

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

MAW COMMUNICATIONS, INC.,

Complainant,

v.

PPL ELECTRIC UTILITIES
CORPORATION, FORMERLY KNOWN
AS PENNSYLVANIA POWER & LIGHT
CO.,

Respondent.

Docket No. C-2019-3015187

RECEIVED

JAN 20 2020

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

NOTICE TO PLEAD

To: MAW COMMUNICATIONS, INC.
i/c/o Margaret A. Morris, Esq.
Meredith C. Schilling, Esq.
Reger, Rizzo & Darnall, LP
Cira Centre, 13th Floor
2929 Arch Street
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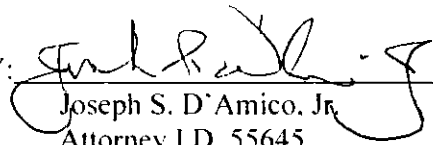
YOU ARE HEREBY NOTIFIED THAT YOU MUST FILE A WRITTEN RESPONSE TO THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

FITZPATRICK LENTZ & BUBBA, P.C.

Date:

1/20/2020

BY:



Joseph S. D'Amico, Jr.
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Attorney I.D. 89535
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Attorneys for Respondent
PPL Electric Utilities Corporation.
f/k/a Pennsylvania Power & Light Co.

**BEFORE THE
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Harrisburg, PA 17105-3265**

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Complainant,	:	
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PPL ELECTRIC UTILITIES	:	
CORPORATION, FORMERLY KNOWN	:	
AS PENNSYLVANIA POWER & LIGHT	:	
CO.,	:	
	:	
Respondent.	:	

ORDER

AND NOW, this _____ day of _____, 2020, upon consideration of Respondent's Preliminary Objections, and any response thereto, it is hereby **ORDERED** that Respondent's Preliminary Objections are **GRANTED**.

IT IS FURTHER ORDERED that Complainant, MAW Communications, Inc.'s, Complaint is dismissed with prejudice.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

MAW COMMUNICATIONS, INC.

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PPL ELECTRIC UTILITIES
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**RESPONDENT, PPL ELECTRIC UTILITIES CORPORATION'S PRELIMINARY
OBJECTIONS TO COMPLAINT**

Respondent, PPL Electric Utilities Corporation ("PPL"), through its counsel Fitzpatrick Lentz and Bubba, submits Preliminary Objections to MAW Communications, Inc.'s ("MAW") Formal Complaint as follows:

I. Background

1. Upon information and belief, in 1998, MAW was granted a Certificate of Public Convenience by the Pennsylvania Public Utility Commission (the "Commission") to provide telecommunications service as a Competitive Access Provider ("CAP") and competitive local exchange carrier ("CLEC") at docket Nos. A-310623 and A-310623F0002, respectively.

2. Upon information and belief, as a regulated public utility (telecommunications provider) and consistent with federal regulations, under appropriate circumstances MAW has a right to obtain a license from other regulated utilities, including entities such as PPL, to attach MAW telecommunications, facilities and apparatus to PPL's poles and other infrastructure.

3. In 2002, PPL Electric and MAW entered into a Telecommunications Pole Attachment License Agreement, effective January 1, 2003 (the "2003 Agreement" or "Pole Attachment Agreement"), which remains in effect. A copy of the 2003 Agreement is attached to MAW's Complaint as Attachment "A."

4. Pursuant to the 2003 Agreement, MAW agreed that its right to acquire a license and authorization for any attachment on PPL's poles would comply with the provisions of the 2003 Agreement and all laws, ordinances and regulations in any manner.

5. On or about May 25, 2017, MAW submitted a municipal carrier agreement between MAW and the City of Lancaster to the Commission, which agreement is dated December, 2014, to attach to PPL's poles and facilities (the "Lancaster Agreement"). A copy of the May 2017 submission to the Commission is marked as No. 19 in the Appendix of Exhibits ("App. Ex.") for both PPL's Answer and New Matter and its Preliminary Objections.

6. MAW failed to obtain authorization from PPL or submit required applications and fees before MAW attached its facilities to PPL's poles, violating not only the 2003 Agreement but also the Lancaster Agreement.

7. Once PPL learned from a former MAW employee of MAW's conduct in Autumn 2017, and upon investigation discovered both unauthorized attachments, numerous safety violations and questionable practices, PPL sought to halt MAW's activities and have it comply with both federal law/regulations and the 2003 Agreement. Eventually, the PUC also observed MAW's improper conduct during an on scene investigation/meeting on December 6, 2017.

8. Despite PPL's demands, MAW ignored its contractual obligations and refused to cure its defaults, failed to remove the unauthorized attachments from PPL's poles and continued to make unauthorized attachments to PPL's poles. MAW has continually attempted to avoid the obligations it assumed contractually under the 2003 Agreement, and, which are applied equally to others similarly

situated. Instead of seeking favorable non-discriminatory access, MAW's is seeking discriminatory access to the detriment of safety, reliability, PPL's interests and the interest of other lawful attachers.

9. On December 5, 2017, PPL filed a Complaint against MAW and its President, Frank T. Wiczowski, with the Lehigh County Court of Common Pleas (the "Court") at Docket No. 2017-C-3755, alleging MAW's breach of contract and trespass (the "PPL Complaint"). A copy of the PPL Complaint is marked as App. Ex. 20. The action pending before the Court pursuant to the PPL Complaint is referred to as the "County Action."

10. Among other things, PPL seeks damages resulting from MAW's unauthorized and improper attachments to PPL's Electric poles, in breach of the 2003 Agreement, and for its continuing tortious conduct. See Counts I and II, App. Ex. 20.

11. On December 5, 2017, PPL also filed a Petition for Preliminary Injunction with the Court against MAW and its President, requesting judicial intervention to stop MAW's improper activity. A copy of PPL's Petition for Preliminary Injunction is marked as App. Ex. 21.

12. On December 18, 2017, MAW filed Preliminary Objections to the PPL Complaint in the State Court. A copy of MAW's Preliminary Objections are marked as App. Ex. 22.

13. Among other things, MAW's Preliminary Objections questioned the jurisdiction of the Court to hear PPL's allegations set forth in the PPL Complaint, alleging that jurisdiction should lie with the Commission. See Section I of MAW's Preliminary Objections, App. Ex. 22.

14. The Court issued an Order, dated January 30, 2018 (the "January 30, 2018 Court Order", overruling MAW's Preliminary Objections. A copy of the January 30, 2018 Court Order is marked as App. Ex. 23.

15. In the January 30, 2018 Court Order, President Judge Reibman determined that the Court, and not the Commission, had jurisdiction regarding the parties' dispute. Specifically, the Court ruled:

The PUC has 'sole and exclusive jurisdiction to promulgate rules and regulations for the allocation of natural or artificial gas supply by a public utility.' 66 Pa.C.S. § 1501. In a dispute between public utilities and the public on issues such as 'reasonableness, adequacy and sufficiency of public utility service,' the PUC maintains initial and exclusive jurisdiction. DiSanto v. Daughin Consol. Water Supply Co., 436 A.2d 197, 199 (Pa. Super. 1981). However, 'the PUC is not jurisdictionally empowered to decide private contractual disputes between a citizen and a utility.' Id. Judicial adjudication is proper where 'a utility's performance of its legally imposed and contractually adopted obligations are examined and applied to a given set of facts.' Id. In other words, the PUC does not have 'general supervisory power of contracts.' Id. Moreover, the PUC 'does not have authority to award damages in negligence or contract actions.' T.W. Phillips Gas and Oil Co. v. Peoples Natural Gas Co., 492 A.2d 776, 779 (Pa. Cmwlth. Ct. 1985).

See fn. 1, App. Ex. 23.

16. On April 13, 2018, the Court issued an Order, *inter alia*, prohibiting MAW from accessing PPL's poles without PPL's prior approval and permitting PPL to remove or remediate any unauthorized attachment by MAW at MAW's cost (the "April 13, 2018 Court Order"). A copy of the April 13, 2018 Court Order is marked as App. Ex. 2. The April 13, 2018 Court Order followed extensive hearings following PPL's Petition for Civil Contempt (App. Ex. 10) which PPL filed upon discovering that MAW had misled the Court and PPL. The April 13, 2018 Court Order also granted PPL's requested injunctive relief.

17. MAW has not sought to appeal the January 30, 2018 Order regarding jurisdiction or the April 13, 2018 Order providing preliminary equitable relief.

18. On March 5, 2018, MAW filed its Answer with New Matter¹ to the PPL Complaint. A copy of the Answer with New Matter is marked as App. Ex. 24.

19. While the County Action remained pending, on or about February 8, 2019, MAW filed a Pole Attachment Complaint with the Federal Communications Commission ("FCC"). On or about

¹ MAW also asserted a Counterclaim alleging PPL intentionally interfered with MAW's Agreement with the City of Lancaster; but the Court dismissed the claim due to legal insufficiency.

February 15, 2019. MAW filed an Amended Pole Attachment Complaint with FCC. A copy of the Amended Complaint is marked as App. Ex. 25 (the “MAW FCC Complaint”).²

20. The MAW FCC Complaint included only one claim for the FCC to resolve, to wit: alleged ongoing denial of access to PPL’s poles.

21. MAW requested that the FCC issue an order:

- a. Directing PPL to immediately allow MAW access to its network so that it can restore service outages and further maintain the network;
- b. Prohibiting PPL from removing additional attachments and allowing MAW to remediate any compliance issues per the terms of the parties’ Pole Attachment Agreement;
- c. Directing PPL to promptly process all of MAW’s pending attachment applications;
- d. Prohibiting PPL from requiring that MAW occupy the uppermost position in the communications zone when other space lower on the pole is available to attach consistent with governing safety standards;
- e. Prohibiting PPL from charging MAW to correct pre-existing non-compliant conditions on PPL poles where such work would be required regardless of whether MAW attaches to the pole;
- f. Requiring that PPL provide sufficiently detailed cost information supporting the past and prospective survey and make-ready cost estimates imposed on MAW;
- g. Requiring PPL to collaborate with MAW to identify less costly make-ready alternatives;
- h. Awarding MAW damages for any costs incurred as a result of PPL’s removal of MAW’s attachments and its failure to process MAW’s applications on a timely basis; and
- i. Such other relief as the [FCC] deems just, reasonable and proper. See App. Ex. 25, p. 39-40.

22. The FCC issued a Memorandum Opinion and Order, adopted and released on August 12, 2019, granting in part and denying in part MAW’s denial of access claim (the “August 12, 2019 FCC Order”). A copy of the August 12, 2019 FCC Order is marked as App. Ex. 3.

² App. Ex. 25 is provided without its exhibits due to the volume of the attachments. All attachments to the MAW FCC Complaint can be produced upon request.

23. As outlined in the August 12, 2019 FCC Order, the FCC denied MAW's right to relief other than directing PPL to process MAW rebuild applications when the only basis for denying the applications was MAW's refusal to meet its prior financial obligations to PPL. However, the FCC made clear that MAW's continued violations of standards and any failure to adhere to its contractual obligations were not being abridged by the FCC ruling. Instead, the FCC respected federal-state comity and the underlying decisions issued by the Court.

24. Other than directing PPL to process MAW rebuild applications when the only basis for denying the applications was MAW's refusal to meet its prior financial obligations, the FCC denied the balance of MAW's requests concerning access, specifically denying MAW's request that the FCC issue an order prohibiting PPL from removing attachments and directing PPL to allow MAW access to its network, as such requests conflict with the April 13, 2018 Court Order. The August 12, 2019 FCC Order provides:

These requests appear to be an effort to avoid or effectively amend provisions of the April 2018 Order that prohibit MAW from accessing PPL's poles without the prior approval of PPL, and allow PPL to remove or remediate any unauthorized attachment by MAW at MAW's cost. There is no indication in the record that MAW has ever asked the Court to rescind, modify, or clarify these provisions of the April 2018 Order. Nor has MAW sought a ruling here finding unjust and unreasonable any terms of the Pole Attachment Agreement that may have formed the basis for the Court's April 2018 Order. Therefore, in the interest of federal-state comity and based on the record before us, we deny this requested relief. *MAW is, of course, free to seek relief from the Court.*" (emphasis added).
See App. Ex. 3, pp. 9-10.

25. Since the FCC Order was issued, PPL has processed and reprocessed dozens of MAW applications to attach. PPL also has given notice to MAW of the intent to remove various unauthorized attachments. See e.g. App. Exs. 12-16.

26. Rather than act on the notices of removal, MAW did nothing. Instead on or about December 19, 2019, MAW filed the within Formal Complaint against PPL (the "MAW PUC Complaint").

27. The MAW PUC Complaint alleges two Counts against PPL: Count I which solely concerns MAW's request that PPL stop removing MAW's pole attachments and that PPL permit MAW access to its network; and Count II that the Commission interpret and modify the terms and conditions of the 2003 Agreement.

28. PPL respectfully requests the Commission grant its Preliminary Objections to the MAW PUC Complaint, and dismiss the MAW PUC Complaint, because the Commission lacks jurisdiction under 52 Pa. Code § 5.101(a)(1), because the MAW PUC Complaint is legally insufficient under 52 Pa. Code § 5.101(a)(4) and because of the pendency of a prior proceeding under 52 Pa. Code § 5.101(a)(6).

II. Objection/Motion to Dismiss for Lack of Jurisdiction Pursuant to 52 Pa. Code § 5.101(a)(1).

29. PPL incorporates by reference paragraphs 1-28 of its Objections as if fully set forth herein.

30. The Commission may dismiss a pleading for lack of jurisdiction. 52 Pa. Code § 5.101(a)(1).

31. A party may file a formal complaint with the Commission concerning any of the following matters: (a) an act or omission done to a person subject to the jurisdiction of the Commission, (b) a violation of a statute which the Commission has jurisdiction to administer or (c) a violation of a regulation or order of the Commission. 52 Pa. Code § 5.21(a).

32. The MAW PUC Complaint alleges that it MAW is a public utility by virtue of its certificate of public convenience as both a CAP and a CLEC.

33. The MAW PUC Complaint focuses on MAW's desire to deploy broadband internet or intranet services, rather than deployment of telecommunications services. Most, if not all, of the attachments at issue involve broadband internet or intranet services, rather than telecommunications services.

34. “Normally, a government agency does not have the authority to abrogate or reform contracts between private parties because that would be an *ex post facto* impairment of a contractual obligation that was entered into through arms-length negotiations by the parties.” ARIPPA v. Penn. Pub. Utility Com’n, 792 A.2d 636, 662 (Pa. Cmwltth. 2002).

35. Section 508 of the Pennsylvania Public Utility Code (the “Code) grants the Commission contract reformation authority only if the contract at hand concerns the public interest and general well-being of the Commonwealth. 66 Pa.C.S.A. § 508; Reading & Southwestern St. Ry. Co. v. Penn. Pub. Utility Com’n, 77 A.2d 102,104 (Pa. Super. 1950) (“The Public Utility Commission has no jurisdiction to adjudicate purely private rights and its duty is to determine the public interest [internal citation omitted].”).

36. The Commission’s contract abrogation powers are limited and it must first identify an adverse harm to the public before asserting its contract reformation powers. AT&T v. Penn. Pub. Utility Com’n, 709 A.2d 980, 986 (Pa. Cmwltth. 1998).

37. “The Commission’s power to set aside contracts does not apply to a contract which does not affect the common welfare by directly influencing rates or actual operations of the public utility.” City of Phila. V. Penn. Pub. Utility Com’n, 296 A.2d 804, 808-09 (Pa. 1972) (ruling Commission was divested of jurisdiction concerning a contract for the cost to relocate rail-highway crossings when cost to public was negligible); see Phila. Suburban Water Co. v. Penn. Pub. Utility Com’n, 808 A.2d 1044, 1056-58 (Pa. Cmwltth. 2002) (“Administrative agencies do not have the authority to order a regulated company to change lawful conduct on the theory that it is in the best interest of their customers.”).

38. Indeed, the FCC voiced a similar principle in a myriad of matters before it. E.g., In re Kansas City Cable Partners, 14 FCC Red. 11599, 11601-02 (“The Commission’s authority under Section 224 does not supplant that of the local jurisdiction when the issue between the parties is a breach of contract not involving unjust or unreasonable contractual terms, rates or conditions.”); In re

Gresham Comm., Inc., Memorandum Opinion and Order, 26 FCC Red 11895, 11900, para. 10 (2011) (stating the Commission is cognizant to only assert authority where the public interest arose).

39. The Commission does not have control over all contractual rights between utilities, including, the rights and obligations of parties pursuant to a lawful and reasonable Pole Attachment Agreement and process.

40. Matters involving the 2003 Agreement relate to a contract entered into through arms-length negotiations by the parties.

41. The MAW PUC Complaint does not allege adverse harm to the public.

42. The Court of Common Pleas has already concluded that the matters complained of by MAW are within the Court's jurisdiction.

43. Moreover, the issues that MAW attempts to raise in the MAW PUC Complaint were previously brought before the FCC after several adverse rulings in the County Action. Notably, the August 12, 2019 FCC Order addressed MAW's attempts to avoid its contractual violations under alleged regulatory bases. The FCC did not disturb the orders of the Court, including the April 13, 2018 Court Order. The FCC did not preclude PPL's right to remove MAW's unauthorized attachments and enforce its attachment standards.

44. The 2003 Agreement contains an agreed upon dispute resolution procedure at Article 21 which permits a disputing party to file a complaint with the appropriate regulatory body.

45. By virtue of the MAW FCC Complaint, MAW sought relief from the appropriate regulatory body for matters which are included in the MAW PUC Complaint.

46. Previously, a PUC representative communicated the position that the dispute between the parties was primarily legal in nature and thus was not within the Commission's jurisdiction. App. Ex. 26.

WHEREFORE, PPL requests its Preliminary Objection be granted pursuant to 52 Pa. Code § 5.101(a)(1) and that the MAW PUC Complaint be dismissed with prejudice.

III. Objection/Motion to Dismiss for Legal Insufficiency pursuant to 52 Pa. Code § 5.101(a)(4).

47. PPL incorporates by reference paragraphs 1-46 of its Objections as if fully set forth herein.

48. The Commission may dismiss a pleading for legal insufficiency, 52 Pa. Code § 5.101(a)(4).

49. A legally insufficient pleading may arise when the claims or issues presented therein were previously litigated and adjudicated on the merits. Del Turco v. Peoples Home Sav. Ass'n, 478 A.2d 456, 460-61 (Pa. Super. 1984).

50. "Res judicata encompasses two related, yet distinct principles: technical res judicata and collateral estoppel." Unified Sportsmen of Penn. v. Penn. Game Com'n. 950 A.2d 1120, 1128 (Pa. Cmwlth. 2008).

A. The doctrine of technical Res Judicata warrants dismissal of the Complaint.

51. Technical res judicata bars a lawsuit from being re-litigated when the following four factors coalesce: (1) identity of the thing sued upon or for; (2) the identity of the causes of action; (3) identity of the persons or parties to the action; and (4) identity of the quality or capacity of the parties suing or being sued. Stilip v. Comm., 910 A.2d 775, 783-84 (Pa. Cmwlth. 2006).

52. Technical res judicata applies to causes of action actually litigated and those that should have been litigated. Id.

53. "Generally, causes of action are identical when the subject matter and the ultimate issues are the same in both the old and new proceedings." Id.

54. The MAW PUC Complaint should be dismissed because all of the issues in this matter were litigated or should have been litigated in front of the FCC.

55. The factual similarities between the contents of the MAW PUC Complaint and the contents of the MAW FCC Complaint are voluminous and both involve MAW's claims that PPL has wrongfully denied MAW access to its poles.

56. Both the MAW PUC Complaint and the MAW FCC Complaint relate to the 2003 Agreement and MAW's desire to deploy broadband internet or intranet service by attaching its facilities on PPL's poles.

57. Both the MAW PUC Complaint and the MAW FCC Complaint include causes of action based upon MAW's request to derive access to PPL's poles and PPL's alleged failure to comply with applicable law.

58. The parties to both the MAW PUC Complaint and the MAW FCC Complaint are identical.

59. MAW is the complainant/petitioner and PPL is the defendant/respondent in both the MAW PUC Complaint and the MAW FCC Complaint.

60. The subject matter and ultimate issues are the same in both the MAW PUC Complaint and the MAW FCC Complaint, as reflected in the similar nature of the prayers for relief in each complaint, namely, a request that the applicable commission: (i) prohibit PPL from removing MAW's attachments, (ii) permit MAW access to its network on PPL's poles, (iii) direct PPL to promptly process pole attachment applications and (iv) address rates and costs for "make-ready" work.

61. Other than granting MAW limited relief by directing PPL to process MAW rebuild applications when the only basis for denying the applications was MAW's refusal to meet its prior financial obligations, the FCC denied MAW's requested relief concerning access, specifically denying MAW's request that the FCC issue an order prohibiting PPL from removing attachments and directing PPL to allow MAW access to its network, as such requests conflict with the April 13, 2018 Court Order.

B. *The doctrine of Collateral Estoppel warrants dismissal of the Complaint.*

62. “Collateral estoppel will bar a subsequent cause of action if four elements are met: (1) the issue decided in the prior adjudication was identical with the one presented in the later action; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication; and (4) the party against whom it is asserted has had a full and fair opportunity to litigate the issue and question in a prior action.” Pat’s Auto Sales v. Comm., 744 A.2d 355, 358 (Pa. Cmwlth. 2000).

63. The MAW PUC Complaint should be dismissed because all of the issues in this matter were litigated in front of the FCC.

64. The factual similarities between the contents of the MAW PUC Complaint and the contents of the MAW FCC Complaint are voluminous and both involve MAW’s claims that PPL has wrongfully denied MAW access to its poles.

65. Both the MAW PUC Complaint and the MAW FCC Complaint relate to the same 2003 Agreement and MAW’s desire to deploy broadband internet or intranet service by attaching its facilities on PPL’s poles in and around the City of Lancaster.

66. The MAW PUC Complaint seeks adjudication of identical issues decided by the FCC based upon MAW’s request to derive access to PPL’s poles and PPL’s alleged failure to comply with applicable law.

67. The August 12, 2019 FCC Order was a final judgment on the merits of the MAW FCC Complaint.

68. The parties to both the MAW PUC Complaint and the MAW FCC Complaint are identical.

69. MAW has had a full and fair opportunity to litigate the issues raised in the MAW PUC Complaint in connection with the MAW FCC Complaint and it has not appealed or challenged the FCC order.

70. The subject matter and ultimate issues are the same in both the MAW PUC Complaint and the MAW FCC Complaint, as reflected in the similar nature of the prayers for relief in each complaint, namely, a request that the applicable commission: (i) prohibit PPL from removing MAW's attachments, (ii) permit MAW access to its network on PPL's poles, (iii) direct PPL to promptly process pole attachment applications and (iv) address rates and costs for "make-ready" work.

71. Other than granting MAW limited relief by directing PPL to process MAW rebuild applications when the only basis for denying the applications was MAW's refusal to meet its prior financial obligations, the FCC denied MAW's requested relief concerning access, specifically denying MAW's request that the FCC issue an order prohibiting PPL from removing attachments and directing PPL to allow MAW access to its network, as such requests conflict with the April 13, 2018 Court Order.

WHEREFORE, PPL requests its Preliminary Objection be granted pursuant to 52 Pa. Code § 5.101(a)(4) and that the Complaint be dismissed with prejudice.

IV. Objection/Motion to Dismiss due to Pendency of Prior Proceeding Pursuant to 52 Pa. Code § 5.101(a)(6).

72. PPL incorporates by reference paragraphs 1-71 of its Objections as if fully set forth herein.

73. The Commission may dismiss a pleading when it concerns a matter presently pending before a tribunal. 52 Pa. Code § 5.101(a)(6).

74. The purpose of the *lis pendens* doctrine is to protect a defendant against harassment in defending separate suits concerning duplicative causes of action and to preserve judicial resources. Feldman v. Lafayette Green Condominium Ass'n, 806 A.2d 497, 502 (Pa. Cmwlth. 2002); Penn. Pharmacists Ass'n v. Dep't of Public Welfare, 733 A.2d 666, 673 (1999); Klein v. City of Phila., 465 A.2d 730, 731 (Pa. Cmwlth. 1983).

75. The doctrine applies, permitting a tribunal to dismiss a new lawsuit, when the suit involves the same parties, the same cause of action and the same relief. Procacina v. Susen, 447 A.2d 1023 (Pa. Super. 1982).

76. The County Action involves the same parties, as PPL is the plaintiff and MAW is a defendant.

77. Among other things, the April 13, 2018 Court Order addresses MAW's access to PPL's poles and PPL's response to attachment applications, each of which are the subject of the MAW PUC Complaint, until the County Action is resolved.

78. The County Action involves the interpretation of the terms of the 2003 Agreement.

79. MAW's requested relief included in the MAW PUC Complaint has been or will be addressed by the Court in the County Action, which has not yet been subject of a final determination or decree.

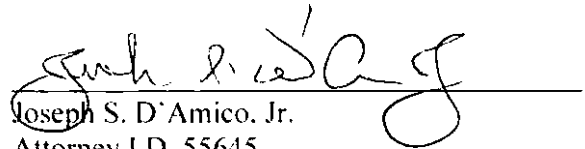
WHEREFORE, PPL requests its Preliminary Objection be granted pursuant to 52 Pa. Code § 5.101(a)(6) and that the MAW PUC Complaint be dismissed with prejudice.

Respectfully submitted,

FITZPATRICK LENTZ & BUBBA, P.C.

Date: 1/20/2020

BY:



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CERTIFICATE OF SERVICE

I, Joseph S. D'Amico, Jr., attorney for Respondent, PPL Electric Utilities Corporation, f/k/a Pennsylvania Power & Light Co., do hereby certify that a copy of the foregoing documents have been served this day, by first class mail, postage prepaid, on all parties or their counsel of record at the following address:

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i/c/o Margaret A. Morris, Esq.
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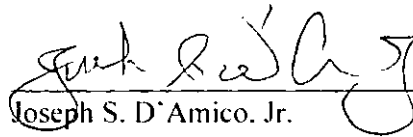
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FITZPATRICK LENTZ & BUBBA, P.C.

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1/20/2020

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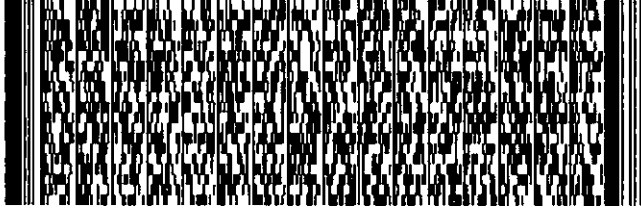
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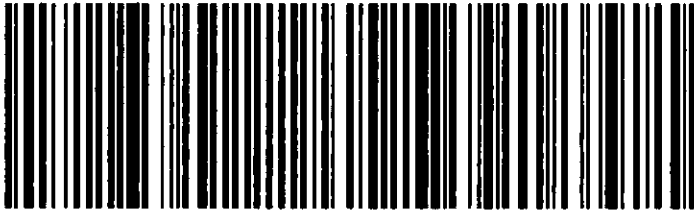


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3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

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Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our ServiceGuide. Written claims must be filed within strict time limits, see current FedEx Service Guide.