

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120

Richard and Sandy Lehet

Public Meeting October 1, 2015

2449983-OSA

v.

Docket No. C-2014-2449983

PPL Electric Utilities Corporation

**MOTION OF**  
**VICE CHAIRMAN JOHN F. COLEMAN, JR.**

Before the Commission for consideration and disposition are the Exceptions of PPL Electric Utilities Corporation (PPL) to the Initial Decision (ID) issued in the above-captioned Formal Complaint proceeding. The ID sustains the Formal Complaint and directs PPL not to remove a line of ornamental pear trees located within PPL's transmission light right-of-way on the Complainants' property. The transmission line at issue is a 69 kV line serving one customer.

In its Exceptions, PPL raises four main issues: (1) Whether PPL's vegetation management policies and procedures applicable to 69 kV transmission lines are reasonable and consistent with its statutory obligation to provide safe and reliable electric service; (2) Whether it is impractical and cost-prohibitive to apply PPL's vegetation maintenance policies and procedures on a case-by-case basis; (3) Whether PPL's vegetation maintenance policies and procedures are consistently applied to all transmission line rights-of-way; and (4) Whether the Commission should take official notice that PPL's vegetation management policies and procedures for 69 kV transmission lines have been submitted to and reviewed by the Commission.

Upon review of the record evidence and applicable law, I propose to grant PPL's exceptions, in part, and to deny them, in part, as follows.

Reasonableness of PPL's vegetation maintenance policies and procedures

Based on the information provided in this case, PPL's vegetation management policies and procedures applicable to 69 kV transmission lines appear to be reasonable. Upon review of the record evidence, PPL's vegetation management policies and procedures applicable to 69 kV transmission lines seem consistent with PPL's statutory obligation to provide safe and reliable electric service under Section 1501 of the Public Utility Code.<sup>1</sup> As previously noted by the Commission, proper vegetation management within transmission line rights-of-way is critical to ensuring that our electric grid operates in a safe and reliable manner.<sup>2</sup>

<sup>1</sup> 66 Pa. C.S. § 1501. This statutory obligation includes providing service that is reasonably continuous and without unreasonable interruption or delay. *See also* 52 Pa. Code § 57.194(a)

<sup>2</sup> *Jan and Joyce Spirat v. Metropolitan Edison Company*, C-2013-2367044 (Opinion and Order entered September 11, 2014).

Moreover, PPL's change in 2013 to a more active vegetation management approach with 69 kV transmission lines was based upon actual lessons learned from Hurricane Irene in 2011, the Halloween snowstorm in 2011, and Superstorm Sandy in 2012. The "lessons learned" revealed it was necessary for PPL to have more active vegetation management policies and procedures with its 69 kV and 138 kV systems.<sup>3</sup> This included applying the Wire Zone/Border Zone vegetation management methodology<sup>4</sup> from PPL's NERC-approved Transmission Vegetation Management Plan applicable to 230 kV and above lines to 69 kV and 138 kV systems as well.

Therefore, I propose to grant PPL's first Exception.

Application of PPL's vegetation maintenance policies and procedures on a case-by-case basis

I do not interpret the ID as requiring or advocating PPL to employ a case-by-case vegetation management approach on all of its transmission lines. And, I do not advocate such an approach either. Nevertheless, when a property owner objects to PPL's proposed vegetation management on his or her property, PPL can and should review the particular facts at hand to ensure a reasonable outcome. In such a situation, PPL can and should consider whether to employ a selective vegetation management approach. Both PPL's STM Plan and its Updated Plan allow for such an approach as it relates to rights-of-way and easement restrictions, compatible species, and the rural or urban/residential nature of the area in question.<sup>5</sup>

Therefore, I propose to deny PPL's second Exception.

Application of PPL's vegetation maintenance policies and procedures consistently to all transmission line rights-of-way

Based upon the facts of record in this case, I do not believe PPL justified its argument to remove the ornamental pear trees in question to ensure consistency with its vegetation maintenance plan. Rather, I believe the Complainants have met their burden of proof that the trees in question should not be removed from their property at this time.

The Complainants have the burden of proof that PPL's proposed vegetation maintenance in this case is unreasonable.<sup>6</sup> Although the burden of proof in a case never shifts, the burden of production or going forward with the evidence can shift. Upon a Complainant's presentation of evidence sufficient to make a prima facie case that initially satisfies the burden of proof, the burden of going forward with the evidence shifts to the Respondent to rebut the Complainant's evidence. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied the burden of proof and must provide additional evidence to rebut the Respondent's evidence.<sup>7</sup> If the evidence presented by the Respondent is not of co-equal weight to the Complainant's evidence, the Respondent has not successfully rebutted the Complainant's prima facie case, and the Complainant has satisfied the burden of proof.

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<sup>3</sup> Tr. at 35-37.

<sup>4</sup> Under this methodology, all non-compatible species in the wire zone and border zone areas within a transmission line right-of-way are removed. The wire zone area is the area underneath the conductor that for 69 kV lines, extends 10 feet outward from the outer-most conductor on both sides of the line. The border zone is the area from the edge of the wire zone to the outer-most edge of the right-of-way. Tr. at 33-34.

<sup>5</sup> Tr. at 37 and 41; PPL Exhibit 4.

<sup>6</sup> 66 Pa.C.S. § 332(a).

<sup>7</sup> *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

I agree with the ID at page 8 that the Complainants have provided sufficient evidence to establish a prima facie case. The evidence includes the following: (1) the Complainants have been planting a line of the same trees for about fifteen years, with the trees now measuring between 16 feet in height for the new trees to around 30 feet for the older trees; (2) the trees are decorative, do not grow to a threatening height, and are not located under the conductor, which is approximately 80 feet above the ground; (3) if the utility has been true to its vegetation maintenance policies and procedures, PPL has been in the area to perform vegetation management at least three times since the tree line began to appear; (4) prior to a year ago (late 2013/early 2014), PPL did not warn the Complainants that the trees were not in compliance with its vegetation management plan; (5) no prior warning was provided because the trees were not deemed to violate the plan until it was changed in October of 2013; and (6) PPL subsequently deemed the trees as non-compliant with its new, more stringent vegetation maintenance plan that does not recognize them as "compatible."

I also agree with the ID that PPL has failed to successfully rebut the Complainants' prima facie case. At hearing, PPL testified that the trees at issue are "non-compatible species" and that based on the location of the trees in the right-of-way, they must be removed.<sup>8</sup> However, nothing in the record specifically explains why PPL classifies the Complainants' ornamental pear trees as an incompatible species. Moreover, nothing in the record shows that the ornamental pear trees in question pose a significant threat or may interfere with PPL's facilities. The line in question is 40 to 45 feet above the top of the Complainants' tallest trees, and those trees are not located directly underneath the conductor.<sup>9</sup> Also, the line in question is a 69 kV line that serves one customer only, and thus, is not critical to the reliability of the bulk power system. Therefore, PPL has not presented evidence of co-equal weight, and the Complainants have satisfied their burden of proof that the relevant trees should not be removed at this time.

Based upon these facts, I do not believe the consistency stance maintained by PPL in this case is justified and propose to deny PPL's third Exception.

Official notice that PPL's vegetation management policies and procedures for 69 kV transmission lines have been submitted to and reviewed by the Commission

Pursuant to the Commission's regulations,<sup>10</sup> I propose to take official notice of the following facts: (1) PPL filed its Inspection and Maintenance Standards Plan pursuant to 52 Pa. Code § 57.198, which includes vegetation maintenance specifications for distribution lines and transmission lines of 69 kV (Updated Plan); (2) the Updated Plan was accepted by the Commission per the Bureau of Technical Utility Services letter dated December 28, 2012; (3) PPL included for Commission review as part of a transmission line siting application proceeding at Docket No. A-2012-2340872, *et al.*, its Specification for Transmission Management (STM Plan), which includes vegetation maintenance specifications for transmission lines of 69 kV and higher and takes into consideration, *inter alia*, protection of natural resources, environmental impact, land use, and other environmental concerns; and (4) the STM Plan was not specifically addressed in the Commission's January 9, 2014 Order adjudicating the siting application at Docket No. A-2012-2340872, *et al.*

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<sup>8</sup> Tr. at 40 and 42.

<sup>9</sup> The trees at issue are located approximately 27 feet from the centerline of the 69 kV line. Tr. 39. The trees at issue normally grow 20 to 35 feet in height but can grow to a possible height of 50 feet. Tr. 44. PPL's conductor is approximately 80 feet high. Tr. 8.

<sup>10</sup> 52 Pa. Code § 5.408.

Accordingly, I propose to grant PPL's fourth Exception.

Conclusion

I commend PPL for seeking to address critical reliability issues by taking a more active vegetation management approach with its 69 kV lines. I encourage PPL to continue to follow this more active approach with its lower voltage transmission systems. At the same time, PPL must still act reasonably under Section 1501 of the Code when carrying out its vegetation management plans and actually performing the work.

Here, I do not believe PPL justified its argument to remove the ornamental pear trees in question. I emphasize that the outcome in this Motion is fact-sensitive and is based on the unique facts and circumstances from the record in this case. The most important of these unique facts and circumstances that persuaded me in making the determinations in this Motion include that the line in question is not critical to the reliability of the bulk power system and that the record does not adequately explain why the trees in question were incompatible, presenting a danger that required the trees to be removed.

**THEREFORE, I MOVE THAT:**

1. The Exceptions of PPL Electric Utilities Corporation are granted, in part, and denied, in part, consistent with this Motion.
2. The Initial Decision is modified, consistent with this Motion.
3. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

**Date: October 1, 2015**

  
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**JOHN F. COLEMAN, JR.**  
**VICE CHAIRMAN**