

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

ORDER
GRANTING IN PART, AND DENYING IN PART, THE PRELIMINARY OBJECTIONS
OF PPL ELECTRIC UTILITIES CORPORATION TO THE AMENDED COMPLAINT

ABBREVIATED PROCEDURAL HISTORY

On February 15, 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 sought the relocation of five Respondent utility poles allegedly located on his property. The pole numbers of these five poles are as follows:

- Pole #: 57334N42685
- Pole #: 57339N46273
- Pole #: 57327N46297
- Pole #: 57320N46302
- Pole #: 57316N46296

On February 11, 2025, Complainant filed an Amended Complaint. Complainant began his Amended Complaint by stating that he is “adding” the following 10 poles to his claim.

- Pole #: 57323N46307
- Pole #: 57328N46314
- Pole #: 57335N46309
- Pole #: 57344N46304
- Pole #: 57355N46297

- Pole #: 57365N46292
- Pole #: 57342N46312
- Pole #: 57341N46321
- Pole #: 57335N46325
- Unknown pole located on the corner of Green St. and Sanderson Avenue in Scranton PA 18509.

Additionally, Complainant raised five arguments in his Amended Complaint. The 10 poles referenced above are referenced in Complainant's fifth argument.

Argument #1

In his first argument, Complainant alleged that Respondent failed to comply with the Public Utility Code ("Code") and the Commission's regulations concerning vegetation management on his property. Specifically, Complainant cited three occasions where Respondent utility wires fell onto his property, causing power outages, due to Respondent's alleged failure to inspect, maintain, repair, and replace its facilities by failing to clear its facilities of vegetation. Complainant also noted that the utility wires fell onto his property while he was performing tree removal near these facilities. Complainant argued that Respondent was unwilling to "drop" and "de-energize" the wires at his request so the tree removal could be safely done.

Argument #2

In his second argument, Complainant alleged that Respondent has not been complying with the electrical and safety standards set forth in Chapter 57 of the Commission's regulations. Specifically, Complainant argued that by failing to inspect, maintain, repair, and replace its facilities by not clearing its facilities of vegetation, Respondent has failed to meet the aforementioned maintenance and safety standards. Complainant alleged that Respondent has not complied with its biennial plan for the inspection, maintenance, repair, replacement and vegetation management for its distribution system. Complainant also alleged that Respondent, through its actions, failed to keep the public safe in violation of Sections 1501 and 2804 of the Code.

Argument #3

In his third argument, Complainant alleged that Respondent has not complied with the record retention requirements of the National Association of Regulatory Utility Commissions (“NARUC”) that are incorporated in Section 57.45 of the Commissions regulations. Specifically, Complainant argued that Respondent failed to keep work orders, incident reports, call center data, utility pole data, utility wire data and PPL inspection maintenance vegetation management and storm damage data for the Respondent owned facilities referenced in the Complaint. Further, Complainant alleged that Respondent replaced two poles, pole numbers 57334N42685 and 57327N46297, with two poles with the same identification numbers. Complainant claimed that this action by Respondent leads to inaccurate reports on the length of service life for the utility poles, in violation of Section 57.45 of the Commissions regulations.

Argument #4

In his fourth argument, Complainant alleged that Respondent 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) by requiring Complainant to pay for the damage he caused to Respondent facilities as a condition of relocating its facilities.

Argument #5

In his fifth argument, Complainant alleged that Respondent violated the applicable service standards in the Code and the Commission’s regulations by permitting pole attachments for facilities of telecommunication providers, including “Verizon,” and averred that Respondent can, and should, deny access to such pole attachments on various poles located outside Complainant’s property on public rights of way. The poles referenced in this argument are the following:

- Pole #: 57323N46307

- Pole #: 57328N46314
- Pole #: 57335N46309
- Pole #: 57344N46304
- Pole #: 57355N46297
- Pole #: 57365N46292
- Pole #: 57342N46312
- Pole #: 57341N46321
- Pole #: 57335N46325
- Unknown pole located on the corner of Green St. and Sanderson Avenue in Scranton PA 18509.

Complainant further argued that these poles have deteriorated and have stress cracks as a result of the utility load weight that they hold.

For relief, Complainant requested the following:

- A complete review of the design of utility companies pole and utility wire design for the utilities in this complaint.
- A PUC investigator appointed to this matter to review issues in this complaint.
- Utility wire and pole design impact study for residents and first responders for the utilities in this complaint.
- Poles and wires that violate industry safety standards to be removed and replaced.
- Removal of all utility poles and wires from the complainant's property and to be relocated at the cost of PPL.
- 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 complainant's property and causing power outages and an unsafe environment.
- Actions taken by the PUC against PPL for PPL's failure to remove vegetation from an alleged right of way from the complainant's property.
- PPL's biennial plan to be enforced in the complainant's coverage area and jurisdictions of the PUC.

On February 20, 2025, Respondent filed an Answer and New Matter to the Amended Complaint. In its Answer, Respondent asserted that it constructs and maintains its facilities consistent with all applicable codes and standards. Regarding the poles subject to the Complaint and Amended Complaint, Respondent noted the following:

- Pole 57334N42685 is located in Spring Brook Township.
- Poles 57339N46273 and 57327N46297 are situated on Complainant's property.
- Pole 57320N46302 appears to be located on Amity Court in the public right-of-way.
- Poles 57323N46307 and 57328N46314 are located on Amity Court in the public right-of-way and well outside the confines of the Complainant's property.
- Pole 57316N46296 does not exist in PPL Electric's system.
- Poles 57335N46309, 57344N46304, 57355N46297, 57342N46312, 57341N46321, and 57335N46325 are located on Green Place in the public right-of-way and well outside the confines of the Complainant's property.
- Pole 57365N46292 is located on Capouse Avenue in the public right-of-way and well outside the confines of the Complainant's property.

Regarding the allegations made in Argument #1, Respondent denied that it has or is jeopardizing the safety of the public, local residents, Complainant, or Complainant's employees. Respondent averred that Complainant engaged in tree removal practices that damaged Respondent's facilities, causing disruptions in service that Respondent was forced to respond to. Thus, Respondent asserted that its conduct was not the cause of the service outages.

Regarding the allegations made in Argument #2, Respondent denied that it violated the Code, a Commission regulation, a Commission Order, or the Company's Commission approved tariff, applicable health and safety codes, or was not in conformance with applicable industry standards. It further denied that its conduct violated any Commission-

approved program or plan submitted by Respondent, or that Respondent violated any of its own internal operating documents.

Regarding the allegations made in Argument #3, Respondent asserted that it maintains its records in accordance with all applicable standards and requirements, including 52 Pa. Code § 57.45. Respondent admitted that it reuses pole identification numbers, which is a standard practice across the utility industry, but denied that it has created “inaccurate reports on the length of service life for the utility pole.”

Regarding the allegations made in Argument #4, Respondent admitted that Complainant requested that certain Respondent facilities be relocated. Respondent denied that it improperly demanded that Complainant pay the costs of that relocation, as that is a requirement under its Commission-approved Tariff. Respondent further denied that it improperly rendered invoices to Complainant as a result of Complainant damaging its facilities and that Respondent is violating its Commission-approved Tariff when requesting monies related to the damage that Complainant caused or effectuated to the Respondent’s facilities.

Regarding the allegations made in Argument #5, Respondent admitted that it has permitted certain entities to attach facilities to certain of its utility poles pursuant to valid pole-attachment agreements but denied that it is affirmatively seeking to have more attachments added to its existing poles and that Respondent’s poles and their associated attachments have violated applicable right-of-way agreements or have created a safety risk.

In its New Matter, Respondent asserted that Complainant does not have standing to pursue claims as it relates to the 10 additional poles raised in the Amended Complaint as these poles are not located on the property of Complainant. Further, Respondent asserted that certain claims raised in the Amended Complaint are barred by the statute of limitations, 66 Pa.C.S. § 3314.

Also on February 20, 2025, Respondent filed Preliminary Objections to the Amended Complaint. The arguments raised in the Preliminary Objections will be addressed in detail below.

On February 28, 2025, Complainant filed an Answer to the Preliminary Objections.

On March 31, 2025, Complainant filed a Reply to the New Matter of Respondent.¹

LEGAL STANDARDS

Respondent in this matter filed Preliminary Objections to the Amended Complaint. The Commission's regulations provide that preliminary objections are available to parties and may be filed in response to a pleading. 52 Pa. Code § 5.101(a). The grounds for preliminary objections are limited to those set forth as follows:

- (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 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.

¹ Through email, Complainant was granted an extension of time to file his Reply to the New Matter of Respondent.

52 Pa. Code § 5.101(a).

Commission procedure regarding the disposition of preliminary objections is similar to the procedure utilized in Pennsylvania civil practice. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Pennsylvania State Lodge, Fraternal Order of Police v. Dept. of Conservation & Natural Resources*, 909 A.2d 413 (Pa. Cmwlth. 2006), *aff'd*, 592 Pa. 304, 924 A.2d 1203 (2007).

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A. 2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to the Complainant and should dismiss the complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

DISCUSSION

Preliminary Objection #1:

In its first Preliminary Objection, Respondent argued that the Amended Complaint should be stricken, pursuant to 52 Pa. Code § 5.101(a)(2), arguing that it does not meet the minimum requirements of Section 5.22(a) and 5.91(a) of the Commission's regulations by not "amending" the Formal Complaint. Instead, it adds additional averments and requests for relief that do not relate back to the Formal Complaint. As a result, Respondent argued that the Amended Complaint failed to provide it with notice of the averments, claims, and requests for relief that Complainant may or may not seek to pursue in further litigation of this matter. Respondent further argued that the Amended Complaint should comply with the requirements of

Pa.R.C.P. 1033, concerning amendment of pleadings, specifically citing to Pa.R.C.P. 1033(d) which requires a party to attach 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. Pa.R.C.P. 1033(d)(1)(ii).

Respondent's argument here will be rejected. Section 5.91(a) of the Commission's regulations permit a party to modify or supplement a complaint. Such modification or supplementation shall be deemed as an amendment to the complaint. An amendment to a complaint must comply with the requirements regarding the content of formal complaints, found in Section 5.22(a) of the Commission's regulations.

Here, the Amended Complaint adds additional averments and requests for relief to the original action. In doing so, Complainant expands the scope and relief sought in his original complaint. The Commission's regulations do not prevent a party from supplementing a complaint to expand the scope and relief of a proceeding. The only limitation found in the Commission's regulations concerning a party's ability to amend a pleading is that an amendment cannot be filed within 5 days of a hearing or during the hearing unless directed or permitted by the Commission or the presiding officer after opportunity for all parties to be heard thereon. *See* 52 Pa. Code § 5.91(c).

Regarding Respondent's due process arguments, the Amended Complaint was served upon Respondent and Respondent was given an opportunity to respond. In fact, Respondent responded to the Amendment Complaint by filing an Answer with New Matter and Preliminary Objections. Respondent's due process rights have been protected as it had notice and the opportunity to respond to the additional averments and requests for relief in the Amended Complaint. I also note that no evidentiary hearing has been scheduled for this matter at this time. Thus, there was adequate time for Respondent to investigate and consider the Amended Complaint.

Lastly, Complainant will not be made to comply with Pa.R.C.P. 1033(d)(1)(ii). As noted by Respondent, the Pennsylvania Rules of Civil Procedure are not directly applicable to

proceedings before the Commission. Requiring Complainant to comply with the stricter requirements of the Pennsylvania Rules of Civil Procedure would be imposing additional requirements on the contents of an amendment complaint. The only requirements to be imposed upon Complainant regarding the contents of his Amended Complaint are the requirements contained in the Commission's regulations.

Preliminary Objection #2

In its second Preliminary Objection, Respondent argued that Argument #3, alleging violation of Section 57.45 of the Commissions regulations concerning preservation of records, does not identify or specify what record prevention requirements imposed by Section 57.45 and the most recent NARUC Publication.² Therefore, given the large number of record keeping requirements imposed by the most recent NARUC Publication, and given that none of the requirements appear to have any relevance to the claims asserted and relief requested, Respondent argued that the Amended Complaint should be stricken as insufficiently specific, pursuant to 52 Pa. Code § 5.101(a)(3).

I agree with Respondent's argument presented in Preliminary Objection #2. The Amended Complaint, pursuant to the Commission's regulations, must include a clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation. 52 Pa. Code § 5.22(a)(5). A Complaint must contain sufficient specificity and information to enable a Respondent to understand the charges or allegations against it and conduct a meaningful investigation of the allegations, and to offer an appropriate response thereto. Regarding Argument #3, the Amended Complaint fails to clearly or concisely state any fact or set of facts to support the claim that Respondent failed to keep records in compliance with Section 57.45 of the Commission's regulations and the most recent NARUC Publication. Instead, the Amended Complaint broadly accuses Respondent of violating the regulation and NARUC Publication.

² Pursuant to this regulation, each electric utility shall keep and preserve its records in conformity with the provisions applicable to it in the most recent publication of the National Association of Regulatory Utility Commissioners, entitled "Regulations to Govern the Preservation of Records of Electric Gas and Water Utilities, except when certain retention periods detailed in the regulation apply. 52 Pa. Code § 57.45.

Therefore, Argument #3 in the Amended Complaint will be stricken in the Ordering paragraphs, below.

Preliminary Objection #3

In its third Preliminary Objection, Respondent argued that Argument #5, alleging that Respondent violated the applicable service standards in the Code and the Commission's regulations by permitting pole attachments for facilities of telecommunication providers, should be stricken as legally insufficient pursuant to 52 Pa. Code § 5.101(a)(4). Respondent cites to Section 77.4 of the Commission's regulations³, which incorporates the terms of 47 U.S.C. §224, which 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. 47 U.S.C.A. § 224(f)(1).⁴ Thus, Respondent argued that Complainant cannot be granted the relief he seeks related to Argument #5.

In Preliminary Objection #5, Respondent seeks to strike Argument #5 due to lack of standing, 52 Pa. Code § 5.101(a)(7). As I will grant Preliminary Objection #5, I will not address Preliminary Objection #3, as the argument raised here is moot.

Preliminary Objection #4

In its fourth Preliminary Objection, Respondent argued that if the averments in Argument #5 and the related request for relief are not stricken, then the averments and request for relief are improper pursuant to 52 Pa. Code § 5.101(a)(5) for failure to join a necessary party.

³ "This chapter 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." 52 Pa. Code § 77.4(a).

⁴ I note that 47 U.S.C.A. § 224(f)(2) states that "Notwithstanding paragraph (1), a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes." 47 U.S.C.A. § 224(f)(2).

Respondent argued that Verizon, and any other telecommunications or cable providers with facilities attached to Respondent's poles are necessary parties to the Amended Complaint.

Due to my ruling on Respondent's Preliminary Objection #5, which will be granted and Argument #5 stricken, Preliminary Objection #4 is moot and will not be addressed here.

Preliminary Objection #5

In Respondent's Preliminary Objection #5, Respondent argued that Complainant does not have standing to pursue various claims in the Amended Complaint, pursuant to 52 Pa. Code § 5.101(a)(7). Specifically, Respondent argued that Complainant does not have standing to pursue Argument #1, Argument #2, Argument #3, or Argument #5.

Generally, the Commission has held that a person or entity has standing when the person or entity has a direct, immediate and substantial interest in the subject matter of a proceeding. *Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co.*, A-210870F2001 (Ordered entered July 9, 1998); *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975); *Landlord Service Bureau, Inc. v. Equitable Gas Co.*, 79 Pa. PUC 342 (1993); *Re Equitable Gas Co.*, 76 Pa. PUC 23 (1992); *Manufacturers' Association of Erie v. City of Erie - Bureau of Water*, 50 Pa. PUC 43 (1976); *Waddington v. Pa. PUC*, 670 A.2d 199 (Pa. Cmwlth. 1995), *alloc. denied*, 678 A.2d 368 (Pa. 1996). Requiring a person or entity to have a direct, immediate and substantial interest in the subject matter of a proceeding helps avoid frivolous, harassing lawsuits whose costs are ultimately borne, at least in part, by utility ratepayers. *See Sunoco v. Dinniman*, 2019 WL 4248071 (Pa. Cmwlth. 2019); *Pennsylvania Public Utility Commission v. National Fuel Gas Distribution Corp.*, 73 Pa. PUC 552 (1990).

A person's interest in a proceeding is direct if he or she was harmed by the challenged action or order. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa.

168, 195, 346 A.2d 269, 282 (1975); *Empire Coal Mining and Dev., Inc. v. Dep't of Env'tl. Res.*, 623 A.2d 897, 899 (Pa. Cmwlth. 1993). Mere conjecture about possible future harm does not confer a direct interest in the subject matter of a proceeding. *Official Court Reporters of the Court of Common Pleas of Philadelphia County v. Pennsylvania Labor Relations Board (Official Court Reporters)*, 467 A.2d 311 (Pa. 1983).

Respondent's argument that Complainant does not have standing to pursue Argument #1 and Argument #2 will be rejected. Generally, Complainant through these arguments argued that Respondent failed to maintain its facilities on Complainant's property by failing to adequately manage the vegetation surrounding its poles. The alleged failure by Respondent in this regard caused Complainant to engage in tree removal activities himself, which resulted in collapsed wires and power outages to the neighborhood. Although Complainant's admission that the wires collapsed following his tree removal activities impacts his ability to prevail on these claims, Complainant has a direct interest regarding the vegetation management practices, or lack thereof, on his property which he alleges caused him to engage in tree removal activities himself.

Regarding Argument #3, as I will grant Preliminary Objection #2 and strike Argument #3 from the Amended Complaint, it is not necessary to address whether Complainant has standing to pursue Argument #3.

I agree that Complainant does not have standing to pursue Argument #5. Through his own admission, Complainant acknowledged that the 10 poles addressed in this argument "are located in a public right of way on the roads that access the property of the complainant." Amended Complaint ¶11. Thus, Complainant acknowledged that these poles are not on his property. Complainant further attempts to represent the interests of the neighborhood and first responders regarding the alleged safety risks caused by Respondent allowing Verizon and other utilities access to its poles. Complainant has not raised a direct, immediate and substantial interest regarding the subject matter raised in Argument #5. For these reasons Argument #5 from the Amended Complaint will be stricken in the Ordering paragraphs below.

CONCLUSION

In conclusion, an evidentiary hearing will be scheduled and held to address the following claims not stricken from the Amended Complaint.

- Whether Respondent has complied with the Commission’s regulations and its tariff regarding the relocation of poles located on Complainant’s property (as raised in the Formal Complaint and Amended Complaint Argument #4).
- Whether Respondent’s tree removal activities (vegetation management practices) on Complainant’s property were reasonable and adequate pursuant to the Code and applicable Commission regulations (as raised in Amended Complaint Argument #1 and Argument #2).
- Whether Respondent is responsible or accountable for the April 13, May 25, and June 6, 2023, incidents where utility wires fell onto Complainant’s property, causing power outages (as raised in Amended Complaint Argument #1).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by PPL Electric Utilities on February 20, 2025, are granted in part, and denied in part, pursuant to the discussion contained above.
2. That Argument #3 and Argument #5 are stricken from the Amended Formal Complaint that was filed on February 11, 2025, in this matter.

3. That this matter will be set for an evidentiary hearing.

Date: June 27, 2025

/s/
Alphonso Arnold III
Administrative Law Judge

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

Revised 6/27/2025

NIEVES ABAD
747 DELAWARE STREET
FOREST CITY PA 18421
631.575.2348
martjua3@aol.com
Accepts eService June 27, 2025

KIMBERLY A KLOCK ESQUIRE
PPL SERVICES CORP
645 HAMILTON ST., STE 700
ALLENTOWN PA 18101
610.774.5696
kklock@pplweb.com
Accepts eService June 27, 2025

MICHAEL J SHAFER
PPL SERVICES CORP
645 HAMILTON ST., STE 700
ALLENTOWN, PA 18101
610-774-2599
mjshafer@pplweb.com
Accepts eService June 27, 2025

PETER J KRAMER ESQUIRE
POST & SCHELL
THREE LOGAN SQUARE
1717 ARCH STREET 24TH FLOOR
PHILADELPHIA PA 19103
215.587.1075
215.587.1444
pkramer@postschell.com
Accepts eService June 27, 2025
(Counsel for PPL Electric Utilities Corporation)

DEVIN T RYAN ESQUIRE
POST AND SCHELL PC
ONE OXFORD CENTRE
301 GRANT STREET SUITE 3010
PITTSBURGH PA 15219
717.612.6052
717.731.1970
dryan@postschell.com
Accepts eService June 27, 2025
(Counsel for PPL Electric Utilities Corporation)

NICHOLAS A STOBBE ESQUIRE
POST & SCHELL PC
17 N SECOND ST
12TH FL
HARRISBURG PA 17101-1601
717.612.6033
717.731.1970
nstobbe@postschell.com

Accepts eService June 27, 2025
(Counsel for PPL Electric Utilities Corporation)