

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeffrey Tobias	:	
	:	
v.	:	C-2024-3049220
	:	
PPL Electric Utilities Corporation	:	

ORDER
DENYING PRELIMINARY OBJECTIONS AND
SCHEDULING AN EVIDENTIARY HEARING

On May 15, 2024, Jeffrey Tobias (Mr. Tobias or Complainant) filed a Formal Complaint against PPL Electric Utilities Corporation (PPL or Company). The Formal Complaint was served on May 23, 2024. In his Complaint, Mr. Tobias asserts that he is having a reliability, safety or quality problem with his utility service. Specifically, Mr. Tobias states that his neighbor’s pine tree in his airspace completely takes over his service pole, putting major pressure on his electric service line. As relief, Mr. Tobias states that he needs his neighbor to hire a tree trimmer to take pressure off his electric line so it doesn’t snap and tree limbs are removed from his airspace.

On June 12, 2024, PPL filed an answer to Mr. Tobias’s Complaint. PPL denies that it can be required to trim the tree the Complainant references in his Complaint. PPL avers that it lacks sufficient knowledge as to the Complainant’s beliefs or concerns as to the alleged danger or nature of the tree in question, and its effect on PPL’s service line running between the Complainant’s property and the Complainant’s neighbor’s property. PPL denies that it is responsible for vegetation growing into the Complainant’s airspace and avers that the requests for relief are unrelated to PPL.

Also on June 12, 2024, PPL filed preliminary objections to Mr. Tobias’s Complaint. PPL’s preliminary objections included a notice to plead. PPL requests that the

Formal Complaint be dismissed for lack of Commission jurisdiction pursuant to 52 Pa. Code § 5.101(a)(1) and because it is legal insufficient pursuant to 52 Pa. Code § 5.101(a)(4). Specifically, PPL asserts that the Commission lacks jurisdiction because Complainant is requesting that his neighbor, rather than PPL, perform the requested relief. PPL asserts the Formal Complaint is legally insufficient because the Formal Complaint fails to allege any violations by PPL. No response to PPL's preliminary objections has been filed.

On July 12, 2024, a motion judge assignment notice was issued, assigning me as the presiding officer.

PPL's preliminary objections are ready for disposition.

Section 5.101 of the Commission's Rules of Administrative Practice and Procedure provides for the filing of preliminary objections. 52 Pa. Code § 5.101. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69 (Pa. P.U.C. 1994) (*Equitable*). Section 5.101(a) provides:

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (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 a proceeding.

52 Pa.Code § 5.101(a)(1)-(7).

For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. *Cnty. of Allegheny v. Commonwealth of Pa.*, 490 A.2d 402 (Pa. 1985); *Commonwealth of Pa. v. Bell Tel. Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to Mr. Tobias and should dismiss the complaint only if it appears that Mr. Tobias would not be entitled to relief under any circumstances as a matter of law. *Equitable, supra*; see also, *Interstate Traveler Services, Inc. v. Commonwealth, Dep't of Envtl. Res.*, 406 A.2d 1020 (Pa. 1979).

I agree with PPL that the Commission lacks jurisdiction to order Mr. Tobias's neighbor to undertake the requested relief. It is well settled that the Commission may not exceed its jurisdiction and must act within it. *City of Pittsburgh v. Pa. Pub. Util. Comm'n.*, 43 A.2d 348 (Pa. Super 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth 1992). As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa. C.S. §§ 101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977). Formal Complaints under the Commission's jurisdiction relate to claims against public utilities. 66 Pa. C.S. § 701(a).

However, under the standards of disposing preliminary objections and viewing the complaint in a light most favorable to Mr. Tobias, I disagree with PPL that the Formal Complaint should be dismissed. Mr. Tobias's Formal Complaint raises concerns regarding the safety of the PPL service line over his property. Public utilities must furnish and maintain adequate, efficient, safe, and reasonable service and facilities to customers as well as the public. 66 Pa.C.S. § 1501. This may include issues related to vegetation management over a

Complainant's property. *See Salera v. West Penn Power Co.*, Docket No. C-2023-3037817 (Order entered May 23, 2024). Additionally, the Commission has held that, in the normal course, a *pro se* complaint should not be dismissed without first providing a hearing during which the *pro se* complainant could further explain his or her position and the factual basis for the complaint. *Carlock v. United Tel. Co. of Pa.*, Docket No. F-00163617 (Order entered July 14, 1993). *Pro se* complainants may find it difficult to navigate through pre-hearing motions and should be given the chance to orally describe their basic issue and supporting facts. There are some cases where a hearing would not enable the complainant to better explain her position or provide additional facts that would alter the inevitable conclusion that the complaint should be dismissed. *See Vata v. Phila. Gas Works*, Docket No. C-2009-2149960 (Order entered August 24, 2010). This case is not one of those instances. Although PPL, in its preliminary objections, states that it is not clear on its face what alleged act or act to be omitted by PPL is raised by the Formal Complaint, at a hearing Mr. Tobias may be able to further explain why PPL is responsible for issues regarding the PPL service line on his property. Therefore, PPL's preliminary objections are denied.

Mr. Tobias's Complaint will now be scheduled for an evidentiary hearing on October 2, 2024, starting at 1:30 p.m., and a hearing notice will be issued. Complainant is advised that to sustain his burden of proof at a hearing, he must demonstrate by a preponderance of the evidence that PPL has violated the Public Utility Code, a Commission order or regulation or a Commission-approved Company tariff. In addition, all orders of the Commission must be supported by substantial evidence. This is a different standard than that used in addressing PPL's preliminary objections.

In the interim, the parties are reminded that Commission policy promotes settlements. 52 Pa.Code §5.231(a). The parties are encouraged to commence settlement discussions amongst themselves for this proceeding as early as possible. Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. If the parties reach an agreement on all issues, a formal hearing will not be necessary. The parties are also reminded that the presiding officer may participate in settlement

discussions upon agreement of all parties. 52 Pa.Code § 5.223(c); *see also*, 52 Pa.Code § 5.231(c).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by PPL Electric Utilities Corporation at Docket Number C-2024-3049220 on June 12, 2024 are denied.

2. That the Formal Complaint filed by Jeffrey Tobias at Docket Number C-2024-3049220 will proceed to a hearing to be held on Wednesday, October 2, 2024 beginning at 1:30 p.m. To participate in the hearing on October 2, 2024, parties must call 888-459-7411 and enter pin number 95632432 when prompted.

Date: August 8, 2024

/s/
John M. Coogan
Administrative Law Judge

C-2024-3049220 - JEFFREY TOBIAS v. PPL ELECTRIC UTILITIES CORP

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