

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**Harrisburg, Pennsylvania 17105-3265**

**Joseph D. Orach**  
v.  
**PPL Utilities Corporation**

**Public Meeting held May 22, 2014**  
**2393163-ALJ**  
**Docket No. C-2013-2393163**

**MOTION OF COMMISSIONER GLADYS M. BROWN**

Mr. Orach filed the instant Complaint alleging that PPL's vegetation management practices, in PPL's right of way which crosses Mr. Orach's land, are unreasonable. As relief, the Complainant requested that PPL not remove any vegetation and cease spraying herbicide in the right of way. The Complaint also requested that the Commission direct PPL to vacate its existing right of way and negotiate a new right of way agreement.

PPL filed preliminary objections arguing that the Complaint arises from a private property dispute and that interpretation of its right of way and easement are within the exclusive jurisdiction of the Courts of Common Pleas. The ALJ granted PPL's preliminary objection based on a finding that the Commission lacked subject matter jurisdiction over the entire action, which the ALJ characterizes as a real property dispute. This dismissal encompassed not only challenges to the scope of the right-of-way but PPL's actions within it.

The Complaint raises two distinct issues. The first is the Complainant's challenge to the right of way itself and his request that PPL negotiate a new one. The second issue involves the Complainant's challenge to removal of an existing thicket and PPL's spraying practices.

With regard to the first issue, the ALJ correctly ruled that the Commission lacks subject matter jurisdiction over the scope or validity of the right of way.

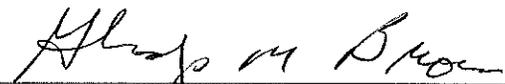
However, on the second issue, the ALJ incorrectly ruled that the Commission lacks subject matter jurisdiction over vegetation management practices, including the removal of vegetation and spraying. Legal precedent distinguishes between issues surrounding the grant of a right of way's scope or validity, which are beyond the Commission's jurisdiction, and the adequacy or reasonableness of the public utility's service or actions in that right of way pursuant to Sections 102 and 1501 of the Public Utility Code, 66 Pa. C.S. §§ 102 and 1501. In *West Penn Power Co. v. Pa. PUC*, 578 A.2d 75, 77 (Pa. Cmwlth. 1990), the Commonwealth Court determined that vegetation management is a service under Section 1501 of the Code. Section 1501 "clearly indicates that the utility's 'service' is not confined to the distribution of electrical energy, but includes 'any and all' acts related to that function." *Id.* See also, *PECO Energy Co. v. Township of Upper Dublin*, 922 A.2d 996, 1005 (Pa. Cmwlth. 2007) and *Popowsky v. Pa. PUC*, 653 A.2d 1385, 1389 (Pa. Cmwlth. 1995) (holding that a utility's maintenance of vegetation is a regulated service even though fault, either on the part of the utility or the customer, has no relevance to the existence of vegetation maintenance as a service).

It is clear that vegetation management and actions within rights of way fall within the Commission's jurisdiction. As such, this portion of the Complaint should not have been dismissed on a preliminary objection. *Broman v. West Penn Power Co.*, Docket No. C-2013-2356237 (April 23, 2014), *Megan Mohn v. PPL Electric Utilities Corp.*, Docket No. C 2012-2301470 (October 11, 2012).

**THEREFORE, I MOVE THAT:**

1. The Initial Decision of ALJ Salapa be reversed, in part, and remanded to the Office of Administrative Law Judge for further proceedings as may be necessary, consistent with this Motion;
2. The Office of Special Assistants prepares an Opinion and Order consistent with this Motion.

May 22, 2014  
Date

  
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Gladys M. Brown, Commissioner