

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jesse Tashlik	:	
	:	
v.	:	C-2025-3057163
	:	
Pike County Light & Power Company	:	

**ORDER
GRANTING IN PART AND DENYING IN PART
THE PRELIMINARY OBJECTIONS OF PIKE COUNTY LIGHT & POWER CO.**

HISTORY OF THE PROCEEDING

On August 29, 2025, Jesse Tashlik (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Pike County Light & Power Company (Pike or Respondent). In the Complaint, Complainant alleges Respondent improperly installed a utility pole (Subject Pole) in front of the property located at 208 Avenue I, Matamoras, PA (Subject Property). Complainant also alleges Respondent did not follow standard practice when connecting electric service to a new home on the Subject Property by creating four midspan splits. Complainant requests that: the Commission order Respondent to relocate the Subject Pole at no cost to Complainant or require Respondent to provide an estimate and relocation timeline; correct the improper service installation including removal of the midspan splits in the road and require Pike to use a proper service method consistent with industry standards; remove or relocate the guy wire that obstructs the public sidewalk, and require that all future installations comply with municipal safety and accessibility standards; provide documentation of Borough Council or Street Commissioner consent under Matamoras Borough Code § 105-8 for any poles placed within the town's right-of-way and comply fully with this ordinance going forward; cease providing inaccurate explanations; and provide any other relief the Commission deems just and proper.

On September 18, 2025, Pike filed an Answer with New Matter (Answer) along with a Notice to Plead. In its Answer, Pike admitted in part and denied in part various material allegations of the Complaint. Pike denied that: it improperly installed the Subject Pole; it did not follow standard practice when connecting electric service to the Subject Property; the guy wire obstructs the public sidewalk as there is no sidewalk; and “mid-spanning” is not standard practice. Pike alleged that the Subject Pole was originally installed by Orange & Rockland Utilities, Inc. prior to any residential development on the Subject Property and replaced by Pike in 2005.

In its New Matter, Pike argues that the Complaint should be dismissed because it raises issues over which the Commission lacks jurisdiction, is legally insufficient, and is time-barred. Specifically, Pike argues that the Commission does not have jurisdiction over property disputes (e.g. right-of-way, easements) or municipal ordinances. Pike further argues the Complaint is time-barred under both 66 Pa. C.S. § 3314 and the doctrine of laches as the Subject Pole was most recently replaced in 2005. Finally, Pike argues, pursuant to 52 Pa. Code § 57.27 and Pike’s Tariff, Complainant is responsible for the costs to relocate the Subject Pole.

Complainant’s Answer to Pike’s New Matter was due within twenty days of the date of service of the Answer with New Matter. 52 Pa. Code § 5.63(a). Complainant did not file an Answer to Pike’s New Matter.

Also on September 18, 2025, Pike filed Preliminary Objections to the Complaint along with a Notice to Plead. In its Preliminary Objections, Pike argues the Complaint should be dismissed in its entirety for legal insufficiency because Complainant seeks relief that would violate Pike’s tariff. Pike also argues the Complaint should be dismissed for lack of Commission jurisdiction because the Commission does not have jurisdiction over property disputes or alleged violations of municipal ordinances regarding utility infrastructure placement. Pike further argues the Complaint should be dismissed for legal insufficiency because it fails to state a claim upon which relief can be granted since municipal ordinances, as a legal matter, cannot control placement of utility infrastructure.

Complainant's Answer to Pike's Preliminary Objections was due within ten days of the date of service of the Preliminary Objections. 52 Pa. Code § 5.101. Complainant did not file an Answer to Pike's Preliminary Objections.

By Motion Judge Assignment Notice dated October 28, 2025, the parties were informed that I was assigned as the Presiding Officer in this matter and responsible for resolving any issues which may arise during the preliminary phase of this proceeding.

Pike's Preliminary Objections are procedurally ready to be ruled upon. For the reasons below, Pike's Preliminary Objections will be granted, in part, denied, in part, and the matter will be scheduled for a hearing solely on the alleged improper service installation portion of the Complaint.

DISCUSSION

New Matter

Although not discussed in its Preliminary Objections, in its New Matter, Pike argues that the Complaint is time-barred pursuant to 66 Pa. C.S. § 3314. I concur as to any portion of the Complaint regarding installation/placement of the Subject Pole.

Section 3314 of the Code provides:

§ 3314. Limitation of actions and cumulation of remedies.

(a) General Rule. No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefore arose, except as otherwise provided in this part.

66 Pa.C.S. § 3314(a). The Commission has consistently held that Section 3314, "is non-waivable because it terminates the right to bring an action as well as any remedy the Commission

may order.” *Kovarikova v. Pa. Am. Water Co.*, Docket No. C-2017-2592131 (Opinion and Order entered Aug. 23, 2018).

In this case, the majority of the Complaint concerns the installation of the Subject Pole and whether it was improper. In response, Pike filed an Answer and New Matter stating that the Subject Pole was replaced by Pike in 2005. Complainant did not file a reply to the New Matter denying Respondent’s averments. Relevant facts stated in new matter may be deemed to be admitted when a timely reply to new matter is not filed. 52 Pa. Code § 5.63(b). Thus, it is deemed admitted that the Subject Pole was replaced in 2005.

Since the Subject Pole was replaced in 2005, that is the date any alleged liability for improper installation/placement arose. The instant Complaint was filed twenty years after that date. As a result, Section 3314(a) divests the Commission of jurisdiction to hear any portion of the Complaint regarding installation/placement of the Subject Pole.

Preliminary Objections

The Commission’s Rules of Administrative Practice and Procedure provide for the filing of Preliminary Objections. 52 Pa. Code § 5.101. Commission Preliminary Objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. *Equitable Small Transp. Intervenor v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994). The Commission’s Rules provide, in relevant part:

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

(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.

52 Pa. Code § 5.101(a).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Complainant, recovery or relief is possible. *Dept. of Auditor Gen., et al v. State. Emps. Ret. Sys.*, 836 A.2d 1053, 1064 (Pa. Cmwlt. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlt. 1996). Any doubt must be resolved in favor of the non-moving party (Complainant) by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlt. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Emps. Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlt. 1997).

Respondent's first preliminary objection is that the Complaint is legally insufficient because it fails to state a claim upon which relief can be granted since the relief requested is prohibited by Pike's tariff.

Complainant requests the Subject Pole be relocated at Pike's expense. Consistent with the Commission's regulations requiring customers to pay for utility pole location requests, 52 Pa. Code § 57.27, Pike has a tariff provision that mirrors this regulation. It is well established that a Commission-approved tariff is *prima facie* reasonable, has the full force of law, and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Zucker v. Pa. Pub. Util. Comm'n*, 437

A.2d 1067 (Pa. Cmwlth. 1981). However, since the tariff is only *prima facie* reasonable, the Complainant must be given the opportunity to rebut that presumption. It also follows that if the Complainant is able to rebut that presumption, recovery or relief would be possible for the Complainant. That being said, the Complainant should note that a complainant seeking to evade the effect of an existing tariff provision ***carries a very heavy burden*** of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. *Shenano Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996)(emphasis added).

Accordingly, I conclude that Pike has failed to show that the Complainant would not be entitled to relief under any circumstance as a matter of law and this Preliminary Objection will be denied.

Respondent's second preliminary objection is that the Commission lacks jurisdiction over the subject matter of the Complaint.

The Commission's Rules of Practice and Procedure permit parties to file preliminary objections for, *inter alia*, lack of Commission jurisdiction. 52 Pa.Code § 5.101(a). As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. §101–3316; *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission must act within and cannot exceed its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Matorano*, 235 A.2d 602 (Pa. 1967). Indeed, subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992).

Pike contends that dismissal is warranted because the Commission lacks jurisdiction over property disputes and over claims of municipal ordinance violations. I concur with Respondent that the Commission lacks jurisdiction over private property disputes and may not adjudicate questions involving private property interests. See *Anne E. Perrige v. Metropolitan Edison Co.*, PUC Docket No. C-00004110 (Order entered July 11, 2003) (Commission had no

jurisdiction to interpret the meaning of a written right-of-way agreement); *Lou Amati/Amati Service Station v. West Penn Power Co. and Bell Atlantic-Pennsylvania, Inc.*, PUC Docket No. C-00945842 (Order entered October 25, 1995) (real property issues such as trespass and whether utility facilities are located pursuant to valid easements are within the exclusive jurisdiction of the Courts of Common Pleas); *Tod and Lisa Shedlosky v. Pennsylvania Electric Company*, PUC Docket No. C-20066937 (Order entered May 28, 2008).

Here, Complainant alleges that Pike installed the Subject Pole adjacent to his lot “without obtaining any right-of-way agreement, easement, municipal approval, or signed authorization.” Complaint ¶ 4. Accepting these arguments as true for the purposes of preliminary objections, the Complaint is fundamentally a property dispute concerning whether Pike holds a right-of-way or easement granting authority to place the Subject Pole. The Commission lacks statutory authority to interpret or enforce such rights and cannot grant the relief requested.

Respondent also contends that the Complaint is beyond the Commission’s jurisdiction because it alleges that the placement of the Subject Pole “violates the Matamoras Borough Code, § 105-8.” Complaint ¶ 4. Again, I concur with Respondent that evaluating whether Pike complied with the Matamoras Borough Code would require the Commission to interpret and enforce municipal law, which is authority the Commission does not possess. The Commission’s authority extends only to matters expressly delegated by the state legislature, and its jurisdiction must derive from the express language of its enabling legislation or from necessary implication therein. *Feingold*, 383 A.2d at 794. While the Commission is responsible “for prescribing rules and regulations governing reasonableness, adequacy and sufficiency of service,” a complaint can only be sustained if the Commission finds that the utility violated its duty under the Code, the Commission’s regulations or a commission order. *T.W. Phillips Gas & Oil Co. v. Peoples Natural Gas Co.*, 492 A.2d 776, 779 (Pa. Cmwlth. 1985) (citing *Behrend v. Bell Telephone Co. of Pa.*, 243 A.2d (Pa. 1968)). Here, Complainant identifies no provision of the Public Utility Code, Commission regulation or order that Pike has violated. Instead, the Complaint alleges a violation of a municipal ordinance over which the Commission has no jurisdiction. Accordingly, Respondent’s second preliminary objection is granted.

Respondent's third preliminary objection is that the Complaint is legally insufficient because it fails to state a claim upon which relief can be granted since Pike has not violated any applicable standards regarding pole placement. Pike objects to Complainant's request that the Commission order Pike to "[r]emove and relocate the [Subject Pole] to a lawful and appropriate location" and to require Pike to "comply fully" with local ordinances moving forward. Complaint ¶ 5.

Here, Complainant alleges that the Subject Pole was "unlawful" because Borough Code § 105-8 prohibits poles between the curblineline and the property line without Borough consent. Complaint ¶ 4. I concur with Respondent that under Pennsylvania law, municipalities lack the authority to determine whether a utility may place its non-building infrastructure within a public right-of-way. See *Del. Riverkeeper Network v. Sunoco Pipeline*, 179 A.3d 670, 679 (Pa. Cmwlth. 2018) ("Pennsylvania courts consistently construct Section 619 narrowly and hold a township has no power to regulate a public utility by zoning ordinances with regard to uses and structures that are not buildings."). The placement of poles is governed by the Public Utility Code and the Commission's regulatory authority, not by municipal ordinances. Accordingly, Respondent's third preliminary objection is granted.

66 Pa. C.S. § 1501

Section 1501 of the Code states:

§ 1501. Character of service and facilities.

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing

the conditions under which it shall be required to render service. Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility. The commission shall have sole and exclusive jurisdiction to promulgate rules and regulations for the allocation of natural or artificial gas supply by a public utility.

66 Pa. C.S. § 1501.

In this case, Complainant alleges Respondent did not follow standard practice when connecting electric service to a new home on the Subject Property by creating four midspan splits. Complaint ¶ 4. The Complaint requests the Commission order Pike to correct the improper service installation including removal of the midspan splits in the road and to use a proper service method consistent with industry standards. Complaint ¶ 5.

When viewing these averments as true for purposes of the Preliminary Objections, it is clear that recovery or relief would be possible for Complainant and the Commission has jurisdiction over this matter pursuant to 66 Pa. C.S. § 1501.

Based on the foregoing, Pike's Preliminary Objections will be granted, in part, and denied, in part. Specifically, any portion of the Complaint regarding installation/placement of the Subject Pole or violations of municipal/local ordinances/code will be stricken from the Complaint. A hearing shall be scheduled solely to address whether Pike provided reasonable service pursuant to 66 Pa. C.S. § 1501 when connecting electric service to a new home on the Subject Property.

C-2025-3057163 - JESSE TASHLIK v. PIKE COUNTY LIGHT & POWER COMPANY

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