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February 9, 2026

Via Electronic Filing

Matthew Homsher, Secretary
PA Public Utility Commission
400 North Street
Harrisburg, PA 17120

Re: Loran Yonkers v. Windstream Pennsylvania, LLC
Docket No. C-2025-3057531

Dear Secretary Homsher:

Enclosed for electronic filing please find Windstream Pennsylvania, LLC's Motion for Summary Judgment in the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Bryce R. Beard
Bryce R. Beard

BRB/jls

cc: Cert. of Service w/enc.
Hon. Katrina L. Dunderdale (via email kdunderdal@pa.gov)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Windstream Pennsylvania, LLC's Motion for Summary Judgment upon the person listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Federal Express and Email

Loran Yonkers
7 Apple Dr.
Fredericktown, PA 15333
Tenchaj27@gmail.com

Date: February 9, 2026

Bryce R. Beard

Bryce R. Beard, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Loran Yonkers,	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2025-3057531
	:	
Windstream Pennsylvania, LLC,	:	
Respondent.	:	
	:	

NOTICE TO PLEAD

To: Loran Yonkers
7 Apple Dr.
Fredericktown, PA 15333
Tenchaj27@gmail.com

You are hereby notified that an Answer to the enclosed **Motion For Summary Judgement** of Windstream Pennsylvania, LLC must be filed within 20 days of the date of service. All pleadings, such as an Answer Motion For Summary Judgment, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for the Authority and the Office of Administrative Law Judge.

File with:
Matthew Homsher, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120
<https://efiling.puc.pa.gov/Login>

With a copy to:
Norman J. Kennard, Esquire
Bryce R. Beard, Esquire
Eckert Seamans Cherin & Mellott, LLC
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/s/ Bryce R. Beard

Bryce R. Beard, Esq.

Counsel for Windstream Pennsylvania, LLC

Date: February 9, 2026

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Complainant,	:	
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v.	:	Docket No. C-2025-3057531
	:	
Windstream Pennsylvania, LLC,	:	
Respondent.	:	
	:	

**WINDSTREAM PENNSYLVANIA, LLC’S
MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) at 52 Pa. Code § 5.102, Windstream Pennsylvania, LLC (“Windstream”) submits this Motion for Summary Judgment on the Formal Complaint of Loran Yonkers (“Complainant”) served on September 19, 2025.

II. PROCEDURAL HISTORY

Complainant filed a Formal Complaint (“Complaint”) with the Commission against Windstream. Complainant seeks a Commission order to compel Windstream to maintain Complainant’s property outside of the utility right of way, including cutting Complainant’s grass and cutting down trees that do not interfere with public utility facilities. Complaint at ¶¶ 4, 5.

On October 9, 2025, Windstream timely filed an Answer and New Matter to Formal Complaint. In its New Matter, Windstream averred that it is not obligated to maintain the remainder of Complainant’s property or expand the utility right of way to plaintiff’s requested width and that the remaining allegations were plainly beyond the Commission’s jurisdiction. Answer and New Matter at ¶¶ 13–18.

As of the date of this Motion, Complainant has not filed an Answer to Windstream’s New Matter. Any responsive pleading to Windstream’s New Matter, which was accompanied by a Notice to Plead, was due within 20 days of service—or by Wednesday, October 29, 2025—under 52 Pa. Code § 5.63. Complainant failed to respond to the New Matter, and by the Commission’s regulations, the relevant facts stated in the New Matter should be deemed admitted.

III. LEGAL STANDARDS

Whether the instant Motion is disposed of as a motion for summary judgment or as a motion for judgment on the pleadings, the standards are interchangeable and is met here. Judgment on the pleadings or summary judgment “will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.” 52 Pa. Code § 5.102(d)(1). Judgment on the pleadings is appropriate only upon acceptance of the material facts asserted in the non-moving party’s pleading. *Accord Travelers Cas. & Sur. Co. v. Castegnaro*, 772 A.2d 456, 459 (Pa. 2001).

It is well settled that the Commission may not exceed its jurisdiction and must act within it. *City of Pittsburgh v. Pa. Pub. Util. Comm’n*, 43 A.2d 348 (Pa. Super. Ct. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). 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. Commw. Ct. 1992). As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa. C.S. §§ 101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977).

While the Commission has the responsibility to ensure “[e]very public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities,” 66 Pa. C.S. § 1501, the Commission is not the proper forum to resolve a controversy regarding property rights, including claims of trespass and whether a utility’s facilities are situated within a valid right of way. Rather, property disputes are within the exclusive jurisdiction of the Court of Common Pleas. *Turgeon v. Verizon Pa. LLC*, Docket No. C-2021-3026390 (Opinion and Order entered May 30, 2024) (citing *Fairview Water Co. v. Pa. Pub. Util. Comm’n*, 502 A.2d 162 (Pa. 1985)).

IV. ARGUMENT

As an initial matter, Complainant failed to timely file any Answer to Windstream’s New Matter which, under the Commission’s regulations, deems facts raised by Windstream in the New Matter to be admitted for the purpose of disposing of this Complaint through summary judgement. Second, Complainant has plainly failed to plead any jurisdictional issues for the Commission to decide—no utility bills at issue, no tariff provision at issue, no service quality at issue, etc. Therefore, dismissal of the Complaint on summary judgment is appropriate. Complainant’s requests involve the scope and validity of existing rights of way and for Windstream to expand the scope of vegetation clearing and grass mowing on Complainant’s property at Windstream’s rate payer’s expense - for Complainant’s own benefit. However, these claims are not justiciable by the Commission and must be dismissed as a matter of law.

1. Complainant Failed to Answer Windstream’s New Matter and the Facts Therein Are Deemed Admitted, Warranting Dismissal.

Complainant failed to answer Windstream’s New Matter and therefore, the facts as stated therein are deemed admitted under the Commission’s regulations. *See* 52 Pa. Code § 5.63(b) (“Failure to file a timely reply to new matter may be deemed in default, and relevant facts stated

in the new matter may be deemed admitted.”). Windstream’s Answer and New Matter included a Notice to Plead cautioning Complainant that failure to file a response to the facts set forth in the Answer and New Matter may result in them being deemed as true, thereby requiring no other proof. Under such circumstances, it is fair to deem the facts in Windstream’s Answer and New Matter as true and grant this Motion for Summary Judgement. *Cf. David Coyle v. W. Penn Power Co.*, Docket No. C-2019-3014261 Opinion and Order at 13-14 (Order entered June 10, 2024) (deeming facts within uncontested answer and new matter as true and dismissing complaint). Accordingly, and as further explained below, the jurisdictional defects identified in the Complaint are deemed admitted and are fatal to this action.

2. The Complaint Fails to Raise a Jurisdictional Issue for the Commission to Decide.

The allegations set forth in the Complaint involve non-jurisdictional issues that the Commission is not empowered to adjudicate. Because the Commission cannot grant any relief related to the property-rights and trespass issues raised, the Complaint must be dismissed.

a. Property-Related Issues

Complainant raises matters of property law and easement rights, seeking exclusively that the Commission order Windstream to maintain his property outside of the utility right of way, including cutting Complainant’s grass and cutting down trees that do not interfere with public utility facilities. Complaint at ¶¶ 4, 5. Complainant alleges that Windstream is responsible for “trees . . . crossing [Complainant’s] driveway, infringing on [Complainant’s] property.” Complaint at ¶ 4. Notwithstanding that this issue is beyond the Commission’s purview, Windstream is not responsible for tree maintenance generally on Complainant’s property or driveway. Nor is Windstream responsible for a “tree [that] fell on [complainant’s] house 2 years ago.” *Id.* at ¶ 4. Windstream maintains its utility poles and performs tree trimming in direct vicinity to the poles

within the utility easement. Just because Windstream maintains an easement across Complainant's property does not mean it is required to remove vegetation beyond the easement which do not interfere with its utility facilities (unless the condition has interrupted service to Complainant's address, which is not the case here). In fact, Windstream actively maintains its utility facilities to ensure adequate, efficient, safe, and reasonable service, doing so as recently as late September 2025, including clearing a substantial portion of the utility corridor, removing a potentially hazardous tree limb near the facilities, and other preventative clearing activities. See New Matter at ¶ 14.

Similarly, Windstream is not required to cut grass or otherwise maintain Complainant's property. Compl. at ¶ 5. Windstream is not responsible for "total cleaning" of the utility right of way on complainant's property for Complainant's use and benefit. *Id.* at ¶ 5. While Complainant seems to request Windstream clear an additional space beyond the right of way, Windstream is not obligated to maintain the remainder of Complainant's property or expand the utility right of way to plaintiff's requested width. *See e.g. Kowski v. Verizon Pa. LLC*, Docket No. C-2013-2384017 (Initial Decision entered May 13, 2014); *W. Penn Power Co. v. Pa. Pub. Util. Comm'n*, 578 A.2d 75 (Pa. Commw. Ct. 1990).

Under the law, questions regarding the scope and validity of the utility easement fall outside of the Commission's jurisdiction. *City of Pittsburgh*, 43 A.2d 348. In *Fairview Water Co. v. Pa. Pub. Util. Comm'n*, 502 A.2d 162 (Pa. 1985), the Pennsylvania Supreme Court held that the Commission does not have jurisdiction to determine the scope and validity of an easement. Numerous Commission decisions reiterate this principle. *See Lasko v. Windstream Pa., LLC*, Docket No. C2010-2217869 (Final Order dated Apr. 1, 2011); *Perrige v. Metro. Edison Co.*, Docket No. C00004110 (Order entered July 3, 2003); *Fiorillo v. PECO Energy Co.*, Docket No.

C-00971088 (Order entered Sept. 15, 1999); *Baker and Blume v. SPLP*, Docket No. C-2020-3022169 (Initial Decision entered Dec. 8, 2020), at 10–11.

As a matter of law, where a complaint is legally insufficient and no relief can be granted, “it is appropriate and in the public interest” to dismiss the complaint without a hearing. *Shasta-Patrice Brown v. PGW*, Docket No. C-2024-3050761 (Opinion and Order Sept. 11, 2025), at 13 (citing 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d)). The Commission undoubtedly lacks jurisdiction to adjudicate the validity and scope of easements, here being the width and extent of the cleared easement which Complainant is demanding Windstream maintain. Therefore, because no relief can be granted, dismissal is appropriate.

b. Trespass

In disparity to the request that Windstream maintain the Complainant’s property beyond the existing right of way, the Complaint states that Complainant “do[es] not consent to [Windstream] trespassing [on] my property” and that Windstream has “no right to occupy my property.” Complaint at ¶ 5. As a matter of law, Windstream’s utility facilities are not “trespassing,” as claimed by Complainant as they are within an existing utility easement. More importantly, to the extent Complainant alleges trespass by Windstream, the Commission has no jurisdiction to adjudicate that allegations, as property right controversies are for courts of general jurisdiction, not the Commission. *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 Sept. 15, 1999); *Stabler v Verizon Pa., Inc.*, Docket No. C-2012-2284222 (Order entered June 1, 2012).

Simply stated, the Commission “is without subject matter jurisdiction to adjudicate questions involving trespass.” *Jo Anna Warren Williamson v. Duquesne Light Co.*, Docket No. C-

2009-2138578 (Opinion and Order Feb. 10, 2011), at 4 (citing *In Re: Lou Amati/Amati Serv. Station v. W. Penn Power Co. and Bell Atlantic-Pa., Inc.*, Docket No. C-00945872 (Order entered Oct. 25, 1996)). Therefore, because no relief can be granted on the issue of trespass, “it is appropriate and in the public interest” to dismiss the complaint without a hearing. *Shasta-Patrice Brown*, Opinion and Order at 13 (citing 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d)).

V. CONCLUSION

WHEREFORE, pursuant to 52 Pa. Code § 5.102 and for all the reasons set forth above, PGW respectfully requests that the Presiding Officer: a) grant the instant Motion and dismiss the Complaint; and b) grant any other relief deemed appropriate under the circumstances.

Respectfully submitted,

/s/ Bryce R. Beard

Norman J. Kennard, Esquire (I.D. 29921)

Bryce R. Beard, Esquire (I.D. 325837)

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Date: February 9, 2026

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