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February 20, 2025

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Nieves Abad v. PPL Electric Utilities Corporation
Docket No. C-2024-3047163

Dear Secretary Chiavetta:

Enclosed for filing are PPL Electric Utilities Corporation's Preliminary Objections to the Amended Complaint in the above-captioned proceeding.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DR/dmc
Enclosures

cc: The Honorable Alphonso Arnold III (*via email; w/attachments*)
Certificate of Service

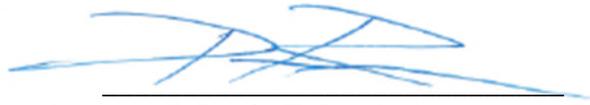
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA EMAIL AND FIRST-CLASS MAIL

Nieves Abad
747 Delaware Street
Forest City, PA 18421
Martjua3@aol.com

Date: February 20, 2025



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nieves Abad,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3047163
	:	
PPL Electric Utilities Corporation	:	
	:	
Respondent.	:	
	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY FILE AN ANSWER TO THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTIONS MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

Respectfully submitted,



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Date: February 20, 2025

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nieves Abad,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3047163
	:	
PPL Electric Utilities Corporation	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS OF
PPL ELECTRIC UTILITIES CORPORATION TO THE
AMENDED FORMAL COMPLAINT OF NIEVES ABAD**

AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric” or “Company”) and hereby files these Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101. The Company’s Preliminary Objections, as set forth below, identify formal and substantive deficiencies with the document that Complainant has titled “Amended Formal Complaint” that entitle the Company to the relief requested herein.

In further support of its Preliminary Objections, PPL Electric states as follows:

I. BACKGROUND

1. PPL Electric is a “public utility” and an “electric distribution company” as those terms are defined under the Public Utility Code, 66 Pa. C.S. §§ 102 and 2803 and, as such, is subject to the regulatory jurisdiction of the Commission.

2. PPL Electric furnishes electric distribution, transmission, and default supply services to approximately 1.4 million customers throughout its certificated service territory, which

includes all or portions of twenty-nine counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania.

A. The March 7, 2024 Formal Complaint

3. By Secretarial Letter dated March 7, 2024, PPL Electric was served with the Formal Complaint of Nieves Abad (hereafter “Initial Complaint”) following the Bureau of Consumer Services’ dismissal of informal complaints.

4. The Complainant indicated that the Initial Complaint pertained to a tract of land that he identified by the address 837 Rear Capouse Avenue, Scranton, Pennsylvania, 18506. Complainant submitted a copy of the quitclaim deed by which he acquired title to the subject tract as Exhibit 1 to his Motion for Summary Judgment. The quitclaim deed shows that Complainant acquired the subject tract on April 25, 2023, from the Lackawanna County Land Bank for the sum of \$500. The recital in the quitclaim deed indicates that the Lackawanna County Land Bank acquired the subject tract from the Tax Claim Bureau of Lackawanna County.

5. In Paragraph 5 of the Initial Complaint, the Complainant set forth the relief he was requesting and averred that: (1) five of the Company’s utility poles supporting spans of overhead wires were located on his property; (2) the Company did not have a “legal right of way with the new owner” (i.e., the Complainant) for the utility facilities located on his property; (3) he was seeking civil damages of “\$100 per pole, per week since May 1, 2023; (4) he was seeking removal of the five poles from his property at the sole cost of the Company; and (5) he was seeking “dismissal” of \$4,128 in charges the Company billed to him for damage he caused to the Company’s distribution facilities from “construction” activity he had conducted. (*See* Initial Complaint ¶ 5.)

B. Orders Defining the Scope of the Proceeding

6. On March 27, 2024, PPL Electric filed Preliminary Objections on the grounds that the Initial Complaint raised issues that were outside the subject matter jurisdiction of the Commission, namely, the award of civil damages and the adjudication of private disputes, such as the scope and effect of a right-of-way for public utilities.

7. By Order issued May 17, 2024, Administrative Law Judge Alphonso Arnold III (“ALJ”) granted in part and denied in part the Preliminary Objections filed by PPL Electric. Specifically, the ALJ ruled that the Commission did not have subject matter jurisdiction to award damages and, by necessary implication, did not have subject matter jurisdiction to adjudicate private legal disputes.

8. On August 13, 2025, in response to Complainant’s Motion to Compel answers to various discovery requests, the ALJ issued his *Order Clarifying Scope of Proceedings and Granting in Part, and Denying in Part, Complainant’s Motion to Compel* (“Order Clarifying Scope”). As its title indicates, the Order established the boundaries of this proceeding by defining the issues that are not within the subject matter jurisdiction of the Commission:

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).

9. In the Order Clarifying Scope (p. 3, n.1), the ALJ noted that whether the Company has an executed right-of-way agreement or other legally sufficient basis to locate poles on Complainant's property is ancillary to the Commission's jurisdiction to determine whether PPL Electric was unreasonably refusing to relocate the facilities located on Complainant's property. The ALJ found, however, that this is a factual matter for which evidence would need to be adduced at any hearing on the Initial Complaint.

10. Any issue as to the Company's right to continue to maintain facilities on Complainant's and the associated issue of whether it was unreasonably refusing to relocate its facilities as requested by the Complainant were rendered moot by PPL Electric's agreement to relocate its facilities off the Complainant's property at its sole expense. (*See* Transcript of Prehearing Conference, Tr. p. 6.) As explained by counsel for PPL Electric at the Prehearing Conference, the Company initially requested that Complainant pay the charges it had billed Complainant for damage he caused to the Company's property in lieu of paying the cost of relocating the Company's facilities on his property. However, after Complainant refused to pay those charges so that further recourse would have to be sought through civil court proceedings, the Company agreed that it would relocate its facilities at its own expense.

C. The Amended Complaint

11. On January 31, 2025, PPL Electric was served with a document bearing the title “Amended Formal Complaint” (hereafter “Amended Complaint”), which was filed by Complainant at the same docket number as his Initial Complaint. The Amended Complaint consists of 12 numbered paragraphs. The body of the Amended Complaint is divided into six sections. The first five sections (Amended Complaint ¶¶ 2-11) are introduced by headings labelled “Argument” and numbered 1-5. The sixth section (Amended Complaint ¶ 12) is titled “Request for Relief.”

12. The “Arguments” set forth in the Amended Complaint consist of the following:

- a) **Argument 1 Vegetation Management** (Paragraphs 2-7). Complainant alleges that PPL Electric failed to comply with the Pennsylvania Public Utility Code (“Code”) and the Commission’s regulations pertaining to vegetation management on his property.
- b) **Argument 2 PPL Inspection and Maintenance Standards** (Paragraph 8). Complainant alleges that PPL Electric is not complying with electrical and safety standards set forth in 52 Pa. Code Chapter 57 of the Commission’s regulations
- c) **Argument 3 Preservation of Records** (Paragraph 9). Complainant alleges that PPL Electric has not complied with record retention requirements of the National Association of Regulatory Utility Commissions (“NARUC”) that are incorporated in 52 Pa. Code § 57.28.
- d) **Argument 4 Tariff** (Paragraph 10). Complainant alleges that PPL Electric has not complied with 52 Pa. Code § 57.27(a), (b) and (c) (Pole Removal or Relocation Expense) or Rule 4.I (2) (Relocation of Facilities).

- e) **Argument 5 New Poles** (Paragraph 11). Complainant alleges that PPL Electric is violating applicable service standards in the Code and the Commission’s regulations by permitting pole attachments for facilities of telecommunication providers, including “Verizon,” and avers that PPL Electric can, and should, deny access to such pole attachments on various poles located outside Complainant’s property on public rights of way.

13. The section of the Amended Complaint bearing the heading “**Requested Relief**” (Paragraph 12) asks the Commission to order the following:

- a) “A complete review of the design of utility companies (sic) pole and utility wire design for the utilities in this complaint.”
- b) “A PUC investigator appointed to this matter to review issues in this complaint.”
- c) “Utility wire and pole design impact study for residents and first responders for the utilities in this complaint.”
- d) “Poles and wires that violate industry safety standards to be removed and replaced.”
- e) “Removal of all utility poles and wires from the complainants (sic) property and to be relocated at the cost of PPL.”
- f) “Actions taken by the PUC against PPL for each of the three incidents created by PPL that led to PPL live utilities falling on the complainants (sic) property and causing power outages and an unsafe environment.”
- g) “Actions taken by the PUC against PPL for PPL’s failure to remove vegetation from an alleged right of way from the complainants (sic) property.”
- h) “PPL’s failure to remove vegetation from an alleged right of way from the complainants (sic) property.”

- i) “PPL’s biennial plan to be enforced in the complainants (sic) coverage area and jurisdictions of the PUC.”

14. The “Wherefore” clause of Paragraph 12 of the Amended Complaint states as follows:

Wherefore, the Complainant, Nieves Abad, Respectfully (sic) requests the Commission grant this Amended Formal Complaint this complaint (sic) to include new information, violations *and other utility companies* and/or grant to The (sic) Complainant such other relief as is just and reasonable under the circumstances.” (Emphasis added.)¹

II. APPLICABLE LEGAL STANDARD

15. The Commission’s regulations at 52 Pa. Code § 5.101(a) authorize the filing of preliminary objections to a pleading on the following grounds:

- (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 a 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 the proceeding.²

16. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled averments of material facts as well as all inferences reasonable that can reasonably be

¹ Complainant does not specify the “other utility companies” to which the “Wherefore” clause refers, but it presumably includes, at a minimum, the entity Complainant refers to as “Verizon” (Verizon Communications Inc.).

² 52 Pa. Code § 5.101(a) (emphasis added).

deduced from those facts. *Stilp v. Commonwealth*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (“*Stilp*”) (citing *Dep’t of Gen. Servs. V. Bd. Of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)), *affirmed* 974 A.2d 491 (Pa. 2009). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep’t of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2008), *affirmed*, 963 A.2d 670 (Pa. 2009). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp* at 781.

17. In addition, the Presiding Officer must determine whether, based on the factual averments of the pleading, if the relief requested is possible. *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987) (citation omitted). For preliminary objections to be sustained, it must appear with certainty that the no relief is possible under applicable law. *See Stilp* at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998) (quoting *Santiago v. Pa. Nat. Mut. Cas. Ins. Co.*, 613 A.2d 1235, 1238 (Pa. Super 1992)).

III. PRELIMINARY OBJECTIONS

A. PRELIMINARY OBJECTION NO. 1: The Complainant Has Not Complied With The Minimum Requirements For An Amended Complaint And, Therefore, Fails To Provide Reasonable Notice Of The Claims He Intends To Pursue In This Case Contrary To Fundamental Principles Of Due Process (52 Pa. Code § 5.101(a)(2))

18. Under 52 Pa. Code §5.91(a), a complainant may file an amended complaint so long as the amended complaint complies with the requirements of Subchapter A (52 Pa. Code §§5.1-5.103) of the Commission’s regulations. Section 5.22(a) of the Commission’s regulations sets forth the required contents of a formal complaint and, as such, applies to the Amended Complaint.

19. Section 5.22(a) specifies seven numbered items that a complaint – and, pursuant to 52 Pa. Code § 5.91(a), an amended complaint – must contain. In particular, it must state “the

interest of the complainant in the subject matter;” provide “a clear and concise statement of the act or omission being complained of;” and furnish “a clear and concise statement of the relief sought.”

20. The Amended Complaint does not comply with the minimum requirements of 52 Pa. Code §§ 5.91(a) and 5.22(a) because it does not “amend” the Initial Complaint. To the contrary, the Amended Complaint is an amalgam of additional averments and requests for relief that does not even attempt to integrate, or relate back to, the averments and requests for relief set forth in the Initial Complaint. Therefore, the Amended Complaint fails to provide the Company reasonable notice of the averments, claims, and requests for relief that Complainant may – or may not – seek to pursue in the further litigation of this matter. *See Pa. Coal Mining Ass’n v. Pa. Ins. Dept.*, 370 A.2d 685, 692 (Pa. 1977) (“Notice is the most basic requirement of due process.”); *see also* 2 Pa. C.S. § 504 (“No adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice. . .”).

21. An amended complaint must begin with the original complaint filed by a party and make revisions, deletions or additions to that document so that the amended complaint is a complete and self-contained statement of a complainant’s averments, claims and requests for relief. This is the consistent and required practice for filing amended complaints under the Pennsylvania Rules of Civil Procedure, as evidenced by Pa.R.C.P. No. 1033. In fact, Rule 1033(d) requires the complainant to also file “a comparison copy of the proposed amended pleading identifying the changes by striking through the material to be deleted and underlining the material to be added.”

22. Although the Pennsylvania Rules of Civil Procedure are not directly applicable to proceedings before the Commission, Administrative Law Judges and the Commission have repeatedly held that the civil rules furnish appropriate guidance for applying comparable provisions

of the Commission’s own procedural rules. *Dudley W. & Patricia M. Miller, et al v. United Telephone Co. of Pa.*, Docket No. C-00924532 (May 12, 1993), 1993 Pa. PUC LEXIS 27 (Initial Dec. of Adm. Law Judge George M. Kashi) (“While not bound by rules of civil procedure, we can and have found reference to them helpful for guidance. *Pa. P.U.C. v. Metropolitan Edison Company*, 54 Pa. PUC 57, 59 (1980). *Pa. P.U.C. v. Harold Williams*, 53 Pa. P.U.C. 552, 554(1979)”).³

23. The Amended Complaint should be stricken. If the Complainant wishes to file an amended complaint, it should adhere to the requirements of Pa.R.C.P. 1033 and be a complete and self-contained statement of all of the Complainant’s averments, claims, and requests for relief that properly identifies the changes, deletions, and additions the Complainant is making relative to the Initial Complaint.

B. PRELIMINARY OBJECTION NO. 2: The Amended Complaint Fails To Provide Reasonable Or Adequate Specificity With Regard To Alleged Violations Of The Public Utility Code And The Commission’s Regulations (52 Pa. Code § 5.101(a)(3))

24. Paragraph No. 8 of the Amended Complaint avers that PPL Electric is violating 52 Pa. Code § 57.45 because the Complainant alleges that the Company is not maintaining “records” in the manner specified in the most recent NARUC publication titled “Regulations to Govern the Preservation of Records of Electric Gas and Water Utilities” (“NARUC Publication”), which is incorporated by reference in the Commission’s regulation (subject to certain revisions specified in that regulation).

³ See also *Livingston C. Barker v. PECO Energy Co.*, Docket No. F-2010-2196486 (Jan. 11, 2011), 2011 Pa. PUC LEXIS 795 (“This [motions] practice is found at Rule 1034 of the Pennsylvania Rules of Civil Procedure. Therefore, the court interpretation of the Rule will be used as guidelines in determining whether the motion above should be granted or denied. *Pennsylvania Public Utility Commission v. Williams*, 53 Pa. PUC 552 (1979); *Bridgeport Garage, Inc. v Pennsylvania-American Water Co.*, Docket No. F-2008-2037352 (May 20, 2009), 2009 Pa. PUC LEXIS 1114 (n. 2) (the Commission applied Pa.R.C.P. 1032, relating to indispensable parties, to decide an analogous issue arising under the Commission’s procedural rules.).

25. The NARUC Publication consists of approximately 30 pages of specific individual “records” that NARUC expects a public utility to maintain for the periods of time set forth in that document (subject to specific revisions the adopted by the Commission at 35 Pa. Bulletin 1886).

26. The Complainant has not furnished a copy of the NARUC Publication with his Amended Complaint.

27. The Complainant has not identified which of the record preservation requirements imposed by 52 Pa. Code § 57.45 and the NARUC Publication he intends to rely upon as the basis for his assertion that PPL Electric is violating one or more of the requirements set forth therein.

28. PPL Electric is entitled, as a matter of fundamental due process, to be given reasonable notice of the specific provisions of the NARUC Publication that the Complainant alleges the Company is violating. *See* Paragraph No. 21 and authorities cited therein. In this instance, reasonable adherence to the fundamental requirements of due process is particularly important because of: (a) the large number of recordkeeping requirements set forth in the NARUC Publication; and (b) the fact that none of those requirements appear to have any relevance to the claims asserted, and relief requested, by the Complainant in either his Initial Complaint or Amended Complaint.

29. The Amended Complaint should be stricken. If Complainant wishes to file an amended complaint that includes averments regarding recordkeeping, that document should specifically identify each of the recordkeeping requirements set forth in the NARUC Publication that the Complainant alleges the Company is not complying with.

C. PRELIMINARY OBJECTION NO. 3: The Averments Of Paragraph No. 11 Of The Amended Complaint Fail To State A Claim For Which The Relief Requested By Complainant May Be Granted Because PPL Electric Cannot Lawfully Refuse Access To “Useable Space” On Its Poles To Telecommunications And Cable Providers (52 Pa. Code § 5.101(a)(4))

30. Paragraph No. 11 of the Amended Complaint avers that PPL Electric is not furnishing safe and reasonable service because it permits telecommunication and cable providers to attach their facilities to its poles located in public rights of way.

31. The attachment of wires, cables and associated auxiliary equipment of telecommunications and cable providers is governed by Section 224 of the federal Communications Act, 47 U.S.C. § 224. Pursuant to Section 224, an electric utility cannot deny access to “useable space” on its poles by telecommunications and cable providers. Pursuant to Section 224(d)(2), “usable space” means “the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.” *Id.* § 224(d)(2). Section 224(f)(1) further provides that “a utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.” *Id.* § 224(f)(1).

32. The Commission, exercising the “reverse preemption” provisions of 47 U.S.C. § 224(c)(2)-(3), has assumed primacy for the enforcement of the access and nondiscrimination provisions of Section 224.

33. A state may assume primary enforcement authority only if it “has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments.” 47 U.S.C. § 224(c)(3).

34. The Commonwealth of Pennsylvania, through the Commission, adopted regulations governing the rates, terms, and conditions for pole attachments. 52 Pa. Code §§ 77.1-77.7.

35. As provided in 52 Pa. Code § 77.4(a), the Commission “adopts the rates, terms and conditions of access to and use of utility poles, ducts, conduits and rights-of-way to the full extent provided for in 47 U.S.C. § 224 and 47 CFR Chapter I, Subchapter A, Part 1, Subpart J (relating to pole attachment complaint procedures), inclusive of future changes as those regulations may be amended.”

36. The Commission, in applying its Chapter 77 regulations, which expressly incorporate the terms of 47 U.S.C. §224, cannot deny nondiscriminatory access to “useable space” on its poles. Accordingly, the Commission cannot, consistent with its own regulations that incorporate the dictates of federal law, grant the relief that Complainant seeks in Paragraph No. 11 of the Amended Complaint.

37. The averments of Paragraph Nos. 11 and 12 (seeking Commission action regarding alleged “violations” of “other utility companies”) should be stricken for the reasons set forth above.

D. PRELIMINARY OBJECTION NO. 4: The Amended Complaint Fails To Join One Or More Necessary Parties (52 Pa. Code §5.101(a)(5))

38. In the event the averments of Paragraph No. 11 and (as applicable) Paragraph No. 12 are not stricken for the reasons set forth in Preliminary Objection No. 3, those averments are improper and violate Section 5.101(a)(5) of the Commission regulations for failing to join one or more necessary parties.

39. A determination that PPL Electric is furnishing unreasonable service by allowing telecommunications and cable providers access for attaching their facilities to the Company’s poles would have a significant adverse effect on those telecommunications and cable providers, including Verizon Communications Inc. (“Verizon”), which is specifically identified by Complainant. Under these circumstances, Verizon, as well as any other telecommunications or

cable providers with facilities attached to the Company's poles, are "necessary" parties and should be joined as Respondents to the Amended Complaint.

40. In *Bridgeport Garage, Inc. v Pennsylvania-American Water Co.*, Docket No. F-2008-2037352, 2009 Pa. PUC LEXIS 1114, at *4 n.2 (Order entered May 20, 2009), the Commission determined that a tenant who could be adversely affected by a utility's collection effort against a landlord, was an "indispensable" party to the proceeding and should have been joined. While the Commission used the term "indispensable" in *Bridgeport Garage, supra*, Section 5.101(a)(5) only requires that a party be "necessary."

41. Under the facts presented here and, in particular, the allegations that telecommunications and cable providers pole attachments constitute unreasonable service by an electric utility, potentially affected telecommunications and cable providers are necessary parties, and their nonjoinder is a valid basis for granting the Company's Preliminary Objection No. 4.

E. PRELIMINARY OBJECTION NO. 5: The Complainant Does Not Satisfy The Requirements For Standing To Pursue Various Claims In The Amended Complaint (52 Pa. Code §5.101(a)(7))

42. Section 701 of the Code, 66 Pa. C.S. §701, provides that a complaint may be filed by any person "having an interest in the subject matter" that alleges a violation of any law, regulation or order the Commission has jurisdiction to administer.

43. It is now well-established that, in applying Section 701, the Commission should adhere to the requirements for standing established by the Pennsylvania Supreme Court in *William Penn Parking Garage, Inc. v City of Pittsburgh*, 346 A.2d 269, 282 (1975). Those requirements consist of (1) causality (a cause-in-fact link between an act and alleged harm); (2) immediacy (more than a tenuous connection between cause and effect); (3) substantiality (a concrete adverse effect beyond "the abstract interest" of having others comply with the law).

44. These principles were summarized in the *en banc* decision of the Commonwealth Court in *Municipal Authority of West View v. Pa. PUC*, 41 A.3d 929 (Pa. Cmwlth. 2012), which reviewed a decision of the Commission:

In order to have standing to pursue a formal complaint before the PUC under Section 701 of the Code, the complainant “must have a direct, immediate, and substantial interest in the subject matter of the controversy.” *Waddington v. Pennsylvania Pub. Util. Comm’n*, 670 A.2d 199, 202 (Pa. Cmwlth. 1995) (emphasis added), appeal denied, 544 Pa. 679, 678 A.2d 368 (1996). “The requirement that an interest be ‘direct’ simply means that the person claiming to be aggrieved must show causation of the harm to his interest by the matter of which he complains.” *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 195, 346 A.2d 269, 282 (1975) (plurality) (emphasis added). The requirement that an interest be “immediate” and not a remote consequence of the matter concerns “the nature of the causal connection between the action complained of and the injury to the person challenging it.” *Id.* at 197, 346 A.2d at 283. The requirement of a “substantial” interest means that the interest must have substance—i.e., there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law. *Id.* at 195, 346 A.2d at 282.

45. The Amended Complaint fails to meet the criteria for standing in three material respects.

1. Arguments 1 (Vegetation Management) and 2 (PPL Inspection and Maintenance Reports)

46. In Paragraph Nos. 2-8 of the Amended Complaint, the Complainant avers that PPL Electric had failed to furnish safe and reasonable service because of its alleged non-compliance with appropriate standards for “vegetation management” and “inspection and maintenance” of its facilities. The Complainant further asserts that such noncompliance was the real and proximate cause of three incidents occurring on April 13, 2023, May 25, 2023, and June 6, 2023.

47. As evidenced by the copy of the quitclaim deed that the Complainant submitted as Exhibit 1 to his Motion for Summary Judgment, the Complainant did not acquire title to the property at 837 Rear Capouse Avenue, Scranton, Pennsylvania until April 25, 2023. The

Complainant did not hold legal title to the property on April 13, 2023, when the first alleged incident occurred. Consequently, because the Complainant asserts that his ownership of the subject property is the basis for the relief requested, his claims regarding the April 13, 2023 incident are baseless and should be stricken.

48. As also evidenced by the Complainant's quitclaim deed, the incidents on May 25 and June 6, 2023, occurred only 30 and 37 days, respectively, after he acquired title.

49. Additionally, as the Complainant concedes in the Amended Complaint, each of the three incidents described in the Amended Complaint were caused by the Complainant's conduct in attempting to clear trees and other vegetation on the property. This is evident from Paragraph 5 of the Amended Complaint, where the Complainant claims that PPL Electric had "passed its vegetation management/tree cutting responsibilities . . . to the complainant." A similar concession is made in Paragraph 12 of the Amended Complaint, where he asserts that PPL Electric had "passed their responsibilities [for tree cutting and vegetation management] to the complaint (*sic*) [complainant]."

50. The Complainant's attempt to deflect the actual cause of the three outage incidents from himself to PPL Electric by claiming that the Company was not complying with applicable service standards for tree clearing and vegetation management is unavailing. The Complainant was the real and proximate cause of each of the three outages (and the associated damage to the Company's facilities) described in Paragraphs 4, 5, 6 and 8 of the Amended Complaint, as the Complainant himself avers in Paragraphs 5 and 12 thereof.

51. A public utility not only has the responsibility to conduct vegetation management but a right to do so, as well. It is never appropriate for a landowner to assume, or impinge upon, such a utility right because landowners' self-help remedies create safety and reliability issues. For

example, in *Yanling Chen and Jianming Hu v. Metropolitan Edison Co.*, Docket No. C-2013-2397061, 2015 Pa. PUC LEXIS 149 (Initial Decision dated Mar. 30, 2015), the landowners alleged that utility vegetation management was not necessary and asserted that tree cutting should be left to the landowner whose trees and planting would be affected. That claim was rejected in the Initial Decision, which found that “leaving vegetation management in the hands of the property owner through pruning jeopardizes the safety and reliability of the transmission line and requires the Company to police such activities to prevent outages.”

52. Because the Complainant, not PPL Electric, was the direct and proximate cause of the outages that form the basis for the averments in Paragraphs 2-8 of the Amended Complaint, the Complainant does not have standing to interpose alleged noncompliance with standards for “vegetation management” or “inspections and maintenance” as a valid basis for relief in this case. Such noncompliance, even if it had occurred – which PPL Electric denies – does not give the Complainant standing to assert or maintain Arguments 1 and 2 of his Amended Complaint. To the contrary, given the direct causal link between Complainant’s conduct and the adverse effects he claims to have borne, Complainant’s averments that PPL Electric did not adhere to legal and regulatory standards for “vegetation management” and “inspection and maintenance” are nothing more than “the abstract interest of all citizens in having others comply with the law,” which long-standing appellate precedent establishes is insufficient to confer standing. See *Municipal Authority of West View v. Pa. PUC*, *supra*.

53. Because Complainant cannot establish standing with regard to the averments of Paragraphs 2-8 of the Amended Complaint, those averments should be stricken.

2. Argument 3 (Preservation of Record)

54. In addition to failing to provide requisite specificity (*see* Preliminary Objection No. 2, *supra*), the Complainant lacks standing to assert that PPL Electric has not complied with 52 Pa.

Code § 57.45 – an assertion that PPL Electric denies in its accompanying Answer to the Amended Complaint.

55. The Complainant has not alleged any harm that he bore as a direct, immediate and substantial effect of PPL Electric’s claimed noncompliance with the record preservation provisions of the Commission’s regulations. As a consequence, this is yet another instance of the Complainant attempting, contrary to established precedent, to assert “the abstract interest of all citizens in having others comply with the law.”

56. Because the Complainant cannot establish standing with regard to the averments of Paragraph 9 of the Amended Complaint, those averments should be stricken.

3. Argument 5 (New Poles)

57. In Paragraph 11 of the Amended Complaint, the Complainant contends that PPL Electric is furnishing unsafe service by allowing telecommunication and cable providers to attach their facilities to its poles. Those averments are also addressed in Preliminary Objection No. 3, *supra*, which explains why Complainant has not stated a claim for which relief can be granted, and Preliminary Objection No. 4, which explains that Complainant failed to join one or more necessary parties. In addition, the Complainant lacks standing to assert the claims set forth in Paragraph 11 of the Amended Complaint.

58. The Complainant concedes that the facilities that are subject of Paragraph 11 of the Amended Complaint are not located on his property. He also concedes that those facilities are located on public rights-of-way. The Company has the right to locate its public utility facilities in public rights-of-way. *See* 15 Pa. C.S. § 1511(e).

59. The Complainant contends that the facilities of telecommunications and cable providers attached to the Company’s poles impede access and egress to homeowners whose

properties are adjacent to public streets and interferes with “emergency vehicles and first responders.”

60. The Complainant’s averments in Paragraph 11 of the Amended Complaint seek to assert other persons’ interests, not his own. The attempt to assert the interests of other homeowners or “first responders” does not satisfy the criteria for standing established by appellate and Commission precedent. *See L. G. Spielvogel, P.E. and Larry Abramovitz v. PECO Energy Co.*, Docket Nos. R-00963728C0001 and R-00963728C0002, 1997 Pa. PUC LEXIS 2 (Initial Decision dated Jan. 17, 1997) (finding that the complainants who were not receiving service under Rate Schedule GS lacked standing to file a complaint alleging that such rate was unjust and unreasonable).

IV. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that Preliminary Objection Nos. 1-5 be granted and that the Amended Complaint be stricken in whole (for the reasons set forth in Preliminary Objection No. 1) or stricken and/or dismissed in substantial part (for the reasons set forth in Preliminary Objection Nos. 2-5) as fully delineated above.

Respectfully submitted,



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Date: February 20, 2025

Attorneys for PPL Electric Utilities Corporation

VERIFICATION

I, DANIEL WALKER, being the Right Of Way Agent at PPL Electric Utilities Corporation, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect PPL Electric Utilities Corporation to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 02/20/2025

Daniel Walker
Daniel Walker (Feb 20, 2025 14:45 EST)
Daniel Walker