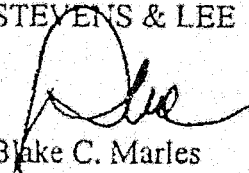
STEVENS & LEE  
LAWYERS & CONSULTANTS

Ms. Sarah Furedi  
March 4, 2005  
Page 2

If you have further concerns or questions, please direct them through this office.

Very truly yours,

STEVENS & LEE



Blake C. Marles

BCM:cjd

cc: South Whitehall Township Board of Authority  
Mr. Gerald J. Gasda