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File #: 140074

February 7, 2023

***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: Tammy McPherson v. PPL Electric Utilities Corporation**  
**Docket No. C-2023-3037690**

Dear Secretary Chiavetta:

Attached please find the Preliminary Objections of PPL Electric Utilities Corporation to the Complaint of Tammy McPherson in the above-referenced proceeding. Copies are being provided per the Certificate of Service.

Respectfully submitted,



Megan E. Rulli

MER/kl  
Attachment

cc: Certificate of Service

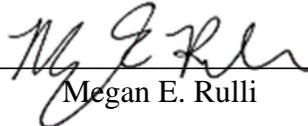
**CERTIFICATE OF SERVICE**

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 EMAIL AND FIRST-CLASS MAIL**

Tammy McPherson  
605 5<sup>th</sup> Street  
Northumberland, PA 17857  
[ssweetlouisaa@yahoo.com](mailto:ssweetlouisaa@yahoo.com)

Date: February 7, 2023

  
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Megan E. Rulli

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tammy McPherson,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2023-3037690
	:	
PPL Electric Utilities Corporation	:	
	:	
Respondent.	:	
	:	

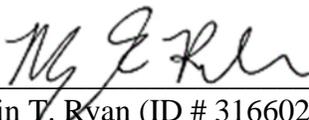
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**NOTICE TO PLEAD**

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

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Date: February 7, 2023

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tammy McPherson,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2023-3037690
	:	
PPL Electric Utilities Corporation	:	
	:	
Respondent.	:	
	:	

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**PRELIMINARY OBJECTIONS OF  
PPL ELECTRIC UTILITIES CORPORATION TO THE  
COMPLAINT OF TAMMY MCPHERSON**

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AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric”) and hereby files these Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Complaint filed by Tammy McPherson (“Complainant”) be dismissed in its entirety as against PPL Electric. 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. By Secretarial Letter dated January 18, 2023, PPL Electric was served with the above-captioned Complaint. In the Complaint, the Complainant alleges that an anchor rod for a utility pole on her property damaged her sewer pipe and caused sewage to back up in her house. (Complaint ¶ 4.) As relief, the Complainant requests, among other things, for PPL Electric to “fix [her] damage[d] sewage line,” “have [her] basement cleaned,” and reimburse her for “suffering for living weeks with raw sewage in [her] basement.” (Complaint ¶ 5.)

3. PPL Electric herein files these Preliminary Objections to the Complaint. For the reasons explained below, PPL Electric respectfully requests that the Complaint be dismissed in its entirety and with prejudice as against PPL Electric pursuant to Section 5.101(a)(5) of the Commission’s regulations, 52 Pa. Code § 5.101(a)(5), due to the nonjoinder of a necessary party, *i.e.*, the utility that owns the anchor rod at issue. Additionally, for the reasons explained below, PPL Electric respectfully requests that the Complaint be dismissed in its entirety and with prejudice as against PPL Electric for legal insufficiency pursuant to Section 5.101(a)(4) of the Commission’s regulations, 52 Pa. Code § 5.101(a)(4). Finally, if the Commission does not dismiss the Complaint in its entirety, PPL Electric respectfully requests that the portion of the Complaint pertaining to a request for monetary compensation 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).

## **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 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) (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 reasonably deducible therefrom. *Stilp v. Cmwltth.*, 910 A.2d 775, 781 (Pa. Cmwltth. 2006) (citing *Dep't of Gen. Serv. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwltth. 2005)); accord *Complaint of Nat'l Fuel Gas Distrib. Corp. and Petition for an Order to Show Cause*, Docket No. P-00072343 (December 26, 2007). 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. Cmwltth. 2007). For preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery, and 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. Cmwltth. 1987). 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).

### III. PRELIMINARY OBJECTIONS

#### A. **PRELIMINARY OBJECTION NO. 1 – THE COMPLAINT IS LEGALLY INSUFFICIENT AND SHOULD BE DISMISSED WITH PREJUDICE AS AGAINST PPL ELECTRIC BECAUSE THE COMPLAINT FAILS TO ALLEGE ANY VIOLATIONS BY PPL ELECTRIC**

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

8. The Complaint is legally insufficient and should be dismissed with prejudice as against PPL Electric because the Complaint fails to allege any violations by PPL Electric.

9. As a matter of law, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa PUC 196, 1990 Pa. PUC LEXIS 19, at \*8 (Order entered Feb. 8, 1990) (citing *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976)).

10. When “the Complaint fails to state a claim against the named respondent upon which the Commission may grant relief,” the Complaint is “insufficient as to substance,” and the “Respondent is entitled to judgment as a matter of law.” *Stabley v. Phila. Gas Works*, Docket No. F-2010-2186368, 2010 Pa. PUC LEXIS 231, at \*6 (July 29, 2010) (Initial Decision), *adopted without modification*, (Order entered Oct. 1, 2010); *see Coggins v. UGI Cent. Penn Gas Inc.*, Docket No. C-2012-2312796, 2012 Pa. PUC LEXIS 1497 (Sept. 10, 2012) (Initial Decision), *adopted without modification*, (Order entered Nov. 9, 2012).

11. On November 1, 2021, the Complainant submitted a damage claim to the Company claiming that her sewer line was damaged by an anchor rod connected to a utility pole on her property.

12. The utility pole on Complainant’s property has two anchor rods securing the pole, one with yellow guarding and another with white guarding.

13. In reporting the damage to the Company, the Complainant identified the anchor rod with white guarding as the rod responsible for the damage to her sewer line. The Complainant reported that this determination was made by Roto-Rooter, the company hired by the Complainant to investigate and fix her damaged sewer line.

14. PPL Electric's investigation of the Complainant's damage claim revealed that PPL Electric owned the rod with yellow guarding, while a different utility owned the rod with white guarding.

15. PPL Electric installed the anchor rod with yellow guarding on June 11, 2004, and has not moved or changed the rod since its installation.

16. The Complainant's own damage claim to the Company reported that the damage caused to her sewer line was caused by the anchor rod with white guarding owned by a different utility, not PPL Electric.

17. Because PPL Electric does not own the anchor rod that caused the Complainant's alleged damages, the Company denied the Complainant's original damage claim on November 8, 2021.

18. After reasonable investigation into the allegations contained in the present Complaint, the Company has confirmed its original finding that it does not own and is not responsible for the anchor rod that the Complainant alleges damaged her sewer line.

19. In fact, the Complaint does not contain any factual averment that PPL Electric owns the anchor rod responsible for the Complainant's damages. The Complaint states only that "an old pole anchor has damaged my sewage line" and describes the resultant damages. (Complaint ¶ 4.)

20. The Complaint includes only one statement that hesitantly connects PPL Electric to the anchor rod at issue. This undated statement was allegedly made by a Service Electric Cablevision Construction Supervisor and is contained in unidentified attachment to the Complaint. The statement hedges that the Construction Supervisor “believe[s]” that the anchor rod with white guarding “belongs to PP&L but [it] could be a Verizon anchor rod.”

21. This statement does not constitute an actual assertion that PPL Electric owns or is responsible for the anchor rod that the Complainant alleges damaged her sewer line.

22. The Complaint does not allege that PPL Electric violated the Public Utility Code, the Commission’s regulations, a Commission order, or the Company’s Commission-approved tariff.

23. Therefore, the Complainant has failed to state a claim against PPL Electric upon which the Commission may grant relief. *See Rok*, 527 A.2d at 214; *Stilp*, 910 A.2d at 781.

24. Accordingly, the Complaint should be dismissed in its entirety and with prejudice as against PPL Electric.

**B. PRELIMINARY OBJECTION NO. 2 – THE COMPLAINANT HAS FAILED TO JOIN NECESSARY PARTIES**

25. PPL Electric incorporates by reference Paragraphs 7 through 24 as if fully set forth herein.

26. The Complaint should be dismissed because the Complainant has failed to join necessary parties.

27. Under Pennsylvania law, “a necessary party is one whose presence, while not indispensable, is essential if the court is to resolve completely a controversy and to render complete relief.” *Pa. Human Relations Comm’n v. Phila. Sch. Dist.*, 651 A.2d 177 (Pa. Cmwlth. 1993) (citation omitted.)

28. The Company's investigation of the Complainant's damage claim determined that a different utility owns and is responsible for the anchor rod with white guarding, potentially Service Electric Telephone Company, LLC ("Service Electric") or Zito Media Voice, LLC ("Zito Media").

29. Service Electric is a Competitive Local Exchange Carrier authorized to provide telecommunications service in its certificated territory.<sup>1</sup>

30. Zito Media is a Competitive Access Provider and a Competitive Local Exchange Carrier authorized to provide telecommunications service in its certificated territory.<sup>2</sup>

31. The Complaint centers around the Complainant's allegation that an anchor rod for a utility pole on her property damaged her sewer pipe and caused sewage to back up in her house. (Complaint ¶ 4.)

32. A different utility, not PPL Electric, owns the anchor rod with white guarding that the Complainant alleges damaged her sewer line.

33. As a result, the actual utility that owns the anchor rod with white guarding is a necessary party to this proceeding, given that the Complainant's allegations pertain directly to that anchor rod.

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<sup>1</sup> See *Application of Service Electric Telephone Company, LLC for expanded authority to offer, render, furnish or supply telecommunication services as a Competitive Local Exchange Carrier to the public in the Commonwealth of Pennsylvania in the service territories of Commonwealth Telephone Company, Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company, Denver and Ephrata Telephone and Telegraph Company, Frontier Communications of Pennsylvania, LLC, Frontier Communications of Lakewood, LLC and TDS Telecom/Mahoney and Mahantango Telephone Company*, Docket No. A-310651F0002AME (Order entered August 17, 2006).

<sup>2</sup> See *Application of Zito Media Voice, LLC for approval to offer, render, furnish, or supply telecommunication services as a Competitive Access Provider to the public in the Commonwealth of Pennsylvania*, Docket No. A-311439 (Order entered August 8, 2007); *Application of Zito Media Voice, LLC for approval to offer, render, furnish or supply telecommunication services as a Competitive Local Exchange Carrier to the public in the service territories of Verizon Pennsylvania Inc., Verizon North Inc., Windstream Pennsylvania, and Frontier Communications of Oswayo River in the Commonwealth of Pennsylvania*, Docket Nos. A-311439F002 et al. (Order entered August 8, 2007).

34. After reasonable investigation, PPL Electric believes the rod could belong to Service Electric or Zito Media.

35. Service Electric and Zito Media are necessary parties to this proceeding. The Commission's determination in this case could affect Service Electric or Zito Media to the extent that either utility is responsible for the anchor rod with white guarding on the Complainant's property.

36. Without Service Electric or Zito Media, the Commission cannot resolve the instant Complaint or grant the Complainant her requested relief.

37. Based on the foregoing, the Complainant has failed to join necessary parties, *i.e.*, Service Electric and Zito media, in this proceeding.

38. Therefore, the Complaint should be dismissed in its entirety and with prejudice as against PPL Electric, pursuant 52 Pa. Code § 5.101(a)(5).

**C. PRELIMINARY OBJECTION NO. 3 – THE COMPLAINANT'S REQUEST FOR DAMAGES SHOULD BE DISMISSED BECAUSE THE COMMISSION HAS NO POWER TO AWARD DAMAGES**

39. PPL Electric incorporates by reference Paragraphs 25 through 38 as if fully set forth herein.

40. If not dismissed in its entirety with prejudice as against PPL Electric, the portion of the Complaint requesting damages should be dismissed because the Commission cannot award damages.

41. 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).

42. In the Complaint, the Complainant requests, among other things, for PPL Electric to “fix [her] damage[d] sewage line,” “have [her] basement cleaned,” and reimburse her for “suffering for living weeks with raw sewage in [her] basement.” (Complaint ¶ 5.)

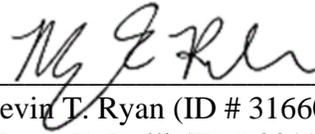
43. Here, the Complainant’s request for damages is impertinent matter “in the sense that it is irrelevant to [the] cause of action” because the Commission lacks authority to award damages. *See Stoner v. PPL Elec. Utils. Corp.*, Docket No. C-2013-2385588, p. 3 (Nov. 14, 2013 (order sustaining preliminary 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).

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

**IV. CONCLUSION**

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Complaint be dismissed in its entirety and with prejudice as against PPL Electric Utilities Corporation pursuant to 52 Pa. Code § 5.101(a)(4) and (5) or, alternatively, that the Complainant's request for damages be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(2).

Respectfully submitted,



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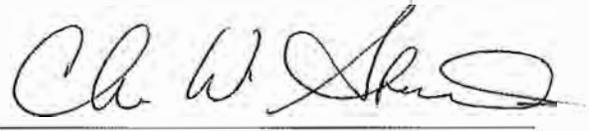
Date: February 7, 2023

Attorneys for PPL Electric Utilities Corporation

## VERIFICATION

I, CHRIS W. STAMATEDES, being a Regional Director Operations 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.

February 7, 2023



Chris W. Stamatedes