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August 8, 2019

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: PPL Electric Utilities Corporation v. Suzanne Kohrs
Docket No. C-2018-3006421

Dear Ms. Chiavetta:

Enclosed for eFiling in the above-captioned matter is PPL Electric Utilities Corporation's Motion for Judgment on the Pleadings Seeking Dismissal for Lack of Jurisdiction, together with supporting Brief, on behalf of PPL Electric Utilities Corporation.

Please note that this filing was eFiled with the Commission on the date indicated above.



KIMBERLY G. KRUPKA

KGK/tb
Enclosure

cc: Administrative Law Judge Benjamin Myers (w/enc.) *via email only*
Lee E. Krause, Esquire (w/enc.) *via First Class Mail*
Michelle L. Bartolomei (w/enc.) *via email only*
Shelbie Frederick Bayda (w/enc.) *via email only*

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SUZANNE KOHRS

Complainant,

vs.

PPL ELECTRIC UTILITIES CORPORATION,

Respondent.

COMPLAINT DOCKET

NO. C-2018-3006421

C-2018-3006013

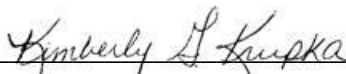
NOTICE OF MOTION

TO: Suzanne Kohrs
c/o Lee C. Krause, Esquire
Foster Building
109 Ninth Street
Honesdale, PA 18431

PLEASE TAKE NOTICE that the attached Motion for Judgment on the Pleadings Seeking Dismissal for Lack of Jurisdiction is herewith presented to the Pennsylvania Utilities Commission for consideration. If you are opposed to this Motion, you must file a written response with the Pennsylvania Utilities Commission within twenty (20) days of service of the within Motion. If no response is timely filed, the Motion may be decided without further opportunity for you to be heard on the matter.

GROSS MCGINLEY, LLP

Dated: August 7, 2019

By: 
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BEFORE THE
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Complainant,

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Respondent.

COMPLAINT DOCKET

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C-2018-3006013

**PPL ELECTRIC UTILITIES CORPORATIONS' MOTION FOR JUDGMENT ON THE
PLEADINGS SEEKING DISMISSAL FOR LACK OF JURISDICTION**

PPL Electric Utilities Corporation (“Respondent PPL Electric”) by and through its counsel, hereby files a Motion for Judgment on the Pleadings seeking Dismissal for Lack of Jurisdiction in the above-captioned proceeding as follows:

1. Movant is PPL Electric Utilities Corporation, Respondent in the above captioned action.
2. Respondent to this instant Motion is Suzanne Kohrs (hereinafter “Kohrs”), Complainant in the above-referenced matter.
3. On or about November 9, 2018, Suzanne Kohrs filed a Complaint with the Public Utility Commission concerning an alleged right-of-way violation by PPL Electric on her property.
4. The Complaint alleges reliability, safety or quality problems with utility services, as well as “other” as explained in Kohrs’ letter (hereinafter the “Letter”) attached to her Complaint. A true and correct copy of the Complaint is attached hereto as “Exhibit A” and incorporated herein.
5. An Answer to the Complaint was filed by PPL on December 4, 2018.

6. Kohrs' Complaint and Letter aver that PPL Electric has violated a privately contracted right-of-way by acting beyond the scope of the right-of way and causing damage to Kohrs' property.

7. Specifically, Kohrs states in her Letter: "*The deed and right-of-way agreement will corroborate that the private access road is not included*" (§ 3 of the Letter).

8. Similarly, Kohrs alleges: "*PPL desires to overreach the right-of-way and will unnecessarily damage the land in question.*" (§ 4 of the Letter).

9. In fact, the majority of Kohrs' Letter describing her complaint stems around the language and limitations included in the said right-of-way.

10. Additionally, Kohrs concludes her Letter alleging that PPL Electric "*is wrongfully using lands outside the bounds of the right-of-way.*" (§ 5 of the Letter).

11. Kohrs' entire Complaint revolves around PPL Electric's alleged violation of the right-of-way. There is nothing in the Complaint or Letter that addresses an issue strictly with the reliability, safety, or quality of service provided by PPL Electric.

12. As such, Kohrs mistakenly categorized her Complaint as an issue dealing with "reliability, safety or quality problems with utility services."

13. The Commission has consistently held that in order for a Complaint to survive "a public utility must be in violation of its duty under the Public Utility Code"; 66 Pa. C.S. § 101 *et seq.*, the Commission's Regulations; 53 Pa. Code § 1.1 *et seq.*, or an Order of the Commission. *See Triple Crown Corp. v. PP&L, Inc.*, 94 Pa. P.U.C. 300 (2000).

14. Similarly, the fact that a regulated public utility is a party to an action is not enough to establish subject matter jurisdiction on the Commission. *See Cf., DeFrancesco v. Westen Pennsylvania Water Co.*, 499 Pa. 374, 453 A.2d 595 (1982).

15. Further, the Commission has already addressed the issue in the instant matter and has consistently held that property rights, including the interpretations of easement and rights-of-

way are matters for a Court of general jurisdiction and the Commission is not the proper forum to resolve such controversies. *See Tod & Lisa Shedlosky*, No. C-20066937, 2008 WL 4614198 (Aug. 7, 2008) (citing *Anne E. Perrige v. Metropolitan Edison Co.*, C-00004110 (July 11, 2003) (holding that, in a dispute regarding the location of a right-of-way, the Commission had no jurisdiction to interpret the meaning of the written right-of-way).

16. On the same note, it is well settled that “the PUC is not jurisdictionally empowered to decide private contractual disputes between a citizen and utility.” *See Byer v. Peoples Natural Gas Company*, 380 A.2d 383 (Pa. Super. 1977); *Leveto v. National Fuel Gas Distribution Corporation* 243 Pa. Super 510, 366 A.2d 270 (1976); *Reading & Southwestern Street Railway Company v. Pennsylvania PUC*, 168 Pa. Super. 61, 77 A.2d 102 (1950).

17. The averments contained within the Complaint and Letter deal solely with issues involving the interpretation of the privately contracted right-of way between the two parties.

18. The issues deal with construction on land subject to a bargained for right of way, and whether PPL Electric is required to restore the land to status quo. There are no claims that actual electrical service being provided to Kohrs’ or any other customer is affected by PPL Electric’s use of a bargained for easement.

19. It is anticipated that Kohrs may attempt to argue that the pad area created by PPL Electric pursuant to the easement is not needed by PPL Electric and causes Kohrs inconvenience in the access of her property. However, there are precisely the private contractual disputes which should be decided by a civil court, and not the public utility commission.

20. There can be no question that but for PPL Electric being a utility there would be no basis for Kohrs’ Complaint being before the PUC. In fact, the interpretation of a right of way, without regard to the parties identities, is exactly the type of dispute heard and decided by a Civil Court.

21. Kohrs' Complaint does not allege that PPL Electric violated any duty under the Public Utility Code; 66 Pa. C.S. § 101 *et seq.*, the Commission's Regulations; 53 Pa. Code § 1.1 *et seq.*, or an Order of the Commission.

22. Kohrs' Complaint is absent of any specific facts or allegations that can even remotely be construed as issues dealing with the adequacy and sufficiency of PPL Electric's service and, therefore, is not within the purview of the Commission's jurisdiction.

WHEREFORE, Movant/Respondent, PPL Electric Utilities Corporation, respectfully requests that the above-captioned action be dismissed based on lack of jurisdiction.

Respectfully submitted,

GROSS McGINLEY, LLP

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Dated: August 7, 2019

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SUZANNE KOHRS,

Complainant,

vs.

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Respondent.

COMPLAINT DOCKET

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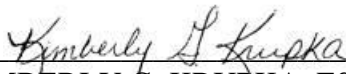
C-2018-3006013

CERTIFICATE OF SERVICE

This is to certify that PPL ELECTRIC UTILITIES CORPORATIONS' MOTION FOR JUDGMENT ON THE PLEADINGS SEEKING DISMISSAL FOR LACK OF JURISDICTION, was mailed to counsel/complainant of record on behalf of Complainant by first class United States mail, postage on this the 7th day of August 2019.

Lee C. Krause, Esquire
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Honesdale, PA 18431

GROSS McGINLEY, LLP

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BEFORE THE
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Complainant,

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Respondent.

COMPLAINT DOCKET

NO. C-2018-3006421
C-2018-3006013

PPL ELECTRIC UTILITIES CORPORATION'S
BRIEF IN SUPPORT OF ITS MOTION FOR JUDGMENT ON THE PLEADINGS
SEEKING DISMISSAL FOR LACK OF JURISDICTION

PPL Electric Utilities Corporation (hereinafter "PPL Electric"), by and through its counsel, Gross McGinley, LLP, files the within Brief in Support of its Motion to Dismiss for Lack of Jurisdiction.

I. HISTORY OF THE CASE

On or about November 9, 2018, Suzanne Kohrs (hereinafter "Kohrs") filed a Complaint with the Public Utility Commission concerning a right-of-way violation pertaining to her property. A true and correct copy of Kohrs' Complaint and corresponding Letter is attached to PPL's accompanying Motion to Dismiss for Lack of Jurisdiction as Exhibit "A" and is incorporated herein by reference. Specifically, the issues within the Complaint deal with construction performed by PPL Electric on Kohrs' property that was subject to a bargained for right-of-way. Kohrs' contends that PPL Electric is required to restore the land to status quo in accordance with the right-of-way. Despite categorizing her Complaint as containing issues dealing with "reliability, safety or quality problems with utility services," there are no claims presented in Kohrs' Complaint that actual service being provided to Kohrs' or any other customer is affected by PPL Electric's use of a bargained for right-of-way. Because the only

issue presented is based on the interpretation of a privately contracted right-of-way this cause of action should be resolved in a civil court and not the public utility commission.

II. QUESTION INVOLVED

Whether Complainant's cause of action against PPL is based solely on a private contractual dispute and therefore should be resolved in a civil court and not the public utility commission?

Suggested Answer: Yes.

III. ARGUMENT

The Commission has consistently held that in order for a complaint to survive “a public utility must be in violation of its duty under the Public Utility Code”; 66 Pa. C.s. § 101 *et seq.*, the Commission's regulations; 53 Pa. Code § 1.1 *et seq.*, or an order of the Commission. *See Triple Crown Corp. v. PP&L, Inc.*, 94 Pa. P.U.C. 300 (2000). Similarly, the fact that a regulated public utility is a party to an action is not enough to establish subject matter jurisdiction on the Commission. *See Cf., DeFrancesco v. Westen Pennsylvania Water Co.*, 499 Pa. 374, 453 A.2d 595 (1982).

Further, the Commission has already addressed the issue presented in the instant matter and has held that property rights, including the interpretations of easement and rights-of-way are matters for a Court of general jurisdiction and the Commission is not the proper forum to resolve such controversies. *See Tod & Lisa Shedlosky*, No. C-20066937, 2008 WL 4614198 (Aug. 7, 2008) (citing *Anne E. Perrige v. Metropolitan Edison Co.*, C-00004110 (July 11, 2003) (holding that, in a dispute regarding the location of a right-of-way, the Commission had no jurisdiction to interpret the meaning of the written right-of-way).

On the same note, it is well settled that “the PUC is not jurisdictionally empowered to decide private contractual disputes between a citizen and utility.” *See Byer v. Peoples Natural Gas Company*, 380 A.2d 383 (Pa. Super. 1977); *Leveto v. National Fuel Gas Distribution*

Corporation 243 Pa. Super 510, 366 A.2d 270 (1976); *Reading & Southwestern Street Railway Company v. Pennsylvania PUC*, 168 Pa. Super. 61, 77 A.2d 102 (1950).

The averments contained within Kohrs' Complaint and Letter deal solely with the interpretation of the privately contracted right-of way between the two parties. The specific allegations reference PPL's construction on land which was subject to a bargained for right of way between the two parties. Kohrs' points out that the focal point of her complaint is whether PPL Electric is required to restore the land to status quo pursuant to the right-of-way. There are no claims that actual electrical service being provided to Kohrs' or any other customer is affected by PPL Electric's use of a bargained for right-of-way. Kohrs may attempt to argue that the pad area created by PPL Electric pursuant to the easement is not needed by PPL Electric and causes Kohrs inconvenience in the access of her property. However, these are precisely the private contractual disputes which should be decided by a civil court, and not the public utility commission.

There can be no question that but for PPL Electric being a utility there would be no basis for Kohrs' Complaint being before the PUC. In fact, the interpretation of a right-of-way, without regard to the parties' identities, is exactly the type of dispute heard and decided by a Civil Court. *See Cf., Defrancesco v. Westen Pennsylvania Water Co.*, 499 Pa. 374, 453 A.2d 595 (1982). Additionally, Kohrs' Complaint does not allege that PPL Electric violated any duty under the Public Utility Code; 66 Pa. C.S. § 101 *et seq.*, the Commission's Regulations; 53 Pa. Code § 1.1 *et seq.*, or an Order of the Commission. Moreover, to the extent Complainant attempts to argue that PPL Electric has created a dangerous condition with the slope of the constructed area, such again is a question for a Civil court. The property in dispute is a large mainly undeveloped area of land. Whether a slope within one area of the property would create an unreasonable risk of harm to trespassing snowmobilers is an issue requiring the testimony of experts to offer opinions

as to proper and acceptable landscapes within open property. Such issues are unrelated to reasonable, reliable and safe provision of electrical service.

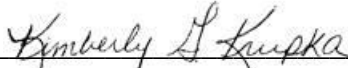
In that Kohrs' Complaint is absent of any specific facts or allegations that can even remotely be construed as issues dealing with the adequacy and sufficiency of PPL Electric's service and therefore is not within the purview of the Commission's jurisdiction.

IV. CONCLUSION

For the reasons stated above, PPL Electric Utilities Corporation, respectfully requests that this Honorable Court grant its Motion for Judgment on the Pleadings and Dismiss the Complaint for Lack of Jurisdiction.

Respectfully submitted,

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