

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ORDER**  
**DENYING COMPLAINANT’S MOTION FOR ORDER TO SHOW CAUSE**

**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.<sup>1</sup>

On September 3, 2024, Complainant filed a Motion for Summary Judgment ("Motion #1"). 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 Motion #1:

- 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
- Exhibits14- 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 Motion #1 within 20 days of service.

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<sup>1</sup> 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.

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

On September 24, 2024, the Commission issued my Order Denying Complainant's Motion for Summary Judgment, which denied Motion #1.

Also on September 24, 2024, the Commission issued my Order Directing the Filing of a Status Report.

On October 7, 2024, Complainant filed a Motion for Order to Show Cause ("Motion #2"). The content of Motion #2 does not materially differ from Motion #1. Further, the attachments included to Motion #2 are the same attachments included to Motion #1.

Respondent did not file an Answer to Motion #2 within 20 days of service.

Complainant's Motion #2 is ready for disposition.

### DISCUSSION

#### *Motion for Order to Show Cause*

Complainant's Motion #2, although titled as a "Motion for Order to Show Cause," is essentially a Motion for Summary Judgment in that Complainant in Motion #2 argues that there are no genuine issues of material fact in this proceeding, that his right to relief is clear and free from doubt, and that judgment should be ruled in his favor without an evidentiary hearing. Therefore, Motion #2 will be analyzed under the legal standards governing Motions for Summary Judgment.

## *Legal Standards*

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. Volkswagenwerk 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).

## *Analysis*

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. The analysis in my September 24, 2024, Order, wherein I denied Complainant's first Motion for Summary Judgment, Motion #1, are also applicable here.

To elaborate further, Complainant in this proceeding seeks an Order from the Commission ordering Respondent to relocate its utility poles from his property. Respondent in its Answer admitted to having utility poles on Complainant's property and informed Complainant that it would be willing to relocate its poles at his own expense.

Complainant's primary argument in its Motion #2 is that Respondent should relocate its poles from Complainant's property at its own cost because it has no legal basis to have its poles on Complainant's property, arguing that Respondent does not have a right-of-way or an easement concerning Complainant's property. Respondent admitted in its Answer that three of its poles are on Complainant's property without a signed right-of-way agreement. However, this admission is not determinative in ruling on Complainant's Motion for Summary Judgment.

Section 57.27(b) of the Commission's regulations, 52 Pa. Code § 57.27(b), directs public utilities to file as part of its tariff provisions setting forth its method of determining pole removal or relocation charges. In this regard, Respondent's tariff states the following:

### I. RELOCATION OF FACILITIES (Continued)

(1) The relocation of customer's facilities due to moving or rearranging Company's facilities at the direction of either the federal, state or local government is the customer's responsibility and expense.

(2) The relocation of Company facilities, when done at the request of others, is at the applicant's expense and payment of the Company's estimated cost of the relocation is required in advance of construction.

When the request is from an affected property owner and the facilities are on the (C) customer's property, the charges for relocation of distribution system facilities are limited to estimated contractor costs, estimated direct labor and estimated material costs, less an amount equal to any estimated maintenance expense avoided as a result of the relocation

*See* Supplement No. 59 to Tariff Electric - Pa. P.U.C. No. 201, Third Revised Page No. 8D and 8E.

It appears that the above sections of Respondent's tariff are implicated here. Review of the applicable pleadings in this case does not lead to a finding that there is no genuine issue of material fact in this proceeding and that Complainant is entitled to judgment as a matter of law. Specifically, it cannot be determined, in advance of an evidentiary hearing, that Respondent did not comply with its Commission-approved tariff, or violated any law that the Commission has jurisdiction to administer.

In sum, Complainant has not met his burden of proof regarding his Motion #2. Therefore, Motion #2 will be denied in the Ordering paragraphs below.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Order to Show Cause, filed by Nieves Abad on October 7, 2024, in the matter of Nieves Abad v. PPL Electric Utilities Corporation, Docket No. C-2024-3047163, is denied.

Date: October 29, 2024

/s/  
Alphonso Arnold III  
Administrative Law Judge

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

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