

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael and Sharon Hartman	:	
	:	
v.	:	C-2019-3008272
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Andrew M. Calvelli
Administrative Law Judge

INTRODUCTION

This Decision grants a Motion for Judgment on the Pleadings and dismisses the Complaint filed by Michael and Sharon Hartman against PPL Electric Utilities Corporation. The Complaint is dismissed because the Pennsylvania Public Utility Commission does not have the legal jurisdiction to hear the claims raised in the Complaint, as those claims revolve around property rights (most specifically easement rights) and money damages.

HISTORY OF THE PROCEEDING

On March 1, 2019, Michael and Sharon Hartman (the Hartmans) filed a formal Complaint against PPL Electric Utilities Corporation (PPL) with the Pennsylvania Public Utility Commission (Commission), at Docket Number C-2019-3008272. In the Complaint, the Hartmans contend that:

PPL has violated the existing right of way Agreement on our residential property, and has failed to compensate us for damage and removal of our property. Furthermore PPL has trespassed upon and damaged private property outside the right of way.

Complaint at Page 2. In the Requested Relief Section of the Complaint, the Hartmans state that:

PPL should be ordered to purchase a new right of way Agreement.
PPL has violated the existing ROW.

PPL should be ordered to restore our property to its original condition to include:

Restoration of topsoil and landscaping stones and boulders removed from our property.

Removal of stone road and foreign materials from our property.

Installation of water runoff protection and soil erosion control measures.

Replace vegetation to include native shrubs that were indiscriminately destroyed during construction.

Return property to original topography (natural slope).

Complaint at Page 3.

The Commission's Secretary served the Complaint upon PPL on March 5, 2019. PPL filed an Answer to the Complaint on March 25, 2019. This case was then assigned to the Commission's Office of Administrative Law Judge (OALJ) for adjudication.

On April 3, 2019, OALJ served an Initial Call-In Telephonic Hearing Notice on the parties, advising that the Initial Hearing in this case would take place on May 16, 2019 and that I was assigned as the Presiding Officer. On April 29, 2019, counsel for PPL requested a continuance of the May 16, 2019 hearing. On May 5, 2019, I was advised that the Hartmans did not oppose PPL's continuance request. I approved the continuance and on May 10, 2019 issued a new Initial Call-In Telephonic Hearing Notice, indicating that the hearing would now take place on June 26, 2019.

Also on May 10, 2019, I received two letters from the Hartmans, the first dated May 2, 2019 and the second dated May 9, 2019. In the May 2, 2019 letter, addressed to the Commission's Secretary and my office, the Hartmans requested that the telephonic hearing be

changed to an in-person hearing. In the May 9, 2019 letter, addressed to my office, the Hartmans requested that an in-person hearing take place on site at their home, which is the subject property in the Complaint.

On June 10, 2019, the Hartmans sent another letter, addressed to the Commission's Secretary and my office. That letter is a Motion to Compel Production of Documents from PPL, based upon prior discovery requests made by the Hartmans to PPL (and referenced in the Hartmans' May 9, 2019 letter).

The May 2, 2019 Hartman letter, the May 9, 2019 Hartman letter and the June 10, 2019 Hartman letter had not been docketed by the Commission's Secretary. PPL did not file any response to any of the Hartman letters. On June 13, 2019, I instructed the Commission's Secretary's Bureau to accept and file the Hartman Letters as 1) Motion to Change from Telephonic to In-Person Hearing; 2) Motion to Change from In-Person Hearing to On-Site In-Person Hearing; and 3) Motion to Compel Production of Documents.

Given the Motions filed by the Hartmans, I entered an Interim Order on June 13, 2019, converting the Initial Hearing of June 26, 2019 to an Initial Prehearing Conference. The purpose of the Prehearing Conference was to address all current outstanding issues so that all parties would be prepared for the subsequent initial hearing in this case.

The Initial Prehearing Conference was held as scheduled on June 26, 2019. Appearing at the Conference were the Hartmans and Graig Schultz, Esquire, counsel for PPL. During the Conference, I advised the parties that I would convert the Initial Telephonic Hearing to an In-Person Hearing, but that I would not hold the In-Person hearing on site at the Hartmans' residence. Instead, the In-Person Hearing was to be scheduled at the OALJ in the Commonwealth Keystone Building at 400 North Street, Harrisburg, Pennsylvania. With regard to outstanding discovery, the parties agreed to work together and report back to me if the Hartmans still were not satisfied with the discovery responses from PPL. I asked the parties if there were any other matters to be discussed, and hearing none, I concluded the Conference.

PPL filed a Motion for Summary Judgment the next day, June 27, 2019. On July 15, 2019, the Hartmans filed an Answer to PPL's Motion for Summary Judgment. Also on July 15, 2019, the Hartmans filed a Second Motion to Compel Production of Documents.¹

The Motion is ripe for consideration. For the reasons discussed below, I am granting the Motion and dismissing the Complaint filed by the Hartmans. The Complaint is being dismissed because the claims made in the Complaint concern property rights and monetary damages, both of which subjects are beyond the legal jurisdiction of the Commission. Such claims must be brought in a court of general legal jurisdiction such as the Court of Common Pleas.

FINDINGS OF FACT

1. The Complainants in this case are Michael and Sharon Hartman.
2. The Respondent in this case is PPL Electric Utilities Corporation
3. On March 1, 2019, the Hartmans filed a Complaint against PPL with the Pennsylvania Public Utility Commission, alleging that PPL has violated the existing right of way Agreement and has trespassed on the Hartmans' property at 1650 Primrose Lane, Dauphin, PA 17018.
4. On March 25, 2019, PPL filed its Answer to the Hartmans' Complaint.
5. On June 27, 2019, PPL filed a Motion for Summary Judgment.
6. On July 15, 2019, the Hartmans filed their Answer to PPL's Motion for Summary Judgment.

¹ My review of the Commission's Docket Entries indicates that the Answer to PPL's Motion for Summary Judgment and the Second Motion to Compel have not been docketed in the system. Accordingly, by memo dated October 3, 2019, I instructed the Commissions' Secretary's Bureau to file and docket those documents.

7. The Hartmans' Complaint states that "PPL has violated the existing right of way Agreement on our residential property, and has failed to compensate us for damage and removal of our property. Furthermore, PPL has trespassed upon and damaged private property outside the right of way."

DISCUSSION

The Commission's Rules of Administrative Practice and Procedure permit parties to file preliminary motions. 52 Pa.Code §§ 5.101-103. The Commission's regulation at 52 Pa.Code § 5.102(a) permits any party to move for judgment on the pleadings or summary judgment after the pleadings are closed, but within such time as not to delay a hearing. In addition to the pleadings, a motion for summary judgment must be based on depositions, answers to interrogatories, admissions and supporting affidavits. 52 Pa.Code § 5.102(c). The standard for granting both motions is the same. The presiding officer will grant a preliminary motion if the record shows that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa.Code § 5.102(d)(1).

The standard of review for both a motion for judgment on the pleadings and a motion for summary judgment is the same. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406 (Pa.Super. 1983); Mertz v. Lakatos, 381 A.2d 497 (Pa.Cmwlt. 1976). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Thomson Coal Company v. Pike Coal Company, 412 A.2d 466 (Pa. 1979). Judgment will be granted only where the right to relief is clear and free from doubt.

In this case, PPL filed a Motion for Summary Judgment. However, I note that no depositions have been taken, and the Motion (and the Hartmans' Answer to the Motion) does not contain any discovery related documents such as interrogatories or requests for admissions. I also note that neither the Motion nor the Hartmans' Answer to the Motion are supported by any factual averments attested to via affidavits. Accordingly, since the Motion and Answer are based

only on the filed pleadings in this case, the Motion is more appropriately treated as a Motion for Judgment on the Pleadings. Given the Commission's Regulation at 52 Pa. Code § 1.2(c), which provides that a presiding officer may waive technical legal defects when the rights of the other party are not prejudiced, I shall waive the technical defect in the title of PPL's Motion and consider it as a Motion for Judgment on the Pleadings.

1) PPL's Motion

In its Motion, PPL asserts that the Commission does not have jurisdiction to determine the scope and validity of an easement. Motion at Page 3. PPL further asserts that the Commission does not have the jurisdiction to determine real property issues, such as trespass and damage to property. Id.

In support of its assertions, PPL notes that the Pennsylvania Supreme Court has ruled that the Commission does not have jurisdiction to determine the scope and validity of an easement. Motion at Page 6 (citing Fairview Water Co. v. Pa. Pub. Util. Comm'n, 502 A.2d 162, 167 (Pa. 1985); Rogoff v. Buncher Co., 151 A.2d 83, 88 (Pa. 1959)). PPL further notes that the Commission, in a number of Commission Decisions, has determined that the Commission is not the proper forum to determine property rights, and that those determinations must be made by a court of general jurisdiction. Motion at Page 6 (citations omitted). PPL also notes that the Commission has determined that it does not have legal jurisdiction over questions of trespass. Motion at Page 7 (citing Boczar v. PPL Electric Utilities Corp., Docket No. C-20016332 (Order entered February 10, 2003)).

2) The Hartmans' Answer to PPL's Motion

In their Answer to PPL's Motion, the Hartmans invoke Section 1501 of the Public Utility Code (66 Pa. C.S.A. § 1501) as standing for the proposition that the Commission has broad legal authority when determining whether or not a public utility is acting reasonably in cases such as theirs. Answer to Motion at Page 2 (July 15, 2019 letter). The Hartmans state that PPL's actions in their case were unreasonable and therefore violate Section 1501 of the Public Utility Code. Answer to Motion at Page 7 (Paragraph 13).

Also in their Answer to PPL's Motion, the Hartmans summarize what they consider to be PPL's unreasonable actions as follows:

- Failure to furnish advance notice to landowner (Answer at Page 8, Paragraphs 1 and 2)
- Misrepresentation to Dauphin County Conservation District (Answer at Page 8, Paragraphs 3 – 6)
- Permanent disfiguration of mountain property (our back yard) (Answer at Page 8, Paragraphs 7 – 9)
- Removal of landowner's property, earth and stone, for PPL's financial enrichment (Answer at Pages 8 – 9, Paragraphs 10 – 15)
- Soil erosion and water runoff onto our property from roadway construction (Answer at Page 9, Paragraphs 15 – 23)
- Preferential treatment afforded neighbors (Answer at Pages 9 – 10, Paragraphs 24 – 31)
- New ROW Agreement is appropriate (Answer at Pages 10 – 11, Paragraphs 32 – 37)

3) Disposition

The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. Shedlosky v. Pennsylvania Electric Co., Docket No. C-20066937 (Order entered May 28, 2008); Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pa. Pub. Util. 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). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. Hughes v. Pennsylvania State Police, 619 A.2d 390 (Pa. Cmwlth. 1992) alloc. denied 637 A.2d 293 (Pa. 1993).

With the foregoing in mind, the Pennsylvania Supreme Court considered the issue of whether the Commission could award money damages in the case of Elkin v. Bell Telephone:

In spite of the PUC's rather extensive statutory responsibility for ensuring the adequacy, efficiency, safety and reasonableness of public utility services, we recognized in Feingold v. Bell of Pennsylvania that the Courts of Common Pleas have original jurisdiction to entertain suits for damages against public utilities based upon asserted failure to provide adequate services, even though the subject matter of the complaint is encompassed by the Public Utility Law. Traditional judicial remedies such as damages had been preserved by the Public Utility Law, and since the legislature had withheld from the PUC the power to award damages, this Court concluded that the courts must have jurisdiction over all damage actions.

Elkin v. Bell Telephone Co. of Pa., 420 A.2d 371, 375 (Pa. 1980) (*citing* Feingold v. Bell of Pennsylvania, 383 A.2d 791 (Pa. 1977)); *see also*, Poorbaugh v. Pa. Pub. Util. Comm'n, 666 A.2d 744 (Pa. Cmwlt. 1995).

The Commission has also determined that it is not the proper forum for resolving property rights controversies. Rather, such controversies are a matter for a court of general jurisdiction. Perrige v. Metropolitan Edison Co., Docket No. C-00004110 (Order entered July 3, 2003); Fiorillo v. PECO Energy Co., Docket No. C-00971088 (Order entered September 15, 1999). In Fairview Water Co. v. Pa. Pub. Util. Comm'n, 502 A.2d 162 (Pa. 1985), the Pennsylvania Supreme Court held that the Commission does not have jurisdiction to determine the scope and validity of an easement.

In Boczar v. PPL Electric Utilities Corp., Docket No. C-20016332 (Order entered February 10, 2003), the complainant alleged that the utility was not authorized to place its poles, transformers and cable lines on his property. The Commission stated that the utility produced right of way agreements for the facilities in question and concluded that it was without jurisdiction to determine property rights concerning these easements. In Lou Amati/Amati Service Station v. West Penn Power Co. and Bell Atlantic Pennsylvania, Inc., Docket No. C-00945842 (Order entered October 25, 1995), the Commission stated that real property issues, such as trespass and whether utility facilities were located pursuant to a valid easement are within the exclusive jurisdiction of the Courts of Common Pleas.

In light of the above legal authority, the Hartmans' Complaint must be dismissed because it revolves exclusively around the issues of property rights and money damages. In that regard, the face of the Complaint itself is dispositive:

PPL has violated the existing right of way Agreement on our residential property, and has failed to compensate us for damage and removal of our property. Furthermore PPL has trespassed upon and damaged private property outside the right of way.

Complaint at Page 2. I also note that the Requested Relief Section of the Complaint speaks exclusively to the issues of property rights and monetary compensation, although the Requested Relief Section is technically not part of the pleadings.

As noted above, since no discovery related materials were provided in connection with the Motion or Answer, and since no Affidavit-related factual averments were provided in the Motion or Answer, I may only consider the filed pleadings in rendering my Decision in this case. However, even if I were to consider the facts alleged in the Hartmans' Answer to the Motion for purposes of rendering this Decision, the outcome would remain unchanged. In that regard, a review of the Answer makes it clear that the Hartmans' complaints against PPL revolve around the issues of property rights and money damages. Even the portions of the Answer entitled "Failure to furnish advance notice to landowner" and "Preferential treatment afforded neighbors" relate exclusively to the Right of Way Agreement that the Hartmans' contend PPL is violating by its actions.

The above issues must first be determined by a court of competent jurisdiction, such as the Court of Common Pleas, before the case could possibly be remanded to the Commission for a hearing on unreasonable service under Section 1501 of the Public Utility Code. If the court were to determine that PPL violated the terms of the easement, or otherwise trespassed upon the Hartmans' property causing damage to the Hartmans, the Commission would then (and only then) be in a position to determine whether PPL's actions also constituted unreasonable service under Section 1501. As the Commission is in no legal position to make the necessary initial determinations regarding easements and property rights, the Commission currently lacks the legal jurisdiction to hear this case.

Given that the Hartmans' Complaint against PPL revolves exclusively around the issues of property rights (most specifically the easement rights in this case) and money damages, and given that the Pennsylvania Supreme Court and the Commission have concluded that the Commission lacks jurisdiction to hear those claims, the Complaint will be dismissed. The Hartmans' must pursue their claims in a court of general jurisdiction such as the Court of Common Pleas. An appropriate Order shall follow below.

CONCLUSIONS OF LAW

1. The Commission's Regulations permit the filing of motions for judgment on the pleadings. 52 Pa. Code § 5.102.

2. In deciding motions for judgment on the pleadings, the presiding officer must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. 52 Pa.Code § 5.102(d)(1).

3. The Commission may grant a motion for judgment on the pleadings only if the record shows that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406 (Pa.Super. 1983); Mertz v. Lakatos, 381 A.2d 497 (Pa.Cmwlth. 1976).

4. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. Tod and Lisa Shedlosky v. Pennsylvania Electric Co., Docket No. C-20066937 (Order entered May 28, 2008); Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977).

5. The Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pa. Pub. Util. Comm'n., 43 A.2d 348 (Pa Super. 1945).

6. Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967).

7. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. Hughes v. Pennsylvania State Police, 619 A.2d 390 (Pa. Cmwlth. 1992) alloc. denied 637 A.2d 293 (Pa. 1993).

8. The Commission lacks jurisdiction to determine disputes involving money damages. Elkin v. Bell Telephone Co. of Pa., 420 A.2d 371, 375 (Pa. 1980) (*citing* Feingold v. Bell of Pennsylvania, 383 A.2d 791 (Pa. 1977)); *see also*, Poorbaugh v. Pa. P.U.C., 666 A.2d 744 (Pa. Cmwlth. 1995).

9. The Commission lacks jurisdiction to determine property rights issues including easement related issues and trespass issues. Boczar v. PPL Electric Utilities Corp., Docket No. C-20016332 (Order entered February 10, 2003); Lou Amati/Amati Service Station v. West Penn Power Co. and Bell Atlantic Pennsylvania, Inc., Docket No. C-00945842 (Order entered October 25, 1995).

10. Property disputes belong in a court of general jurisdiction. Perrige v. Metropolitan Edison Co., Docket No. C-00004110 (Order entered July 3, 2003); Fiorillo v. PECO Energy Co., Docket No. C-00971088 (Order entered September 15, 1999).

11. The matters complained of in the Complaint are beyond the Commission's jurisdiction and the Complaint must therefore be dismissed.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Judgment on the Pleadings filed by PPL Electric Utilities Corporation on June 27, 2019 at Docket Number C-2019-3008272 is hereby granted.

2. That the Complaint filed by Michael and Sharon Hartman against PPL Electric Utilities Corporation on March 1, 2019 at Docket Number C-2019-3008272 is hereby dismissed.

3. That the Commission's Secretary's Bureau shall mark Docket Number C-2019-3008272 as closed.

Date: October 4, 2019

/s/
Andrew M. Calvelli
Administrative Law Judge