

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

ORDER
DENYING COMPLAINANT’S MOTION FOR SUMMARY JUDGMENT

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 to the Formal Complaint. In its Answer, Respondent admitted that it had five utility poles located on or near Complainant’s property. Respondent asserted that one of the five utility poles is in the public right of way, and

that another of the utility poles is the subject of a right of way agreement between Respondent and Real Estate Technology Corporation. Respondent further admitted that three of the utility poles are located on Complainant's property without a signed right of way agreement. Regarding the two utility poles located on Complainant's driveway, Respondent admitted that it spoke with Complainant concerning their relocation to a different portion of Complainant's property. Respondent also admitted that it sent Complainant two invoices concerning damage done to these two poles after Complainant damaged the poles through his tree removal actions. Respondent requested that the Commission deny the Complaint.

Also on March 27, 2024, Respondent filed Preliminary Objections to the Formal Complaint, properly endorsed with a Notice to Plead. In its Preliminary Objections, Respondent sought dismissal of a portion of the Complaint pursuant to 52 Pa. Code § 5.101(a)(2), and dismissal of the Complaint in its entirety pursuant to 52 Pa. Code § 5.101(a)(1).

On April 4, 2024, Complainant filed an Answer to the Preliminary Objections.

On April 23, 2024, the undersigned was assigned as Motion Judge to this proceeding.

On May 17, 2024, the Commission issued my Order Granting in Part and Denying in Part the Preliminary Objections. In my Order, I dismissed a portion of the Complaint pursuant to 52 Pa. Code § 5.101(a)(2) finding that the Commission does not have jurisdiction over claims for damages. However, denied the request of Respondent to dismiss the Complaint in its entirety pursuant to 52 Pa. Code § 5.101(a)(1).

On June 18, 2024, Complainant filed a Motion to Compel.

On July 18, 2024, a prehearing conference was held with both parties participating.

On August 13, 2024, the Commission issued my Order Clarifying Scope of Proceedings and Granting in Part and Denying in Part Complainant's Motion to Compel.¹

On September 3, 2024, Complainant filed a Motion for Summary Judgment ("Motion"). In his Motion, Complainant argued that Respondent admitted that it does not have a right-of-way or an easement for the placement of the poles in question on his property and that Respondent has not otherwise presented a valid reason for the poles to stay on his property or for Respondent not to remove the poles from his property. Complainant also included the following attachments to his Motion:

- Exhibit 1- Property Deed
- Exhibit 2-Property Survey
- Exhibit 3-Answer of PPL Electric Utility Corporation to the Complaint of Nieves Abad
- Exhibit 4-Order Granting/Denying In Part Respondents Preliminary Objections
- Exhibit 5-Billing Invoice 91130032-3
- Exhibit 6-Billing Invoice 91130033-3
- Exhibit 7-Informal Complaint Results
- Exhibit 8-Quote Invoice
- Exhibit 9-Transcripts from Pre Trial-Hearing 07/18/2024
- Exhibit 10-PPL Pole Design Plan
- Exhibit 11-Right Of Way agreement with Real Estate Corporation provided by PPL
- Exhibit 12-Formal Complaint
- Exhibit 13-Text message with PPL Employee Daniel Walker

¹ In clarifying the scope of this proceeding, I indicated that the Commission does not have jurisdiction: (1) over claims for damages or (2) property disputes.

- Exhibits 14- Picture of Pole # 7316N46296
- Exhibit 15- Picture of pole # 57334N42685
- Exhibit 16- Picture of pole # 57327N46297
- Exhibit 17- Picture of pole # 57320N46302
- Exhibit 18- Picture of pole # 57339N46273

Respondent did not file an Answer to the Motion within 20 days of service.

On September 18, 2024, a further prehearing conference was held with both parties participating.

Complainant's Motion is ready for disposition.

DISCUSSION

Motions for summary judgment are governed by Section 5.102 of our Regulations, which provides, in relevant part, as follows:

§ 5.102. Motions for summary judgment and judgment on the pleadings.

* * *

(d) *Decisions on motions.*

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law.

52 Pa. Code § 5.102.

Summary judgment is available when the pleadings, depositions, and other documents show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Summary judgment should be granted only when the right to relief is clear and free from doubt. In determining the absence of a genuine issue of material fact, the Commission must view the record in the light most favorable to the non-moving party and resolve any doubts against the entry of the judgment. *Day v. Volkswagonwerk Aktiengesellschaft*, 464 A.2d 1313, 1316 (Pa. Super. 1983). As the moving party, Complainant bears the burden of demonstrating clearly that there is no genuine issue of material fact. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Commonwealth v. Diamond Shamrock Chemical Co.*, 391 A.2d 1333 (Pa. Cmwlt. 1978).

The provisions at 52 Pa. Code § 5.102 serve judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 557 (Pa. Cmwlt. 1989).

Viewing the record in the light most favorable to Respondent, Complainant has not met his burden of demonstrating that there is no genuine issue of material fact in this proceeding and that he is entitled to judgment as a matter of law.

This matter concerns a request by Complainant to Respondent to relocate its poles from his property. Complainant alleged in the Complaint that Respondent refused to honor his poles relocation request. Respondent's position in its Answer was that it spoke to Complainant about his relocation request and would proceed with relocating the poles for a payment of \$4,861.45. Complainant's claim that Respondent refused to relocate the poles versus Respondent's assertion that would relocate the poles at Complainant's expense is an issue of material fact in this proceeding and would aid me in determining whether or not Respondent

acted in a way that was in violation of the Public Utility Code, Commission's regulations, or its Commission-approved tariff² when dealing with Complainant's relocation request.

Further, there are other facts that are material to the determination of this case that need to be established. For example, the current estimated cost of relocating the poles on Complainant's property and how that cost was determined is a fact relevant to determining the outcome of this case.

In sum, Complainant has not met his burden of proof regarding his Motion. Therefore, the Motion will be denied in the Ordering paragraphs below.

² To my understanding, the relocation of PPL's facilities, at the request of a customer, is addressed in Respondent's tariff. *See* Supplement No. 59 to Tariff Electric - Pa. P.U.C. No. 201, Third Revised Page No. 8E.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Summary Judgment, filed by Nieves Abad on September 3, 2024, in the matter of Nieves Abad v. PPL Electric Utilities Corporation, Docket No. C-2024-3047163, is denied.

Date: September 24, 2024

/s/
Alphonso Arnold III
Administrative Law Judge

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

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