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July 19, 2013

**Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Buidlign
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:

Enclosed for filing is the Complainants' Response to the Motion of PPL Electric Utilities Corporation for Summary Judgment in the above-referenced proceeding.

Thank you for your time and attention and should you have any questions regarding this correspondence or the enclosed filing, do not hesitate to contact my office.

Sincerely,


John W. McDanel, Esquire

JWM/kh

Enclosure – *Complainants' Response to Motion for Summary Judgment*

Cc: File

Honorable Joel H. Cheskis – *w/ Enclosure*

Paul E. Russell, Esquire – *w/ Enclosure*

David B. MacGregor, Esquire – *w/ Enclosure*

John H. Isom, Esquire & Jessica R. Rogers – *w/ Enclosure*

2. PPL Electric furnishes electric services to approximately 1.4 million customers throughout its certified service territory, which includes the area owned by the Complainants.
3. On August 3, 2012, Complainants filed a Complaint with the Public Utility Commission.
4. The Complainants alleged property damage, breach of contract, issues with the utilities vegetation management system and other claims associated with the cutting of timber, the failure to remove timber and the use of herbicides, creating a hazardous condition in the right-of-way held by PPL Electric which crosses the Complainants property.
5. 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 Complaint's allegations.
6. 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.
7. On October 3, 2012, Administrative Law Judge, Joel H. Cheskis, issued an Order granting in part and denying in part PPL Electric's Preliminary Objections. In the Order the Administrative Law Judge specifically stated that there are jurisdictional matters involving vegetation management within the right-of-way that warrants denial of PPL Electric's first preliminary objection.

8. The Preliminary Objection regarding the scope and validity of the easement was granted and it was indicated that the Commission does not have the authority to Order the Public Utility to pay compensatory damages.
9. The issue of PPL Electric's vegetation management within a right-of-way, is clearly within the jurisdiction of the Public Utility Commission.
10. There is also a question of fact as to whether or not PPL Electric conducted the vegetation management system in a reasonable manner.
11. The Public Utility Code, pursuant to Section 1501, requires public utilities to provide service which is adequate, efficient, safe and reasonable.
12. The Court in West Penn Power Company v. Pa.P.U.C., 578 A.2d 75 (Pa. Cmwlth 1990) 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."
13. There clearly is a question of law and fact as to whether or not the vegetation management system incorporated and used by PPL Electric is adequate, efficient, safe and reasonable.

14. The West Penn Court further concluded that vegetation maintenance is a service and that the manner in which that service is provided as to whether it is adequate, safe and reasonable, falls within the jurisdiction of the Public Utility Commission and that vegetation maintenance constitutes a utility service and must be performed in a safe, adequate, reasonable and efficient manner. Id.; see also PECO Energy Company v. Township of Upper Dublin, 922 A.2d 996 (Pa. Cmwlth 2007) Popowsky v. Pa. P.U.C., 653 A.2d 1385 (Pa. Cmwlth 1985).

II. STANDARD FOR MOTION FOR SUMMARY JUDGMENT

15. 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.

III. ARGUMENT

16. Complainants hereby incorporate by reference Paragraphs 1 through 15 as if fully set forth herein.
17. The sole matter for determination in deciding the Motion for Summary Judgment is whether or not the Public Utility commission has jurisdiction over any items mentioned in the Complaint by the Complainants.
18. Clearly, as previously stated, the Commission has jurisdiction over the vegetation management service provided by a utility over the right-of-way of a customer.
19. Vegetation Management is a "service" and there is clearly a factual issue as to whether the vegetation management has been performed in a safe, adequate, reasonable and efficient manner.
20. This Court has already ruled in determining the Preliminary Objections of PPL Electric that Mr. Hashagen's Complaint is not solely about the scope and validity of an easement. The Complaint also alleges averments pertaining to vegetation management including the use of herbicides, indicating that a hearing before an Administrative Law Judge should be held to determine the manner and scope of such vegetation management and to determine whether such vegetation management has been performed in a safe, adequate, reasonable and efficient manner.

21. The fact that the Complainants have filed a Civil Suit in the Court of Common Pleas of Luzerne County seeking compensatory damages as a result of the breach of vegetation management obligations, should not weigh in the decision of the Commission.
22. The Civil Suit in the Court of Common Pleas of Luzerne County is seeking damages for the removal of timber and the failure to abide by the terms and conditions of the right-of-way Agreement.
23. The issue presently before the Commission is whether or not the service provided by the utility has been performed in a safe, adequate, reasonable and efficient manner.
24. There clearly are still issues of material fact that need to be determined and therefore the PPL Electric's Motion for Summary Judgment should be dismissed.

IV. CONCLUSION

25. The Complainants incorporate by reference Paragraphs 1 through 24, as though set forth fully herein.
26. The scope of the Commission's jurisdiction over the matters alleged in the Complaint are well settled. The Commission has subject matter jurisdiction over questions involving claims regarding service provided by the public utility including, but not limited to, vegetation management.

27. Accordingly, the Commission should deny the Motion for Summary Judgment for failing to have subject matter jurisdiction.

WHEREFORE, the Complainants, Clinton and Caroline Hashagen, respectfully request that the Motion for Summary Judgment be dismissed and a hearing be scheduled forthwith.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **RESPONSE TO MOTION FOR SUMMARY JUDGMENT** 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

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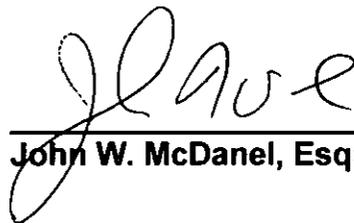
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Date: July 19, 2013



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