



17 North Second Street  
12th Floor  
Harrisburg, PA 17101-1601  
717-731-1970 Main  
717-731-1985 Main Fax  
www.postschell.com

---

John H. Isom

jisom@postschell.com  
717-612-6032 Direct  
717-731-1985 Direct Fax  
File #: 140074

March 5, 2013

***VIA ELECTRONIC FILING***

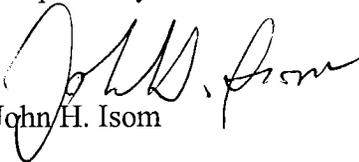
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Clinton and Caroline Hashagen v. PPL Electric Utilities Corporation**  
**Docket No. C-2012-2317387**

Dear Secretary Chiavetta:

Attached for filing is the Motion of PPL Electric Utilities Corporation for Summary Judgment in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



John H. Isom

JHI/skr  
Enclosures

cc: Honorable Joel H. Cheskis  
Certificate of Service

**CERTIFICATE OF SERVICE**

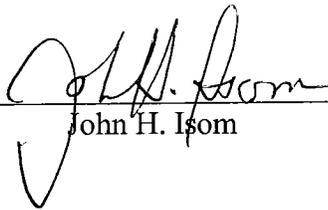
I hereby certify that a true and correct copy of the foregoing **Motion** has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA FIRST CLASS MAIL**

Clinton & Caroline Hashagen  
171 Everetts Lane  
Berwick, PA 18603

John McDanel, Esquire  
107 Rear E. Second Street  
Berwick, PA 18603

Date: March 5, 2013

  
\_\_\_\_\_  
John H. Isom

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Clinton and Caroline Hashagen,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2012-2317387
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

---

**NOTICE TO PLEAD**

---

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE §§ 5.102(b) AND 5.103(c), YOU MAY ANSWER THE ENCLOSED MOTION WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. YOUR ANSWER SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

Paul E. Russell (ID # 21643)  
Associate General Counsel  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18106  
Phone: 610-774-4254  
Fax: 215-587-1444  
E-mail: perussell@pplweb.com

  
\_\_\_\_\_  
David B. MacGregor (ID # 28804)  
Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2808  
Phone: 215-587-1197  
Fax: 610-774-6726  
E-mail: dmacgregor@postschell.com

Of Counsel:

Post & Schell, P.C.

John H. Isom (ID # 16569)  
Jessica R. Rogers (ID # 309842)  
Post & Schell, P.C.  
17 North Second Street  
12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
Phone: 717-731-1970  
Fax: 717-731-1985  
E-mail: jisom@postschell.com  
jrogers@postschell.com

Date: March 5, 2013

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Clinton and Caroline Hashagen,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2012-2317387
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

---

**MOTION OF PPL ELECTRIC UTILITIES CORPORATION  
FOR SUMMARY JUDGMENT**

---

**TO ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS:**

AND NOW comes PPL Electric Utilities Corporation (“PPL Electric”) and files this Motion for Summary Judgment pursuant to Section 5.102 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.102, and requests that the above-captioned Complaint be summarily dismissed for lack of subject matter jurisdiction. In support thereof, PPL Electric states as follow:

**I. INTRODUCTION AND BACKGROUND**

1. PPL Electric furnishes electric service to approximately 1.4 million customers throughout its certificated service territory, which includes all or portions of twenty-nine counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania. PPL Electric is a “public utility” and an “electric distribution company” as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 102, 2803.

2. PPL Electric owns approximately 5,000 miles of transmission lines operating at 69 kV (kilovolts) or higher, approximately 375 substations with a capacity of 10 MVA (megavolt amperes) or more, and approximately 43,000 miles of distribution lines operating at less than 69 kV.

3. Pursuant to Chapters 15 and 28 of the Public Utility Code, PPL Electric has a statutory obligation to provide safe, efficient, and reasonable service and facilities and to make all repairs or improvements in or to such service or facilities as are reasonably necessary for the accommodation, convenience, and safety of its customers.

4. Complainants Clinton and Caroline Hashagen (“Complainants”) are the owners of property located at 171 Everett’s Lane, Berwick, Luzerne County, Pennsylvania 18603.

5. On August 3, 2012, Complainants filed the above-captioned Complaint with the Commission.

6. The Complaint alleged property damage and other claims associated with the cutting of timber in the right-of-way held by PPL Electric which crosses the Complainants’ property. (*See* Complaint ¶ 4).

7. The Complainants requested compensatory damages and what would effectively be an injunction. (*See* Complaint ¶ 5).

8. On August 23, 2012, PPL Electric filed an Answer and New Matter to the Complaint, admitting in part and denying in part the factual basis of the Complainants’ allegations.

9. Also on August 23, 2012, PPL Electric filed Preliminary Objections, requesting that the Complaint be dismissed because the allegations in the Complaint were not within the Commission’s jurisdiction.

10. On October 3, 2012, Administrative Law Judge Joel H. Cheskis (“ALJ”) issued an Order granting in part and denying in part PPL Electric’s Preliminary Objections. In the Order, the ALJ granted PPL Electric’s Preliminary Objection “with regard to any averments pertaining to the scope and validity of the easement.” Order at 6. A copy of the Order is provided as Attachment A hereto. Complainants have not sought review of or relief from the ALJ’s Order.

11. For the reasons set forth below, PPL Electric’s Motion for Summary Judgment should be granted. As stated by the Complainants in response to the interrogatory included with this motion as Attachment B, the Complainants intend to testify only to what access the right-of-way agreement allows. This issue was determined in the ALJ’s Order to be outside the Commission’s jurisdiction and an inappropriate subject for hearing. Therefore, PPL Electric is herein requesting, consistent with the ALJ’s Order on Preliminary Objections, that the Complaint be dismissed because the evidence which Complainants intend to produce at the hearing addresses exclusively issues that are not within the Commission’s jurisdiction.

## **II. STANDARD FOR MOTION FOR SUMMARY JUDGMENT**

12. Section 5.102 of the Commission’s regulations provides the Commission’s standard of review for granting summary judgment:

(1) Standard for grant or denial on all counts. The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought 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.

(2) Standard for grant or denial in part. The presiding officer may grant a partial summary judgment if the 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 on one or more but not all outstanding issues.

52 Pa. Code § 5.102(d)(1), (2).

13. The Commission may decide any complaint without a hearing if a hearing is not necessary. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed material questions of fact, and when the question presented is one of law, the Commission need not hold a hearing. *Lehigh Valley Power Comm. v. Pa. P.U.C.*, 563 A.2d 548 (Pa. Cmwlth. 1989); *Edan Transportation Corp. v. Pa. P.U.C.*, 623 A.2d 6 (Pa. Cmwlth. 1993).

14. It is well-settled that the scope and validity of a right-of-way agreement is beyond the Commission's subject matter jurisdiction. A hearing on this issue and any claims for relief would be a fruitless exercise. For these reasons, as more fully explained below, the above-captioned Complaint should be dismissed.

### **III. ARGUMENT**

15. PPL Electric incorporates by reference Paragraphs 1 through 14 as if fully set forth herein.

16. The subject matter of the testimony that Complainants intend to present at hearing does not relate to questions of the safety of the facilities used by PPL Electric to provide electric service or a dispute over the provision of utility service. In response to an interrogatory on the subject matter to which witnesses would testify, the Complainants stated that they would be the only witnesses and that they would testify only to "what access the right-of-way agreement allows for." As stated in their interrogatory response, the Complainants' testimony at hearing will focus exclusively on the scope of the right-of-way agreement.

17. The Commission only has those duties, powers, and responsibilities as expressly, or by necessary implication, given to it by the General Assembly. *Jennifer Tomb v. Pennsylvania Electric Co.*, Docket No. C-2008-2036378, 2008 Pa. PUC LEXIS 994 (Dec. 8, 2008) (citing *Rogoff v. The Buncher Co.*, 395 Pa. 477, 151 A.2d 83 (1959)). The Commission must act within, and cannot exceed, its jurisdiction. The mere fact that a party to an action is a regulated utility does not automatically confer subject matter jurisdiction upon the Commission. *DeFrancesco v. Western Pennsylvania Water Co.*, 499 Pa. 374, 453 A.2d 595 (1982).

18. The Commission has determined that it is not the proper forum for resolving property rights controversies. *Henry and Julie Dengler v. Metropolitan Edison Co.*, Docket No. C-2009-2112197 (Oct. 16, 2009); *Guy and Virginia Mauro v. Pennsylvania Electric Co.*, Docket No. C-2009-2114087 (July 15, 2010). Rather, such controversies are a matter for a court of general jurisdiction. *Anne E. Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (July 3, 2003); *Fiorillo v. PECO Energy Co.*, Docket No. C-00971088 (Sept. 15, 1999). In *Boczar v. PPL Electric Utilities Corp.*, Docket No. C-20016332 (February 10, 2003), the Complainant alleged that the utility was not authorized to place electric facilities on his property. The Commission noted that the utility produced right-of-way agreements for the facilities in question and concluded that it was without jurisdiction to determine property rights concerning the agreements.

19. Included with this motion as Attachment C is the right-of-way agreement associated with the Complainants' property. The parties do not dispute that this agreement applies to the Complainants' property. Therefore, PPL Electric has produced a valid right-of-way agreement in this proceeding. Based on the authorities cited above, the interpretation of this right-of-way is beyond the Commission's jurisdiction.

20. Based on their own statement in response to PPL Electric's interrogatory, a copy of which has been produced for the Commission's review as Attachment B hereto, the Complainants do not intend to present any testimony on any subject matter that is within the Commission's jurisdiction. The matter they intend to testify to, the interpretation of the right-of-way agreement, ~~is exclusively within the jurisdiction of the Courts of Common Pleas.~~ Consequently, Complainants' claim must be dismissed for lack of Commission jurisdiction. In addition, the ALJ has already determined that the portions of the Complaint that apply to interpretation of the right-of-way agreement have been dismissed. A hearing on the right-of-way issues would be fruitless, as it is not within the Commission's jurisdiction to make a determination, and is inappropriate, as those issues have already been dismissed in this proceeding.

21. Further, the granting of this Motion for Summary Judgment will not deprive the Complainants of their "day in court." They have already filed a civil suit in the Court of Common Pleas of Luzerne County, that is based on the same underlying facts as the Complaint filed before the Commission, and which seeks the same requested relief as the Complaint before the Commission. A copy of the civil suit is attached hereto as Attachment D. Dismissal of the Complaint will not deprive the Complainants of due process or the opportunity to be heard. The suit is pending before the Court of Common Pleas of Luzerne County.

22. Because the Complainants' claims are already before a court which has the authority to both hear the case and to grant the relief requested, and because the Complainants do not intend to present any testimony on any subject that is appropriately before the Commission, Complainants' complaint before the Commission should be dismissed for lack of Commission jurisdiction.

**IV. CONCLUSION**

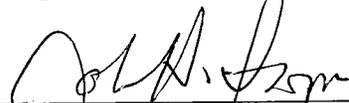
23. PPL Electric incorporates by reference Paragraphs 1 through 22, *supra*, as though set forth fully herein.

24. The scope of the Commission's jurisdiction over the matters Complainants intend ~~to present at hearing is well-settled. The Commission lacks subject matter jurisdiction over~~ questions involving claims associated with private property rights and the interpretation of a right-of-way agreement.

25. Accordingly, the Commission should enter an order, pursuant to 52 Pa. Code § 5.101(a), dismissing the above-captioned Complaint for lack of subject matter jurisdiction.

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the above-captioned Complaint be dismissed in its entirety.

Respectfully submitted,



David B. MacGregor (ID # 28804)  
Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2808  
Phone: 215-587-1197  
Fax: 610-774-6726  
E-mail: dmacgregor@postschell.com

Paul E. Russell (ID # 21643)  
Associate General Counsel  
PPL Services Corporation  
Two North Ninth Street  
Allentown, PA 18106  
Phone: 610-774-4254  
Fax: 215-587-1444  
E-mail: perussell@pplweb.com

John H. Isom (ID # 16569)  
Jessica R. Rogers (ID # 309842)  
Post & Schell, P.C.  
17 North Second Street  
12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
Phone: 717-731-1970  
Fax: 717-731-1985  
E-mail: jisom@postschell.com  
jrogers@postschell.com

Of Counsel:

Post & Schell, P.C.

Date: March 5, 2013

Attorneys for PPL Electric Utilities Corporation

---

---

# **ATTACHMENT “A”**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Clinton Hashagen

:  
:  
:  
:  
:  
:

v.

C-2012-2317387

PPL Electric Utilities Corporation

**ORDER**  
**GRANTING IN PART AND DENYING IN PART**  
**PRELIMINARY OBJECTIONS**

On July 17, 2012, Clinton Hashagen filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against PPL Electric Utilities Corp. (PPL or “the Company”), Docket Number C-2012-2317387. In his Complaint, Mr. Hashagen averred, among other things, that “PPL refused to honor an agreement dated September 10, 1969 to remove timber off of the right of way and refused to repair damage done by the contractor on our land.” Mr. Hashagen also averred that PPL “then came back with spray trucks and sprayed everything including the logs.” For relief, Mr. Hashagen noted on the Complaint that he would like PPL to “pay for the damage they done and say off our land until they do!” Mr. Hashagen attached to his formal Complaint copies of various correspondences amongst lawyers, PPL and others, as well as pictures of his property, newspaper articles and a copy of the easement.

On August 23, 2012, PPL filed an Answer with New Matter to Mr. Hashagen’s formal Complaint. In its Answer, PPL admitted that it is the holder of a valid right of way and easement agreement with Mr. Hashagen’s predecessor’s in interest but denied that it refused to honor its right of way agreement with Mr. Hashagen. PPL admitted that, as part of its vegetation management plan, which is necessary for the continued provision of reliable transmission service, it cut down mature trees on the Mr. Hashagen’s property and believes that it went “above and beyond its obligation under the agreement in moving the timber it could access.” PPL denied that the herbicides that it used on Mr. Hashagen’s property pose a health risk, as Mr.

Hashagen complained, and believes that it has followed the herbicide manufacturer's instructions for applying the herbicide. In its New Matter, PPL noted that it has filed a Preliminary Objection simultaneously with its Answer contending that the Complaint should be dismissed for lack of subject matter jurisdiction. PPL concluded its Answer by requesting that the Complaint be denied in its entirety and attached several supporting documents.

---

Also on August 23, 2012, PPL filed a Preliminary Objection. The Preliminary Objection was accompanied by a Notice to Plead. In its Preliminary Objection, PPL claimed that Mr. Hashagen's claims are not within the jurisdiction of the Commission because they arise out of a right of way agreement which is in the exclusive jurisdiction of the Courts of Common Pleas. PPL argues that the Commission therefore lacks jurisdiction over the issues identified by Mr. Hashagen and his Complaint must be dismissed. PPL further argues that because Mr. Hashagen has already filed a civil suit in the Court of Common Pleas that is based on the same underlying facts as those in his Complaint filed with the Commission, that Mr. Hashagen tacitly admits that the matter is appropriately before the Court of Common Pleas. PPL provides several attachments to its Preliminary Objection in support of its position.

Mr. Hashagen's answer to the Preliminary Objection was due not later than September 5, 2012. 52 Pa. Code §§ 5.101(f)(1), 1.12(a), 1.56(a)(1) and (b). Mr. Hashagen's answer to the New Matter was due not later than September 17, 2012. 52 Pa. Code §§ 5.63(a), 1.12(a), 1.56(a)(1) and (b). Mr. Hashagen filed neither an answer to the Preliminary Objection nor an answer to the New Matter.

By Motion Judge Assignment Notice dated September 11, 2012, 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.

PPL's Preliminary Objections are procedurally ready to be ruled upon. For the reasons discussed further below, PPL's Preliminary Objections will be granted in part and denied in part.

The Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code Chapters 1, 3 and 5, 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 Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (Equitable). PPL filed Preliminary Objections arguing that the Commission does not have jurisdiction over matters involving rights of ways and that the Commission does not have the authority to award damages. The Commission's Rules provide, in relevant part:

(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.

52 Pa. Code § 5.101(a)(1)-(6).

For purposes of disposing of the Preliminary Objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable 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, supra; see also, Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources, 486 Pa. 536, 406 A.2d 1020 (1979).

---

With regard to PPL's first Preliminary Objection, that the Commission does not have jurisdiction over claims that arise from the interpretation of a right of way agreement, this argument will be rejected.

PPL argued that "the specific allegations [in the Complaint] are focused exclusively on averments that PPL Electric failed to act on certain duties as required by its right of way agreement and that the Complainants' property rights have been violated as a result of PPL Electric's actions." Preliminary Objection at para 14. PPL is correct that the Commission only has those duties, powers and responsibilities as expressly, or by necessary implication, given to it by the General Assembly and that the Commission must act within, and cannot exceed, its jurisdiction. PPL further argues that the allegations relating to property rights and the interpretation of a valid right of way agreement are exclusively within the jurisdiction of the Courts of Common Pleas. There is substantial precedent that supports PPL's argument. *See e.g., Fairview Water Co. v. Pennsylvania 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).

Mr. Hashagen's Complaint, however, does not raise issues solely related to "the scope and validity of an easement." Mr. Hashagen's Complaint also raises issues involving vegetation management and PPL's use of herbicides. There is precedent that supports the exercise of jurisdiction over matters involving vegetation management within a right of way that warrants denying PPL's first Preliminary Objection.

In West Penn Power Company v. Pa. P.U.C., 578 A.2d 75 (Pa. Cmwlth 1990) (West Penn), the Commonwealth Court affirmed the Commission's decision to impose a fine on the utility for the removal of 74 trees from a customer's property. The Court stated:

Although West Penn has a right of way agreement dated December 11, 1948, which permits West Penn ‘to cut and trim or remove trees and shrubbery whenever necessary ...’ we agree with the commission that substantial evidence exists to support the finding that West Penn failed to conduct the right of way vegetation management on Brown’s property in a reasonable manner.

\* \* \* \*

---

Although the right of way agreement permits West Penn to engage in vegetation maintenance, section 1501 of the Code requires public utilities to provide service which is adequate, efficient, safe and reasonable.

Id. at 77. The Court noted that the Public Utility Code defines “service” as “any and all acts done, rendered or performed, and any and all things furnished or supplied, and any and all facilities used, furnished or supplied by public utilities. Id., *citing*, 66 Pa. C.S. §102.

The Court concluded that: “The PUC is correct in concluding that vegetation maintenance is a service and that West Penn’s clearing of the entire 40 foot right of way and West Penn’s removal of trees outside of the right of way did not constitute reasonable and adequate service.” Id.; *see also*, PECO Energy Company v. Township of Upper Dublin, 922 A.2d 996 (Pa. Cmwlth 2007)(Commission possesses the sole authority to regulate a public utility’s vegetation management practices in its service territory) (PECO) and Popowsky v. Pa. P.U.C., 653 A.2d 1385 (Pa. Cmwlth 1985)(vegetation maintenance constitutes a utility service and must be performed in a safe, adequate, reasonable and efficient manner).

In PECO, *supra*, the Commonwealth Court addressed the issue of vegetation management within a township’s right of way. In doing so, the Court noted that both PECO and the Commission, who intervened in the appeal to support PECO, relied on the reliability provisions of Section 2802(20) of the Public Utility Code in affirming the Commission’s jurisdiction over vegetation management. Section 2802(20) states:

Since continuing and ensuring the reliability of electric service depends on adequate generation and on conscientious inspection and maintenance of transmission and distribution systems, the independent system operator or its functional equivalent should set, and the commission shall set through regulations, inspection,

maintenance, repair and replacement standards and enforce those standards.

PECO at 1003-1004; *citing*, 66 Pa. C.S. § 2802(20). The Court noted the Commission's Proposed Rulemaking Order adding Inspection and Maintenance Standards for Electric Distribution Companies to the Commission's regulations that require the electric utilities to develop vegetation management plans, including for trees and limbs "on and off a right of way." Id. at 1004; *citing*, 52 Pa. Code §57.198(a)(3). The Court concluded, in part, that "public utility service embraces vegetation management." Id.

When accepting as true all well pleaded material averments in Mr. Hashagen's Complaint, as well as every reasonable inference from those averments, as is required when addressing PPL's Preliminary Objection, Mr. Hashagen's Complaint is not solely about "the scope and validity of an easement," as PPL argues. The Complaint also includes averments pertaining to vegetation management, including the use of herbicides, that warrant a hearing before an Administrative Law Judge and should not be dismissed on the basis of a preliminary pleading. Granting PPL's first Preliminary Objection would contradict the appellate precedent and statutory directive that gives the Commission jurisdiction over vegetation management "on or off a right of way." This is true regardless of the fact that Mr. Hashagen has also filed a civil suit in the Court of Common Pleas based on the same underlying facts as the Complaint filed before the Commission.

PPL's first Preliminary Objection, therefore, will be denied with regard to averments pertaining to PPL's vegetation management practices and granted with regard to any averments pertaining to the scope and validity of the easement as per Fairview, *supra*.

With regards to PPL's second Preliminary Objection, that the Commission does not have authority to order a public utility to pay compensatory damages, PPL is correct. The statutory array of Commission remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. *See, Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 794 (1977). To the extent that Mr. Hashagen requests that the Commission award compensation, such claims may be appropriate for a Court of Common

Pleas. This Commission, however, lacks authority over those claims raised in the Complaint. PPL's Preliminary Objection is sustained with regard to Mr. Hashagen's claims for compensation.

In conclusion, PPL's Preliminary Objections will be granted in part and denied in part. ~~When accepting as true all well-pleaded material facts raised in Mr. Hashagen's Complaint,~~ as well as all reasonable inferences from those facts, it is clear that Mr. Hashagen should be given an opportunity to demonstrate before an Administrative Law Judge whether PPL has violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff with regards to its vegetation management practices on or off the right of way on Mr. Hashagen's property. Mr. Hashagen will not, however, be able to raise any claims regarding the scope or validity of the right of way or damages.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by PPL Electric Utilities Corporation in the above-captioned case at Docket Number C-2012-2317387 dated August 23, 2012 are denied in part and granted in part.
2. That the portion of the Complaint requesting that the Pennsylvania Public Utility Commission address the scope or validity of the right of way and any request for damages is stricken from Mr. Hashagen's Complaint.
3. That the remaining issues set forth in Mr. Hashagen's Complaint are

allowed to proceed to a hearing before an Administrative Law Judge.

Date: October 3, 2012

---

Joel H. Cheskis  
Administrative Law Judge

---

---

# **ATTACHMENT “B”**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Clinton and Caroline Hashagen,

Complainants,

v.

PPL Electric Utilities Corporation,

Respondent.

Docket No. C-2012-2317387

---

**COMPLAINANTS' ANSWERS TO INTERROGATORIES  
AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
PROPOUNDED BY PPL ELECTRIC UTILITIES**

---

- I-1 Identify each fact witness you expect to call in the hearings on this matter, and describe each specific subject matter on which the witness is expected to testify.
- A. Clinton and Caroline Hashagen –  
To testify as to what access the right-of-way agreement allows for.
- I-2 Identify each expert witness you expect to call in the hearings on this matter, provide credentials and describe each specific subject matter on which the witness is expected to testify.
- A. n/a
- I-3 Explain in detail the facts supporting the allegations in paragraph 4B of the Formal Complaint.
- A. Plaintiff's Counsel is without sufficient information with which to formulate a response. Plaintiffs were unable to provide Counsel with a copy of said Formal Complaint which was filed by Plaintiffs without the aid of Counsel.

# **ATTACHMENT “C”**

Know all Men by these Presents, That I, Bertha J. Everett, a widow

Res. of  
Berwick, Pennsylvania 18603

In consideration of the sum of One Dollar (\$1.00) to me paid at the date hereof by PENNSYLVANIA POWER & LIGHT COMPANY, the receipt whereof is hereby acknowledged, and in consideration of the further sum of Six Thousand and No/100 (\$6,000.00) Dollars

to be paid to me when the rights hereby granted are exercised by the said Company, do hereby, for

myself and my heirs, executors, administrators and assigns, irrevocably grant and convey unto the said PENNSYLVANIA POWER & LIGHT COMPANY, its successors and assigns, the right to construct, operate and maintain, and from time to time to reconstruct its electric lines, including such poles, towers, cables and wires above and under the surface of the ground, fixtures and apparatus as may be from time to time necessary for the convenient transaction of the business of the said Company, its successors and assigns, upon, across, over, under and along a strip of land 200 feet in width, said strip being a part of the property which I own, or in which

I have any interest in the Township of Salem County of Inazuma

Commonwealth of Pennsylvania, and upon, across, over, under and along the roads, streets and highways adjoining the said property, as shown on the plan hereto attached and made a part hereof, including the right of ingress and egress to and from the said lines at all times for any of the purposes aforesaid, together with the right to set and maintain the necessary guy and brace poles or towers and anchors, and to attach thereto the necessary guy wires; also the right to cut down, trim, remove and to keep cut down and trimmed by mechanical means or otherwise, any and all trees, brush or other undergrowth on said strip of land or adjoining the same which in the judgment of the said Company, its successors and assigns, may at any time interfere with the construction, reconstruction, maintenance or operation of the said electric lines, poles, towers, wires, cables or other fixtures and apparatus, or menage the same, and in connection therewith, the right to remove, if necessary, the root systems of said trees, brush or other undergrowth, and to spray said brush and undergrowth with chemicals for their removal and control and in consideration of the said payments do hereby release and quitclaim the said PENNSYLVANIA POWER & LIGHT COMPANY, its successors and assigns, of and from any and all damages, loss or injury that may be at any time caused by or result from the construction, reconstruction, operation and maintenance of the said electric lines, or the cutting down, trimming or removal of any and all trees, brush or other undergrowth on said premises.

And, further, in consideration of said payments, I do hereby covenant and agree for myself

and my heirs, executors, administrators and assigns, to and with the said PENNSYLVANIA POWER & LIGHT COMPANY, its successors and assigns, that no house, barn or other structure, or inflammable or explosive materials of any kind, shall be built or stored on said strip of land, and that the said Company, its successors and assigns, shall not be limited in its or their enjoyment of the rights hereby granted to such electric lines, poles, towers, wires, cables, fixtures and apparatus as may be first constructed on said strip of land, but that the said Company, its successors and assigns shall have, at all times in the future, the right to construct, operate and maintain, and from time to time to reconstruct additional electric lines, poles, towers, wires, cables, fixtures and apparatus upon, across, over, under or along the said strip of land.

All merchantable timber shall be cut, tapped, limbed and the logs laid along the edge of the right-of-way for Grangers further handling.

Witness my hand and seal this 10th day of September, 1969.

Signed, sealed and delivered in the presence of

[Signature]  
[Signature]

Bertha J. Everett (SEAL)  
Bertha J. Everett (SEAL)  
MUNICIPALITY Salem (SEAL)  
TRANSFER TAX PAID: 1.60 (SEAL)  
AGENT: FRANK CASTELLINO (SEAL)

Received July 15th 1970, of PENNSYLVANIA POWER & LIGHT COMPANY the sum of

Six Thousand and No/100 (\$6,000.00) Dollars,  
in full payment of the further consideration above mentioned.

Bertha J. Everett  
Bertha J. Everett

COMMONWEALTH OF PENNSYLVANIA } ss:  
COUNTY OF Luzerne

On this ... day of September 19 69, before me, a <sup>Justice of Peace</sup> ~~Notary Public~~ for the Commonwealth aforesaid, commissioned for and residing in the Township ... of Salem, County of Luzerne, came the above named Bertha J. Everett, a widow and acknowledged the foregoing instrument to be her act and deed, and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

*John H. Callender*  
Notary Public  
Justice of Peace  
My commission expires 2-3-72

COMMONWEALTH OF PENNSYLVANIA } ss:  
COUNTY OF Luzerne

On this 15<sup>th</sup> day of July 19 70, before me, a Notary Public for the Commonwealth aforesaid, commissioned for and residing in the Township ... of Hawlock, County of Luzerne, came the above named Bertha E. Everett, a widow and acknowledged the foregoing instrument to be her act and deed, and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

*Mrs. Bertha E. Everett*  
Notary Public  
Justice of Peace  
My commission expires July 15, 1972

COMMONWEALTH OF PENNSYLVANIA } ss:  
COUNTY OF ...

On this ... day of ... 19 ... before me, a Notary Public for the Commonwealth aforesaid, commissioned for and residing in the Township ... of ... County of ... came the above named ... and acknowledged the foregoing instrument to be her act and deed, and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

Notary Public  
My commission expires

Recorded in the Office for Recording of Deeds in and for ... County,  
in Book Page, etc.  
WITNESS my hand and seal of Office this ... day of 19 ...

Recorder

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF Luzerne

On this ... day of September, 19 69, before me, Justice of Peace  
Notary Public for the Common-  
wealth aforesaid, commissioned for and residing in the Township of Salem,  
County of Luzerne, came the above named Bertha J. Everett, a widow,

and acknowledged  
the foregoing instrument to be her act and deed, and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

*John R. Callahan*  
Notary Public  
Justice of Peace  
My commission expires 10-30-72



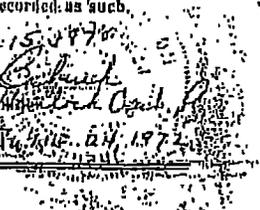
COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF Luzerne

On this 15<sup>th</sup> day of July 19 70, before me, a Notary Public for the Common-  
wealth aforesaid, commissioned for and residing in the Township of Hurlock,  
County of Luzerne, came the above named Bertha E. Everett,  
a widow,

and acknowledged  
the foregoing instrument to be her act and deed, and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

*Mrs. Bertha E. Everett*  
Notary Public  
Justice of Peace  
My commission expires July 15, 1972



COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF Luzerne

On this ... day of ... , before me, a Notary Public for the Common-  
wealth aforesaid, ... of ...  
County of Luzerne, came the above named ...  
and acknowledged  
the foregoing instrument to be her act and deed, and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

Notary Public  
My commission expires



Recorded in the Office for Recording of Deeds in and for  
in Book Page , etc. County,  
WITNESS my hand and seal of Office this day of 30

Recorder



39

Lucerne Co.

*Salem Prop*  
*60.91*

RIGHT OF WAY GRANT

Bertha J. Everett

ENTERED FOR RECORD

at *11:09 A.M.*

SEP-11-1970

Tax and Fees \$ *8.95*

*Frank C. Castellino*

RECORDER

to

PENNSYLVANIA POWER & LIGHT CO.

Recorded in the office of the Recorder of  
 Luzerne County, Pennsylvania  
 Book No. *1701*  
 Witness my hand and seal of office this  
 day of *Sept* 11 1970  
*Frank C. Castellino* Recorder

# **ATTACHMENT “D”**



5. Said right of ingress and egress together with all obligations of the Defendant, pursuant to the right-of-way Agreement, are part of the property located at 171 Everetts Lane, Berwick, Pennsylvania and said Agreement is subject to any subsequent purchase by any land owner.

6. Pursuant to the right-of-way Agreement, the Defendant is also allowed ingress and egress to maintain their power line running through 171 Everetts Lane. The Defendant is also required to process all merchantable timber it cuts down and the said logs shall be laid upon the edge of the right-of-way for further handling by the Land owners.

7. On or about December 29<sup>th</sup>, 1988, the Plaintiffs, Clint and Caroline Hashagen, purchased the property located at 171 Everetts Lane, Berwick, Pennsylvania.

8. In the Spring of 2010, the Defendants entered onto the Plaintiffs' property and cut, chopped and otherwise timbered trees along its power line which runs through the Plaintiffs' property.

9. The Defendant failed to move the logs, which were taken down through the maintenance of their power line, along the edge of the right-of-way to allow the Plaintiffs to further handle them.

10. Due to the Defendant's failure to lay the fallen logs along the edge of the right-of-way for Plaintiffs to handle, the Plaintiffs were unable to use the wood for whatever purpose they saw fit.

11. The Defendant has failed to fulfill their obligation under the right-of-way Agreement which requires them to lay the logs along the edge of the right-of-way for the Grantors, in this case the Plaintiffs, further handling.

12. The Defendant failed to lay any such logs along the edge of the right-of-way for the Plaintiffs to use.

13. The Defendant failed to remove the timber which was taken down by the Defendant to the edge of the right-of-way as is required by the Agreement.

14. The Defendant has also sprayed the wood which currently lies among the power line of the Defendant which runs through the Plaintiffs' land, thereby making the wood unusable and unable to be merchantable if it had been moved to the right-of-way as per the right-of-way Agreement.

15. The wood laying among the power line that was sprayed and not moved to edge of the right-of-way has been valued at Nineteen Thousand Seven Hundred Twenty Three Dollars (\$19, 723.00).

16. The Defendant has breached the terms and conditions of the right-of-way Agreement.

17. As a direct result of the breach of the right-of-way Agreement by the Defendant, the Plaintiffs are denied the free and unhampered access and use of their property.

18. As a direct result of the breach of the right-of-way Agreement by the Defendant, the Plaintiffs have been denied use, access and revenue from such trees which were taken down on their property.

19. As a direct result of the breach of the right-of-way Agreement by the Defendant, the Plaintiffs have been damaged in the amount of Nineteen Thousand Seven Hundred Twenty Three Dollars (\$19, 723.00) in lost value of the wood that was not moved to the edge of the right-of-way.

**WHEREFORE**, the Plaintiffs, Clint and Caroline Hashagen, claim against the Defendant in the amount not in excess of Twenty Five Thousand Dollars (\$25,000.00).

Respectfully submitted,

  
\_\_\_\_\_  
**JOHN W. MCDANEL, ESQUIRE**  
Attorney for Plaintiffs  
107 Rear E. Second St.  
P.O. Box 381  
Berwick, PA 18603  
(570) 752-3687  
I.D. #50867

SUSQUEHANNA-MOUNTAIN LINE

5-9

Know all Men by these Presents, That I, Bertha J. Everett a widow,  
R.R. 1,  
Berwick, Pennsylvania 18603

in consideration of the sum of One Dollar (\$1.00) to me paid at the date hereof by PENNSYLVANIA POWER & LIGHT COMPANY, the receipt whereof is hereby acknowledged, and in consideration of the further sum of Six Thousand and No/100 (\$6,000.00) Dollars to be paid to me when the rights hereby granted are exercised by the said Company, do hereby, for myself and my heirs, executors, administrators and assigns, irrevocably grant and convey unto the said PENNSYLVANIA POWER & LIGHT COMPANY, its successors and assigns, the right to construct, operate and maintain, and from time to time to reconstruct its electric lines, including such poles, towers, cables and wires above and under the surface of the ground, fixtures and apparatus as may be from time to time necessary for the convenient transaction of the business of the said Company, its successors and assigns, upon, across, over, under and along a strip of land 200 feet in width, said strip being a part of the property which I own, or in which I have any interest in the Township of Salem County of Luzerne Commonwealth of Pennsylvania, and upon, across, over, under and along the roads, streets and highways adjoining the said property, as shown on the plan hereto attached and made a part hereof, including the right of ingress and egress to and from the said lines at all times for any of the purposes aforesaid, together with the right to set and maintain the necessary guy and brace poles or towers and anchors, and to attach thereto the necessary guy wires; also the right to cut down, trim, remove, and to keep cut down and trimmed by mechanical means or otherwise, any and all trees, brush or other undergrowth on said strip of land or adjoining the same which in the judgment of the said Company, its successors and assigns, may at any time interfere with the construction, reconstruction, maintenance or operation of the said electric lines, poles, towers, wires, cables or other fixtures and apparatus, or menace the same, and in connection therewith, the right to remove, if necessary, the root systems of said trees, brush or other undergrowth, and to spray said brush and undergrowth with chemicals for their removal and control; and in consideration of the said payments do hereby release and quitclaim the said PENNSYLVANIA POWER & LIGHT COMPANY, its successors and assigns, of and from any and all damages, loss or injury that may be at any time caused by or result from the construction, reconstruction, operation and maintenance of the said electric lines, or the cutting down, trimming or removal of any and all trees, brush or other undergrowth on said premises.

And, further, in consideration of said payments, I do hereby covenant and agree for myself and my heirs, executors, administrators and assigns, to and with the said PENNSYLVANIA POWER & LIGHT COMPANY, its successors and assigns, that no house, barn or other structure, or inflammable or explosive materials of any kind, shall be built or stored on said strip of land, and that the said Company, its successors and assigns, shall not be limited in its or their enjoyment of the rights hereby granted to such electric lines, poles, towers, wires, cables, fixtures and apparatus as may be first constructed on said strip of land, but that the said Company, its successors and assigns, shall have, at all times in the future, the right to construct, operate and maintain, and from time to time to reconstruct additional electric lines, poles, towers, wires, cables, fixtures and apparatus upon, across, over, under or along the said strip of land.

All merchantable timber shall be cut, topped, limbed and the logs laid along the edge of the right-of-way for Gractors further hauling.

Witness my hand and seal this 10th day of September, 1969.

Signed, sealed and delivered in the presence of  
Ray J. Sawyer  
James J. Sawyer

Bertha J. Everett (SEAL)  
Bertha J. Everett (SEAL)  
MUNICIPALITY: Salem Twp (SEAL)  
TRANSFER TAX PAID: 00 (SEAL)  
AGENT: FRANK CASTELLINO (SEAL)

Received July 15th 1970, of PENNSYLVANIA POWER & LIGHT COMPANY the sum of Six Thousand and No/100 (\$6,000.00) Dollars, in full payment of the further consideration above mentioned.  
Bertha J. Everett  
Bertha J. Everett

GRID # 4365  
PP&L CO. - CORPORATE FILES  
35341

COMMONWEALTH OF PENNSYLVANIA }  
COUNTY OF Luzerne } ss:

On this . . . day of September . . . 19 69, before me, Justice of Peace  
Notary Public for the Common-  
wealth aforesaid, commissioned for and residing in the . . . Township . . . of . . . Salom . . .  
County of Luzerne . . . came the above named Bartha J. Byeratt, a widow

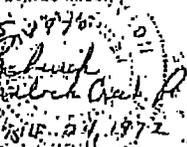
. . . and acknowledged  
the foregoing instrument to be her net and deed, and desired the same to be recorded as such.  
Witness my hand and notarial seal the day and year aforesaid.

*Frank R. Callahan*  
Notary Public  
Justice of Peace  
My commission expires 12-3-72  


COMMONWEALTH OF PENNSYLVANIA }  
COUNTY OF Luzerne } ss:

On this 15<sup>th</sup> day of July . . . 1970, before me, a Notary Public for the Common-  
wealth aforesaid, commissioned for and residing in the Township . . . of Hartsel . . .  
County of Luzerne . . . came the above named Beatha E. Byeratt,  
a widow . . . and acknowledged

the foregoing instrument to be her net and deed, and desired the same to be recorded as such.  
Witness my hand and notarial seal the day and year aforesaid.

*Mrs. Beatha E. Byeratt*  
Notary Public  
My commission expires July 15, 1976  


COMMONWEALTH OF PENNSYLVANIA }  
COUNTY OF . . . } ss:

On this . . . before me, a Notary Public for the Common-  
wealth aforesaid, . . . of . . .  
County of . . . came the above named . . .  
and acknowledged  
the foregoing . . . and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

Notary Public  
My commission expires

Recorded in the Office for Recording of Deeds in and for . . . County,  
in Book Page , etc.  
WITNESS my hand and seal of Office this . . . day of . . . 19 . . .

Recorder

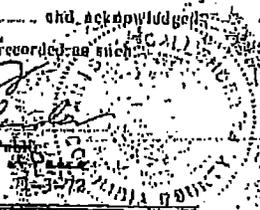
COMMONWEALTH OF PENNSYLVANIA }  
COUNTY OF Luzerne } ss:

On this ... day of September, 19 69, before me, a Notary Public for the Commonwealth aforesaid, commissioned for and residing in the Township ... of Salem, County of Luzerne, came the above named Bertha J. Everett, a widow,

and acknowledged the foregoing instrument to be her net and deed, and desired the same to be recorded as such. Witness my hand and notarial seal the day and year aforesaid.

*[Signature]*  
Notary Public

My commission expires

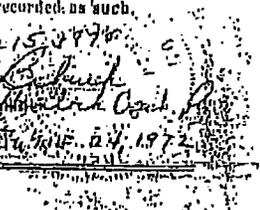


COMMONWEALTH OF PENNSYLVANIA }  
COUNTY OF Luzerne } ss:

On this 15<sup>th</sup> day of July, 19 70, before me, a Notary Public for the Commonwealth aforesaid, commissioned for and residing in the Township ... of Hawlocks, County of Luzerne, came the above named Bertha J. Everett, a widow,

and acknowledged the foregoing instrument to be her net and deed, and desired the same to be recorded as such. Witness my hand and notarial seal the day and year aforesaid.

*[Signature]*  
Notary Public  
My commission expires July 15, 1971



COMMONWEALTH OF PENNSYLVANIA }  
COUNTY OF ... } ss:

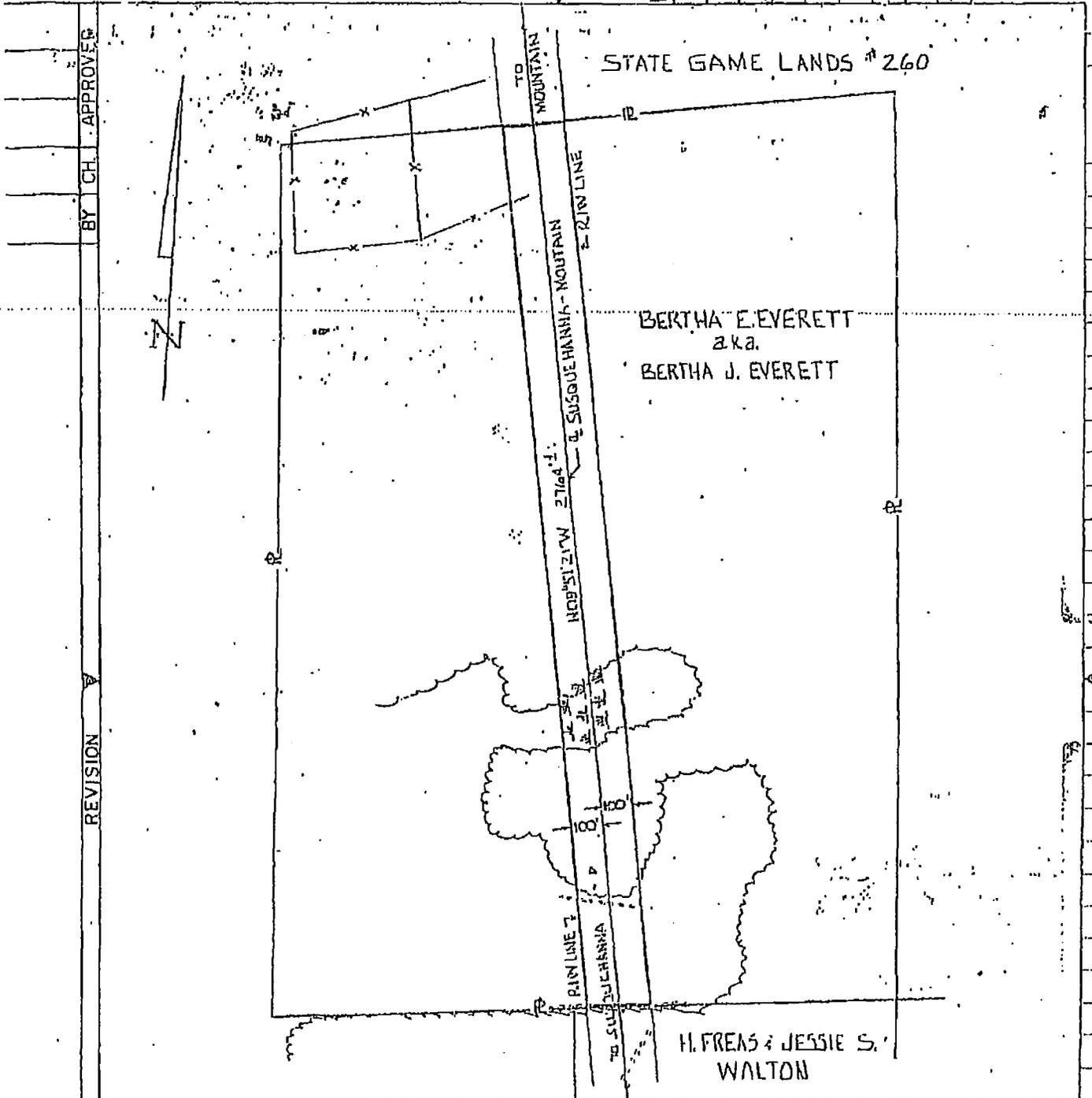
On this ... day of ... before me, a Notary Public for the Commonwealth aforesaid, commissioned for and residing in the Township ... of ... County of ... came the above named ... and acknowledged the foregoing instrument to be ... net and deed, and desired the same to be recorded as such. Witness my hand and notarial seal the day and year aforesaid.



Notary Public  
My commission expires

Recorded in the Office for Recording of Deeds in and for ... County,  
In ... Book ... Page ... etc.  
WITNESS my hand and seal of Office this ... day of ... 19 ...

Recorder



BY CH. APPROVED

REVISION

NO. DATE ER.

ER-139007-50	SUSQUEHANNA - MOUNTAIN
ER-	PLAN SHOWING ELECTRIC LINE RIGHT OF WAY OVER
ER-	PROPERTY OF
Scale: 1"=400'	BERTHA E. EVERETT a.k.a. BERTHA J. EVERETT
Date: 7-9-70	SALEM TWP., LUZERNE CO., PA.
DRAWN-	PENNSYLVANIA POWER & LIGHT COMPANY,
CHECKED-	
LEADER-	ALLENTOWN, PA.
APPROVED-	APPROVED <i>S. W. [Signature]</i>
APPROVED-	TRANSMISSION LINE ENGINEER
	LA-89409-0

39

Lucerne Co.

*Salmon Trip*  
*60.01*

RIGHT OF WAY GRANT

Bertha J. Everett

ENTERED FOR RECORD.

at 11:09 A.M.

SEP-1-1970

Tax and Fees \$ *8.50*

*Frank C. Castellano*

RECORDER

ED

PENNSYLVANIA POWER & LIGHT CO.

Recorded in the office of the Recorder of Deeds for  
 Luzerne County, Pennsylvania, on this 1st day of September, 1970.  
 Book No. *1701*  
 Witness my hand and seal of office this 1st day of September, 1970.  
*Frank C. Castellano* Recorder

**VERIFICATION**

I, Clint M. Hashagen, have read the foregoing document and to the extent that the document is based upon information which has been provided to counsel, it is true and correct to the best of my knowledge, information and belief. To the extent that the contents of the Complaint are that of counsel, I have relied upon counsel in making this Verification. I understand this Verification is made subject to the penalties of P.A.C.S.A. §4904 relating to unsworn falsifications to authorities.

11/7/11  
DATE

Clint M Hashagen Es.  
CLINT M. HASHAGEN

**VERIFICATION**

I, Caroline Hashagen, have read the foregoing document and to the extent that the document is based upon information which has been provided to counsel, it is true and correct to the best of my knowledge, information and belief. To the extent that the contents of the Complaint are that of counsel, I have relied upon counsel in making this Verification. I understand this Verification is made subject to the penalties of PA.C.S.A. §4904 relating to unsworn falsifications to authorities.

1/13/11  
DATE

Caroline Hashagen  
CAROLINE HASHAGEN