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File #: 214375

August 28, 2025

VIA ELECTRONIC FILING

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

**Re: William Beaver v. Buckeye Partners, L.P.
Docket No. C-2025-3056718**

Dear Secretary Homsher:

Attached for filing are the Preliminary Objections of Buckeye Partners, L.P., to the Complaint of William Beaver in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Alice A. Wade

AAW/dmc
Attachment

cc: 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

William Beaver
29 Lenape Road
Barto, PA 19504
Beaver29@comcast.net

Date: August 28, 2025



Alice W. Wade

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Beaver,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2025-3056718
	:	
Buckeye Partners, L.P.	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS OF BUCKEYE
PARTNERS, L.P. TO THE COMPLAINT OF WILLIAM BEAVER**

AND NOW, Buckeye Partners, L.P. (“Buckeye” or “Company”) files these Preliminary Objections pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101 and requests that the Formal Complaint filed by William Beaver be summarily dismissed because the Commission lacks jurisdiction, Complainant fails to state a claim upon which relief could be granted, and Complainant fails to join a necessary and indispensable party.

I. BACKGROUND

1. Buckeye is an independent operator of pipelines and terminals for liquid petroleum products.
2. On August 8, 2025, Buckeye received notice that the above-captioned Complaint had been filed against it.
3. Buckeye received a copy of the Complaint by email on August 11, 2025.
4. In the Complaint, Complainant alleges that there are “multiple safety hazards” over Buckeye’s pipeline on an adjacent property, with an “occupied structure just 15-20 feet from the

pipeline, 30-40 pet livestock roaming, running, grazing directly on top of the pipeline[,]” as well as fencing and fence posts over the pipeline. Compl. p. 3.

5. Complainant claims that these purported hazards are causing soil erosion. *Id.*

6. Complainant additionally complains of his neighbor’s livestock, with a “pen located only 10 feet from my rear yard property line...uphill from my drinking well.” *Id.*

7. Complainant maintains that the “rain water rushes down through the manure and then down near my well” and is concerned “about possible well contamination.” *Id.*

8. As for relief, the Complaint demands a field inspection at his neighbor’s property, as well as removal of the structure, livestock, fence posts and fencing. *Id.*

9. Complainant further demands that the structure, livestock, fence posts and fencing be “moved 100 feet away or more from my property line.” *Id.*

II. STANDARD OF REVIEW

10. Pursuant to the Commission’s regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (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.

52 Pa. Code § 5.101(a).

11. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonable deducible therefrom.

Stilp v. Commonwealth, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (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). Any doubt must be resolved in favor of the non-moving party. *Stilp*, 910 A.2d at 781.

12. Additionally, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987) (citation omitted). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. *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)).

13. Under 703 of the Public Utility Code, 66 Pa. C.S. § 703(b), the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. *See also* 52 Pa. Code § 5.21(d).

14. For the reasons set forth in the following Preliminary Objections, the public interest does not require a hearing in this case because a public utility service issue has not been alleged. *See* 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d).

III. PRELIMINARY OBJECTIONS

A. PRELIMINARY OBJECTION NO. 1: The Commission Lacks Jurisdiction Over Buckeye.

15. Buckeye incorporates by reference Paragraphs 1 through 14 as though set forth fully herein.

16. Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. *Equitable Small Transportation Intervenors v.*

Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). A preliminary objection asserting lack of Commission jurisdiction pursuant to the Commission's Rules of Practice and Procedure is therefore analogous to preliminary objections allowed by Rule 1028 of the Pennsylvania Rules of Civil Procedure. *Kurt Stabler v. Verizon Pennsylvania, Inc.*, 2012 Pa. PUC LEXIS 613, *4, Docket No. C-2012-2284222 (March 28, 2012).

17. As a creature of statute, the Commission has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. *See Allegheny Cnty. Port Auth. v. Pa. PUC*, 237 A.2d 602, 605 (Pa. 1967) (“The Public Utility Commission’s powers in all cases are statutory.”).

18. Formal Complaints before the Commission must allege an act or thing done or not done by a public utility in violation of any law which the Commission has jurisdiction to administer. 66 Pa. C.S. § 701; 52 Pa. Code § 5.21(a).

19. Buckeye is not a jurisdictional Pennsylvania public utility and does not provide intrastate service subject to the Commission’s jurisdiction.¹

20. Buckeye’s pipeline at issue in this Complaint is not used for intrastate service.

21. Instead, Buckeye engages in interstate transport of petroleum products pursuant to Federal Energy Regulatory Commission (“FERC”)-approved tariffs.

22. Under the Pipeline Safety Act, 49 U.S.C. § 60101, *et seq.*, the United States Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (“PHMSA”) has exclusive jurisdiction over the safety of Buckeye’s pipeline.

23. Similarly, the Commission’s regulations applicable to hazardous liquid pipeline utilities at 52 Pa. Code §§ 59.131-143 do not apply to Buckeye because, as stated in Section

¹ While the Commission does have jurisdiction over the intrastate operations of the Laurel pipeline in Pennsylvania, the pipeline at issue in this proceeding is not a part of Laurel’s intrastate operations.

59.131, “[t]he purpose of this section and § § 59.132—59.143 (relating to hazardous liquid public utility safety standards) is to set forth safety standards for all hazardous liquid public utilities regarding their intrastate operations in this Commonwealth.”

B. PRELIMINARY OBJECTION NO. 2: The Commission Lacks Jurisdiction Over Complainant’s Common Law Claim.

24. Buckeye incorporates by reference Paragraphs 1 through 23 as though set forth fully herein.

25. In addition to lacking jurisdiction over Buckeye, the Complaint also fails assert any purported violation of law over which the Commission has jurisdiction to administer. *See* 66 Pa. C.S. § 701; 52 Pa. Code § 5.21(a); *Charles J. Ball v. Verizon Pennsylvania, Inc.*, 2010 Pa. PUC LEXIS 1883, *8 (Dec. 1, 2010).

26. The Commission must act within its jurisdiction and may only hear complaints regarding the Public Utility Code, Commission regulations, or Commission orders. *See Alkhatib v. PECO Energy Co.*, 2012 Pa. PUC LEXIS, *13-14, Docket No. C-2011-2242125 (Jan. 12, 2012) (citing 66 Pa. C.S. § 701).

27. Even if all of the facts in the Complaint are accepted as true, they do not constitute a violation of any law under which the Commission has jurisdiction to administer or enforce, or of any regulation or order of the Commission. 66 Pa. C.S. § 701.

28. The Complaint does not allege that Buckeye has violated any Public Utility Code provision, any regulation of the Commission, or any order of the commission. 66 Pa. C.S. § 701. Indeed, the Complaint does not even relate to any action by Buckeye.

29. Instead, scrutiny of Complainant’s claims, even when accepted as true, reveals that this is a property dispute between adjacent landowners.

30. Complainant appears to be alleging claim for nuisance, which, at common law, is an unwarranted or unlawful use of property that causes damage to another in the legitimate enjoyment of reasonable property rights. As the Commission previously has summarized:

Legal nuisance refers to the type of interest invaded -- not to any particular type of conduct from which the invasion results. *Moran v. Pittsburgh-Des Moines Steel Co.*, 166 F.2d 908 (1948). It applies to a class of wrongs, which arise from unreasonable use of property or from improper, indecent or unlawful personal conduct that causes material annoyance or discomfort. *Anderson v. City of Philadelphia*, 380 Pa. 528, 112 A.2d 92 (1955). "Nuisance" signifies use of property or conduct, irrespective of actual trespass or of malicious or actual criminal intent, that transgresses the just restriction upon use or conduct, which the proximity of other persons or property in civilized communities imposes upon what otherwise may be rightful freedom. *Kramer v. Pittsburgh Coal Co.*, 341 Pa. 379, 19 A.2d 362 (1941).

The law distinguishes between public and private nuisances. *Phillips v. Donaldson*, 269 Pa. 244, 112 A. 236236 (1920). The difference depends not upon the nature of the thing done, but upon the question whether it affects the general public or merely some private individual. *Golen v. Union Corp.*, 718 A.2d 298 (Pa. Superior Ct. 1998). The distinction between a public and a private nuisance is that a public nuisance is common to the neighborhood where it is committed, as well as to those members of the public traveling in that vicinity, while a private nuisance is one inflicting injury personal to the party complaining or to one's property. *Phillips v. Donaldson*, 269 Pa. 244, 112 A. 236236 (1920); *Price v. Grantz*, 118 Pa. 402, 11 A. 794 (1888).

The Fez Banquet Ctr./John Thomas v. Duquesne Light Co., 2003 Pa. PUC LEXIS 57, *25-26, Docket No. C-20028464 (Oct. 3, 2003).

31. The Commission has determined that it is not the proper forum for resolving property rights controversies as it relates to utilities and the public; instead, property disputes are matters for courts of general jurisdiction. *Anne E. Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (Order entered July 3, 2003); *Fiorillo v. PECO Energy Co.*, Docket No. C-00971088 (Order entered September 15, 1999). Complainant's claim here is even more tenuous, as he is asserting claims related to property rights as between himself and his neighbor.

32. The Commission has repeatedly acknowledged that it lacks jurisdiction over disputes between private parties, as such matters must be resolved in the Pennsylvania courts of common pleas. *See, e.g., Key Recycling, LLC v. Reclim, LLC*, 2022 PA. PUC LEXIS 36, *11-12, Docket No. C-2020-3021125 (Feb. 3, 2022) (Commission lacks jurisdiction over private contractual disputes); *Renee Yanko v. Pennsylvania-American Water Co.*, 2021 PA. PUC LEXIS 76, *10, Docket No. F-2019-3011774 (March 25, 2021) (Commission lacks jurisdiction over financial disputes between private parties); *Douglas Park v. PPL Electric Utilities Corp.*, 2013 Pa. PUC LEXIS 175, *10, Docket No. F-2012-2308984 (March 13, 2013) (same). Indeed, “there can be no dispute that the courts of common pleas have subject matter jurisdiction over common law claims...involving private individuals and businesses....” *Pettko v. Pa. Am. Water Co.*, 39 A.3d 473, 478 N. 9 (Pa. Cmwlth. 2012).

C. PRELIMINARY OBJECTION NO. 3: *In the Alternative* – Complainant Fails to State a Legally Sufficient Cause of Action

34. Buckeye incorporates by reference Paragraphs 1 through 33 as though set forth fully herein.

35. Even if all of the facts in the Complaint are accepted as true, they do not constitute a violation of any law under which the Commission has jurisdiction to administer or enforce, or of any regulation or order of the Commission. 66 Pa. C.S. § 701.

36. Buckeye has not violated any Public Utility Code provision, any regulation of the Commission, or any order of the commission. 66 Pa. C.S. § 701. Indeed, the Complaint does not even relate to any action by Buckeye.

37. Because the Complaint fails to allege any act or thing done or omitted to be done in violation of a Commission rule, regulation or order, it must be deemed legally insufficient.

D. PRELIMINARY OBJECTION NO. 4: *In the Alternative* – Failure to Join an Indispensable Party.

38. Buckeye incorporates by reference Paragraphs 1 through 37 as though set forth fully herein.

39. Under Pennsylvania law, “a necessary party is one whose presence, while not indispensable, is essential if the court is to resolve completely a controversy and to render complete relief.” *Pa. Human Relations Comm’n v. Phila Sch. Dist.*, 651 A.2d 177 (Pa. Cmwlth. 1993) (citation omitted).

40. The relief sought by Complainant, namely, the removal of a structure, livestock, fencing, and fence posts on the adjacent property, is directed at private activities and property controlled by the neighbor.

41. Any court order to remedy these conditions would be meaningless without the neighbor's participation in this action, as they are the only party capable of fulfilling such an order.

42. Without joinder of unidentified neighbor, the Commission would not be able to fully resolve the dispute or award relief as to each averment made by the Complainant.

43. Complainant’s failure to join the neighbor, despite seeking to litigate that neighbor’s rights and obligations, underscores the incurable jurisdictional defects of the Complaint, as the Commission lacks statutory authority over non-utility, private individuals.

IV. CONCLUSION

WHEREFORE, Buckeye Partners, L.P. respectfully requests that the above-captioned complaint filed by William Beaver be dismissed with prejudice pursuant to 52 Pa. Code §§ 5.101(a)(1), (4), and (5).

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Date: August 28, 2025

Respectfully submitted,



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Counsel for Buckeye Partners, L.P.

VERIFICATION

I, Robert C. Osika, Director, DOT Compliance of Buckeye Partners, L.P., 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 to be able to prove the same at a hearing held on 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: August 28, 2025



Robert C. Osika