**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lawrence Kingsley :

:

v. : C-2020-3019763

:

PPL Electric Utilities Corporation :

**ORDER**

This Order is issued pursuant to the authority of presiding officers under the Pennsylvania Public Utility Code at 66 Pa. C.S. § 331(d) and the Commission’s regulations at 52 Pa. Code § 5.483. This Order dismisses, with prejudice, Complainant’s Motion to Compel filed November 1, 2021, accepts Respondent’s Answer to the Motion as filed *nunc pro tunc* on January 13, 2022, and provides guidance to the parties with respect to the conduct and scope of the further evidentiary hearing in this matter.

PROCEDURAL BACKGROUND AND HISTORY

To understand the context of this Order, it is essential to understand the procedural background and history of this case to date.

On May 12, 2020, Lawrence Kingsley (Complainant) filed a formal Complaint against PPL Electric Utilities Corporation (PPL of Respondent) alleging that PPL had failed to provide safe and adequate service in that PPL contractors are overly aggressive in cutting trees deemed necessary to protect PPL wiring. Complainant also alleged that PPL had not communicated its plans to engage in vegetation management to Complainant. Complainant referred to a case resolved by the Commission’s Bureau of Consumer Services (BCS) at Case

No. 3682784.[[1]](#footnote-1) Complainant’s request for relief as stated in his formal Complaint at this docket constituted both a complaint with respect to PPL’s vegetation management and a request for the issuance of what would be tantamount to a directive from the Commission to PPL to observe the terms of an agreement purportedly reached through the BCS proceeding. Indeed, Complainant went so far as to request that the Commission pre-approve sanctions on PPL in case PPL did not adhere to the informal agreement. Because the filing of the formal Complaint effectively resurrected Complainant’s allegations against PPL, the prior BCS informal agreement between the parties notwithstanding, the matter was referred to the Office of Administrative Law Judge (OALJ).

On June 1, 2020, PPL filed an Answer to the formal Complaint. In sum, PPL denied any violation of the Public Utility Code (Code) or of any regulation of the Commission and asked that the Complaint be dismissed.

On June 10, 2020, Chief Administrative Law Judge (CALJ) Charles E. Rainey, Jr. assigned this matter to the Commission’s Mediation Unit. Ultimately, the Chief of the Mediation Unit filed a *pro forma* report with CALJ Rainey indicating that the matter had not been resolved, and the case was thereafter assigned to me as presiding judge.

At that point, Complainant embarked on a series of efforts – none of which are contemplated let alone allowed by the Commission’s procedural regulations—to obtain a copy of the summary report of the Chief of the Mediation Unit to the CALJ. Complainant repeatedly refused to accept my assurances that the report was procedural only and contained no discussion of or recommendation with respect to the relative merits of this case.[[2]](#footnote-2) This effort on Complainant’s part consumed an inordinate amount of time and effort on the part of the presiding officer as will be referred to, below.

On October 5, 2020, Complainant filed what he termed a, “Memorandum,” but which was in fact an extended recital of Complainant’s opinion with respect to PPL, its management, and its operations. No responsive filing was required to this Memorandum by PPL, and none was filed.

On October 6, 2020, a hearing Notice was issued setting November 17, 2020, as the date for a telephonic evidentiary hearing in this case.

On November 12, 2020, a Notice was issued cancelling the hearing scheduled for November 17, 2020. This cancellation was ordered at my direction because of the uncertain procedural posture of this case given the ambiguity of the formal Complaint. Indeed, on November 12, 2020, I issued a prehearing Order alerting the parties of my concerns, the reasons therefore, and required Complainant to file an Amended Complaint by December 14, 2020, and PPL to file an Answer thereto by January 8, 2021.

On November 20, 2020, I issued a prehearing Order explaining in part that no procedure for “formalization,” by the Commission on a BCS informal agreement exists. A party either will or will not comply with the terms of a settlement or agreement reached through mediation or negotiation. In the unlikely event that either party fails to comply with the terms of an agreement or settlement, then the aggrieved party may file a complaint as provided for in the Code at 66 Pa. C.S. §701, *et seq*., and/or avail itself of any other remedies inherent in the settlement, or, in the case of a formal Complaint resolved by Settlement, file a Petition for Enforcement of the Settlement. See *Laren v. Phila. Gas Works*, Docket No. C-2008-2058148 (Order entered June 7, 2012). What is clear with respect to each of these remedies is that the terms of a settlement must have actually been breached by one of the parties. No proceeding exists that would allow the Commission to act on what one of the parties contends is a possible future breach as is the Complainant’s apprehension in his formal Complaint.

On November 30, 2020, Complainant filed what he characterized as a Motion to Strike and a Motion for Sanctions. This document reflected Complainant’s ongoing misunderstanding of the nature of the summary report from the Chief of Mediation to the CALJ, casting that report as a virtual *in camera* proceeding wherein the merits of this case had been heard. As has been stated many times, such a proceeding never took place.

On December 15, 2020, Complainant filed an Amended Formal Complaint (this being the first of two Amendments of his Formal Complaints), but which was primarily a conflation of the allegations set forth in the original Complaint along with the opinions of Complainant stated in his October 5, 2020, “Memorandum.” However, the significance of this (first) Amended Formal Complaint is that it raised the misbilling issue and provided notice of the same to PPL for the first time. Thus, it is from this date that the four year limitation on refunds (which will be discussed, below) is measured.

On January 4, 2021, PPL filed an Answer and New Matter to the Amended Formal Complaint, repeating in more detail its Answers to the original Formal Complaint and attempting to respond to Complainant’s ongoing misunderstanding with respect to the report of the Chief of Mediation to the CALJ. PPL also denied any misbilling of Complainant. In its New Matter, PPL contended that the Complaint in this case is barred by the Statute of Limitations, the Doctrine of Waiver and the Doctrine of Estoppel. PPL, however, offered no explanation or argument as to why these bars are applicable to this case. PPL reiterated that it has not violated any provision of the Code or regulation of the Commission in this matter.

No responsive pleading was received from Complainant in answer to PPL’s New Matter.[[3]](#footnote-3)

On January 5, 2021, Complainant filed a Motion for Leave to Substitute a Corrected Version of Amended Complaint. This document, however, and the Corrected Version efiled the same day contained no substantive changes to the Amended Complaint.

On February 8, 2021, Complainant filed a document styled, “Reply to PPL’s Answer to Formal Complaint.” The Commission’s procedural rules do not allow for such a pleading which, in any event, was merely a recitation of Complainant’s previous allegations against and strident opinions with regard to PPL, its management, and its operational practices, generally, as well as related to this case.[[4]](#footnote-4)

On March 25, 2021, a hearing Notice was issued setting April 29, 2021, as the date for an Initial Hearing in this case. This was followed on April 6, 2021, by a Notice cancelling the hearing and rescheduling it for May 6, 2021, as I was informed by the parties that they were still engaged in discovery.

On May 5, 2021, Complainant filed: a Renewed Motion to Strike and a Motion for Sanctions, and a Motion to Compel Discovery and Motion for Sanctions. On this date, the parties also jointly filed a Motion for Continuance on the basis that they had that day served additional discovery requests on one another.

On May 6, 2021, I issued an Order denying the Joint Motion for Continuance and requiring the parties to attend the scheduled hearing.[[5]](#footnote-5)

On May 6, 2021, a telephonic hearing was held in this case.[[6]](#footnote-6) Complainant appeared and represented himself. Kimberly G. Krupka, Esquire, appeared on behalf of PPL.

Immediately after the hearing, I issued a post-Hearing Order directing that within 20 days from May 6, 2021, Complainant was to file a further amendment of his Complaint limiting the Complaint to the specifics of PPL’s actual implementation of its vegetation management plan vis-à-vis Complainant’s property, and Complainant’s property only. The Order further directed that within 20 days of the filing of Complainant’s further amended Complaint, PPL would file an Answer or responsive pleading to the further amended Complaint.

On May 27, 2021, no filing of an Amended Complaint having been made by Complainant, I issued an Order closing the record in this case.

On June 1, 2021, counsel for PPL provided me with an ecopy of the second Amended Complaint which Complainant had served on her on May 26, 2021. As Complainant had at least attempted to comply with my Order of May 6, 2021, even though he had not perfected his filing with the Secretary of the Commission, I issued an Order on June 1, 2021, rescinding that part of the Order of May 27, 2021, which had closed the record in this case.

On June 10, 2021, Complainant successfully filed a second (further) Amended Formal Complaint in this case.

On June 30, 2021, PPL filed an Answer to that Amended Complaint.

On July 20, 2021, a telephonic evidentiary hearing was held in this case. Complainant appeared and represented himself, providing testimony and offering the following exhibits that were received into evidence: Complainant’s Exhibit 1, a picture of aerial clearance of overhead distribution wires; Complainant’s Exhibit 2, a picture of aerial clearance of overhead distribution wires; Complainant’s Exhibit 3, a picture of aerial clearance or overhead distribution wires; Complainant’s Exhibit 4, a picture of a tree in the water; Complainant’s Exhibit 5, a picture of a truncated tree Complainant’s Exhibit 6, a picture of an uprooted tree; Complainant’s Exhibit 7, a picture of branches on the ground; Complainant’s Exhibit 8, a picture of branches on the ground; Complainant’s Exhibit 9, a picture of branches on the ground; Complainant’s Exhibit 10, a picture of branches on the ground; Complainant’s Exhibit 11, a picture of branches on the ground; and, Complainant’s Exhibit 12, a picture of branches on the ground. Kimberly G. Krupka, Esquire, appeared on behalf of PPL and presented the testimony of Tyler Marino, a Forester employed by PPL, and offered the following exhibits that were received into evidence: PPL Exhibit 7, several pages from a Deed Book relative to Complainant’s property; and, PPL Exhibit 12, several pages from the *PPL Manual Specification for Distribution Vegetation Management*. The record was left open for discovery and a further hearing on the billing issue raised by Complainant.

On November 1, 2021, Complainant filed a Motion to Compel Answers to Interrogatories.[[7]](#footnote-7)

On January 13, 2022, PPL filed an Answer to the Motion which I accept as filed *nunc pro tunc*.

RULINGS AND GUIDANCE WITH RESPECT TO THE

FURTHER EVIDENTIARY HEARING

At the hearing on July 20, 2021, the allegations with respect to the issue of vegetation management on Complainant’s property were addressed. Those were matters raised in both Complainant’s original Complaint and in his Amended Complaints. The evidentiary hearing with respect to those issues concluded on July 20, 2021. The additional allegation raised in Mr. Kingsley’s Amended Complaints filed on December 15, 2020, and on June 10, 2021, focused on a billing issue that he also mentioned in a number of his prehearing filings. In essence, Complainant asserted that he has been misbilled by PPL because responsibility for the bill over a discrete period of time rests with the estate of Ms. Linda Schoener, deceased. Complainant stated in his (second) Amended Complaint filed June 10, 2021, that he is the Administrator of Ms. Schoener’s estate, a fact that PPL stipulated to. Tr. July 20, 2021 at 61.

As Mr. Kingsley explained at hearing:

Ms. Schoener and I shared an apartment in New York City. I came back Lancaster from time to time, including the time when the damage we discussed occurred. I came back to do various jobs on the property, including mowing, snow removal, maintenance of the house and so on. But she was the account holder prior to my taking over the account on August 8, 2017. She died in March of . . . 2015, and the house, of course, it was still in the winter . . . the heating system, of course, requires electricity to operate. So to keep the account open, I had to meet my responsibility as the Administrator of her estate to pay the PPL bills. I was actually not appointed as the Administrator of the estate until later, so I had to pay out of my own pocket for the expenses to keep the lights on, so to speak, and to, you know, keep the house from freezing in the winter.

\* \* \*

Linda Schoener was billed directly by PPL. I simply paid the bills on her behalf because there was no alternative. Subsequently, I asked PPL to re-bill the estate because I have to account for all expenditures on behalf of the estate, and I'm not permitted to advance one creditor before the other creditors. PPL should get its money from the Surrogates' Court in New York, which is similar to our Orphans' Court. There is still a pending case there because there are details like this that haven't been settled. Attorney's fees still haven't been resolved, for example. So, I've asked PPL to refund my own out-of-pocket expenses and simply to bill the estate. PPL has refused to do so. Tr. July 20, 2021 at 57-59.

Mr. Kingsley is requesting a refund of $1946.85. Tr. July 20, 2021 at 61.

For its part, PPL denied any misbilling of Complainant in its Answers to both Amended Complaints. At hearing, PPL again denied misbilling Complainant and objected to Complainant’s request for a refund as time-barred at any point before May or June of 2017, which PPL contended was the four year statutory limit for a refund as calculated from the filing of the second Amended Complaint which, PPL asserted, was the first time in this proceeding that Complainant formally raised the billing issue.[[8]](#footnote-8) Tr. July 20, 2021 at 64. PPL also raised an objection, held in abeyance, with respect to the Complainant’s standing to assert this claim.

It was clear at the hearing on July 20, 2021, that neither party was fully prepared to litigate the billing issue. Thus, the hearing was adjourned to permit additional discovery with a further evidentiary hearing to be convened upon conclusion of the same.

As stated in the Procedural History, above, on November 1, 2021, Complainant filed a Motion to Compel Answers to Interrogatories. On January 13, 2022, PPL filed an Answer to the Motion which I accept as filed *nunc pro tunc*.

Complainant’s Motion to Compel

On November 1, 2021, Complainant filed a Motion to Compel Answers to Interrogatories. The Motion did not list with specificity documents sought by Complainant, but these appear to be billing records from September 25, 2015, to May 12, 2020, the date of the filing of the original Complaint in this matter. Complainant also asked for several admissions from PPL.

On January 13, 2022, PPL filed an Answer *nunc pro tunc* to Complainant’s Motion to Compel. In that Answer, PPL asserts that the documents which are responsive and would provide the Answers to Complainant’s Interrogatories have been previously provided with the exception of copy of PPL’s *Security Deposits and Credit Policy* which was requested within the Interrogatories and which represents the only document not yet provided to Complainant. PPL indicated that it will provide a copy of that document to Complainant. PPL maintains that it has provided Complainant copies of all billings/payments and Contact History on the accounts of Complainant and the Estate of Linda Schoener. PPL Answer at ¶¶ 1-2.

Anticipating that PPL’s Answer will not be satisfactory to Complainant, I refer to the Commission’s regulations with respect to discovery. Under the Commission’s Regulations, 52 Pa. Code § 5.321, the scope of discovery is broad:

(c)  *Scope*. Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c).

Limitations on discovery, however, are set forth in the Commission’s regulations at 52 Pa. Code § 5.361, which states, in pertinent part:

**§****5.361. Limitation of scope of discovery and deposition.**

 (a)  Discovery or deposition is not permitted which:

   (1)  Is sought in bad faith.

   (2)  Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.

   (3)  Relates to matter which is privileged.

   (4)  Would require the making of an unreasonable investigation by the deponent, a party or witness.

While the Commission allows parties wide latitude in discovery matters, the implication of 52 Pa. Code § 5.361 is that there is a rule of, “reasonableness” as well as relevancy that guides us. In deciding a Motion to Compel, this means that the Presiding Officer must consider the law and weigh arguments of the parties as shaped around 52 Pa. Code § 5.321. See, *City of Pittsburgh v. Pennsylvania Public Utility Commission*, 526 A.2d 1243 (Pa. Cmwlth. 1987).

PPL has stated that with one exception, the documents which are responsive and provide the Answers to Complainant’s Interrogatories have been previously provided. I accept that assertion, and Complainant’s Motion to Compel is denied, with prejudice.[[9]](#footnote-9) No further Motions to Compel or Motions for Sanctions in this regard will be entertained.[[10]](#footnote-10)

In the event that PPL has not already done so, within ten days of the issuance of this Order, PPL is to provide Complainant with a copy of *PPL Electric’s Security Deposits and Credit Policy*. PPL will advise me by email that it has accomplished that service at which point discovery in this matter will close.

Four Year Limitation on Refunds

At the hearing on July 20, 2021, counsel for PPL raised the point that there is a four year limitation on the calculation of refunds under the Code. That is correct. See Limitation on Refunds – 66 Pa. C.S. §1312; *Murphy v. PECO Energy Co*., Docket No. C-2008-2051141, (Final Order entered April 10, 2009). In this case, which appears to be in part an untimely appeal of a BCS determination in 2019, any *calculation* of a refund, and evidence/argument related thereto, may only encompass the four years preceding the filing of the Amended Formal Complaint filed on December 15, 2020, which is the first time that Mr. Kingsley raised this issue in the context of a formal Complaint. See Footnote 8, *infra*. Requests for the refund of charges prior to that four year limitation are time-barred by Section 1312, which states in pertinent part:

General rule.--If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment.

66 Pa. C.S. § 1312(a), (emphasis added).

Thus, no evidence will be accepted nor will argument be heard at the further hearing in this case for a refund of charges incurred before December 15, 2016.

PPL’s Objection Based on Standing

This objection has not been explained by PPL, and Complainant has not had a chance to respond to it. Until such time as PPL files an appropriate Motion or Objection in this regard no ruling from the presiding officer is possible. 66 Pa. C.S. § 331(d).

THERFORE,

IT IS ORDERED:

1. That the Answer to Complainant’s Motion to Compel Answers to Interrogatories filed *nunc pro tunc* by PPL is accepted.

2. That Complainant’s Motion to Compel is denied, with prejudice.

3. That within ten (10) days of the date of the issuance of this Order, PPL will provide Complainant with a copy of *PPL Electric’s Security Deposits and Credit Policy* unless PPL has already done so.

4. That PPL will advise the presiding officer by email of the date upon which that service is accomplished.

5. That a further evidentiary hearing in this matter be scheduled thereafter.

6. That the parties comply with the guidance provided in this Order with respect to the scope and conduct of that hearing.

Date: January 28, 2022 \_\_\_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dennis J. Buckley

Administrative Law Judge

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1. I note that this case is not a timely appeal from the BCS determination but is a separately filed formal Complaint. [↑](#footnote-ref-1)
2. It was explained to Complainant that the report was an internal Commission document which even the presiding officer did not have access to and that the report had no bearing whatsoever on the ultimate decision in this case. [↑](#footnote-ref-2)
3. This is a statement of fact and not a criticism of Complainant, who is proceeding in this matter *pro se*. Indeed, without further explanation or argument from PPL, it is unlikely that even an attorney would have been able to meaningfully respond to the New Matter. While I understand that the New Matter might be viewed as a sort of placeholder for an affirmative defense, explanation of how those defenses apply to this case would have been helpful, or, possibly, as the basis for a Motion to Dismiss. [↑](#footnote-ref-3)
4. Though this filing is both unauthorized and irrelevant, PPL has never moved to strike it and it is still existent in the case file; thus, I provide this entry in the Procedural History accounting for it. [↑](#footnote-ref-4)
5. This had been communicated to the parties by email on May 5, 2021. [↑](#footnote-ref-5)
6. The hearing was, in fact, a prehearing conference convened in place of the scheduled evidentiary hearing. [↑](#footnote-ref-6)
7. I also note that on November 1, 2021, Complainant filed a Petition for Transcript Corrections. The Petition was unopposed, and so the requested corrections were adopted. See 52 Pa. Code § 5.253(f)(2). [↑](#footnote-ref-7)
8. PPL is in error with respect to this calculation in that there have been two amendments of the formal Complaint, the first having been filed on December 15, 2020. Complainant referred to this as an Affidavit in Support of Amended Complaint, but it was filed and accepted as an Amended Complaint by the Secretary of the Commission. Indeed, PPL filed an Answer to the Amended Complaint (and the billing issue raised therein) on January 4, 2021. [↑](#footnote-ref-8)
9. “With prejudice,” means that the ruling on the Motion is final, and any refiling or “renewal” of the Motion will be denied by the terms of this Order. [↑](#footnote-ref-9)
10. Regardless of whether Complainant accepts PPL’s responses as complete or asserts that PPL is withholding evidence, I accept PPL’s statement that it has complied with Complainant’s discovery requests so far as it is required and able to do. [↑](#footnote-ref-10)