

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

David Morales

v.

PPL Electric Utilities Corporation

:  
:  
:  
:  
:

C-20077505

ORDER DENYING PRELIMINARY OBJECTIONS

DOCUMENT  
FOLDER

Before  
Veronica A. Smith  
Chief Administrative Law Judge

DOCKETED  
JUN 6 2007

HISTORY OF THE PROCEEDING

On March 23, 2007, David Morales (Complainant), filed a Formal Complaint with the Commission against PPL Electric Utilities Corporation (Respondent), requesting that the Commission require Respondent to relocate pole #58468-N55141 which is located on Complainant's property. Complainant alleges that Respondent does not have a valid easement and that the pole is blocking construction of a planned driveway. Complainant further avers that he has met with Respondent regarding relocation of the pole but the discussions were not successful.

On April 23, 2007<sup>1</sup>, Respondent filed an Answer and Preliminary Objections, addressing the allegations of the Complaint and moving to dismiss the Complaint on the basis that the Commission lacks subject matter jurisdiction over the Complaint allegations.

According to Commission records, as of May 31, 2007, Complainant did not file a response to the Preliminary Objection<sup>2</sup>. This matter was assigned to me by Motion Judge Assignment Notice dated May 1, 2007. The Preliminary Objections are ripe for ruling.

<sup>1</sup> Respondent was served with a copy of the Complaint on April 2, 2007. Furthermore, April 22, 2007 was a Sunday so Respondent's filing of its Answer on April 23 was timely. See 52 Pa. Code §§1.12 and 5.61.

<sup>2</sup> Pursuant to 52 Pa. Code §5.101(f)(1) a reply to the Preliminary Objections was due on or before May 3, 2007.

## DISCUSSION

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code §§5.101-5.103. This practice is similar to Pennsylvania civil practice regarding the filing of preliminary objections. Equitable Small Transportation Interveners v. Equitable Gas Company, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991). The Commission has adopted this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988).

The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the motion, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. County of Allegheny v. Commw. of Pa., 490 A.2d 402 (Pa. 1985); Commw. of Pa. v. The Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Commw. 1988). The objections may be granted only if the moving party prevails as a matter of law. Roc v. Flaherty, 527 A.2d 211 (Pa. Commw. 1985). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. Dept. of Auditor General, et al. v. State Employees' Retirement System, et al., 836 A.2d 1053, 1064 (Pa. Commw. 2003) (citing, Boyd v. Ward, 802 A.2d 705 (Pa. Commw. 2002)).

Respondent's Preliminary Objections move for dismissal of the Complaint on the basis that the Commission lacks subject matter jurisdiction over the allegations raised therein. In its Preliminary Objections, Respondent classifies the Complaint allegations as a "property dispute between [a] public utility and [a] property owner." Preliminary Objection ¶5. *See also*, Answer ¶5.

As in every case coming before this forum, the Commission must decide initially whether it has jurisdiction over the parties and the subject matter of this dispute. As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Public Utility Code (the "Code"). 66 Pa. C.S. §§101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication

therefrom. Feingold v. Bell of Pa., 383 A.2d 791 (Pa. 1977); Allegheny County Port Authority v. Pa. P.U.C., 237 A.2d 602 (Pa. 1967); Behrend v. Bell of Pa., 390 A.2d 233 (Pa. Super. 1978); Pa. Department of Highways v. Pa. P.U.C., 87, 182 A.2d 267 (Pa. Super. 1962); and City of Erie v. Pa. Electric Co., 383 A.2d 575 (Pa. Commw. 1978).

The Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. PA Public Utility Comm'n, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967). Neither silence nor agreement of the parties will confer jurisdiction where it otherwise would not exist, Commonwealth v. VanBuskirk, 449 A.2d 621 (Pa. Super. 1982), nor can jurisdiction be obtained by waiver or estoppel, In Re Borough Of Valley-Hi, 420 A.2d 15 (Pa. Commw. 1980).

Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Cf.*, Hughes v. PA State Police, 619 A.2d 390 (Pa. Commw. 1992), *alloc. den.*, 637 A.2d 293 (1993). The Commission has been granted broad powers to supervise and regulate all public utilities doing business within the Commonwealth and is empowered to determine whether a public utility is providing safe, adequate and reasonable service. 66 Pa. C.S. §§501, 1501. The Commission may impose civil penalties upon a utility that is found to be in violation of a statute, regulation or order of the Commission. 66 Pa. C.S. §3301.

The Public Utility Code requires that a public utility provide and maintain adequate, efficient, safe and reasonable service and that it make such changes, improvements and adjustments to such service as necessary or proper for the accommodation, convenience and safety of its patrons and the public. If the Commission finds that the utility has rendered unreasonable or inadequate service, the Commission shall determine and prescribe, by regulation or order, the reasonable, adequate and sufficient service to be furnished by the utility. 66 Pa. C.S. §§1501, 1505.

The Commission has the exclusive jurisdiction to determine the reasonableness and sufficiency of a public utility's service and facilities. Elkin v. Bell of PA, 420 A.2d 371 (1980). The Public Utility Code defines "service" as follows:

Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all

things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities . . . (Emphasis added).

66 Pa. C.S. §102. Utility service is not limited to the [provision of service] and includes “any and all acts” related to that function as well as the safety of the facilities. West Penn Power Company v. PA P.U.C., 578 A.2d 75, 76 (Pa. Cmwlth. 1990).

The Complainant alleges that Respondent placed a pole on his property without a valid easement and that Respondent’s actions amounted to an unlawful taking of private property. While Respondent is correct in its assertion that the Commission lacks the requisite jurisdiction to determine the validity of an easement, I do not agree with its conclusion that this case presents solely a property dispute between a property owner and a public utility. In Messina v. Bell Atlantic-Pennsylvania, Inc., 1998 Pa. PUC, Lexis 190 (September 23, 1998), the complainant alleged that Bell’s telephone lines were encroaching on his private property and requested that the Commission require Bell to relocate the lines. Messina at \*2. The Commission concluded that requiring Bell to establish the mere existence of its asserted right-of-way did not exceed the scope of the Commission’s jurisdiction but was a “threshold factual determination” incident to its jurisdiction. Id. at \*15.

Whether Respondent has an easement granting a right-of-way across Complainant’s property is a factual determination that the Commission is empowered to make. Furthermore, the location of a utility pole as well as the circumstances surrounding its placement fall within the meaning of “service” as defined by the Public Utility Code and if the Respondent is found to have violated the Public Utility Code or a regulation or Order of the Commission, the Commission may direct that the pole be moved, which is the very relief requested by Complainant<sup>3</sup>. Accordingly, I cannot conclude that disposition of the Complaint allegations fall outside the general administrative powers granted to the Commission by the Public Utility Code. 66 Pa. C.S. §§501. 1501.

Respondent’s Preliminary Objections are denied and this case will be set for hearing. Complainant is advised that he will bear the burden of proof at hearing and must present evidence sufficient to prove that Respondent violated a statute, regulation or order of the Commission and that he is entitled to the relief requested. 66 Pa. C.S. §332(a).

---

<sup>3</sup> A Commission order directing a utility to move its facilities does not necessarily mean that the facility will be moved at the sole expense of the utility. A customer may be required to contribute to the cost or bear the entire cost of relocating the facility.

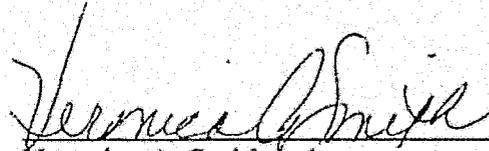
ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by PPL Electric Utilities seeking dismissal of the Complaint of David Morales at PUC Docket No. C-20077505 are denied.
2. That this case be set for hearing.

Dated: June 4, 2007

  
Veronica A. Smith  
Chief Administrative Law Judge



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Office of Administrative Law Judge  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
June 6, 2007

IN REPLY PLEASE  
REFER TO OUR FILE

In Re: C-20077505

(SEE ATTACHED LIST)

# DOCUMENT FOLDER

David Morales v. PPL Electric Utilities Corporation

Pole location dispute.

## Telephone Hearing Notice

This is to inform you that a hearing by telephone on the above-captioned case will be held as follows:

Type: Initial Telephonic Hearing

Date: Thursday, July 19, 2007

Time: 10:00 a.m.

Presiding: Administrative Law Judge Ember S. Jandebour  
Room 317  
Scranton State Office Building  
100 Lackawanna Avenue  
Scranton, PA 18503  
Telephone: 570.963.4818  
Fax: 570.963.3310

**DOCKETED**  
JUN 08 2007

If you have not provided a current telephone number where you can be reached for participation in the hearing OR YOUR AREA CODE HAS CHANGED, then you must contact the presiding officer at least 7 days before the actual hearing and provide the necessary information.

BA

At the above date and time, the Presiding Officer will contact the parties as follows:

David Morales	570.239.3796
Andrew H. Ralston Jr., Esquire	610.871.1323
Howard M. Spizer, Esquire	570.346.1111

If you have any hearing exhibits to which you will refer during the hearing, 3 copies must be sent to the Administrative Law Judge and 1 copy each must be sent to every other party. All copies must be received at least 5 days before the hearing.

*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*

Except for those individuals representing themselves, the Commission's rules require that all parties have an attorney; therefore, you should have an attorney of your choice file an entry of appearance before the scheduled hearing.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission at least (2) two business days prior to your hearing:

- Scheduling Office: 717.787.1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired:  
1.800.654.5988

pc: Judge Jandebaur  
Dawn Reitenbach  
Beth Plantz  
Docket Section  
Calendar File



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Office of Administrative Law Judge  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
June 19, 2007

IN REPLY PLEASE  
REFER TO OUR FILE

In Re: C-20077505

(SEE LETTER DATED 6/6/07)

David Morales v. PPL Electric Utilities Corporation

Pole location dispute

Hearing Notice

DOCUMENT  
FOLDER

This is to inform you that the notice dated June 6, 2007 on the above-captioned case was scheduled for a Telephonic hearing. The purpose of this notice is to change the hearing to an In-Person Hearing. All changes will be double underlined.

Type: Initial In-Person Hearing

Date: Thursday, July 19, 2007

Time: 10:00 a.m.

Location: Room 318  
Scranton State Office Building  
100 Lackawanna Avenue  
Scranton, PA 18503

Presiding: Administrative Law Judge Ember S. Jandebaur  
Room 317 Scranton State Office Building  
100 Lackawanna Avenue  
Scranton, PA 18503  
Telephone: 570.963.4818  
Fax: 570.963.3310

DOCKETED  
JUN 28 2007

*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*

If you intend to file exhibits, 2 copies of all hearing exhibits to be presented into evidence must be submitted to the reporter. An additional copy must be furnished to the Presiding Officer. A copy must also be provided to each party of record.

Individuals representing themselves do not need to be represented by an attorney. All others (corporation, partnership, association, trust or governmental agency or subdivision) must be represented by an attorney. An attorney representing you should file a Notice of Appearance before the scheduled hearing date.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission at least (2) two business days prior to your hearing:

- Scheduling Office: 717.787.1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired:  
1.800.654.5988

pc: Judge Jandebaur  
Dawn Reitenbach  
Beth Plantz  
Docket Section  
Calendar File



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Office of Administrative Law Judge  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
July 6, 2007

IN REPLY PLEASE  
REFER TO OUR FILE

5

In Re: C-20077505

(SEE LETTER DATED 6/6/07)

David Morales v. PPL Electric Utilities Corporation

Pole location dispute.

Hearing Cancellation/Reschedule Notice

This is to inform you that the Initial Hearing on the above-captioned case previously scheduled for July 19, 2007 has been canceled.

The hearing has been rescheduled as follows:

Type: Initial In-Person Hearing  
Date: Wednesday, August 15, 2007  
Time: 10:00 a.m.  
Location: Room 318  
Scranton State Office Building  
100 Lackawanna Avenue  
Scranton, PA 18503

Presiding: Administrative Law Judge Ember S. Jandebour  
Room 317  
Scranton State Office Building  
100 Lackawanna Avenue  
Scranton, PA 18503  
Telephone: 570.963.4818  
Fax: 570.963.3310

DOCUMENT  
FOLDER

DOCKETED  
JUL 11 2007

Please mark your records accordingly.

SECRETARY'S OFFICE  
2007 JUL 11 11:03 23

BA

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission at least (2) two business days prior to your hearing:

- Scheduling Office: 717.787.1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired:  
1.800.654.5988

pc: Judge Jandebaur  
Dawn Reitenbach  
Beth Plantz  
Docket Section  
Calendar File

# OALJ Hearing Report

Please Check Those Blocks Which Apply

Docket No:	C-20077505	Prehearing Held:	YES	NO
Case Name:	David Morales v. PPL Electric Utilities	Hearing Held:	<input type="checkbox"/>	<input type="checkbox"/>
Corporation:	(tele)	Testimony Taken:	<input type="checkbox"/>	<input type="checkbox"/>
		Transcript Due:	<input type="checkbox"/>	<input type="checkbox"/>
Location:	Scranton	Hearing Concluded:	<input type="checkbox"/>	<input type="checkbox"/>
Date:	Thursday, July 19, 2007	Further Hearing Needed:	<input type="checkbox"/>	<input type="checkbox"/>
		Estimated Add'l Days:		
ALJ:	Ember S. Jandebaur	RECORD CLOSED:	<input type="checkbox"/>	<input type="checkbox"/>
Reporting Firm:	Sargents Court Reporting	DATE:		
		Briefs to be Filed:	<input type="checkbox"/>	<input type="checkbox"/>
		DATE:		
		Bench Decision:	<input type="checkbox"/>	<input type="checkbox"/>
		REMARKS:		

DOCUMENT FOLDER

Moved To 8/15

RECEIVED

AUG 24 2007

PLEASE PRINT CLEARLY - Incomplete information may result in delay of processing.

Name and Telephone Number	Address	PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU What are you representing?
	City      State      Zip	
Telephone:	E-mail Address:	Fax Number:
	City      State      Zip	
Telephone:	E-mail Address:	Fax Number:
	City      State      Zip	
Telephone:	E-mail Address:	Fax Number:

BTL

Check this box if additional parties or attendees appear on back of form.

Reporter's Signature

*Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.*

**OALJ Hearing Report**

Please Check Those Blocks Which Apply

Docket No.:	C-20077505	Prehearing Held:	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/>	NO
Case Name:	David Morales v. PPL Electric Utilities Corp	Hearing Held:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
		Testimony Taken:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
		Transcript Due:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		Hearing Concluded:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Location:	SCR	Further Hearing Needed:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Date:	August 15, 2007	Estimated Add'l Days:				
ALJ:	Ember S. Jandebour	RECORD CLOSED:	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Reporting Firm:	Sargents Court Reporting	DATE:		8/15/07		
		Briefs to be Filed:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
		DATE:				
		Bench Decision:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<p><b>RECEIVED</b></p> <p>SEP 17 2007</p> <p>PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU</p> <p>PLEASE PRINT CLEARLY - Incomplete Information may result in delay of processing.</p>		REMARKS:				
			F.C. Withdrawn -			
			written w/o attached			

**DOCUMENT FOLDER**

**RECEIVED**

SEP 17 2007

PA PUBLIC UTILITY COMMISSION

SECRETARY'S BUREAU

PLEASE PRINT CLEARLY - Incomplete Information may result in delay of processing.

Name and Telephone Number	Address	Who are you representing?
Andrew RAALSTON, Jr. Esquire	335. 7th St. PO Box 4060 Allentown, PA 18105-4060 <small>City State Zip</small>	PPL
Telephone: 610-820-5450	E-mail Address: aralston@smle.com	Fax Number:
David Morales	HCZ Box 2410 Oswald Johnson Rd Lancaster, Pa 17441 <small>City State Zip</small>	Property (520) 222-2970
Telephone: (520) 432-9141	E-mail Address: hantfordstoneco@ecloes.net	Fax Number:
	<small>City State Zip</small>	BTL
Telephone:	E-mail Address:	Fax Number:

Check this box if additional parties or attendees appear on back of form.

*[Signature]*  
Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.

8-15-07

I David Morales wish to withdraw  
my complaint against PPL Electric  
Utilities filed with the PUC

David Morales

**OALJ Hearing Report**

Please Check Those Blocks Which Apply

Docket No.:	C-20077505	Prehearing Held:	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Case Name:	David Morales v. PPL Electric Utilities Corp	Hearing Held:	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
		Testimony Taken:	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
		Transcript Due:	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
		Hearing Concluded:	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Location:	SCR	Further Hearing Needed:	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
Date:	August 15, 2007	Estimated Add'l Days:		
ALJ:	Ember S. Jandebaur	RECORD CLOSED:	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Reporting Firm:	Sargents Court Reporting	DATE:	8/15/07	
		Briefs to be Filed:	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
		DATE:		
		Bench Decision:	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
<p><b>RECEIVED</b></p> <p>SEP 17 2007</p> <p>PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU</p>		REMARKS:		
		<p><i>F.C. Withdrawn -</i></p> <p><i>written w/d attached</i></p>		

**DOCUMENT FOLDER**

PLEASE PRINT CLEARLY - Incomplete Information may result in delay of processing.

Name and Telephone Number	Address	Who are you representing?
Andrew RALSTON, Jr. Esquire	335. 7th St. PO Box 4060 Allentown, PA 18105-4060 <small>City State Zip</small>	PPL
Telephone: 610-820-5450	E-mail Address: aralston@smk.com	Fax Number:
David Morales	1407 Box 7410 Oswald Johnson Rd Lancaster Pa 17441 <small>City State Zip</small>	Property (570) 222-2970
Telephone: (570) 432-9141	E-mail Address: kwardstone@echoes.net	Fax Number:
	<small>City State Zip</small>	BTL
Telephone:	E-mail Address:	Fax Number:

Check this box if additional parties or attendees appear on back of form.

*[Signature]*  
Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

DATE: August 22, 2007  
SUBJECT: C-20077505  
David Morales v. PPL Electric Utilities Corporation  
TO: ✓ Wanda Zeiders  
Docket Management  
FROM: Dawn M. Reitenbach, ALJ Support Staff  
Office of Administrative Law Judge

DOCUMENT  
FOLDER

On August 15, 2007, a Petition for leave to Withdraw was filed in the above-captioned proceeding. If no objection is filed to this petition within 20 days of the filing, this proceeding will be closed.

All parties should be notified that the case is closed and a copy of that notification placed in the document folder.

Attachment

pc: ALJ Ember Jandebour  
Beth Plantz  
Case File

DOCKETED  
SEP 06 2007

BTL



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

September 28, 2007

C-20077505

DAVID MORALES  
HC 7 BOX 7410  
LENOXVILLE PA 18441

**DOCKETED**  
SEP 26 2007

DAVID MORALES  
v.  
PPL ELECTRIC UTILITIES CORPORATION

**DOCUMENT  
FOLDER**

TO WHOM IT MAY CONCERN:

Please be advised that the Commission has marked closed the above-entitled proceeding.

Very truly yours,

James J. McNulty  
Secretary

cc: All parties of Record

nvl

**BTL**