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File #: 202236

August 28, 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: Daniel and Kimberly Spence v. PPL Electric Utilities Corporation
Docket No. C-2023-3042094

Dear Secretary Chiavetta:

Attached for filing please find the Preliminary Objections on behalf of PPL Electric Utilities Corporation in response to the Complaint of Daniel and Kimberly Spence in the above-referenced proceeding. Copies are being provided as indicated on 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

Daniel and Kimberly Spence
276 Moore's Hill Road
Berwick, PA 18603
Kbowerspence@gmail.com

Date: August 28, 2023



Megan E. Rulli

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Daniel and Kimberly Spence,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2023-3040294
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

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: August 28, 2023

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Daniel and Kimberly Spence,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2023-3042094
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS OF
PPL ELECTRIC UTILITIES CORPORATION TO
THE COMPLAINT OF DANIEL AND KIMBERLY SPENCE**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) 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 Commission strike the portions of the Formal Complaint of Daniel and Kimberly Spence (“Complainants”): (1) requesting damages because the Commission has no power to award damages; and (2) providing details of recent settlement negotiations with PPL Electric because such information is impertinent matter.

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 August 8, 2023, PPL Electric was served with the above-captioned Complaint. The issues raised in the Complaint pertain to a driveway on the Complainants’ property that the Complainants allege was damaged due to the Company’s use of the driveway to rebuild portions of the Hunlock-Berwick 69 kV Transmission Line in Salem Township, Luzerne County, Pennsylvania. (Complaint ¶ 6.) The Complainants also provide details of recent settlement negotiations with PPL Electric. (Complaint ¶ 6.) As relief, the Complainants request, among other things, that “PPL Electric Utilities should pay half of the total repair costs and a penalty for acting in bad faith and delaying promised repairs for well over a year.” (Complaint ¶ 6.)

3. PPL Electric herein files these Preliminary Objections to the Complaint. For the reasons explained below, PPL Electric respectfully requests that: (1) the portions of the Complaint pertaining to a request for monetary reimbursement to compensate for restoration to the Complainants’ driveway 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)); and (2) the portions of the Complaint providing details about 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)).

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 COMPLAINANTS’ REQUEST 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 portion of the Complaint requesting damages should be dismissed because the Commission cannot award damages.

9. In the Complaint, the Complainants request that that “PPL Electric Utilities should pay half of the total repair costs and a penalty for acting in bad faith and delaying promised repairs for well over a year.” (Complaint ¶ 6.)

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 Complainants’ 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).

12. Therefore, consistent with longstanding Commission precedent, the Complainants' request for damages is impertinent matter and should be stricken from their Complaint pursuant to 52 Pa. Code § 5.101(a)(2).

B. PRELIMINARY OBJECTION NO. 2 – THE AVERMENTS ABOUT RECENT SETTLEMENT NEGOTIATIONS BETWEEN THE COMPANY AND THE COMPLAINANTS 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 PPL Electric's recent settlement negotiations with the Complainants 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 Complainants provide details about recent settlement negotiations with PPL Electric. Specifically, the Complainants state that a PPL Electric representative offered the Complainants “\$6,000 towards the repair of the lane,” that the Complainants received estimates to restore the driveway from a contractor totaling \$17,265 and \$20,180, and that “PPL was not willing to increase the amount” of its original offer. (Complaint ¶ 6.)

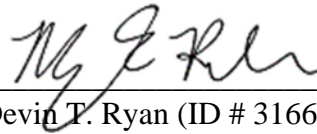
18. These averments in the Complaint are “immaterial and inappropriate to the proof of the cause of action” *Common Cause/Pa. v. Commonwealth*, 710 A.2d 108, 115 (Pa. Cmwlth. 1998) (citing *Dep’t of Env’tl. Res. v. Peggs Run Coal Co.*, 423 A.2d 765 (Pa. Cmwlth. 1980)).

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

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: August 28, 2023

Attorneys for PPL Electric Utilities Corporation

VERIFICATION

I, AUSTIN K. WESELOH, being a Trans ROW and Real Estate Supervisor 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.

August 28, 2023

Austin Weseloh

Austin K. Weseloh