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Devin Ryan

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File #: 140074

November 1, 2022

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Gregory J. Myers v. PPL Electric Utilities Corporation**  
**Docket No. C-2022-3035609**

Dear Secretary Chiavetta:

Attached for filing are the Amended Preliminary Objections of PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) to the Complaint of Gregory J. Myers in the above-referenced proceeding.

The only amendment to the Company’s Preliminary Objections appears in Paragraph 2, which sets forth the date that PPL Electric was served with the above-captioned Complaint. PPL Electric clarifies that the Company was electronically served with the Complaint at 4:42 PM Eastern time on Friday, September 23, 2022, *i.e.*, after 4:30 PM Eastern time. Accordingly, the “date of service” for purposes of calculating the due date for responsive pleadings was not September 23, 2022. *See* 52 Pa. Code § 1.56(a)(4)-(5). Rather, the “date of service” was the next business day, Monday, September 26, 2022, and, thus, the Company’s Answer and Preliminary Objections to the Complaint were timely filed on Monday, October 17, 2022. *See id.*; *see also id.* § 1.12(a) (stating that in computing a period of time, if the final day falls on a Saturday, Sunday, or legal holiday, “the period shall run until the end of the next day which is neither a Saturday, Sunday or holiday”).

Copies will be provided as indicated on the Certificate of Service.

Rosemary Chiavetta, Secretary  
November 1, 2022  
Page 2

Respectfully submitted,

A handwritten signature in blue ink, appearing to be "Devin Ryan", written over a light blue horizontal line.

Devin Ryan

DR/dmc  
Attachments

cc: Certificate of Service

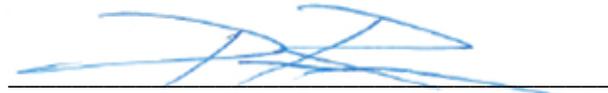
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA E-MAIL ONLY**

Gregory J Myers  
110 Miller Road  
York Haven, PA 17370  
[Gmyers8888@aol.com](mailto:Gmyers8888@aol.com)

Date: November 1, 2022



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Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gregory J. Myers,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2022-3035609
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

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**NOTICE TO PLEAD**

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YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE §§ 5.65 AND 5.101, YOU MAY FILE AN ANSWER TO THE ENCLOSED **AMENDED** PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS AFTER THE DATE OF SERVICE. YOUR ANSWER SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY OF YOUR ANSWER SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.



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Date: November 1, 2022

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gregory J. Myers,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2022-3035609
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

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**AMENDED PRELIMINARY OBJECTIONS OF  
PPL ELECTRIC UTILITIES CORPORATION TO  
THE COMPLAINT OF GREGORY J. MYERS**

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TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) and hereby files these **Amended** Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code §§ 5.91 and 5.101, and respectfully requests that the Commission strike the portions of the Formal Complaint of Gregory J. Myers (“Complainant”): (1) requesting damages because the Commission has no power to award damages; (2) providing details on prior settlement agreements reached with PPL Electric and recent settlement negotiations because such information is impertinent matter; and (3) alleging violations of the Right-of-Way Agreement between the Company and the Complainant because the Commission lacks subject matter jurisdiction over such claims.

In support thereof, PPL Electric states as follows:

## I. BACKGROUND

1. PPL Electric furnishes electric distribution, transmission, and default supply services to approximately 1.4 million customers throughout its certificated service territory, which includes all or portions of twenty-nine counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania. PPL Electric is a “public utility,” an “electric distribution company,” and a “default service provider” as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 102, 2803.

2. On September 26, 2022, PPL Electric was served with the above-captioned Complaint.<sup>1</sup> The issues raised in the Complaint pertain to PPL Electric’s vegetation management practices in the transmission line right-of-way traversing the Complainant’s property. (Complaint ¶¶ 4-5.) The Complainant, among other things, alleges that PPL Electric “violated the terms of the Right of Way Agreement.” (Complaint ¶ 4.) The Complainant also provides details on prior settlement agreements that he and PPL Electric previously entered into to resolve his Formal Complaints at Docket Nos. C-2011-2227711 and C-2011-2227684, as well as information about settlement negotiations with the Company that took place after he filed his informal complaint. (Complaint ¶¶ 4, 7.) As relief, the Complainant requests that the Company: (a) purchase 30 trees selected by the Complainant from Diller’s Nursery, plant those trees at the Complainant’s selected locations, and provide a one-year warrant for the trees; (b) make one payment to the Complainant of \$2,500; (c) make a second payment to the Complainant of \$10,000; and (d) make a third payment to the Complainant of \$10,000 in “punitive damages.” (Complaint ¶ 5.)

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<sup>1</sup> PPL Electric was electronically served with the Complaint at 4:42 PM Eastern time on Friday, September 23, 2022, *i.e.*, after 4:30 PM Eastern time. Accordingly, the “date of service” for purposes of calculating the due date for responsive pleadings was not September 23, 2022. *See* 52 Pa. Code § 1.56(a)(4)-(5). Rather, the “date of service” was the next business day, Monday, September 26, 2022, and, thus, the Company’s Answer and Preliminary Objections to the Complaint were timely filed on Monday, October 17, 2022. *See id.*; *see also id.* § 1.12(a) (stating that in computing a period of time, if the final day falls on a Saturday, Sunday, or legal holiday, “the period shall run until the end of the next day which is neither a Saturday, Sunday or holiday”).

3. PPL Electric herein files these Preliminary Objections to the Complaint. For the reasons explained below, PPL Electric respectfully requests that: (a) the portions of the Complaint pertaining to requests for monetary damages be dismissed pursuant to Section 5.101(a)(2) of the Commission's regulations because a request for damages constitutes impertinent matter (52 Pa. Code § 5.101(a)(2)); (b) the portions of the Complainant providing details about the prior settlement agreements between the Complainant and PPL Electric and recent settlement negotiations be stricken pursuant to Section 5.101(a)(2) of the Commission's regulations because such information constitutes impertinent matter (52 Pa. Code § 5.101(a)(2)); and (c) the Complainant's allegations that PPL Electric violated the Right-of-Way Agreement between the Company and the Complainant be stricken pursuant to Section 5.101(a)(1) of the Commission's regulations because the Commission lacks subject matter jurisdiction over such claims (52 Pa. Code § 5.101(a)(1)).

## **II. STANDARD OF REVIEW**

4. Pursuant to the Commission's regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (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 a 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 the proceeding.

52 Pa. Code § 5.101(a)(2) (emphasis added).

5. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonable deducible therefrom. *Stilp v. Commonwealth*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (“*Stilp*”) (citing *Dep’t of Gen. Servs. V. Bd. Of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)), *affirmed* 974 A.2d 491 (Pa. 2009). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep’t of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2008), *affirmed*, 963 A.2d 670 (Pa. 2009). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp* at 781.

6. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987) (citation omitted). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. *See Stilp* at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998) (quoting *Santiago v. Pa. Nat. Mut. Cas. Ins. Co.*, 613 A.2d 1235, 1238 (Pa. Super 1992)).

### **III. PRELIMINARY OBJECTIONS**

#### **A. PRELIMINARY OBJECTION NO. 1 – THE COMPLAINANT’S REQUESTS FOR DAMAGES SHOULD BE DISMISSED BECAUSE THE COMMISSION HAS NO POWER TO AWARD DAMAGES**

7. PPL Electric incorporates by reference Paragraphs 1 through 6 as if fully set forth herein.

8. The portions of the Complaint requesting damages should be dismissed because the Commission cannot award damages.

9. In the Complaint, the Complainant requests, among other relief, that the Commission direct PPL Electric to: (a) make one payment to the Complainant of \$2,500; (b) make a second payment to the Complainant of \$10,000; and (c) make a third payment to the Complainant of \$10,000 in “punitive damages.” (Complaint ¶ 5.)

10. It is well-established that the Commission does not have authority to order a public utility to pay damages, as requested by the Complainant. *See DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595, 596-97 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371, 375 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791, 794-95 (Pa. 1977).

11. Here, the Complainant’s requests for damages are impertinent matter “in the sense that it is irrelevant to [the] cause of action” because the Commission lacks authority to award damages. *See Stoner v. PPL Elec. Utils. Corp.*, Docket No. C-2013-2385588, p. 3 (Nov. 14, 2013 (order sustaining preliminary objections)). Indeed, requests for damages are regularly stricken from complaints as being impertinent matter. *See, e.g., id.* at pp. 3, 5; *Powell v. Verizon Pa., Inc.*, Docket No C-2011-226876, 2011 Pa. PUC LEXIS 652, at \*8-9, 16-17 (Dec. 21, 2011), *adopted by Comm’n*, 2012 PA. PUC LEXIS 374 (Order Entered Mar. 1, 2012); *J.E. Culbertson Co. v. Pa. Elec. Co.*, Docket No. C-2010-2204947, 2011 Pa. PUC LEXIS 781, at \*8-9, 12 (Feb. 4, 2011), *adopted by Comm’n*, Docket No. C-2010-2204947 (Order Entered Apr. 8, 2011).

12. Therefore, consistent with longstanding Commission precedent, the Complainant’s requests for damages are impertinent matter and should be stricken from the Complaint pursuant to 52 Pa. Code § 5.101(a)(2).

**B. PRELIMINARY OBJECTION NO. 2 – THE AVERMENTS ABOUT PRIOR SETTLEMENT AGREEMENTS BETWEEN THE COMPANY AND THE COMPLAINANT SHOULD BE STRICKEN FROM THE COMPLAINT**

13. PPL Electric incorporates by reference Paragraphs 1 through 12 as if fully set forth herein.

14. The portions of the Complaint providing details about the Company’s prior settlement agreements with the Complainant and PPL Electric’s recent settlement negotiations with the Complainant should be stricken.

15. Rule 408 of the Pennsylvania Rules of Evidence bars the admission of evidence about: (a) “furnishing, promising, or offering--or accepting, promising to accept, or offering to accept--a valuable consideration in compromising or attempting to compromise the claim”; and (b) “conduct or a statement made during compromise negotiations about the claim.” Pa.R.E. 408(a)(1)-(2).

16. Accordingly, Pennsylvania courts have granted preliminary objections to strike averments about settlements from complaints because such averments are impertinent matter. *See Indep. Enters. v. James E. Noland & Pentrust Real Estate Advisory Servs.*, 2009 Pa. Dist. & Cnty. Dec. LEXIS 1327, at \*4-5 (Allegheny Cnty. Ct. of Common Pleas July 23, 2009) (striking the statements in the complaint about one defendant’s settlement offer); *Monchik v. Troccoli*, 2019 Pa. Dist. & Cnty. Dec. LEXIS 1370, at \*1 n.1 (Lancaster Cnty. Ct. of Common Pleas Jan. 4, 2019) (striking the averments in the amended complaint “which address amounts set out in settlement negotiations between the parties).

17. In this Complaint, the Complainant recites specific terms and conditions of the settlement agreements that he reached with the Company to resolve his Formal Complaints at Docket Nos. C-2011-2227711 and C-2011-2227684, including monetary compensation paid to him under those agreements. (Complaint ¶ 5.)

18. The Complainant also provides details about settlement negotiations with PPL Electric that occurred after the Complainant filed his informal complaint. (Complaint ¶ 7.)

19. These averments in the Complaint are “immaterial and inappropriate to the proof of the cause of action” *Common Cause/Pa. v. Commonwealth*, 710 A.2d 108, 115 (Pa. Cmwlth. 1998) (citing *Dep’t of Env’tl. Res. v. Peggs Run Coal Co.*, 423 A.2d 765 (Pa. Cmwlth. 1980)).

20. Based on the foregoing, these statements about the prior settlements and the recent settlement negotiations should be stricken as impertinent matter pursuant to 52 Pa. Code § 5.101(a)(2).

**C. PRELIMINARY OBJECTION NO. 3 – THE COMPLAINANT’S ALLEGATIONS ABOUT PPL ELECTRIC’S PURPORTED VIOLATION OF THE RIGHT-OF-WAY AGREEMENT SHOULD BE DISMISSED BECAUSE THE COMMISSION LACKS SUBJECT MATTER JURISDICTION OVER SUCH CLAIMS**

21. PPL Electric incorporates by reference Paragraphs 1 through 20 as if fully set forth herein.

22. The portions of the Complaint alleging violations of the Right-of-Way Agreement between the Company and the Complainant should be dismissed because the Commission lacks subject matter jurisdiction over such claims.

23. As a creature of statute, the Commission “has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication.” *Feingold v. Bell*, 383 A.2d 791, 794 (Pa. 1977) (citations omitted).

24. It is well-established that the Commission lacks authority to adjudicate real property rights, as such disputes are within the exclusive jurisdiction of the courts of common pleas. *See, e.g., Stefanoski v. Pa. Am. Water Co.*, Docket No. C-20078219 (Order entered Sept. 22, 2008); *Perrige v. Metro. Edison Co.*, Docket No. C-00004110 (Order entered July 11, 2003);

*Lou Amati/Amati Serv. Station v. West Penn Power Co.*, Docket No. C-00945842 (Order entered Oct. 25, 1995); *Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Order entered May 28, 2008).

25. Moreover, “[t]he PUC lacks jurisdiction over private contractual disputes.” *Adams v. Pa. PUC*, 819 A.2d 631, (Pa. Cmwlth. 2003) (citing *Allport Water Auth. v. Winburne Water Co.*, 393 A.2d 673 (Pa. Super. 1978)).

26. Here, the Complainant alleges that “PPL violated the terms of the Right of Way Agreement which requires them to selectively clear all non-compatible species and that the compatible species shall be permitted to remain” and that “[t]his requirement also applies to the wire zone in low lying areas where the surface is at least ten feet lower than the base of the transmission line structures.” (Complaint ¶ 4.)

27. The Complainant then requests damages based on this alleged breach of the Right-of-Way Agreement, including “a payment of \$10000 for punitive damages . . . to penalize PPL for ignoring the selective clearing provision of the Right of Way Agreement.” (Complaint ¶ 5.)

28. Therefore, the Complaint alleges breaches of a private contract (*i.e.*, the Right-of-Way Agreement) and demands damages based upon such breach, and both of those issues are outside of the Commission’s subject matter jurisdiction.<sup>2</sup>

29. Thus, the portions of the Complaint setting forth the alleged violations of the Right-of-Way Agreement, as well as the Complainant’s requested relief based thereon, should be dismissed pursuant to 52 Pa. Code § 5.101(a)(1).

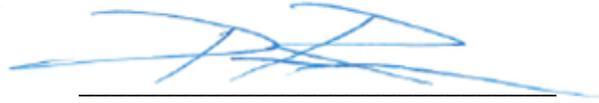
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<sup>2</sup> PPL Electric also notes that punitive damages cannot be awarded for a breach of contract action. *See Ash v. Cont’l Ins. Co.*, 932 A.2d 877, (Pa. 2007) (“The law in Pennsylvania has always been that punitive damages cannot be recovered for breach of contract.”) (internal quotation marks omitted) (quoting *Smith v. Harleysville Ins. Co.*, 418 A.2d 705, 706 (Pa. Super. 1980), *aff’d*, 431 A.2d 974 (Pa. 1981)).

**IV. CONCLUSION**

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission grant these Preliminary Objections.

Respectfully submitted,



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Date: November 1, 2022

Attorneys for PPL Electric Utilities Corporation

## VERIFICATION

I, RYAN J. YANEK, being the Manager-Distribution Program Management at PPL Electric Utilities Corporation, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect PPL Electric Utilities Corporation to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

November 1, 2022

