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File #: 202443

September 12, 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: Gary Jay Bowman v. PPL Electric Utilities Corporation**  
**Docket No. C-2023-3042390**

Dear Secretary Chiavetta:

Attached for filing please find the Preliminary Objection on behalf of PPL Electric Utilities Corporation in response to the Complaint of Gary Jay Bowman in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Megan E. Rulli  
Associate

MER/kl  
Attachment

cc: Certificate of Service

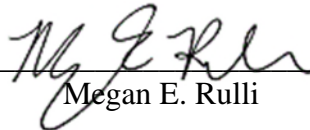
**CERTIFICATE OF SERVICE**

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**

Gary Jay Bowman  
1584 Pine Mountain Road  
Lock Haven, PA 17745  
[Burnell.brenda@yahoo.com](mailto:Burnell.brenda@yahoo.com)

Date: September 12, 2023

  
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Megan E. Rulli

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gary Jay Bowman,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2023-3042390
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

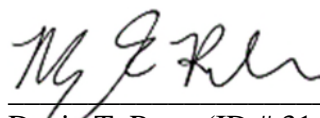
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**NOTICE TO PLEAD**

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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 PRELIMINARY OBJECTION 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: September 12, 2023

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gary Jay Bowman,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2023-3042390
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

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**PRELIMINARY OBJECTION OF  
PPL ELECTRIC UTILITIES CORPORATION TO  
THE COMPLAINT OF GARY JAY BOWMAN**

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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 this Preliminary Objection, 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 dismiss the Formal Complaint of Gary Jay Bowman (“Complainant”) because the Commission lacks subject matter jurisdiction over the claims raised therein, which solely relate to the nature and scope of an existing right-of-way over his property.

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 23, 2023, PPL Electric was served with the above-captioned Formal Complaint, which challenges the Company’s right to provide electric service to the Complainant’s neighbors through use of an existing right-of-way over the Complainant’s property. (Complaint ¶¶ 5-6.)

3. PPL Electric herein files this Preliminary Objection to the Complaint. For the reasons explained below, PPL Electric respectfully requests that the Complaint be dismissed pursuant to Section 5.101(a)(1) of the Commission’s regulations because the Commission lacks subject matter jurisdiction over the claims raised in the Complaint, which solely pertain to the nature and scope of an existing right-of-way on the Complainant’s property (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 OBJECTION**

#### **A. PRELIMINARY OBJECTION NO. 1 – THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE COMMISSION HAS LACKS SUBJECT MATTER JURISDICTION OVER THE REAL PROPERTY CLAIMS RAISED THEREIN**

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

8. The Complaint should be dismissed because the Commission lacks subject matter jurisdiction over the real property claims raised therein.

9. 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).

10. 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).

11. Here, the Complainant alleges that “[t]he intent of the 50 ft. Right of Way Agreement [over his property] is to use as a road to cross [his] property from the main highway” and that “[t]here is no mention of utilities in the Right-of-Way as the township ordinance requires.” (Complaint ¶ 5.) As relief, the Complainant seeks “to retain [his] property rights to **not** have [his] property disrupted, dug up and altered for any utility that never had been intended for now or in the future as the typical Right-of Way [sic] written and recorded in the Clinton County Registry 22 years ago indicates.” (Complaint ¶ 6).

12. The Complaint exclusively concerns the Complainant’s real property rights.

13. Therefore, the Complaint’s sole allegations relate to his real property rights (*i.e.*, the nature and scope of the existing right-of-way over his property), which are outside of the Commission’s subject matter jurisdiction.

14. Thus, because the Complaint raises claims related to real property rights and his requested relief is based on the same, the Complaint should be dismissed pursuant to 52 Pa. Code § 5.101(a)(1).

**IV. CONCLUSION**

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

Respectfully submitted,



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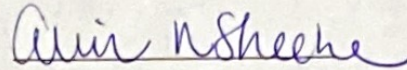
Date: September 12, 2023

Attorneys for PPL Electric Utilities Corporation

VERIFICATION

I, ALLISON N. SHEEHE being a Supervisor - Right of Way 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.

September 12, 2023

  
Allison N. Sheehe