

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ray Banach	:	
	:	
v.	:	C-2026-3060510
	:	
Pike County Light & Power Company	:	

INITIAL DECISION

Before
Alphonso Arnold III
Administrative Law Judge

INTRODUCTION

In this matter, Ray Banach filed a Formal Complaint against Pike County Light & Power Company raising questions of trespass and whether the utility’s facilities are situated within a valid right of way. This Initial Decision grants Pike’s Preliminary Objections that seek dismissal of the Complaint because the Commission lacks jurisdiction over claims regarding property right disputes, including disputes over the scope of a right of way.

HISTORY OF PROCEEDING

On January 28, 2026, Mr. Banach filed a Complaint with the Commission against Pike arguing that Pike refuses to move encroaching lines off of his property, and that pursuant to a 1977 right of way (ROW) Pike is not authorized to place its lines on his property. For relief, Mr. Banach requests that Pike move all power and communication

lines off of his private property or purchase a new ROW. The Complaint was served on Pike on February 17, 2026.

On March 9, 2026, Pike filed an Answer with New Matter to the Complaint. Pike denies that its wires are trespassing upon Mr. Banach's property. In its New Matter, Pike asserts that the Commission lacks jurisdiction over the issue in the Complaint, i.e., interpretation of property rights. Pike also asserts that it does not own the lines in question and, therefore, the Complaint fails to state a claim because Pike cannot move the lines.

Also on March 9, 2026, Pike filed Preliminary Objections to the Complaint. Pike argues that the Complaint should be dismissed for lack of Commission jurisdiction pursuant to 52 Pa. Code § 5.101(a)(1). Alternatively, Pike argues that the Complaint should be dismissed for legal insufficiency of a pleading pursuant to 52 Pa. Code § 5.101(a)(4).

Mr. Banach did not file a Reply to Pike's New Matter, or an Answer to Pike's Preliminary Objections. The record closed on March 29, 2026, the deadline for Mr. Banach to file a Reply to Pike's New Matter. *See* 52 Pa. Code § 5.63(a).

On April 16, 2026, the Commission issued a Motion Judge Assignment Notice assigning me as presiding officer over this proceeding.

For the reasons discussed below, Pike's Preliminary Objections will be granted, and the Complaint will be dismissed.

FINDINGS OF FACT

1. Complainant is Ray Banach.
2. Respondent is Pike County Light & Power Company.
3. On January 28, 2026, Mr. Banach filed a Complaint with the Commission against Pike alleging that it refuses to move encroaching lines off of his property. Complaint ¶4.
4. Mr. Banach also alleged in his Complaint that, pursuant to a 1977 ROW, Pike is not authorized to place its lines on his property. Complaint ¶4.
5. For relief in this proceeding, Mr. Banach requests that Pike move all power and communication lines off of his private property or purchase a new ROW. Complaint ¶5.
6. On March 9, 2026, Pike filed an Answer with New Matter to the Complaint.
7. On March 9, 2026, Pike filed Preliminary Objections to the Complaint seeking dismissal of the Complaint pursuant to 52 Pa. Code § 5.101(a)(1) and 52 Pa. Code § 5.101(a)(4).
8. Mr. Banach did not file a Reply to Pike's New Matter, or an Answer to Pike's Preliminary Objections.

DISCUSSION

Pike filed Preliminary Objections in this matter seeking dismissal of Mr. Banach's Complaint. The Commission's Regulations provide for the filing of Preliminary Objections and state the following:

§ 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 General, et al v. SERS, et al.*, 836 A.2d 1053 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 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. Cmwlth. 1997).

Pike, in its Preliminary Objections, alleges that the Commission lacks jurisdiction over the Complaint, pursuant to 52 Pa. Code § 5.101(a)(1). Section 5.101(a)(1) of the Commission's regulations provide lack of Commission jurisdiction as basis for preliminary objections. 52 Pa. Code § 5.101(a)(1). 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). 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.* 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. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell Tel. Co.*, 383 A.2d 791 (Pa. 1977).

Mr. Banach argues that Pike refuses to move encroaching lines off of his property. Complaint ¶4. Mr. Banach references a 1977 ROW, alleging that the ROW does not authorize Pike to place its lines on his property. *Id.* For relief, Mr. Banach requests that Pike move its lines off of his property or purchase a new ROW. Complaint ¶5.

Pike alleges that resolution of the Complaint would require the Commission to interpret the scope of the 1977 ROW to determine whether it authorizes the placement of the lines at issue. Preliminary Objections ¶9. Pike also argued that the relief requested in the Complaint depends on a determination of the scope of the land or property rights authorizing the placement of the lines in their current location. Preliminary Objections ¶10.

Accepting the averments of the Complaint as true for purposes of deciding the Preliminary Objections, I agree with the argument presented by Pike in its Preliminary Objections. The Commission does not have jurisdiction over Mr. Banach's Complaint.

The issue presented in Mr. Banach's Complaint is whether the 1977 ROW authorizes Pike to place its lines on his property. Addressing this issue, as Pike correctly stated, would require the Commission to interpret the scope of the 1977 ROW. The Commission is not the proper forum to resolve a controversy which will determine property rights, including claims of trespass and whether a utility's facilities are situated within a valid ROW. My finding here is supported by the cases of *Anne E. Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (Opinion and Order entered July 11, 2003) ("*Perrige*") and *Erdman v. PPL Electric Utilities Co.*, Docket No. C-2025-3056487 (Order entered Nov. 7, 2025) ("*Erdman*").

In *Perrige*, Ms. Perrige alleged, amongst other things, that the utility wrongfully installed its facilities on her property, outside of a 1937 ROW. The Commission held that it cannot interpret the meaning of the written ROW because it lacks subject matter jurisdiction to make a determination involving substantive property rights. The Commission therefore dismissed this portion of Ms. Perrige's complaint. *Perrige* at 5-6.

In *Erdman*, Mr. Erdman alleged that the utility placed an electric pole on his property without his consent and that the pole was blocking an easement to access his property. For relief, Mr. Erdman requested that the utility move the pole so he can have access to his easement, and to fill the hole and reseed. In the Administrative Law Judge's (ALJ) Initial Decision issued October 7, 2025, the ALJ found that for the Commission to determine whether the utility has installed the utility pole on Mr. Erdman's property and without his consent, the Commission would have to interpret the location of the property boundaries and whether the pole is located within a valid easement. The ALJ found that such interpretation would be beyond the Commission's jurisdiction. *Erdman Initial Decision* at 7.

The facts of this present case are similar to the facts of *Perrige* and *Erdman*. Like in *Perrige* and *Erdman*, Mr. Banach's Complaint raises a real property dispute, i.e. the scope and validity of the 1977 ROW, which is an issue that the Commission has held that it has no jurisdiction to address. As the Commission lacks jurisdiction to address the sole issue raised in the Complaint, Pike's Preliminary Objections will be granted, and the Complaint will be dismissed, in the Ordering paragraphs below. As the Complaint will be dismissed for lack of Commission jurisdiction, Pike's Preliminary Objection alleging legal insufficiency of the Complaint need not be addressed.

CONCLUSIONS OF LAW

1. Preliminary objections are available to parties in Commission proceedings and may be filed in response to a pleading except motions and prior preliminary objections. 52 Pa. Code § 5.101(a).

2. In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Complainant, recovery or relief

is possible. *Dept. of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053 (Pa. Cmwlt. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlt. 1996).

3. In deciding preliminary objections, any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlt. 2002).

4. 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).

5. The Commission's regulations provide lack of Commission jurisdiction as basis for preliminary objections. 52 Pa. Code § 5.101(a)(1).

6. 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. Cmwlt. 1992).

7. 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.*

8. 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. 1945).

9. Subject matter jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

10. The Commission’s jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell Tel. Co.*, 383 A.2d 791 (Pa. 1977).

11. The Commission lacks jurisdiction to adjudicate private property disputes, including disputes concerning the scope of easements and rights of way. *Anne E. Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (Opinion and Order entered July 11, 2003); *Erdman v. PPL Electric Utilities Co.*, Docket No. C-2025-3056487 (Order entered Nov. 7, 2025).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by Pike County Light & Power Company on March 9, 2026, against the Formal Complaint filed by Ray Banach at Ray Banach v. Pike County Light & Power Company, Docket No. C-2026-3060510, are granted.

2. That the Formal Complaint filed by Ray Banach at Ray Banach v. Pike County Light & Power Company, Docket No. C-2026-3060510, is dismissed.

