

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael and Sharon Hartman	:	
	:	
v.	:	C-2024-3050485
	:	
PPL Electric Utilities Corporation	:	

**INTERIM ORDER
HOLDING RESPONDENT’S PRELIMINARY OBJECTION IN ABEYANCE
AND GRANTING MOTION TO STAY**

On July 31, 2024, Michael and Sharon Hartman filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission), against PPL Electric Utilities Corporation (PPL, Company, or Respondent) regarding service at their residence at 1650 Primrose Lane, Dauphin, PA (service location). Complainants checked the “other” box on the Formal Complaint Form, writing,

PPL has knowingly and recklessly submitted misleading and False testimony and documents during a Formal Hearing, case number C-2019-3008272. PPL’s unethical, unreasonable, and discriminatory actions have subjected us and our property to post-hearing destruction and danger, and defrauded PPL ratepayers, including ourselves, to quality service and fair rates. Since July 2023, PPL’s discriminatory vegetation management practices have negatively impacted biodiversity on our property.”

See Complaint at 2.

As relief, Complaints request: (1) “the Commission or appropriate Commonwealth Agency investigate PPL’s submission of misleading and false testimony in case number C-2019-3002782”; (2) the Commission schedule a status conference to “establish discovery guidelines and issue subpoenas to PPL [various] contractors”; (3) the Commission schedule an in-person hearing; (4) the Commission, if appropriate, fine and censure PPL counsel;

(5) the Commission preclude PPL from passing on legal fees associated with this matter to ratepayers, (6) the Commission prevent PPL from exercising discriminatory vegetation management standards and procedures; (7) the Commission direct PPL to “return our topsoil and restore our vegetation that was destroyed due to careless, unreasonable, and discriminatory application methods, and the continued deterioration and threat to our property since the record for case number C-2019-3002782 was closed”; and the Commission to direct PPL to “remediate access roads and construction pads to prevent continued accelerated soil erosion and stormwater runoff.” Complaint at 3. Complainants also noted the Commission’s authority to make a determination that a utility engaged in fraud or misrepresentation pursuant to 52 Pa. Code § 69.1201(c)(1), and requested it make such a finding in this case, arguing that the Initial Decision (ID) in C-2019-3002782 failed to “address the alleged willful, reckless, misleading, and knowingly false representations and testimony presented by PPL, PPL counsel, and PPL contractors.” Complaint at 9.

Complainants attached multiple attachments to the instant Complaint, including a memorandum that “addresses the false testimony by PPL employee witness William Salisbury;” a memorandum that “addresses the disclosure of evidence of unreasonable and discriminatory vegetation management activity after the original Formal Complaint C-2019-300872, was closed;” a copy of PPL Exhibit MS-5 entered into the record at C-2019-300872 and used as the basis for a Finding of Fact in ALJ Haas’ ID which Complainants claim was altered and “fraudulently presented” by PPL; and a copy of Hartman Exhibit 34 entered into the record at C-2019-300872, which Complainants claim shows PPL Exhibit MS-5 was “fraudulently altered and redacted.” Complainant at 9.

Finally, Complainants argue that they were not afforded an opportunity to testify and rebut PPL’s false and misleading rebuttal testimony, cross examination testimony, and exhibits during the September 2022 telephone hearing at Docket Number C-2019-300872.

On August 21, 2024, PPL filed an Answer and New Matter, as well as a Preliminary Objection. In its Answer, PPL explains that the instant Formal Complaint is the second Formal Complaint filed by the Complainants concerning the Company's construction and vegetation management activities in the existing transmission line right-of-way traversing their property as part of the Halifax-Dauphin 69 kilovolt (kV) Transmission Rebuild Project (Project). PPL notes that Complainants' first complaint, filed at Docket No. C-2019-3008272 (First Complaint) remains pending before the Commission. PPL explains that, on October 3, 2023, Administrative Law Judge (ALJ) Steven K. Haas issued an ID dismissing in part, and sustaining in part, the First Complaint; on October 19, 2023, Complainants filed Exceptions to the ID; on October 23, 2023, the Company filed Exceptions to the ID; and on November 13, 2023, both the Company and Complainants filed Replies to their respective Exceptions. PPL explains that, as of the date of its Answer and New Matter, the First Complaint remains pending before the Commission awaiting a Final Opinion and Order on PPL Electric's and the Complainants' Exceptions and Replies thereto. PPL's Answer at 1-2.

PPL further denies the material averments in the Complaint and maintains that its actions within the transmission line right-of-way (ROW) traversing Complainants' property has met all applicable requirements, including the Company's duty to provide safe and reasonable service.

In its Preliminary Objection, PPL notes that Complainant's First Complaint at Docket No. C-2019-3008272 is still pending with the Commission on exceptions, and argues the instant Complaint at Docket No. C-2024-3050485 (Second Complaint) should be dismissed due to the pendency of prior proceedings and for abuse of administrative process because the public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources in addressing an "inappropriately-filed second complaint, the subject of which is pending before the Commission on exceptions already."

On September 4, 2024, Complainants filed a response to the Preliminary Objection. Complainants allege that the Second Complaint contains two arguments that were not addressed in the First Complaint, specifically¹:

(2) PPL counsel, through PPL employee witnesses, either knowingly, recklessly or both, submitted misleading and false testimony to the PUC during the August and September 2022 Hearing.

(3) PPL postponed scheduled 2021 and 2022 vegetation management activity on neighboring public and private lands until 2023 and 2024 to conceal the fact that the 2021 vegetation management activity on the complainants' property was both unreasonable and discriminatory. PPL's 2023 and 2024 vegetation management activity demonstrated that the 2022 testimony of PPL's Forester, Matthew Stutzman, was false. During 2023 and 2024, PPL selectively controlled incompatible vegetation and spared compatible vegetation on neighboring public and private lands in a manner that Stutzman falsely testified was not feasible. During 2023 and 2024, PPL failed to control incompatible vegetation and invasive noxious weeds on the complainants' property. Incompatible and invasive vegetation that were unleashed on the complainants' property after the 2021 herbicide application destroyed all compatible and erosion deterrent vegetation on the complainants' property.

(4) Accordingly, the complainants' property, on and off the right of way, has been subjected to and will continue to be subjected to accelerated and unmitigated erosion and storm water runoff.

Complainants' Response to Preliminary Objection at 1-2.

On September 19, 2024, PPL filed a Motion to Stay Discovery Pending the Ruling on its Preliminary Objections (Motion to Stay). This Motion included a Notice to Plead, directing Complainant to file a response within 20 days.

Complainants did not file a response to the Motion to Stay.

¹ This section of Complainants' response is quoted verbatim and retains the original numbering of Complainant's filing for ease of reference.

On October 18, 2024, the Commission issued a Motion Judge Assignment Notice, assigning me to rule upon the Preliminary Objection and Motion to Stay filed in the Second Complaint.

It is now appropriate to rule on the Preliminary Objection and Motion to Stay.

Discussion

Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible. *Dept. of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections. *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985); *Pennsylvania State Lodge, Fraternal Order of Police v. Dept. of Conservation and Natural Resources*, 909 A.2d 413 (Pa.Cmwlth. 2006), *aff'd per curiam*, 924 A.2d 1203 (Pa. 2007). Only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

In this case, the Complainants' Second Complaint clearly, directly, and unambiguously attacks the hearing process and Initial Decision rendered in the matter at C-2019-3008272. They argue the hearing process in the first proceeding was substantively and procedurally defective (e.g. PPL "knowingly and recklessly submitted misleading and False testimony and documents during a Formal Hearing," Complainants "were not afforded an opportunity to testify and rebut PPL's false and misleading rebuttal testimony, cross examination

testimony, and exhibits,” there were “discovery irregularities”, and ALJ Haas’ Initial Decision relied upon the “reckless, misleading, and knowingly false representations and testimony presented by PPL, PPL counsel, and PPL contractors.”)

The matter at C-2019-3008272 is currently before the Commission on exceptions. Complainants filed exceptions to ALJ Haas’ Initial Decision on October 19, 2023. In their exceptions, Complainants’ make substantially similar arguments as they do in the Second Complaint. The Commission’s Final Order in Docket Number C-2019-3008272 may render some, if not substantially all, of Complainants’ claims in the Second Complaint moot.

Therefore, the Preliminary Objection shall be held in abeyance pending a Final Order issued by the Commission in Docket Number C-2019-3008272. For similar reasons, the Motion to Stay is also granted.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by PPL Electric Utilities Corporation against the Formal Complaint filed by Michael and Sharon Hartman at Docket Number C-2024-3050485 shall be held in abeyance pending the Commission’s Final Order in Docket Number C-2019-3008272.

2. That the Motion to Stay Discovery Pending the Ruling on its Preliminary Objections filed by PPL Electric Utilities Corporation at Docket Number C-2024-3050485 is granted.

3. That the parties shall file a status report, and any appropriate motion, within 20 days of the entry of the Commission's Final Order in Docket Number C-2019-3008272.

October 21, 2024
Date

_____/s/
Emily I. DeVoe
Administrative Law Judge

C-2024-3050485 - MICHAEL AND SHARON HARTMAN v. PPL ELECTRIC UTILITIES CORPORATION

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