
Peter J. Kramer

pkramer@postschell.com
215-587-1075 Direct
215-587-1444 Direct Fax
File #: 205250

March 27, 2024

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: Nieves Abad v. PPL Electric Utilities Corporation
Docket No. C-2024-3047163**

Dear Secretary Chiavetta:

Attached for filing are the Preliminary Objections of PPL Electric Utilities Corporation to the Complaint of Nieves Abad in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Peter J. Kramer

PJK/dmc
Attachments

cc: Certificate of Service

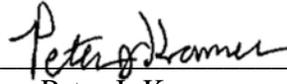
CERTIFICATE OF SERVICE

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 EMAIL AND FIRST-CLASS MAIL

Nieves Abad
747 Delaware Street
Forest City, PA 18421
Martjua3@aol.com

Date: March 27, 2024



Peter J. Kramer

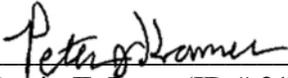
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nieves Abad,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3047163
	:	
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.

Respectfully submitted,



Kimberly A. Klock (ID # 89716)
Michael J. Shafer (ID # 205681)
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Phone: 610-774-2599
Fax: 610-774-4102
E-mail: kklock@pplweb.com
mjshafer@pplweb.com

Devin T. Ryan (ID # 316602)
Peter J. Kramer (ID # 331797)
Nicholas A. Stobbe (ID # 329583)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-731-1970
Fax: 717-731-1985
E-mail: dryan@postschell.com
pkramer@postschell.com
nstobbe@postschell.com

Date: March 27, 2024

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nieves Abad,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3047163
	:	
PPL Electric Utilities Corporation	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS OF
PPL ELECTRIC UTILITIES CORPORATION TO THE
COMPLAINT OF NIEVES ABAD**

AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric” or “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 portion of the Formal Complaint filed by Nieves Abad (“Complainant”) requesting damages be summarily dismissed because the Commission has no power to award damages. In addition, the Complaint should be summarily dismissed because the Commission does not have jurisdiction over private contractual disputes or property rights controversies.

In support thereof, PPL Electric states as follows:

I. BACKGROUND

1. PPL Electric is a “public utility” and an “electric distribution company” as those terms are defined under the Public Utility Code, 66 Pa. C.S. §§ 102 and 2803, subject to the regulatory jurisdiction of the Commission.

2. 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.

3. By Secretarial Letter dated March 7, 2024, PPL Electric was served with the above-captioned Complaint. In the Complaint, the Complainant alleges, among other things, that PPL Electric utility poles are illegally on or near his property at 837 Rear Capouse Avenue, Scranton, Pennsylvania 18509, and that PPL Electric “refuses to pay any fees associated with keeping the poles on property.” (Complaint ¶ 4). As relief, the Complainant argues that PPL Electric should provide “compensation in the amount of \$100 per pole, per week since May 1, 2023” for the Company’s utility poles on or near his property. (Complaint ¶ 5).

4. PPL Electric herein files this Preliminary Objection to the Complaint. For the reasons explained below, the Company respectfully requests that the portion of the Complaint pertaining to a request 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). In addition, the Commission does not have jurisdiction to adjudicate a private contractual matter between the Complainant and PPL Electric. 52 Pa. Code § 5.101(a)(4)

II. STANDARD OF REVIEW

5. 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), (4) (emphasis added).

6. 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.

7. 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 REQUEST FOR DAMAGES SHOULD BE DISMISSED BECAUSE THE COMMISSION HAS NO POWER TO AWARD DAMAGES.

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

9. The portion of the Complaint requesting damages should be dismissed because the Commission cannot award damages.

10. In the Complaint, the Complainant argues that PPL Electric should provide “compensation in the amount of \$100 per pole, per week since May 1, 2023” for the Company’s utility poles at or near his property. (Complaint ¶ 5).

11. 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).

12. 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).

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

B. PRELIMINARY OBJECTION NO. 2 - THE COMPLAINT RAISES A PRIVATE CONTRACTUAL DISPUTE OVER WHICH THE COMMISSION LACKS SUBJECT MATTER JURISDICTION (52 PA. CODE § 5.101(A)(1), (4))

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

15. In the Complaint, the Complainant refers to a "right of way" agreement and discussions with PPL Electric.

16. Moreover, throughout the Complaint, the Complainant alleges that PPL Electric does not have valid property rights to locate certain utility poles on or near the Complainant's property. (Complaint ¶¶ 4-5.)

17. It is well-established that the Commission lacks subject matter jurisdiction over private contractual disputes. *See Pettko v. Pa. Am. Water Co.*, 39 A.3d 473, 478 n.9 (Pa. Cmwlth. 2012) ("[T]here can be no dispute that the courts of common pleas have subject matter jurisdiction over common law claims such as conversion and breach of contract involving private individuals and businesses."); *Adams v. Pa. PUC*, 819 A.2d 631, 635 (Pa. Cmwlth. 2003) ("[T]he PUC lacks jurisdiction over private contractual disputes."). Real property issues, such as trespass and whether utility facilities were located pursuant to a valid easement are within the exclusive jurisdiction of the Courts of Common Pleas. *See Lou Amati/Amati Service Station v. West Penn Power Co. and Bell Atlantic Pennsylvania, Inc.*, Docket No. C-00945842 (Order entered October 25, 1995).

18. Rather, jurisdiction over such private contractual disputes lies with the Pennsylvania courts of common pleas. *See Pettko*, 39 A.3d at 478 n.9.

19. In this case, the Complainant alleges that PPL Electric's poles are on his property without a right of way agreement. (*See* Complaint ¶ 4.)

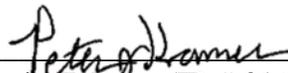
20. Thus, the Complaint should be dismissed because the Commission lacks subject matter jurisdiction over this contractual and real property dispute. *See* 52 Pa. Code § 5.101(A)(1).

IV. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Complainant filed by Nieves Abad be dismissed in its entirety for the reasons set forth above.

Respectfully submitted,

Kimberly A. Klock (ID # 89716)
Michael J. Shafer (ID # 205681)
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Phone: 610-774-2599
Fax: 610-774-4102
E-mail: kklock@pplweb.com
mjshafer@pplweb.com



Devin T. Ryan (ID # 316602)
Peter J. Kramer (ID # 331797)
Nicholas A. Stobbe (ID # 329583)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-731-1970
Fax: 717-731-1985
E-mail: dryan@postschell.com
pkramer@postschell.com
nstobbe@postschell.com

Date: March 27, 2024

Attorneys for PPL Electric Utilities Corporation

VERIFICATION

I, COURTNEY ASTEAK, being a Reliability 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.

March 27, 2024

X 

Courtney Asteak