**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jason R. Paul :

 :

 v. : C-2022-3032008

 :

PPL Electric Utilities Corporation :

**ORDER**

**DENYING PRELIMINARY OBJECTIONS AND**

**SCHEDULING AN EVIDENTIARY HEARING**

On April 20, 2022, Jason R. Paul (Mr. Paul or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL), docket number C-2022-3032008. In his formal complaint, Mr. Paul avers that he is having a reliability, safety or quality problem with his utility service. Specifically, Mr. Paul claims PPL installed power lines on trees on his property and refuses to detach them. Mr. Paul asserts trees cannot be used to support power lines as a means of transportation and there is no right of way to use the trees for power lines. Mr. Paul alleges PPL told him they would remove trees and place a pole, but they never did. As relief, Mr. Paul requests that PPL either remove the lines from the trees or remove the trees and install power poles to support the power lines.

On May 10, 2022, PPL filed an answer and new matter to Mr. Paul’s complaint. PPL’s answer and new matter included a notice to plead. In its answer and new matter, PPL admits or denies the various averments in the formal complaint. In particular, PPL denies Complainant is a customer of PPL, or that PPL provides electric service to the mailing address listed in Mr. Paul’s complaint.[[1]](#footnote-2) PPL also asserts it is without sufficient knowledge or information as to whether there are power lines installed at Mr. Paul’s mailing address, and PPL denies it either installed or refused to detach power lines on trees located at Mr. Paul’s mailing address. PPL further states it does not possess a right of way to construct, maintain, and operate power lines at Mr. Paul’s mailing address, and PPL cannot remove any alleged trees or install a power pole at Mr. Paul’s mailing address. PPL denies it told Complainant that PPL would remove trees and place a pole at his mailing address. In its new matter, PPL alleges Mr. Paul lacks the standing required to bring a complaint about the service of PPL. Specifically, PPL alleges Mr. Paul lacks standing because he is neither a customer of PPL nor does PPL provide electric distribution service to Mr. Paul at the mailing address, and therefore his formal complaint should be dismissed.

Also on May 10, 2022, PPL filed preliminary objections in response to Mr. Paul’s complaint. In its preliminary objections, which were accompanied by a notice to plead, PPL argued that the Commission should dismiss the formal complaint because Complainant lacks standing because he is neither a customer of PPL, nor does PPL provide electric service to Complainant’s mailing address.

No response was filed to PPL’s new matter or preliminary objections.

On June 14, 2022, a motion judge assignment notice was issued, assigning me as the presiding officer.

PPL’s preliminary objections are ready for disposition.

Section 5.101 of the Commission’s Rules of Administrative Practice and Procedure provides for the filing of preliminary objections. 52 Pa. Code § 5.101. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. *Equitable Small Transp. Intervenors v. Equitable Gas Co.,* 1994 Pa. PUC LEXIS 69 (Pa. P.U.C. 1994) (*Equitable*). Section 5.101(a) provides:

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

1. Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
2. Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
3. Insufficient specificity of a pleading.
4. Legal insufficiency of a pleading.
5. Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
6. Pendency of a prior proceeding or agreement for alternative dispute resolution.
7. Standing of a party to participate in a proceeding.

52 Pa.Code § 5.101(a)(1)-(7).

For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. *Cnty. of Allegheny v. Commonwealth of Pa.*, 490 A.2d 402 (Pa. 1985); *Commonwealth of Pa. v. Bell Tel. Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to Mr. Paul and should dismiss the complaint only if it appears that Mr. Paul would not be entitled to relief under any circumstances as a matter of law. *Equitable*, *supra*; *see also*, *Interstate Traveler Services, Inc. v. Commonwealth, Dep’t of Envtl. Res.*, 406 A.2d 1020 (Pa. 1979).

Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. *Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co.*, 75 Pa. P.U.C 598, 603 (1991). Generally, the Commission has held that a person or entity has standing when the person or entity has a direct, immediate, and substantial interest in the subject matter of a proceeding. *Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co.*, A-212285F0046/47 and A-210870F2001 (Opinion and Order entered July 9, 1998) (citing *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975));  *Re Equitable Gas Co.*, 76 Pa. P.U.C. 23 (1992).

As discussed in the matter of *Luke v. Columbia Gas of Pennsylvania*, Docket No. C-2014-2425948 (Initial Decision issued July 18, 2014) (*Luke*), the legal considerations as to whether a party has a direct, immediate, and substantial interest to maintain a complaint were explained as follows:

The Complainant’s interest in the subject matter of the proceeding is direct if her interest is adversely affected by the actions challenged in the complaint, is immediate if there is a close causal nexus between her asserted injury and the actions challenged in the complaint and is substantial if she has a discernible interest other than the general interest of all citizens in seeking compliance with the law*.*

*Luke* (citations omitted).

Applying the above legal precedent, and for the reasons discussed below, PPL’s preliminary objections will be denied. Mr. Paul claims PPL installed power lines on trees on his property and PPL refuses to detach them. Mr. Paul also asserts trees cannot be used to support PPL’s power lines as a means of transportation and there is no right of way for PPL to use the trees for power lines. Under the standards of disposing preliminary objections and viewing the complaint in a light most favorable to Mr. Paul, PPL has not shown Mr. Paul lacks standing to pursue his complaint. Standing should only be used to dismiss a complaint where the lack of standing is obvious on the face of the pleadings filed by the non-moving party. *Tomko v. Duquesne Light Co.*, C-2016-2577571 (Opinion and Order entered July 20, 2017). The question of standing is a fact in dispute and, here, it is not obvious on the face of Mr. Paul’s formal complaint that PPL is not responsible for the power lines on Mr. Paul’s property and therefore not the proper party to the complaint. Even if Mr. Paul is not a PPL customer or does not receive PPL service (which is not confirmed by Mr. Paul in his pleadings), he may still be able to show that PPL is responsible for the power lines on his property and establish a discernible interest in this matter other than the general interest of all citizens. *See Id.* Public utilities must furnish and maintain adequate, efficient, safe, and reasonable service and facilities to customers as well as the public. 66 Pa.C.S. § 1501.

Additionally, the Commission has held that, in the normal course, a *pro se*complaint should not be dismissed without first providing a hearing during which the *pro se*complainant could further explain his or her position and the factual basis for the complaint. *Carlock v. United Tel. Co. of Pa.*, Docket No. F-00163617 (Order entered July 14, 1993). *Pro se*complainants may find it difficult to navigate through pre-hearing motions and should be given the chance to orally describe their basic issue and supporting facts. There are some cases where a hearing would not enable the complainant to better explain her position or provide additional facts that would alter the inevitable conclusion that the complaint should be dismissed.  *See Vata v. Phila. Gas Works*, Docket No. C-2009-2149960 (Order entered August 24, 2010). This case is not one of those instances. Mr. Paul may be able to further explain why PPL is responsible for the power lines on his property, and therefore why his complaint is properly directed towards PPL. Therefore, PPL’s preliminary objections are denied.

Mr. Paul’s complaint will now be scheduled for an evidentiary hearing on August 17, 2022, starting at 10 a.m., and a hearing notice will be issued. Complainant is advised that to sustain his burden of proof at a hearing, he must demonstrate by a preponderance of the evidence that PPL has violated the Public Utility Code, a Commission order or regulation or a Commission-approved Company tariff. In addition, all orders of the Commission must be supported by substantial evidence. This is a different standard than that used in addressing PPL’s preliminary objections.

In the interim, the parties are reminded that Commission policy promotes settlements. 52 Pa.Code §5.231(a). The parties are encouraged to commence settlement discussions amongst themselves for this proceeding as early as possible. Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. If the parties reach an agreement on all issues, a formal hearing will not be necessary. The parties are also reminded that the presiding officer may participate in settlement discussions upon agreement of all parties. 52 Pa.Code § 5.223(c); *see also*, 52 Pa.Code § 5.231(c).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by PPL Electric Utilities Corporation at Docket Number C-2022-3032008 on May 10, 2022 are denied, consistent with this order.
2. That the formal complaint filed by Jason R. Paul at Docket Number C-2022-3032008 will proceed to a hearing to be held on Wednesday, August 17, 2022 beginning at 10:00 a.m. To participate in the hearing on August 17, 2022, parties must call 888-459-7411 and enter pin number 95632432 when prompted.

Date: June 30, 2022 /s/

 John M. Coogan

 Administrative Law Judge

**C-2022-3032008 - JASON PAUL v. PPL ELECTRIC UTILITIES CORPORATION**JASON PAUL132 CESSNA HILL RDBOSWELL PA 15531**814.288.8578**Jayjpglobalenginerr2017@gmail.comAccepts eServiceKIMBERLY A KLOCK ESQUIREMICHAEL J SHAFER

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*Represents PPL Electric Utilities Corporation*

1. PPL asserted Mr. Paul incorrectly supplied an address for a PPL service center in the portion of the complaint where a complainant may identify a different address than the mailing address. [↑](#footnote-ref-2)