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November 14, 2019

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

**RE: Michael and Sharon Hartman v PPL Electric Utilities Corporation**  
**Docket No: C-2019-3008272**

Dear Ms. Chiavetta:

Enclosed for eFiling in the above-captioned matter is PPL Electric Utilities Corporation's Replies to Exceptions to the Initial Decision Issued by the Honorable Andrew M. Calvelli on October 4, 2018.

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

Very truly yours,

GRAIG M. SCHULTZ

GMS/tb  
Enclosure

cc: Administrative Law Judge Andrew. M. Calvelli (w/ enc.)  
Michael and Sharon Hartman (w/enc.)  
Michelle L. Bartomomei (w/enc.) *via email only*  
Shelbie Frederick Bayda (w/enc.) *via email only*

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL HARTMAN and SHARON  
HARTMAN,  
  
Complainants,

No. C-2019-3008272

v.

PPL ELECTRIC UTILITIES  
CORPORATION,  
  
Respondent.

**RESPONDENT PPL ELECTRIC UTILITIES CORPORATION'S REPLIES TO  
COMPLAINANTS' EXCEPTIONS TO THE INITIAL DECISION ISSUED BY  
THE HONORABLE ANDREW M. CALVELLI ON OCTOBER 4, 2018**

Respondent PPL Electric Utilities Corporation ("Respondent"), by and through its counsel, Gross McGinley, LLP, replies to Complainants Michael and Sharon Hartman's ("Complainants") Exceptions as follows:

**Introduction**

On October 4, 2019, the Honorable Andrew M. Calvelli ("Judge Calvelli") issued an Initial Decision, which dismissed Complainants' Complaint because the matters complained therein were beyond the jurisdiction of the Pennsylvania Public Utility Commission (the "Commission"). On October 16, 2019, Judge Calvelli's Initial Decision was served upon the parties. On November 1, 2019, counsel for Respondent was served with Complainants' Exceptions to the Initial Decision.

**Replies to Complainants' Exceptions**

The Pennsylvania Administrative Code (the "Code") provides that the proper way to except to an initial decision is by filing exceptions. *See* 52 Pa. Code. § 5.533. More specifically, exceptions may be filed by a party and served within twenty (20) days after the

initial, tentative or recommended decision is issued. 52 Pa. Code § 5.533(a). Exceptions must be “concise.” 52 Pa. Code § 5.533(c). Additionally, the Code provides that each exception must be numbered, identify the finding of fact or conclusion of law to which exception is taken, and cite relevant pages of the decision. 52 Pa. Code § 5.533(b). Further, supporting reasons for the exceptions shall follow each specific exception. *Id.*

As an initial matter, the Exceptions filed by Complainants must be dismissed because they do not comply with the Code provisions cited above. The six-page narrative letter submitted by Complainants fails to identify one finding of fact and/or one conclusion of law to which an exception is taken. In addition, Complainants’ fail to cite to the relevant pages of Judge Calvelli’s Initial Decision to which each exception is taken. Complainants’ Exceptions also fail to provide supporting reasons for each exception. In light of Complainants’ failure to conform to the various Code provisions cited above, Respondent respectfully requests that their Exceptions be dismissed due to lack of compliance with the Code. *See, e.g., Forward Twp. Mun. Auth. v. W. Pennsylvania Water Co.*, No. C-882171, 74 Pa. P.U.C. 421, 1991 WL 476309 (Feb. 15, 1991) (“We note that the Complainant’s Exception [] constitutes a bald assertion. Consonant with [Section 5.533(b)], we shall deny this Exception of the Complainant.”); *Fulton v. PECO Energy Co.*, No. C-2004-2502, 2005 WL 1838683, at \*3 (Pa.P.U.C. June 29, 2005) (“We will deny the Complainant’s Exceptions....Nor does the Complainant cite to any error of the ALJ based upon the record evidence before her.”).

In addition to the aforementioned nonconformity, Complainants’ Exceptions must also be dismissed because they fail to explain the reasons for their disagreement with the Initial Decision, other than to generically state that they disagree with the Initial Decision and “PPL’s unsavory business practices” and that PPL “violated the public interest.” *See* Exceptions at pp. 1-

2. In contrast, Complainants' Exceptions include a regurgitation of the arguments that have been advanced in their prior pleadings, and already dismissed by the Commission. Further to this point, Complainants go as far as to attach a thirteen (13) page "summary" of their Complaint to their Exceptions. Complainants, in passing, also mention that they feel that they have "presented evidence of PPL service quality irregularities that violate [66 Pa.C.S.A. § 1501]." See Exceptions at p. 1. However, this is the same meritless argument that was offered in response to Respondent's Motion for Summary Judgment. Judge Calvelli previously rejected this argument because each of the actions which Complainants consider to be unreasonable exclusively relate to property rights and monetary damages. In this case, Complainants are merely cloaking their property rights claims under the guise of "service." This type of argument has been consistently denied by the Commission. See, e.g., *Shedlosky v. Pennsylvania Elec. Co.*, No. C-20066937, 2008 WL 8014593, at \*3 (Pa.P.U.C. May 28, 2008) (citing *Fiorello v. PECO Energy Co.*, Docket No. C-00971088 (September 15, 1999)) (where the Commission stated that real property issues, such as trespass and whether or not utility facilities are located pursuant to valid easements or rights-of-way, are within the exclusive jurisdiction of the Courts of Common Pleas of the Commonwealth). Moreover, in *Chervenitski v. PPL Elec. Util. Corp.*, No. C-2014-2423862, 2014 WL 3555466, at \*5 (Pa.P.U.C. July 1, 2014) the Commission stated as follows:

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PPL points out that the Commission itself has determined that it is not the proper forum for resolving property rights controversies, and that statement is correct. The interpretation of legal instruments related to property rights, such as those granting easements and rights-of-way, are a matter for a court of general jurisdiction. *Fiorello v. PECO Energy Company*, Docket No. C-00971088 (Order entered September 14, 1999) (the Commission found a valid right-of-way and the interpretation of that agreement was held to be a substantive property rights issues within the court of common pleas' jurisdiction); *Lou Amati/Amati Service Station v.*

*West Penn Power Co. and Bell Atlantic-Pennsylvania, Inc.*, Docket C-00945872, (Order entered October 25, 1996) (the Commission does not have subject matter jurisdiction over questions of trespass and the scope and validity of a utility's right-of-way); *Edward Boczar v. PPL Electric Utilities Corporation*, Docket No. C-20016332 (Order entered February 10, 2003) (the Commission does not have jurisdiction to determine if utility's facilities are situated within a valid right-of-way; such matters are within the exclusive jurisdiction of the Court of Common Pleas); *Anne E. Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (Order entered July 3, 2003) (the Commission does not have jurisdiction to determine the true location of the utility's right-of-way); *Stefanoski v. Pennsylvania-American Water Co.*, Docket No. C-20078219 (Order entered September 22, 2008) (The commission does not have jurisdiction to interpret a right-of-way).

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*Chervenitski*, 2014 WL 3555466, at \*5.

In sum, at no point do Complainants state that they disagree with any one of Judge Calvelli's findings of fact or conclusions of law, or that Judge Calvelli committed an error of law and/or otherwise abused his discretion in reaching any one of his findings of fact and/or conclusions of law. Most importantly, Complainants fail to offer any substantive authority to demonstrate that Judge Calvelli committed an error of law when he appropriately concluded that: (1) the Commission lacks jurisdiction to determine disputes involving money damages (Finding of Fact No. 8); (2) the Commission lacks jurisdiction to determine property rights issues including easement related issues and trespass issues (Finding of Fact No. 9); (3) property disputes belong in a court of general jurisdiction (Finding of Fact No. 10); and (4) the Commission does not have subject matter jurisdiction to hear the claims raised in their Complaint (Finding of Fact No. 11) – claims that Respondent has violated the terms of the Right of Way Agreement, trespassed on their property, and caused damage to their property. To the contrary, the bases for Judge Calvelli's findings of fact and conclusions of law are supported by

long-standing precedent, which is routinely followed by this Commission. Most recently, in *Kohrs v. PPL Electric Util. Corp.*, Nos. C-2018-3006013 and C-2018-3006421, 2019 WL 5297907, \*6-7 (Pa.P.U.C. Oct. 2, 2019) (Myers, J.), the Commission held that the complainant's consolidated complaints allege and seek relief of matters relating to the scope and validity of an easement over which the Commission has no subject matter jurisdiction. Of note, the complainant in the *Kohrs* case complained that Respondent exceeded the scope of its valid right-of way agreement, and was responsible to restore the complainant's property to its pre-construction condition. These allegations are identical to the allegations raised by Complainants in this action. *See* Compl. at ¶ 4. As such, Judge Calvelli's Initial Decision is supported by the established case law that governs property disputes in Pennsylvania, as well as the statutory law which confers upon the Commission those powers which it cannot exceed. Given this, Complainants have failed to sustain their burden of proving that Judge Calvelli committed an error of law and/or otherwise abused his discretion in dismissing their Complaint.

### **Conclusion**

Based upon the foregoing reasons, there is no basis in which to grant Complainants' Exceptions. Respondent respectfully requests that Complainants' Exceptions be denied in their entirety.

Dated: November 14, 2019

Respectfully submitted,



By: \_\_\_\_\_

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Attorneys for Respondent:  
PPL Electric Utilities Corporation

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL HARTMAN and SHARON  
HARTMAN,  
Complainants,

No. C-2019-3008272

v.

PPL ELECTRIC UTILITIES  
CORPORATION,  
Respondent.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of Respondent PPL Electric Utilities Corporation's Replies to Complainant's Exceptions to the Initial Decision Issued by the Honorable Andrew M. Calvelli on October 4, 2018, was served on this 14<sup>th</sup> day of November, 2019, upon the following via e-mail and first class mail:

Honorable Andrew M. Calvelli  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, PA 17120

Michael and Sharon Hartman  
1650 Primrose Lane  
Dauphin, PA 17018

By: \_\_\_\_\_

Graig M. Schultz