

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nieves Abad	:	
	:	
v.	:	C-2024-3047163
	:	
PPL Electric Utilities Corporation	:	

**ORDER CLARIFYING SCOPE OF PROCEEDINGS AND
GRANTING IN PART, AND DENYING IN PART,
COMPLAINANT’S MOTION TO COMPEL**

HISTORY OF THE PROCEEDING

On February 12, 2024, Nieves Abad (“Complainant”) filed a Formal Complaint against PPL Electric Utilities Corporation (“Respondent”) with the Pennsylvania Public Utility Commission (“Commission”). In his Complaint, Complainant argued that five Respondent utility poles are located on his property without a legal right-of-way. Complainant claimed that two of these utility poles are located in the middle of his driveway and that Respondent refused to remove these two utility poles at his request.

For relief, Complainant requested that the Commission: (1) order Complainant to be compensated in the amount of \$100 per pole, per week since May 1, 2023; (2) order Respondent to remove the five utility poles from his property; (3) come to a resolution in regards to a fair right of way with Respondent; (4) order that all future upgrades to poles, transformers, and the running of new wires be the full responsibility of Respondent; and (5) dismiss two invoices rendered by Respondent to Complainant for damage that Complainant allegedly caused to utility poles. The Complaint was served on Respondent on March 7, 2024.

On March 27, 2024, Respondent filed an Answer and Preliminary Objections to the Formal Complaint. On April 4, 2024, Complainant filed an Answer to the Preliminary Objections.

On May 17, 2024, the Commission issued my Order Granting in Part, and Denying in Part, the Preliminary Objections. On the same date, a Hearing Notice was issued scheduling this matter for a telephonic evidentiary hearing for July 18, 2024.

On May 24, 2024, Complainant filed a certificate of service indicating that he had served discovery requests upon Respondent.

On June 7, 2024, Respondent filed a certificate of service indicating that it had served objections to certain discovery requests propounded by Complainant, upon Complainant.

On June 14, 2024, Complainant filed a certificate of service indicating that he had served a Motion to Compel upon Respondent and myself.

On June 17, 2024, Respondent filed a certificate of service indicating that it had served responses to Complainant's discovery requests upon Complainant.

On June 28, 2024, the Commission issued a Hearing Type Change Notice converting the July 18, 2024, evidentiary hearing to a prehearing conference.

On July 16, 2024, the Commission issued my Prehearing Conference Order.

On July 18, 2024, the prehearing conference was held as scheduled. Both parties appeared and participated in the conference.

This Motion to Compel filed by Complainant is ready for disposition.

DISCUSSION

Scope of proceeding

Before I discuss Complainant's Motion to Compel, I will first clarify the scope of this proceeding. In his Complaint, Complainant asked that five utility poles on his property be moved. The Commission has held that the relocation of utility facilities at a customer's request falls within the statutory definition of service and that the Public Utility Code defines service in its broadest and most inclusive sense. *See Barbara Gallagher v. PECO Energy Co.*, Docket No. C-2010-2201568 (Order entered September 22, 2011) at 21. Taking the averments of the Complaint as true, it can be reasonably construed that Complainant asserted an unreasonable service allegation averring that PPL refused to relocate these poles at his request. Thus, in this proceeding, the burden of proof is on Complainant to show that he is entitled to a Commission Order requiring PPL to move or relocate its facilities.

All other issues raised in the Complaint are not issues that can be addressed by the Commission in this proceeding and, therefore, are not relevant to this proceeding. As discussed in my Order Granting in Part, and Denying in Part, the Preliminary Objections, and as discussed at the July 18, 2024, prehearing conference, the Commission does not have jurisdiction to address claims for damages. *See, Poorbaugh v. Pa. PUC*, 666 A.2d 744 (Pa. Cmwlth. 1995). Therefore, if Complainant wishes to raise a claim for monetary damages against Respondent he must do so in a different forum. If Complainant wishes to challenge the invoices issued to him by Respondent for damage Complainant allegedly caused to Respondent's facilities, then he must do so in a different forum. Further, any property dispute between Complainant and Respondent must also be resolved in a different forum. *See, Fairview Water Co. v. Pa. PUC*, 502 A.2d 162 (Pa. 1985).¹

¹ To this last point, there is no factual record, at this time, that shows that Respondent has an executed and recorded right-of-way over Complainant's property. Whether a utility has an executed and recorded right-of-way is a factual determination that is incident to the Commission's jurisdiction. *Samuel Messina v. Bell Atlantic – Pennsylvania*, 91 Pa. P.U.C. 657, 1998 WL 1040953 (Order entered September 23, 1998).

Legal standards concerning discovery

Complainant's Motion to Compel seeks to compel Respondent to provide full and complete responses to Complainant's discovery requests. Specifically, Complainant seeks to compel responses to his Interrogatories Nos. 6-10, his "Request for Production of Documents and Things" No. 1 (A) through (G), and his "Documents and Things Requested" Nos. 1, 2, 3, 7, 8, 9, 11, 12, and 13.

The Commission's regulations state that a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c).

Information is relevant if it tends to establish a material fact, tends to make a fact at issue more or less probable, or supports a reasonable inference or presumption regarding a material fact. *Smith v. Morrison*, 47 A.3d 131 (Pa. Super. 2012), *app. denied*, 57 A.3d 71 (Pa. 2012). Relevancy in discovery is broader than the standard used for admission of evidence at a hearing. *Com. v. TAP Pharmaceutical Products, Inc.*, 904 A.2d 986 (Pa. Cmwlth. 2006).

Discovery or deposition is not permitted which: (1) is sought in bad faith, (2) would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party, (3) relates to matter which is privileged, or (4) would require the making of an unreasonable investigation by the deponent, a party or witness. 52 Pa. Code § 5.361(a)

With the scope of this proceeding being narrowed, and with the above legal principles in mind, I will review Complainant's Motion.

Interrogatories

As stated above, Complainant seeks to compel responses to his Interrogatories Nos. 6-10.

Interrogatory #6 asks Respondent to “state the name, address, business, address, and capacity of all witnesses having knowledge or discoverable matter.”

A party may obtain discovery regarding the identity and location of persons having knowledge of a discoverable matter. *See* 52 Pa. Code § 5.321(c). Complainant’s Motion to Compel an answer to Interrogatory #6 will be granted.

It is noted, however, that “discoverable matter” in this proceeding refers to matters that are relevant to this subject proceeding, i.e., whether Respondent is providing safe and reasonable service and facilities.

Interrogatory # 7 asks Respondent if “you and/or anyone acting on your behalf obtained from any witness or person, including the parties to this action, any reports, statements, recordings, etc., concerning the allegations found in the Complaint” and asks Respondent to provide “written statements or a digest of each oral statement.”

This Interrogatory was served to Respondent prior to the clarification of the scope of this proceeding in this Order. In its present form, this Interrogatory is overly broad and burdensome and, if it seeks information pertaining to the allegations in the Complaint that Respondent has invoiced Complainant for damage Complainant caused to Respondent’s poles, is not relevant to this proceeding. Thus, the Motion to Compel an answer to this interrogatory will be denied.

Interrogatory #8 asks Respondent to “state whether you or any persons acting on your behalf have prepared any charts, diagrams, photographs or videos

pertaining in any manner to the incident complained of in your Complaint or for the damages allegedly sustained.”

In his Complaint, Complainant states the following:

5.Claim numbers 2023-00453 and 2023-00661 for the damages to the utility poles and any other claims to date to be dismissed . Utility poles were illegally on the property at the time of the incident with no right of way or legal right to have utility poles on, said property. I contacted PPL multiple times and opened multiple work orders before construction began asking them move the poles , or remove the wires so no damages would occur. I also contacted PPI forestry department that were close to the trees so that no damage would occur to the poles before construction.

Complaint ¶ 5.

Thus, the incident that Complainant refers to here is the incident that led to the alleged damages to Respondent’s poles for which it invoiced Complainant. As stated, the Commission does not have jurisdiction to adjudicate claims for damages. Further, PPL, as Respondent in this proceeding, is not the party that filed the Complaint. Respondent is not the party that has made allegations or claims in this proceeding for which it is seeking relief. Therefore, I conclude that Interrogatory #8 is not relevant to the issues to be addressed in this proceeding and is not likely to lead to the discovery of admissible evidence.

Interrogatory #9 asks Respondent to “state whether you or anyone acting on your behalf have undertaken any investigation or had any contact with you for any claim of any party to this action, or with your attorney, or representative, relative to any aspect of this case.”

The Commission does not have jurisdiction to adjudicate claims for damages. Thus, information sought regarding any monetary claims is irrelevant to this proceeding. Therefore, I conclude that Interrogatory #9 is not relevant to the issues to be addressed in this proceeding and is not likely to lead to the discovery of admissible evidence

Interrogatory #10 asks Respondent to “state each and every act or omission on the part of the inquiring Complainant(s), which you allege caused or contributed to cause your damages, including in your answer.”

Respondent has not made any claim for damages in this proceeding, nor is the Commission the appropriate forum to adjudicate claims for damages. Therefore, I conclude that Interrogatory #10 is not relevant to the issues to be addressed in this proceeding and is not likely to lead to the discovery of admissible evidence.

Request for Production of Documents

As stated above, Complainant seeks to compel responses to his “Request for Production of Documents” No. 1 (A) through (G).

Request for Production of Documents No. 1 is titled “Dates of Alleged Damage to PPL Electric Utilities Poles.” Letters (A) through (G) seek documents related to the incident that caused damage to Respondent’s poles for which Complainant was invoiced for. As explained above, the Commission is not the appropriate forum to resolve disputes concerning claims for damages. Therefore, I conclude that “Request for Production of Documents” No. 1 (A) through (G) is not relevant to the issues to be addressed in this proceeding and is not likely to lead to the discovery of admissible evidence.

Documents and Things

As stated above, Complainant seeks to compel responses to his “Documents and Things Requested” Nos. 1, 2, 3, 7, 8, 9, 11, 12, and 13.

“Documents and Things Requested” No. 1 requests “the entire contents of any investigative file or files and any other documentary material in Respondent’s possession which support or relate to the allegations set forth in the Complaint, (excluding references to mental impressions, conclusions or opinions representing the value or merit

of the claim or respecting strategy or tactics and privileged communications to and from counsel).”

This request was served to Respondent prior to the clarification of the scope of this proceeding in this Order. In its present form, this request is overly broad and burdensome and, if it seeks information pertaining to the allegations in the Complaint that Respondent has invoiced Complainant for damage Complainant caused to Respondent’s poles, seeks information beyond the scope of this proceeding. Respondent will not be compelled to respond to this request.

“Documents and Things Requested” No. 2 requests “Any and all statements concerning the contract from all witnesses, including any statements from the parties herein or their respective agents, servants or employees.”

The “contract” that this request relates to is unclear. If by “contract” Complainant means to refer to the right-of-way agreement requested in Documents and Things Requested No. 12, then this request is duplicative of Documents and Things Requested No. 12. Respondent will not be compelled to respond to this request.

“Documents and Things Requested” No. 3 requests “Any and all correspondence, including but not limited to letters, e-mails, and text messages between Respondent or their respective agents, servants or employees and Respondents or their respective agents servants and employees related to the allegations set forth in the Complaint.”

This request was served to Respondent prior to the clarification of the scope of this proceeding in this Order. In its present form, this request is overly broad and burdensome and, if it seeks information pertaining to the allegations in the Complaint that Respondent has invoiced Complainant for damage Complainant caused to Respondent’s poles, seeks information beyond the scope of this proceeding. Respondent will not be compelled to respond to this request.

“Documents and Things Requested” No. 7 requests “All writings and/or notes made in any manner relating to the alleged Complaint including any diaries maintained by you or your agents, servants, or employees.”

This request was served to Respondent prior to the clarification of the scope of this proceeding in this Order. In its present form, this request is overly broad and burdensome and, if it seeks information pertaining to the allegations in the Complaint that Respondent has invoiced Complainant for damage Complainant caused to Respondent’s poles, seeks information beyond the scope of this proceeding. Respondent will not be compelled to respond to this request.

“Documents and Things Requested” No. 8 requests “All documents or other demonstrative evidence which will be introduced or used at Hearing.”

Pursuant to 52 Pa. Code § 5.342(a), a response to a request may not be submitted as an exhibit. Respondent will not be compelled to respond to this request, although it will be noted that both parties will be required to submit proposed exhibits in advance of the evidentiary hearing scheduled in this matter.

“Documents and Things Requested” No. 9 requests “Copies of any and all internal documentation related to the incident complained in Complainants Complaint.”

In his Complaint, Complainant states the following:

5.Claim numbers 2023-00453 and 2023-00661 for the damages to the utility poles and any other claims to date to be dismissed . Utility poles were illegally on the property at the time of the incident with no right of way or legal right to have utility poles on,said property. I contacted PPL multiple times and opened multiple work orders before construction began asking them move the poles , or remove the wires so no damages would occur. I also contacted PPI forestry department that were close to the trees so that no damage would occur to the poles before contruction.

Complaint ¶ 5.

My interpretation of this request is that Complainant requests internal documentation related to the incident that caused damage to Respondent's poles. As explained, the Commission is not the appropriate forum to resolve disputes concerning claims for damages. This request therefore is not relevant to the issues to be addressed in this proceeding and is not likely to lead to the discovery of admissible evidence.

“Documents and Things Requested” No. 11 requests “Copies of any and all documents used in answering these written Discovery requests.”

Complainant's Motion to Compel “Documents and Things Requested” No. 11 will be granted, as it fits within the scope of discovery material. 52 Pa. Code § 5.321(c).

“Documents and Things Requested” No. 12 requests “The contract, Right of Way or Easement.”

Complainant's Motion to Compel “Documents and Things Requested” No. 12 will be granted. Although the Commission cannot interpret the scope and validity of a right-of-way agreement, the existence of an executed right-of-way agreement is relevant to this proceeding, as the Commission may make a threshold determination as to the existence of a right-of-way agreement.

“Documents and Things Requested” No. 13 requests “Any and all documentation relevant to this Complaint.”

This “catch-all” provision is overly broad and burdensome to Respondent. 52 Pa. Code § 5.361(a)(2). Respondent will not be compelled to respond to this request.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant's Motion to Compel is granted in part and denied in part.
2. That Complainant's Motion to Compel an answer to Interrogatory No. 6 is granted.
3. That Complainant's Motion to Compel responses to "Documents and Things Requested" No. 11 and "Documents and Things Requested" No. 12 is granted.
4. That Respondent shall provide a full and complete response to Complainant's Interrogatory No. 6., "Documents and Things Requested" No. 11, and "Documents and Things Requested" No. 12, with fifteen (15) days of the date of this Order.

Date: August 13, 2024

/s/
Alphonso Arnold III
Administrative Law Judge

C-2024-3047163 - NIEVES ABAD v. PPL ELECTRIC UTILITIES CORPORATION

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