

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Eugene G. and Joan A.
Butala
v.
PPL Electric
In-Person Hearing

Docket No.: C-20066076

Pages: 1 - 239

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3rd Floor
Scranton, PA 18503-1923

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Tuesday, October 17, 2006
Commencing at 10:00 a.m.

BEFORE:

EMBER S. JANDEBEUR, Administrative Law Judge

APPEARANCES:

LAWRENCE N. KLEMOW, Esquire
81 Laurel Street, Suite 201
Hazelton, PA 18201-5958
For the Complainants

ANDREW H. RALSTON, JR., Esquire
Gross, McGinley, Labarre & Eaton, LLP
33 South 7th Street
P.O. Box 4060
Allentown, PA 18105
For the Respondent

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REPORTER: RICHARD J. LIPUMA
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P R O C E E D I N G S

JUDGE JANDEBEUR:

1
2 -----
3
4 This is the time and place for the
5 in-person hearing in the matter of Eugene G. and Joan
6 A. Butala, B-U-T-A-L-A, versus PPL Electric Utilities
7 Corporation. Docket C-20066076. I have in the
8 courtroom Lawrence Klemow representing the Butalas and
9 Andrew Ralston representing PPL.

10 Just by way of background, the Butalas
11 filed their formal complaint April 3rd, 2006. It was
12 assigned to mediation. Mediation failed as of May
13 1st, 2006. It was signed to a motion judge because
14 PPL filed preliminary motions on May 2nd, 2006. The
15 preliminary motion was granted in that we of the PUC
16 do not have authority to award monetary damages. That
17 would be a Common Pleas Court action. It was not
18 granted with regard to service issues. That order was
19 dated June 5th, 2006.

20 So we are now here, ready to hear service
21 issues. Now, before we get started, I'd like a brief
22 statement from both counselors on what you intend to
23 address today. Mr. Klemow?

ATTORNEY KLEMOW:

24
25 Yes, Your Honor. Basically it's a rather

1 simple issue. It started in the early summer of 2004.
2 Mr. and Mrs. Butala own about 18 acres in West Penn
3 Township in Schuylkill County. It's actually two
4 parcels of land divided by a county road. And they
5 have some trees adjoining that road and apparently
6 there are PPL power lines in that area.

7 In June of 2004, Mr. Butala was on his
8 property when he found a man there and just asked him
9 who he was and why he was there, and the man explained
10 that he was there on behalf of PPL, they were going to
11 trim the trees. He showed them where they were
12 because they were growing into power lines. Mr.
13 Butala basically said that's fine.

14 They returned in early August and at this
15 point a tree trimming service had returned.
16 Apparently they were doing this along the road, people
17 could hear the sounds of their equipment at other
18 properties, and at one point he went out there to find
19 out what's going on. They explained what they were
20 there for. He thought they were going to trim the
21 trees. He came out again when he saw that they'd
22 actually cut down two of the trees. Told them to
23 stop, he was very unhappy with what they were doing.

24 Went back into his house and basically
25 was in his house for a few hours, he had fallen

1 asleep. When he came back out, they had taken down 19
2 trees along the front of the road. And here are
3 photographs, some are of before, mostly of afterwards.
4 Our position is is that this is one of the safe,
5 adequate, and reasonable service issues under 1501.
6 There is a very specific Commonwealth Court case on
7 this issue, West Penn Power versus PPL, that dealt
8 with this almost exact same issue where 70-some trees
9 were cut down and it was determined that this is a PPL
10 service issue under their jurisdiction.

11 It's our position today that after you
12 hear the evidence and what was done or not done, if
13 it's determined that PPL or their representatives did
14 something they should not have done, PUC has the power
15 to order them to restore the property. They failed to
16 do that and I do believe you have the power to fine
17 them \$1,000 a day, as long as they can continue to
18 refuse to do that.

19 JUDGE JANDEBEUR:

20 Thank you. Mr. Ralston?

21 ATTORNEY RALSTON:

22 I'll save my argument on the legal
23 conclusion for the end of my opening, but this is a
24 very troubling case. There's no doubt about that.
25 We've had a subsequent --- I'm sorry, prior

1 magistrate's complaint involving this. So some of the
2 facts have already become further elaborated. And
3 although Mr. Butala claims that PPL cut down his trees
4 without his permission, the testimony from all of our
5 witnesses here today will establish conclusively that
6 they cut down his trees because he asked them to cut
7 down his trees on two separate occasions. And they
8 did that as a courtesy to him and for no other reason.

9 As to the legal conclusion about the
10 authority of the Commission to order PPL to restore
11 property, I don't think they have that authority and I
12 have been able to find no support of that position.
13 I think that asking someone to restore trees is the
14 equivalent of fining them. It's six of one, half a
15 dozen of the other. I'm sorry, not of fining them;
16 it's the exact same thing as asking them for monetary
17 damages. Whether you're compensating someone in the
18 form of money in the form of having to go out and
19 spend money to buy trees, it's the exact same thing.
20 I don't think either is appropriate for the Commission
21 to order.

22 Of course there is a possibility of a
23 fine, but the testimony will clearly establish that
24 that's not warranted here.

25 JUDGE JANDEBEUR:

1 What was the issue in the magistrate
2 case?

3 ATTORNEY RALSTON:

4 The same issue.

5 JUDGE JANDEBEUR:

6 And what was the outcome?

7 ATTORNEY KLEMOW:

8 I'm sorry, Your Honor. That was a suit
9 that was just brought for the monetary damages. Mr.
10 Butala was then unrepresented and I believed the
11 magistrate dismissed the case, based upon the statute
12 of limitations issue.

13 ATTORNEY RALSTON:

14 That's correct.

15 JUDGE JANDEBEUR:

16 So in other words, I can't look to that
17 for any guidance?

18 ATTORNEY KLEMOW:

19 I don't believe so.

20 ATTORNEY RALSTON:

21 I don't believe so, Your Honor.

22 JUDGE JANDEBEUR:

23 I don't like that answer, when they come
24 up with that answer. Okay. Mr. Klemow?

25 ATTORNEY KLEMOW:

1 Mr. Butala?

2 A. Yes.

3 ATTORNEY KLEMOW:

4 Do you want to go over there?

5 A. Sure.

6 -----

7 EUGENE G. BUTALA, HAVING FIRST BEEN DULY SWORN,
8 TESTIFIED AS FOLLOWS:

9 -----

10 ATTORNEY KLEMOW:

11 Are we just going to mark these?

12 JUDGE JANDEBEUR:

13 Well, I told him not to premark them
14 because I didn't know the order in which you're going
15 to use them. So as you introduce them, we'll mark
16 them as you go along.

17 DIRECT EXAMINATION

18 BY ATTORNEY KLEMOW:

19 Q. Mr. Butala, please state your full name.

20 A. My name is Eugene G. Butala.

21 Q. How old are you?

22 A. Seventy-three (73).

23 Q. Are you presently employed?

24 A. No, I'm not.

25 Q. Are you retired?

1 A. Yes, sir.

2 Q. Where do you live?

3 A. 19 Hill Drive, West Penn Township.

4 Q. Is that in Schuylkill County?

5 A. In Schuylkill County, sir.

6 Q. Are you married?

7 A. Yes, I am.

8 Q. What is your wife's name?

9 A. Joan A. Butala.

10 Q. Now, let me show --- well, this will be

11 Complainant's Exhibit Number One.

12 JUDGE JANDEBEUR:

13 We'll mark it C-1.

14 (Complainant's Exhibit One

15 marked for identification.)

16 BY ATTORNEY KLEMOW:

17 Q. I'll ask you, is that the deed to the property
18 that you and your wife purchased in 1994?

19 A. Yes, it is.

20 Q. And this is the property for the address you just
21 gave; is that correct?

22 A. Yes, sir.

23 Q. Now, am I correct in that it is divided into two
24 parcels?

25 A. Yes, it is.

- 1 Q. How big is the total parcel?
- 2 A. 19.4 acres.
- 3 Q. What divides the two parcels?
- 4 A. The township road.
- 5 Q. Is it safe to say that they're approximately
6 about the same size?
- 7 A. Yes.
- 8 Q. The one is a little bigger than the other.
9 Describe the property. What is on it?
- 10 A. My house, a pond, and a lot of pine trees.
- 11 Q. Are there some other buildings?
- 12 A. A little storage shed.
- 13 Q. I'm going to show you a photograph. Let me ask
14 you this. Before you bought the property, do you know
15 what ---?
- 16 A. This was on the north side of the property, what
17 I'm talking about.
- 18 Q. Well, what was on the acreage? Was it used for
19 farming or something like that?
- 20 A. Yes, it was. There was a barn, a garage, a
21 lean-to building where they stored their tractors, a
22 huge barn, 50 by 60 feet.
- 23 Q. I'm going to show you what's been marked as
24 Number Two, and it's a photograph. And would you
25 please tell us what does that photograph show?

1 A. It shows my house, the barn, the lean-to, a
2 little milk house.

3 JUDGE JANDEBEUR:

4 Hold on one second. Do you have copies
5 for me?

6 ATTORNEY KLEMOW:

7 I don't have actual copies. I have a
8 photocopy that I mailed.

9 JUDGE JANDEBEUR:

10 So which one is it of the photocopies?

11 ATTORNEY KLEMOW:

12 It's the long narrow one.

13 JUDGE JANDEBEUR:

14 This is what I have. I don't have that
15 photograph. Do you have that photograph?

16 ATTORNEY RALSTON:

17 No, Your Honor. I have no objection to
18 it, though.

19 JUDGE JANDEBEUR:

20 Did you receive copies of the exhibits?

21 ATTORNEY RALSTON:

22 I received copies of the exhibits,
23 although I think when we spoke with Judge ---

24 JUDGE JANDEBEUR:

25 Nene.

1 ATTORNEY RALSTON:

2 - - - Nene, he indicated that we were free
3 to supplement our exhibits.

4 JUDGE JANDEBEUR:

5 Right. And you are. I'm just checking
6 to see if you got something that I didn't get.

7 ATTORNEY KLEMOW:

8 This one may not have been included.

9 JUDGE JANDEBEUR:

10 No, he's got exactly what I have.

11 ATTORNEY KLEMOW:

12 That's a copy.

13 JUDGE JANDEBEUR:

14 Do you have additional ones? Do you have
15 one for Mr. Ralston?

16 ATTORNEY KLEMOW:

17 I may.

18 JUDGE JANDEBEUR:

19 So I'm going to mark this C-2. I assume
20 that yours is marked C-2?

21 (Complainant's Exhibit Two
22 marked for identification.)

23 ATTORNEY RALSTON:

24 Yes, it is.

25 JUDGE JANDEBEUR:

1 Thank you.

2 ATTORNEY KLEMOW:

3 Your Honor, I'd have to make that one.

4 JUDGE JANDEBEUR:

5 That's okay. This is fine.

6 ATTORNEY RALSTON:

7 That's okay.

8 BY ATTORNEY KLEMOW:

9 Q. Would you agree that that photograph was taken
10 years before this incident happened?

11 A. Yes.

12 Q. Now, if I may, I'd like to try and have him point
13 to it so you know what this photograph is being used
14 for. Does this photograph show somewhat the area
15 where the trees were?

16 A. Yes, right over here (indicating).

17 ATTORNEY KLEMOW:

18 He's pointing over here.

19 ATTORNEY RALSTON:

20 Your Honor, he's pointing over in this
21 area.

22 JUDGE JANDEBEUR:

23 He's pointing to the left side of the
24 picture where the brown home is. Okay.

25 ATTORNEY KLEMOW:

1 Correct. And there are pine trees behind
2 it.

3 JUDGE JANDEBEUR:

4 Just try and remember that over here
5 won't work on a transcript. I won't know what you
6 were talking about when I read it.

7 BY ATTORNEY KLEMOW:

8 Q. You're on the far left of the picture; am I
9 correct?

10 A. Yes.

11 Q. Was that a photograph taken that somewhat showed
12 the tree line that we're going to be talking about
13 today?

14 A. Yes.

15 JUDGE JANDEBEUR:

16 Mr. Ralston, we're marking this C-3.
17 (Complainant's Exhibit Three
18 marked for identification.)

19 ATTORNEY RALSTON:

20 Okay. I have that one.

21 BY ATTORNEY KLEMOW:

22 Q. Now I'm showing you what's marked Number Three.
23 Could you describe what's in that picture?

24 A. On the right-hand side of the photograph is my
25 garage where they used to start the tractors, my barn

1 and the milk house.

2 Q. And in the middle, is there a road?

3 A. Yeah, a driveway going into the barn.

4 Q. Is that Mill Road?

5 A. No. Yes, it is Mill Road.

6 Q. Now on the left, there are trees on the left.

7 Are they part of the trees that we're talking about
8 here today?

9 A. Yeah, that's every one of them.

10 Q. Now, that photograph, do you know when that was
11 taken?

12 A. No, I don't.

13 Q. Was it prior to the cutting down of the trees?

14 A. Yes.

15 Q. So the trees that are on the left side of that,
16 the evergreens are some of the trees that were
17 eventually cut down?

18 A. Yes.

19 Q. And is that how they run along your property,
20 along that road?

21 A. Yes, sir.

22 Q. I think you may have answered this, that's the
23 road that divides your two lots in half; is that
24 correct?

25 A. Yes, sir.

1 Q. Now, I'm not sure if you answered this, but is it
2 true that you bought this in 1994 and you were living
3 there about ten years when this happened?

4 A. Yes.

5 Q. Now I'd like to bring your attention to the
6 summer of 2004. Did you have occasion to talk with
7 somebody at your property who advised you that there
8 were going to be some tree removal --- or not removal,
9 trimming?

10 A. Yes, I did.

11 Q. Describe about when that happened and do you
12 remember who you talked to?

13 A. I don't remember.

14 Q. In terms of when the trees were cut down, do you
15 know how much before it was?

16 A. About two months, a month.

17 Q. What happened? How did you come across this
18 person?

19 A. I was walking out of my barn, I was working in
20 the barn and this gentleman was walking up the street.
21 And I said to him, I said hi, how are you doing. He
22 said okay. I said what are you doing walking up the
23 street? He said I'm just coming to over here to trim
24 them trees over there. He said the top of the trees
25 here has to come down because PPL gave him the

1 contract.

2 And I says great. I say's you're going to trim
3 the trees then? He said probably and that was it.

4 Q. Do you know who he was?

5 A. No, I don't.

6 Q. Did he give you a name?

7 A. No, nothing at all. He never asked for
8 permission, he never did anything according to that.

9 Q. Is that person here in the room today?

10 A. I don't know. Maybe that gentleman in the back.
11 I'm not sure.

12 Q. On that particular day, though, did anything
13 happen to the trees?

14 A. No. He's as tall as me, my height.

15 ATTORNEY RALSTON:

16 I'm confused as to what the answer is.

17 JUDGE JANDEBEUR:

18 I'm not confused. I didn't get an
19 answer. Did you get answer, Mr. Klemow?

20 ATTORNEY KLEMOW:

21 He stood up and I think he was looking to
22 see the gentleman back here and he really didn't say
23 anything about him and then he just said he was as
24 tall as me.

25 JUDGE JANDEBEUR:

1 Yes. So I did not get an identification
2 out of that; did you?

3 A. No, I don't see anybody here.

4 BY ATTORNEY KLEMOW:

5 Q. You don't see that person here?

6 A. Right.

7 Q. Did anything happen on that particular day with
8 regard to the trees?

9 A. No, nothing.

10 Q. Did you ever get anything in the mail about what
11 was going to happen?

12 A. No, nothing at all.

13 Q. Let's move forward. What happened then next?

14 A. Early August I guess it was --- yeah, it had to
15 be early August. I was sitting in the house and I
16 heard this noise and I walked outside and a big ---
17 what do you call it, the cutter of the trees was up
18 the street and I looked and there was a young
19 gentleman going up with a cherry picker up on top of
20 the --- going up the thing and he's looking up over
21 there and I'm watching him from over on the side of my
22 house there.

23 Q. Now, let me stop you for a second. Where is this
24 person? Is he on your property or someone else's
25 property?

1 A. No, he's in the cherry picker on my property.

2 Q. In the area where the trees that we're talking
3 about were?

4 A. In the area where the trees are, my first
5 telephone pole.

6 Q. Did you see anybody else there besides this
7 fellow in the cherry picker?

8 A. Yes. A lot of kids, young kids. I never seen no
9 older people at all, whatsoever.

10 Q. The cherry picker, is that part of a vehicle or
11 truck?

12 A. Yes.

13 Q. Were there any markings on any of the vehicles
14 regarding where the truck had come from?

15 A. Not at that one. There was nothing whatsoever on
16 it.

17 Q. What did you do then next?

18 A. I went over to him. He went up and he was
19 looking. He had that extending saw and it was going
20 and he was just ready to stop and then start coming
21 down and I says what's wrong, bud. And he says I'm
22 not going up that high. He said that's too dangerous
23 with them power lines up over there. And that was it.
24 He came down and I walked in the house.

25 Q. By the way, is it true that there are PPL poles

1 and PPL power lines in the area of these trees?

2 A. Yes.

3 Q. So then what happened next?

4 A. I walked in the house and that was it. After
5 that, I guess I was in there, maybe had a sandwich or
6 something. My son came home from football practice
7 and he said, dad, you better come out here and look at
8 what they did to the trees. I walked out and two of
9 my trees were gone.

10 Q. Well, let's deal with those. How far was your
11 house, by the way, from where they were working?

12 A. About 30 yards, 40 yards away.

13 JUDGE JANDEBEUR:

14 C-4.

15 (Complainant's Exhibit Four
16 marked for identification.)

17 ATTORNEY RALSTON:

18 Okay.

19 JUDGE JANDEBEUR:

20 And there's two that look quite similar.

21 ATTORNEY KLEMOW:

22 This one, I think, is the one right here.

23 ATTORNEY RALSTON:

24 It's slightly closer in?

25 ATTORNEY KLEMOW:

1 Yes.

2 ATTORNEY RALSTON:

3 The two pictures look like they're the
4 same except for one's maybe a little bit closer.

5 JUDGE JANDEBEUR:

6 Yes. Exactly.

7 ATTORNEY KLEMOW:

8 You have two of the same?

9 JUDGE JANDEBEUR:

10 No, but they're very similar.

11 ATTORNEY KLEMOW:

12 I only chose one and that was that one on
13 the right.

14 ATTORNEY RALSTON:

15 The far in or the close up?

16 ATTORNEY KLEMOW:

17 I'm sorry, with the higher space up on
18 top. That one (indicating).

19 ATTORNEY RALSTON:

20 This one?

21 ATTORNEY KLEMOW:

22 That one is ---.

23 JUDGE JANDEBEUR:

24 C-4. I think it's this, but this is
25 whited out.

1 ATTORNEY KLEMOW:

2 Yes. Like the pole is whited out. That
3 one is C-5.

4 (Complainant's Exhibit Five
5 marked for identification.)

6 ATTORNEY RALSTON:

7 Okay.

8 JUDGE JANDEBEUR:

9 And you've got a C-6 that we don't have?

10 ATTORNEY KLEMOW:

11 I think you got both and I'm not using
12 both. Aren't they the two that are ---?

13 JUDGE JANDEBEUR:

14 You have another photo there. No. Yeah,
15 I don't have that.

16 ATTORNEY RALSTON:

17 Which one is this? Yeah, I don't have
18 that one either.

19 ATTORNEY KLEMOW:

20 That I believe is this one. Sorry, but
21 we'll need one more of that one. That's this one
22 here.

23 JUDGE JANDEBEUR:

24 I'll look off of that. Mr. Ralston, do
25 you have a problem with this picture at all? You're

1 not going to have a copy to work with.

2 (Complainant's Exhibit Six
3 marked for identification.)

4 ATTORNEY RALSTON:

5 That's okay. I can stand up and look at
6 it.

7 JUDGE JANDEBEUR:

8 Go ahead, Mr. Klemow.

9 BY ATTORNEY KLEMOW:

10 Q. Mr. Butala, I'm showing you what's been marked as
11 Exhibit Number Four. And is that a photograph that
12 shows the area of where these 19 trees were?

13 A. Yes, sir.

14 Q. You said that when you came out the first time,
15 two trees were gone. Can you point to and then we'll
16 describe where you're pointing?

17 A. By there, by the telephone pole.

18 JUDGE JANDEBEUR:

19 Show me in the picture.

20 BY ATTORNEY KLEMOW:

21 Q. These would be ---.

22 A. You can see where the stumps are, ma'am. Right
23 on the side of the pole.

24 Q. These would be the trees that would have been
25 closest to your house?

1 A. Yes.

2 ATTORNEY JANDEBEUR:

3 Okay. I'm with you.

4 BY ATTORNEY KLEMOW:

5 Q. So those two trees are gone and what happened
6 then?

7 A. Well, I walked out and I said what in the hell
8 did you do to my two trees? And the kid just looked
9 at me, he didn't say a word. I said well, what are
10 you doing? He said we made it more prettier. And
11 that's exact words. I'll never forget them words.

12 Q. Now, the people that were there at that point
13 cutting the trees, do you see any of them here today?

14 A. No, sir.

15 Q. Now, you described him as a kid and others as a
16 kid. When you say kid, what do you mean in terms of
17 approximate age?

18 A. About 18 to 20 years old, 19 years old, somewhere
19 in that vicinity.

20 Q. And the person that you referred to as a kid who
21 responded to you, where was he when was talking to
22 you?

23 A. I guess on the side of the truck that was parked
24 right there.

25 Q. This truck, is that the truck that had the cherry

- 1 picker?
- 2 A. Yes.
- 3 Q. Were there any other vehicles there at the time?
- 4 A. Just the one that caught the chippers, a bigger
- 5 one way up over here by the other pole. That's 100-
- 6 some yards away.
- 7 Q. You mean the grinder?
- 8 A. The grinder, yeah. The chipper, a wood chipper.
- 9 Q. Was that a separate vehicle?
- 10 A. Yes, it was.
- 11 Q. So then what happened next?
- 12 A. That was it. I started hollering at him and I
- 13 was screaming at him. I said what in the hell did you
- 14 do to my trees? He wasn't answering. I took off, I
- 15 went back in the house.
- 16 Q. What did you do when you went back in?
- 17 A. I made a sandwich for my son, we sat down and
- 18 watched television, and I fell asleep.
- 19 Q. And eventually did you wake up?
- 20 A. Yeah. I don't know when, about two hours later.
- 21 I usually take a nap in the afternoon.
- 22 Q. And then what happened?
- 23 A. I came back outside and all my trees are gone.
- 24 Q. Now, when you say all the trees are gone ---?
- 25 A. All 19 of them.

- 1 Q. I'm going to show you two more photographs which
2 are Five and Six. What do those photographs show?
- 3 A. They're my trees that was taken down.
- 4 Q. When were those photographs taken; do you know?
- 5 A. About two weeks afterwards, three weeks
6 afterwards.
- 7 Q. All right. Is that the way they appeared at the
8 end of the day when these fellows that were there were
9 done?
- 10 A. Yes, it was.
- 11 Q. Now, how many trees were there there?
- 12 A. Nineteen (19).
- 13 Q. Can you describe what kind of tree they are?
- 14 A. White pine. I don't know.
- 15 Q. Were they on the property when you first bought
16 it in 1994?
- 17 A. Yes, it was.
- 18 Q. Can you describe how big they were?
- 19 A. Well anywhere --- like this one here
20 (indicating). I don't know, Your Honor, can you see
21 this here? This one here was like 24 inches.
- 22 JUDGE JANDEBEUR:
- 23 Okay.
- 24 A. There was three of them inside there that was
25 pretty big, but the rest of them were like seven and

1 eight inches.

2 BY ATTORNEY KLEMOW:

3 Q. Now, you're talking about the diameter in inches?

4 A. Diameter.

5 Q. In terms of how high they were, are you able to
6 give an estimate of that?

7 A. Well, as you could see, the other trees are the
8 same identical ones that was planted whenever they
9 were planted there. They were way up above the wires.
10 So I don't know, maybe 30, 40 feet. I couldn't
11 measure them, so I don't know.

12 Q. Now when you look at those photographs, behind
13 the stumps there is a second row of trees?

14 A. Yes.

15 Q. Describe the condition of those trees as you can
16 see them in the photographs?

17 A. Well, my wife and I used to walk in between
18 there, so they were all rotted out from not having no
19 sun from the outside ones facing the inside. Okay.
20 And that's the size of the trees that was taken down,
21 the same as these trees right there (indicating).
22 That's what was taken down.

23 Q. The second row of trees, would I be accurate in
24 describing them as not being very healthy looking?

25 A. Right. Very good.

1 Q. Now as a result of the front row of trees being
2 taken down --- strike that.

3 The front row of trees in comparison to the
4 health of the row that's left standing, how would you
5 compare them?

6 A. Like this (indicating).

7 Q. Now, you're showing us Exhibit Number Two and
8 you're referring to the evidence?

9 A. Yes.

10 Q. And obviously they are in --- I mean if you can
11 describe an evergreen as being in full bloom ---?

12 A. That's the phrase I would use.

13 Q. As a result now, those 19 trees coming down, what
14 has that done to the view of your property from both
15 sides, if you're standing on the road side or if
16 you're standing within your property?

17 A. If I'm standing on the inside where my pond is
18 looking out, it's beautiful. On the outside it's
19 ugly.

20 Q. What do you mean by it's ugly? What happened?

21 A. Would you buy property like this?

22 Q. No, that's not my question to you. And I realize
23 we don't have one photograph that shows what that view
24 is and so let me change this a little bit. And I'm
25 showing you Exhibit Six. If you're looking beyond

1 those trees ---?

2 A. I'm across the road.

3 Q. What is on that side?

4 A. On my side?

5 Q. Behind these trees right here?

6 A. That's my pond.

7 Q. Is that the one parcel that's eight, nine, ten
8 acres?

9 A. Yes, it is.

10 Q. And you have a pond back there?

11 A. Yes, it is.

12 Q. Now, the land that is beyond this, is it clear or
13 is it open?

14 A. That's clear. There's a peach tree right there,
15 three peaches.

16 Q. Now, if you're on the road now, looking where
17 these trees were, are you able to now see into your
18 property?

19 A. Yes.

20 Q. Were you able to see into your property before?

21 A. No.

22 Q. To the best of your knowledge, does anyone have a
23 right of way or an easement involving those trees?

24 A. No.

25 Q. Are those trees actually on your property?

1 A. Yes, they are.

2 Q. Did you ever give anyone permission to cut the
3 trees down?

4 A. No, I didn't. I never got no written statements,
5 no nothing at all whatsoever.

6 Q. Your goal here today, what are you asking the PUC
7 to do with regard to the trees that have been removed?

8 A. To remove the stumps and put new trees in there.

9 Q. After all this happened and you came out and you
10 saw that they were down, was anybody still there?

11 A. They were just cleaning up.

12 Q. Did you talk to anybody at that point?

13 A. No, I didn't.

14 Q. What did you do after all this happened?

15 A. I was shocked. At the top of the road they were
16 putting the last stumps --- not the stumps, the
17 clippings and everything that was on the side of the
18 road, they were throwing them into the chopper-up, the
19 chipper.

20 Q. Did you notice whether or not they were doing
21 similar clearing or removal along other properties on
22 Mill Road on that day?

23 A. Yes, they were.

24 Q. In which direction?

25 A. On the West side, the East side going down the

1 road.

2 Q. So you would be going from your trees, past your
3 house, and going further ---?

4 A. They were down near Larry's. They were down the
5 street, they came up.

6 Q. Then they came up your way?

7 A. They came up my way and that was it.

8 Q. If you continue to follow Mill Road from your
9 house, past these trees and continue out, where does
10 it take you to?

11 A. 309.

12 Q. And about far is 309 from your house?

13 A. About 50, maybe 25 yards.

14 Q. Is part of your property a corner on 309 and Mill
15 Road?

16 A. Yes, it is.

17 Q. After this was all done and all gone, did you
18 attempt to contact PPL?

19 A. Yes, I did. I followed up.

20 Q. How did you do it?

21 A. I had the telephone book. I looked up the phone
22 number and I called up somebody there. I don't know
23 who it was. I forgot even if I did it. They came off
24 and says I'll let them know about the 19 Mill Drive
25 and that was it.

1 Q. And nothing else happened. Eventually, what else
2 did you do after that?

3 A. I went and got one lawyer, he himmed and hawed
4 for a long while. I don't know how long it was. I
5 got sick and tired of him. I went over and got my
6 pictures and I went to another lawyer and they said
7 well give me \$7,000. I said you're kidding me.
8 Waited a while, I went to another lawyer and they said
9 \$6,000. I said oh, my God. So I went and seen a good
10 friend of mine and they referred me to Larry.

11 Q. Eventually you got to me; am I correct?

12 A. Yes.

13 Q. I know this is not relevant to here, but in the
14 middle of August did you also get estimates for what
15 it would cost you if you had to replace them, and I'm
16 not going to ask you what they were?

17 A. Yes.

18 Q. You also did that during the time that went by?

19 A. Yes.

20 Q. Eventually leading to this action that I
21 recommended to you that we file here before the PUC;
22 am I correct?

23 A. Yes.

24 Q. Is the condition of the property the same as
25 shown in those photographs?

1 A. Yes.

2 Q. Nothing has changed at all?

3 A. Nothing at all.

4 ATTORNEY KLEMOW:

5 That's all I have.

6 JUDGE JANDEBEUR:

7 Cross?

8 CROSS EXAMINATION

9 BY ATTORNEY RALSTON:

10 Q. Mr. Butala, the last time that we spoke I
11 mentioned to you that --- I had asked you whether you
12 would be surprised to learn that the PPL power lines
13 on your property had been in that location since 1944?

14 A. Yes.

15 Q. I believe your answer was you wouldn't be
16 surprised by that?

17 A. Right.

18 Q. When we last spoke you also told me that when you
19 went out the first time and there was a young man or a
20 young boy in a cherry picker, you told me that there
21 were eight to nine members of the Lebanon High School
22 wrestling team?

23 A. Right.

24 Q. That were doing the cutting?

25 A. Yes, sir.

1 Q. And you're still saying that?

2 A. Yes, I am.

3 Q. So they were in high school?

4 A. I guess, because they said they were in the
5 Lebanon wrestling match.

6 Q. So they would have been somewhere under the age
7 of 18 presumably?

8 A. I don't know.

9 Q. And it's your testimony that eight or nine high
10 school children that were members of the Lebanon
11 wrestling team cut down 19 of your trees without your
12 permission?

13 A. Yes.

14 Q. How long did that take?

15 A. I don't really know because I fell asleep.

16 Q. Can you estimate from start to finish? You said
17 that sometime during the episode, your son came home
18 from football practice; is that correct?

19 A. Yes.

20 Q. Where was your son a football player?

21 A. Tamaqua High School.

22 Q. Two years ago, your son was in high school?

23 A. Yes.

24 Q. Do you know what the people who cut your trees
25 did with the timber?

1 A. Yeah, they chipped it up.

2 Q. And all this, you can't tell, you can't give an
3 estimate to how long it took to take down 19 trees and
4 chip up 19 trees worth of wood? You can't give any
5 type of estimate on how long that took?

6 A. Well, when I went into the house, this started I
7 guess about 12:00 or something. I don't really know.
8 Then by time I came back out, about 2:30, they were
9 gone.

10 Q. So within a span of no more than three and a half
11 hours, you're saying that these high school wrestlers
12 chopped down and cut up and removed 19 full-grown pine
13 trees?

14 A. Yes, I am.

15 Q. How did you know that they were members of the
16 Lebanon wrestling team?

17 A. Because when my son was out there, he started
18 talking to them and that's when they disclosed that
19 they were wrestling for Lebanon High School.

20 Q. Do you know their names?

21 A. No.

22 Q. Mr. Butala, at this same time, were there high
23 school aged children camping on your property?

24 A. No way.

25 Q. In tents?

1 A. No. I won't let nobody come fishing.

2 Q. Did you say whether the children who cut down
3 your trees had any designation of whether they were
4 affiliated with any company?

5 A. No.

6 Q. So there was no markings on the trucks or
7 anything?

8 A. No.

9 Q. And you didn't ask anybody to cut your trees?

10 A. No, I never did.

11 Q. You didn't ask them to cut down your trees
12 because you didn't like the look of how it was when
13 they were cutting the tops of them?

14 A. No.

15 Q. Did you stand outside with the trimming tree crew
16 and talk to a Mr. Vought?

17 A. Who?

18 Q. Mr. Vought, the gentleman in the back. Did you
19 ever speak with him?

20 A. I don't remember.

21 Q. Have you ever spoken to either of these two
22 gentlemen before?

23 A. No.

24 Q. Do you have a dog, Mr. Butala?

25 A. Yes, I do.

1 Q. What kind of dog do you have?

2 A. Three of them, which one do you want?

3 Q. Do you have a cocker spaniel type dog, smaller
4 dog?

5 A. No.

6 Q. What kind of dogs do you have?

7 A. Border collies.

8 Q. How big are they?

9 A. One's a (indicating), we call him Hot Dog, and
10 the other ones are pretty big.

11 Q. Did you ever talk with Mr. Vought about one of
12 your dogs who was out with you when you were talking
13 to him?

14 A. Is he the gentleman coming up the street?

15 Q. He's the gentleman here in the yellow shirt.

16 A. Yes, I did. Yes, I did that.

17 Q. So you did talk to him?

18 A. Yes.

19 Q. You said before you didn't talk to him. On your
20 Direct Examination you said you never talked to this
21 man before?

22 A. No, I didn't say that.

23 ATTORNEY KLEMOW:

24 I'm not sure what you're saying. If you
25 originally couldn't identify him and then when you

1 said did you ever talk to Mr. Vought, then we find out
2 there are two Mr. Voughts, I think it was very unclear
3 as to who you ---?

4 ATTORNEY RALSTON:

5 No. It was very clear. He testified
6 after I said I didn't know his answer that he had
7 never seen these people before and that he had never
8 talked to them.

9 JUDGE JANDEBEUR:

10 He did not identify them is what I got
11 out of it.

12 BY ATTORNEY RALSTON:

13 Q. Correct. Now I'm saying you're now identifying
14 the fact that one of the people you talked to was, in
15 fact, the gentleman with the yellow shirt in the back
16 of the room?

17 A. Yes.

18 JUDGE JANDEBEUR:

19 Mr. Ralston, be careful. Both of them
20 have the lime green shirts on. So we're speaking
21 about Mr. Vought without a bandana?

22 ATTORNEY RALSTON:

23 Yes. An older gentleman.

24 JUDGE JANDEBEUR:

25 That was mean. Okay.

1 BY ATTORNEY RALSTON:

2 Q. So at some point, you talked with the older
3 Mr. Vought; is that correct?

4 A. Yes, I did.

5 Q. And did you have a conversation with him about
6 your dog?

7 A. Probably.

8 Q. Did your dog approach him and you said to him,
9 don't go near the dog because it had a tendency to be
10 unfriendly and then Mr. Vought bent down and talked
11 with the dog and petted it?

12 A. Border collies are very friendly. He's very,
13 very friendly.

14 Q. You had a conversation with Mr. Vought and your
15 dog was probably there?

16 A. Why about the dog? We were talking about the
17 trees.

18 Q. I'm trying to establish, Mr. Butala, that there
19 may be some things that you're not remembering.

20 A. I remember everything. Don't try to confuse me,
21 sir, please.

22 Q. I'm not trying to confuse you. I'm trying to get
23 ---.

24 JUDGE JANDEBEUR:

25 Back off, both of you. Don't get

1 antagonistic. Just ask the questions. And you, sir,
2 just answer the questions.

3 BY ATTORNEY RALSTON:

4 Q. You never had or you never asked the crew after
5 they cut down the trees to take the wood behind your
6 barn?

7 A. Why would I do that?

8 Q. I'm not sure, but you never asked that?

9 A. It's a barn.

10 Q. Do you have a barn, Mr. Butala?

11 A. Yes, I do, in fact.

12 Q. Mr. Butala, you mentioned in your Direct
13 Examination that you bought your property in 1994; is
14 that correct?

15 A. Yes.

16 Q. And that one and a half months before the tree
17 cutting, somebody came out and talked to you about the
18 fact that in the future they were going to be doing
19 tree work on your property?

20 A. Yes.

21 Q. If I get the course of events right, here's what
22 happened. You went out and you saw the young man in
23 the cherry picker, he said he wasn't going up there,
24 meaning to cut the tree at the top. You went back
25 inside, your son came home ---.

1 ATTORNEY KLEMOV:

2 I'm going to object. I'm not sure if
3 this is a question. If it's just a recitation of what
4 he would said, I would object to that being done.

5 JUDGE JANDEBEUR:

6 I think you started your question by
7 asking if this was correct?

8 ATTORNEY RALSTON:

9 Yes.

10 JUDGE JANDEBEUR:

11 He's all right so far. Overruled. Go
12 ahead.

13 BY ATTORNEY RALSTON:

14 Q. Your son came home from football practice, he
15 said you better come out here and see what they did.
16 They cut two of your trees down at that point; is that
17 correct?

18 A. Yes.

19 Q. You went back inside, made a sandwich for
20 yourself and perhaps your son, took a nap. When you
21 came out, the trees were all cut down?

22 A. Correct.

23 ATTORNEY RALSTON:

24 Nothing further, Your Honor.

25 JUDGE JANDEBEUR:

1 I have just a couple of questions. Do
2 you have Redirect?

3 REDIRECT EXAMINATION

4 BY ATTORNEY KLEMOW:

5 Q. Just one follow up when you were asked about
6 markings on the truck. At one time, Mr. Butala, did
7 you not have a name of who you thought ---?

8 A. It was Kocher, K-O-C-K, was on it.

9 Q. Where did you see that?

10 A. I wasn't looking for ---.

11 Q. Where was that name, did you see it on any
12 equipment?

13 A. Yeah. Beside the tractor, I think it was up on
14 Archery Club Road, where I found them.

15 Q. That's the name that you thought it was?

16 A. Yes.

17 ATTORNEY KLEMOW:

18 That's all I have.

19 JUDGE JANDEBEUR:

20 Which time did you see that truck, the
21 very first time that the person came and --- in summer
22 '04 a person came and said can I trim those trees over
23 there?

24 A. I didn't hear that. I have a hard hearing
25 problem.

1 JUDGE JANDEBEUR:

2 Okay. In summer of '04 you testified
3 that someone came and asked you can I trim those trees
4 over there, and you said yes?

5 A. Yes.

6 JUDGE JANDEBEUR:

7 That person didn't trim them on that
8 occasion, though?

9 A. No, ma'am.

10 JUDGE JANDEBEUR:

11 Is that the time that you saw the truck
12 with Kocher on it?

13 A. No.

14 JUDGE JANDEBEUR:

15 When did you see the truck with Kocher on
16 it?

17 A. After the trees were all cut down. I had to go
18 looking for them.

19 JUDGE JANDEBEUR:

20 Okay. And how did you know, how did you
21 determine it was the same truck that did the work on
22 your property?

23 A. They had the contract, ma'am.

24 JUDGE JANDEBEUR:

25 How do you know that?

1 A. A friend of mine, he came down Archery Club Road,
2 these people come down Archery Club Road and they was
3 cutting his trees down. And he asked them ---

4 ATTORNEY RALSTON:

5 I'll object.

6 A. --- and I said that's probably the same people
7 that cut my trees down.

8 JUDGE JANDEBEUR:

9 Did you ask anyone if they were the same
10 people that cut your trees down?

11 A. No, I didn't.

12 JUDGE JANDEBEUR:

13 Do you still have your objection?

14 ATTORNEY RALSTON:

15 No, Your Honor.

16 JUDGE JANDEBEUR:

17 Okay. Mr. Ralston asked you --- I think
18 Mr. Ralston asked you if someone came and told you
19 about a month or so before they cut all 19 trees down
20 that they were going to be doing tree trimming in the
21 area and I think you said yes; is that correct?

22 A. Yes.

23 JUDGE JANDEBEUR:

24 Tell me about that occasion. Who talked
25 to you and what did they say?

1 A. That Mr. Vought with the light green shirt on.

2 JUDGE JANDEBEUR:

3 And what did he say?

4 A. He was just walking up the street, ma'am. I came
5 walking up and I said hi, how are you doing? I'm a
6 very friendly person coming down our street and I
7 watch people who's coming around there. And he says
8 how are you doing. We were talking there the whole
9 while. And he says I'm coming down, I have a contract
10 with PPL and I'm going to be cutting trees or trimming
11 trees down that's going above the power lines. And I
12 said my god, yous have a good job there and he said
13 yeah. And that was it. He walked away.

14 JUDGE JANDEBEUR:

15 When did that occur?

16 A. Maybe a month, two months later before they were
17 coming to cut the trees down.

18 JUDGE JANDEBEUR:

19 You spoke with Mr. Vought a month to two
20 months prior to the 19 trees being cut down?

21 A. Yes, ma'am.

22 JUDGE JANDEBEUR:

23 And he told you he was gonna be coming
24 and doing tree trimming?

25 A. Yes.

1 JUDGE JANDEBEUR:

2 Is that the same occasion that Mr. Vought
3 and your dog interacted?

4 A. I guess. I don't remember that. I'm pretty sure
5 that I didn't leave the dog out at that time.

6 JUDGE JANDEBEUR:

7 Now, are we talking about --- you have a
8 border collie? You have one or two border collies?

9 A. Two border collies and a poodle.

10 JUDGE JANDEBEUR:

11 Well, a minute ago it was a hot dog dog.

12 A. Yeah.

13 JUDGE JANDEBEUR:

14 Now it's a poodle. They're not the same
15 kind of dog.

16 A. It was a mixture of a hot dog, a border collie
17 and a dalmatian.

18 JUDGE JANDEBEUR:

19 So you got two border collies and a mutt?

20 A. Yes.

21 JUDGE JANDEBEUR:

22 Who did Mr. Vought talk to, the border
23 collie or the mutt?

24 A. I guess the big one came out.

25 JUDGE JANDEBEUR:

1 The big one's a border?

2 A. Yeah, the big one's a border. Very docile.

3 JUDGE JANDEBEUR:

4 Have you ever measured from the stumps to
5 the wire?

6 A. No.

7 JUDGE JANDEBEUR:

8 So you don't have any idea what the
9 distance is from the PPL wire to the where the stumps
10 are?

11 A. No, ma'am.

12 JUDGE JANDEBEUR:

13 Did PPL ever do any topping off of your
14 trees to get it below the wires?

15 A. Not that I remember, no.

16 ATTORNEY KLEMOW:

17 I'm sorry. You mean before this ---

18 JUDGE JANDEBEUR:

19 Yes.

20 ATTORNEY KLEMOW:

21 --- 2004 at any time prior. Okay. I
22 wasn't sure.

23 A. I don't remember.

24 JUDGE JANDEBEUR:

25 The day that the 19 trees were cut down,

1 what color was that truck?

2 A. White.

3 JUDGE JANDEBEUR:

4 And no markings on it?

5 A. Not that I remember.

6 JUDGE JANDEBEUR:

7 And you talked to at least one of the
8 kids?

9 A. Yes, ma'am.

10 JUDGE JANDEBEUR:

11 Your son also spoke with that kid?

12 A. No. We were discussing it on the side of the
13 road and they were wrestling on the side and I said to
14 the kid that was in front of me, I says what are they
15 doing over there, they're going to hurt themselves on
16 my property. And he says they're just wrestling, they
17 wrestle for Lebanon High School. That's how I know
18 that.

19 JUDGE JANDEBEUR:

20 Okay. So there is a young man cutting
21 trees and there are other young men wrestling
22 adjacent?

23 A. Yes, ma'am.

24 JUDGE JANDEBEUR:

25 So now the folks cutting the trees are

1 not necessarily the Lebanon wrestling team. The
2 Lebanon wrestling team is adjacent.

3 A. I guess they were taking turns using the saws and
4 stuff. I don't know. Why would you have that many
5 people doing that kind of work?

6 JUDGE JANDEBEUR:

7 Were the kids that were wrestling
8 wrestling on your property?

9 A. Yes, on the other side of the road.

10 JUDGE JANDEBEUR:

11 And you didn't walk over to ask them hey,
12 what are you guys doing?

13 A. No, they're kids.

14 JUDGE JANDEBEUR:

15 Did they have lime green shirts on like
16 Mr. Vought?

17 A. No, ma'am.

18 JUDGE JANDEBEUR:

19 Did the individual --- did the young man
20 that you spoke with have a lime green shirt on?

21 A. No.

22 JUDGE JANDEBEUR:

23 What did he have on?

24 A. I think a sweatshirt. I'm not sure.

25 JUDGE JANDEBEUR:

1 So he didn't look like he was in any sort
2 of company uniform?

3 A. No way.

4 JUDGE JANDEBEUR:

5 Did the other kids, the ones that were
6 wrestling?

7 A. No. Nobody.

8 JUDGE JANDEBEUR:

9 You made one telephone call to PPL; is
10 that correct?

11 A. Yes.

12 JUDGE JANDEBEUR:

13 And you didn't get anywhere with that
14 call?

15 A. No, ma'am. Nowhere at all.

16 JUDGE JANDEBEUR:

17 Okay. Did that drum anything else up for
18 either of you?

19 REDIRECT EXAMINATION

20 BY ATTORNEY KLEMOW:

21 Q. Besides the young man you say you spoke to who
22 was in the cherry picker, the other young men that
23 were there, were they doing any of the work involving
24 the cutting or the trimming of these trees? Did you
25 ever see them doing anything?

1 A. They were taking the trees. When I woke up the
2 last tree was getting put into the cutter, the
3 chipper.

4 Q. What was your impression of these other young men
5 who were there? Was it your impression that they were
6 with whoever was cutting down the trees?

7 A. Yes. Yes, sir.

8 Q. I'm sorry, is it Vought?

9 A. Yes.

10 Q. The Mr. Vought that you have a recollection of,
11 do you recall if he was there on the day that they cut
12 down the trees? Do you recall seeing him there at the
13 property?

14 A. I don't remember. I really don't remember.

15 ATTORNEY KLEMOW:

16 That's all.

17 JUDGE JANDEBEUR:

18 Mr. Ralston, anything?

19 ATTORNEY RALSTON:

20 Nothing at this point.

21 JUDGE JANDEBEUR:

22 Thank you very much, sir. You can step
23 down. You can leave those right there.

24 ATTORNEY KLEMOW:

25 I'm just going to call Mrs. Butala just

1 for a couple of questions.

2 JUDGE JANDEBEUR:

3 Okay.

4 -----

5 JOAN A. BUTALA, HAVING FIRST BEEN DULY SWORN,

6 TESTIFIED AS FOLLOWS:

7 -----

8 JUDGE JANDEBEUR:

9 Mr. Klemow?

10 DIRECT EXAMINATION

11 BY ATTORNEY KLEMOW:

12 Q. Mrs. Butala, what is your full name?

13 A. It's Joan A. Butala.

14 Q. And you are married to Eugene Butala?

15 A. Yes.

16 Q. What's the date of your marriage?

17 A. Sometimes I forget. It's like November 18, 1984.

18 Q. Before the property you purchased?

19 A. Yeah.

20 Q. Is it true that this property was purchased by
21 the two of you on August 19th, 1994?

22 A. Yes.

23 Q. And in 2004, was that how the ownership of the
24 property remained?

25 A. Yes.

1 Q. Did anyone ever come to you and ask you if they
2 could cut down any of the trees on this property?

3 A. No.

4 Q. Were you there, by the way, on the day this
5 happened? do you have any personal knowledge of what
6 happened?

7 A. No. When I came home from work, the trees were
8 gone. I came in, he was all upset and everything. I
9 said why didn't you call the police? And he said what
10 would the police do. He says I'm going to get a
11 lawyer. He said I'm gonna call the Utility Commission
12 and if I don't get anywhere, I'm getting a lawyer.
13 And that's that.

14 ATTORNEY KLEMOW:

15 That's all I have for Mrs. Butala.

16 JUDGE JANEBEUR:

17 Anything? Did he, in fact, call the
18 Utility Commission? I got the impression that he
19 called PPL.

20 A. PPL, I'm sorry. It was PPL and then I don't know
21 if he ever did --- it wasn't right away, if he called
22 the Commission, but I know he called PPL.

23 JUDGE JANDEBEUR:

24 Thank you, ma'am. You can step down.

25 ATTORNEY KLEMOW:

1 At this point I would move for the
2 admission of Exhibits One through Six.

3 JUDGE JANDEBEUR:

4 Any objections?

5 ATTORNEY RALSTON:

6 One is no objection. Were the rest of
7 them photos?

8 JUDGE JANDEBEUR:

9 Yes.

10 ATTORNEY RALSTON:

11 No objection to any photographs.

12 JUDGE JANDEBEUR:

13 So admitted.

14 ATTORNEY KLEMOW:

15 Technically we don't have direct evidence
16 saying that it's PPL or Kocher. Certainly their
17 Answer admits that, but I don't want that to be an
18 issue at this point, because I don't want to rest if
19 that is an issue. If it's an issue, then obviously I
20 would call either Kocher or just simply read into the
21 record their answers in which they admitted that they
22 did this. We never really knew who was involved until
23 a letter was sent.

24 ATTORNEY RALSTON:

25 I'm going to object to this as being

1 testimony.

2 ATTORNEY KLEMOW:

3 Well, I'm just saying if that's going to
4 be an issue, somebody saying to me well that's still
5 an issue, then I'll deal with it.

6 ATTORNEY RALSTON:

7 That's not an issue.

8 JUDGE JANDEBEUR:

9 Well, you'd have to do it in,
10 surrebuttal. At this point, he's correct. You appear
11 to be testifying.

12 ATTORNEY KLEMOW:

13 Well, what I'm saying is I'm prepared to
14 rest, but if somebody's saying well you haven't
15 actually proved that PPL did this or are
16 responsible ---.

17 JUDGE JANDEBEUR:

18 You're telling me it's in their Answer?

19 ATTORNEY KLEMOW:

20 It is in their Answer.

21 JUDGE JANDEBEUR:

22 Well, then it shouldn't be an issue.

23 ATTORNEY RALSTON:

24 It's not going to be an issue.

25 JUDGE JANDEBEUR:

1 It's not going to be an issue.

2 ATTORNEY KLEMOW:

3 All right. Well, then I would rest.

4 JUDGE JANDEBEUR:

5 Very good. Thank you.

6 ATTORNEY RALSTON:

7 I call my first witness, Gary Owens.

8 JUDGE JANDEBEUR:

9 I was going to ask first did anyone need
10 a break or should we just continue right on through?

11 Okay. Then Mr. Owens. If you'd raise
12 your right hand?

13 -----
14 GARY J. OWENS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
15 AS FOLLOWS:

16 -----
17 DIRECT EXAMINATION

18 BY ATTORNEY RALSTON:

19 Q. Can you state your name for the record please?

20 A. Gary J. Owens.

21 Q. Who are you employed by?

22 A. PPL Electric Utilities.

23 Q. What is your position?

24 A. My title is forester.

25 Q. What are your responsibilities?

1 A. I manage the vegetation along the distribution
2 and transmission system over a certain designated
3 area.

4 Q. What's your designated area?

5 A. Approximately seven counties in Pennsylvania.

6 Q. Does your designated area include the property of
7 Mr. Butala?

8 A. Yes, it does.

9 Q. How long have you been in your position with PPL?

10 A. Thirty-five (35) years.

11 Q. Does PPL do its own tree cutting or does it
12 contract that work out?

13 A. The maintenance tree trimming is all contracted
14 out.

15 Q. To whom?

16 A. To various companies.

17 Q. In this case, who was it contracted out to?

18 A. Jaflo, Incorporated.

19 JUDGE JANDEBEUR:

20 How do you spell that?

21 A. J-A-F-L-O.

22 BY ATTORNEY RALSTON:

23 Q. Are there PPL power lines running --- what I'm
24 going to do is I'm going to show you --- I only have
25 one of these, but I just wanted to --- I think it may

1 help context-wise, seeing what we are here. This is a
2 map of the circuit which includes Mr. Butala's
3 property, the electrical circuit.

4 A. Okay.

5 ATTORNEY RALSTON:

6 And we'll mark this P-1 or how does it
7 work?

8 JUDGE JANDEBEUR:

9 No. You're just try and submit that so
10 that I and the Commissioners can use it, but you only
11 have one copy?

12 ATTORNEY RALSTON:

13 Yeah, I only have one copy. I can
14 supplement with additional copies if you'd like.

15 JUDGE JANDEBEUR:

16 Well, you need to because the
17 Commissioners do not always agree with me, in which
18 case they need their own copies. So yes, 'cause I'm
19 going to keep one to right my decision, but an
20 additional copy needs to go to the Commissioners.

21 ATTORNEY RALSTON:

22 By the end of the week, if I send in
23 three additional copies will that be ---?

24 JUDGE JANDEBEUR:

25 That will work just fine. So yes, we'll

1 mark it R-1, Respondent's One.

2 (Respondent's Exhibit One
3 marked for identification.)

4 BY ATTORNEY RALSTON:

5 Q. Mr. Owens, can you explain what this document is?

6 A. This is a primary operating map of the PPL
7 Electric Utility distribution system of Mr. Butala.

8 Q. Can you point out where Mr. Butala's property
9 would be on this map?

10 JUDGE JANEBEUR:

11 Going to have him mark it?

12 BY ATTORNEY RALSTON:

13 Q. Yes. Just mark it with a red mark where the
14 Butalas' property is located. Just make it a red X,
15 the general vicinity. Are there PPL power lines that
16 run along Mill Road which bisects Mr. Butala's
17 property?

18 A. That's correct.

19 Q. Do you know how long those PPL power lines have
20 been in that location?

21 A. Our records show since 1944.

22 Q. So the lines have been in continual operation and
23 existence since 1944?

24 A. That's right.

25 Q. And I believe you heard Mr. Butala testify that

1 he bought his property in 1994, 50 years later; is
2 that correct?

3 A. That's correct.

4 Q. Does PPL have a tree trimming schedule that it
5 operates around?

6 A. Yes, they do.

7 Q. Can you describe that briefly for Her Honor?

8 A. We rate our distribution circuits either urban or
9 rural. The rural circuits, which this one is, is
10 assessed every six years. Presently the system works
11 every six years. We go out and assess the conditions
12 of the lines, tree conditions. And if tree conditions
13 have affected the reliability of the line, then we
14 submit it to the budget and they trim the next year.

15 Q. When you have power lines that are coming into
16 contact with trees, and the power lines have been
17 there since 1944, what is your understanding about
18 what you're able to do to protect your power lines?

19 A. We contact the people, the customers to trim and
20 take the limbs away from coming in contact with the
21 lines.

22 Q. So you have a right to trim the trees away from
23 the power lines; is that correct?

24 A. That's correct.

25 Q. In 2004, were the trees that are at issue here

1 part of PPL's tree trimming circuit for that
2 particular period of time?

3 A. Yes.

4 Q. Do you know whether Jaflo subcontracted the tree
5 trimming work for this particular area to another
6 company?

7 A. Yes, they did.

8 Q. Who was that?

9 A. Kocher Tree Services.

10 Q. Is Kocher an approved tree trimming subcontractor
11 for PPL?

12 A. Yes.

13 Q. How long has been Kocher been doing work for PPL?

14 A. I really do not know.

15 Q. Have they done work for PPL in the past?

16 A. Yes.

17 Q. Did you hear Mr. Butala's version of the events
18 related to this matter?

19 A. Yes.

20 Q. And did you specifically hear him testify that
21 eight or nine high school age cut down his trees?

22 A. Yes.

23 Q. Does PPL employ, contract, or authorize high
24 school age children to do tree trimming work?

25 A. I do not answer that.

1 Q. In your opinion and only in your opinion, do you
2 think it's possible for eight or nine high school aged
3 children to have the skills necessary to cut down and
4 remove full trees in a three-hour period of time.

5 ATTORNEY KLEMOW:

6 Objection. This requires expert
7 testimony.

8 ATTORNEY RALSTON:

9 He's a lay expert.

10 JUDGE JANDEBEUR:

11 Let him get it out first.

12 ATTORNEY KLEMOW:

13 This is total speculation for what eight
14 or nine 18 year olds can do or not do. I think he
15 would have to establish his expertise in this area.
16 If he has some knowledge of what a typical 18 or 19 is
17 physically capable of doing. All it is is
18 speculating. He wasn't even there that day.

19 JUDGE JANDEBEUR:

20 Sustained. Different question.

21 BY ATTORNEY RALSTON:

22 Q. Did Kocher submit paperwork through Jaflo to PPL
23 regarding the work they performed on Mr. Butala's
24 property?

25 A. Yes, he did.

1 Q. I'm going to show you ---.

2 ATTORNEY KLEMOW:

3 Is this my copy?

4 ATTORNEY RALSTON:

5 Yeah, you can have that copy. And I
6 marked this one on the back because there's no real
7 good place to put ---.

8 JUDGE JANDEBEUR:

9 Okay. What did you mark it?

10 ATTORNEY RALSTON:

11 It was marked as Exhibit E. I guess it
12 will now be marked ---.

13 JUDGE JANDEBEUR:

14 Can we make it R-2?

15 (Respondent's Exhibit Two
16 marked for identification.)

17 ATTORNEY RALSTON:

18 R-2.

19 BY ATTORNEY RALSTON:

20 Q. Is this the paperwork that Kocher submitted to
21 Jaflo and then was passed on to you for the work that
22 was performed on Mr. Butala's property?

23 A. That's correct.

24 Q. When does it indicate that that work was done?

25 JUDGE JANDEBEUR:

1 Mr. Ralston, do you have one of those for
2 me? I have reviewed what's pre-submitted. Do you
3 have an extra copy?

4 ATTORNEY RALSTON:

5 I don't, Your Honor, have an extra copy.
6 I will make one more of that, too. I'm terribly sorry
7 for being unprepared in that respect.

8 BY ATTORNEY RALSTON:

9 Q. Do you know what date it was?

10 A. July 26th, 2004.

11 Q. And I'm going to ask --- at this point I don't
12 need it and I'll give it to you. So on July 26th,
13 2004, the document indicates that Kocher did tree
14 trimming work along Mill Road on Butala's property?

15 A. That's correct.

16 Q. When you looked at the document did you see
17 whether it mentioned any names at the top as people
18 who were doing that work on that day?

19 A. Yes.

20 Q. And the first person that you see, who is that?

21 A. Eugene Vought.

22 ATTORNEY KLEMOW:

23 Your Honor, I'm going to object to what
24 he's doing to this witness. This witness did not
25 prepare this document. There has been testimony that

1 this document was prepared in the normal course of
2 somebody's business of what it is. It clearly, I'm
3 getting the impression, was prepared by someone else.

4 He gives an answer to the last two
5 questions, there's no way in the world I can tell by
6 looking at this that he knows that answer. And unless
7 he's prepared it, I don't think he's the one who
8 should be answering the questions.

9 JUDGE JANDEBEUR:

10 You can remedy that, but you need to do
11 the groundwork for it. So this is the supervisor of
12 the unit is my understanding.

13 ATTORNEY RALSTON:

14 Correct.

15 JUDGE JANDEBEUR:

16 So you're safe getting it in through him,
17 but you got to do the groundwork that Mr. Klemow
18 mentioned.

19 ATTORNEY RALSTON:

20 I understand. And to that extent,
21 perhaps I'll reserve these questions and, if
22 necessary, call him back after we've laid a foundation
23 through other witnesses for the paperwork.

24 JUDGE JANDEBEUR:

25 So now is your objection to strike what's

1 gone before with regard to R-2?

2 ATTORNEY KLEMOW:

3 Yes, Your Honor. At this point it would
4 be.

5 JUDGE JANDEBEUR:

6 That's fine. And you would rather, Mr.
7 Ralston, go ahead and strike and then bring it in
8 through someone else?

9 ATTORNEY RALSTON:

10 Yeah, that's fine. I'll bring it in
11 through somebody's testimony.

12 JUDGE JANDEBEUR:

13 So stricken.

14 BY ATTORNEY RALSTON:

15 Q. Did the Bureau of Consumer Services, BCS, did
16 they make a determination in this case that you're
17 aware of?

18 A. Yes.

19 Q. This was in my pre-submitted exhibits, Exhibit C.
20 I guess it will now be R-3?

21 JUDGE JANDEBEUR:

22 R-3.

23 (Respondent's Exhibit Three
24 marked for identification.)

25 ATTORNEY RALSTON:

1 Do you have those?

2 ATTORNEY KLEMOW:

3 No.

4 ATTORNEY RALSTON:

5 I have another copy right here if you
6 need it.

7 BY ATTORNEY RALSTON:

8 Q. Is what I've shown you the BCS Decision in this
9 case?

10 A. Do you know whether or not the BCS made a
11 determination that Mr. Butala's complaint was
12 justified?

13 ATTORNEY KLEMOW:

14 Objection. I don't think it's relevant
15 as to what somebody else may have determined. He
16 hasn't laid a foundation for what this is. I don't
17 know who BCS is, what their role is in this.

18 ATTORNEY RALSTON:

19 I believe Her Honor will.

20 ATTORNEY KLEMOW:

21 Well maybe you do, but I don't. But I
22 just don't think he's laid any foundation for what
23 he's talking about.

24 JUDGE JANDEBEUR:

25 Typically, Mr. Klemow, we do accept BCS.

1 I also take judicial notice when people don't have
2 copies. Bureau of Consumer Services is the first line
3 of offense for a consumer to call the Utility
4 Commission and say look, I have a problem with my
5 utility. It's basically an informal complaint
6 process, whereas what we're doing today is a formal
7 complaint process.

8 So we can do one of two things. I can
9 make Mr. Ralston do the groundwork or can simply take
10 judicial notice. Or there's a third option, you can
11 understand that this is a BCS Decision and I will take
12 judicial notice of it, if necessary. Or we can just
13 make Mr. Ralston do his groundwork, but I don't think
14 it's necessary. It is the first line of offense for a
15 utility customer to complain.

16 ATTORNEY KLEMOW:

17 This is from PPL.

18 JUDGE JANDEBEUR:

19 No. This is from Public Utility
20 Commission. It is the Bureau of Consumer Services and
21 as I said, it's the first line of offense for someone
22 like Mr. or Mrs. Butala to call and say PPL is
23 mistreating us, this is what they're doing, this is
24 wrong. And BCS investigators investigate it, they
25 render an informal decision. If you wish to appeal

1 it, you appeal it to me. Formal process; okay?

2 ATTORNEY RALSTON:

3 I'm sorry if I was presumptuous about
4 that, Your Honor.

5 JUDGE JANDEBEUR:

6 That's fine.

7 ATTORNEY RALSTON:

8 I'm not sure whether he answered or not.

9 JUDGE JANDEBEUR:

10 Well, I'm going to take judicial notice
11 of it. I see no reason to make you keep us here so
12 you can make sure we know you learned your lesson in
13 law school. So it's really up to you. Do you not
14 know what it is?

15 ATTORNEY KLEMOW:

16 I understand that. When I read it, it
17 sounded to me like exactly what had happened here, but
18 it doesn't identify it and it does relate how this got
19 started and what happened.

20 JUDGE JANDEBEUR:

21 Okay. So we'll continue with it.

22 ATTORNEY KLEMOW:

23 Your Honor, actually to be honest with
24 you, it's something that I've always wondered myself,
25 why at the top of them they don't at least put Public

1 Utility Commission or something like that. But I
2 guess that's neither here nor there. I guess it does
3 say on the bottom PUC mediations.

4 JUDGE JANDEBEUR:

5 I think probably another answer is
6 outsiders may not have access to the BCS actual
7 database, whereas I do.

8 ATTORNEY KLEMOW:

9 I understand.

10 JUDGE JANDEBEUR:

11 So if Mr. Ralston, for example, wanted me
12 to just take judicial notice of a BCS decision and
13 said I'd like you to do that, I would go back and
14 print it out and make it part of the file. And it
15 looks significantly different than this, but they have
16 the same information. It's just a different format.

17 BY ATTORNEY RALSTON:

18 Q. Mr. Owens, on page one, two, three, four of ---
19 on page four of the BCS Decision in the last box where
20 the words no analysis items found, does it indicate
21 whether the BCS made a decision about whether
22 Mr. Butala's complaint was justified?

23 A. Yes, they made a decision.

24 Q. And what was the decision?

25 A. No.

1 ATTORNEY RALSTON:

2 Nothing further at this point from this
3 witness, Your Honor.

4 JUDGE JANDEBEUR:

5 Mr. Klemow?

6 CROSS EXAMINATION

7 BY ATTORNEY KLEMOW:

8 Q. Mr. Owens, when you hire people to do your tree
9 trimming like Jaflo, do you have any kind of
10 procedural requirements, policy manuals, anything that
11 would advise the subcontractor what they are supposed
12 to do when carrying out this function on your behalf?

13 A. That's really up to the procurement department,
14 the people that set up the contract. They would know
15 that.

16 Q. You're not aware then of anything other than the
17 fact that Jaflo was used as a subcontractor?

18 ATTORNEY RALSTON:

19 Objection, Your Honor. Jaflo isn't
20 subcontractor.

21 ATTORNEY KLEMOW:

22 Well, it's the sub of ---.

23 ATTORNEY RALSTON:

24 And then sub it to Kocher.

25 JUDGE JANDEBEUR:

1 So Jaflo is not the subcontractor? The
2 subcontractor is Kocher?

3 ATTORNEY RALSTON:

4 Correct.

5 JUDGE JANDEBEUR:

6 The contractor is Jaflo?

7 A. Jaflo, yeah. I guess.

8 ATTORNEY RALSTON:

9 Yes.

10 JUDGE JANDEBEUR:

11 Continue.

12 BY ATTORNEY KLEMOW:

13 Q. So is that all you know about the process of
14 picking somebody to trim the trees?

15 A. The procurement department and asset management,
16 they are the department. I am in field services.
17 They are the departments that qualify contractors,
18 keep a qualified list of contractors, and they're the
19 ones that award the bids.

20 Q. Am I correct in stating then that your really
21 only knowledge or involvement in this case is to
22 identify Exhibit One, basically identified where your
23 power lines or the history of the power lines in the
24 area. You're not directly involved in what happened?

25 A. Your question to me was about contracts.

1 Q. Yeah.

2 A. And I answered that.

3 Q. Well, do you have any knowledge of this
4 particular case personally?

5 A. Yes.

6 Q. In what way? Where did you get the knowledge
7 from?

8 A. When you sent me the complaint. That was my
9 initial knowledge.

10 Q. And why was that brought to your attention?

11 A. I'm the one that has to do the field
12 investigation for our people to fill this out, to
13 submit it back to the State.

14 Q. To the PUC?

15 A. That's correct.

16 Q. Did you submit anything to the PUC?

17 A. Yes. I filled the field investigation notes on
18 this.

19 Q. Are the field investigation notes a part of this
20 Exhibit Three that I'm looking at?

21 A. I have Exhibit C.

22 ATTORNEY RALSTON:

23 Now it's Three.

24 BY ATTORNEY KLEMOW:

25 Q. Are they the field investigation notes?

1 A. Part of these, yes.

2 Q. Well, this is my only notes of the process,
3 obviously. The language that is in there in various
4 pages, point me to the language that is your language?

5 ATTORNEY RALSTON:

6 I'm not sure if I'm understanding the
7 relevance of this line of questioning. I need to call
8 someone to lay a foundation about PPL's power lines in
9 the area and that's what he's being called for. I'm
10 not sure, maybe I'll object on this being beyond the
11 scope of Cross Examination (sic).

12 JUDGE JANDEBEUR:

13 Beyond the scope of Direct?

14 ATTORNEY RALSTON:

15 I'm sorry, beyond the scope of Direct
16 Examination.

17 JUDGE JANDEBEUR:

18 Okay. I think it is a fair question,
19 though. Just hold on a second. You are bringing in
20 R-3 through Mr. Owens. It's a fair question to see if
21 anything that Mr. Owens did appears on this document.
22 Overruled. Continue.

23 ATTORNEY RALSTON:

24 Okay.

25 A. My --- where it says informal final report,

1 details of company ---.

2 BY ATTORNEY KLEMOW:

3 Q. I'm sorry, which page are you on?

4 A. On the third page.

5 Q. Okay.

6 A. August 2nd, 2005 I started typing there.

7 Q. So am I correct that all you have related or all
8 you did was the fact that I had sent a letter to PPL,
9 you discussed some of things in my letter, you
10 indicate that someone was a subcontractor of Jaflo,
11 eventually identified as Kocher, and that Kocher then
12 wrote me a letter stating their position. Is that the
13 extent of your involvement?

14 A. Then the next company's final position to BCS?

15 Q. So it says customer gave permission to cut down
16 trees, customer helped in removing the logs, customer
17 satisfied with work that was complete?

18 A. That is correct.

19 Q. That's based upon the letter that Kocher wrote;
20 am I correct? You have no personal knowledge of any
21 of those statements?

22 A. I'm the one that has to provide this information
23 and I received this information by talking to Kocher.

24 Q. When I say you have no personal knowledge, am I
25 correct you weren't at this job site at any time when

- 1 it was being performed?
- 2 A. Post or pre?
- 3 Q. Either one?
- 4 A. Post.
- 5 Q. When would that have been?
- 6 A. When this came out, when the informal complaint
7 came out.
- 8 Q. And that came out, I don't know, talking about
9 this year, April the 17th, '06?
- 10 A. It's date stamped here where I started selling it
11 out as August 2nd, 2005.
- 12 Q. So when you wrote in there customer gave
13 permission to cut down trees, customer helped in
14 removing the logs, and customer was satisfied with the
15 work that was complete, that comes from Kocher;
16 correct?
- 17 A. That is correct.
- 18 Q. Not from you at all? You never went out and
19 interviewed any witnesses?
- 20 A. I interviewed Kocher.
- 21 Q. That's all?
- 22 A. That's correct.
- 23 Q. You never went to see the Butalas?
- 24 A. They're asking for our side of the story.
- 25 Q. What you described that you did was an

1 investigation? That was the word that I think was
2 used.

3 JUDGE JANEDBEUR:

4 Is there a question in there?

5 BY ATTORNEY KLEMOW:

6 Q. Did you do anything else other than relate what
7 was in the Kocher letter?

8 A. And a field visit to the particular place.

9 Q. So you saw what was left after the fact; correct?

10 A. That's correct.

11 Q. You said you weren't that day when the work was
12 done?

13 A. No, I was not.

14 Q. Now, where it says analysis information justified
15 note, who writes the note?

16 JUDGE JANDEBEUR:

17 BCS writes the note.

18 ATTORNEY KLEMOW:

19 And that's something from PUC?

20 JUDGE JANDEBEUR:

21 Correct.

22 ATTORNEY KLEMOW:

23 That's all I have.

24 JUDGE JANDEBEUR:

25 Let me understand the PPL process

1 correctly. Did you have any Redirect?

2 ATTORNEY RALSTON:

3 Not at this point. Maybe after you're
4 done.

5 JUDGE JANDEBEUR:

6 You're the forester and you've been the
7 forester for 35 years?

8 A. That's correct.

9 JUDGE JANDEBEUR:

10 In seven counties?

11 A. Previous, before 1983, I covered a larger area.
12 I was a forester in a different department.

13 JUDGE JANDEBEUR:

14 A forester makes an assessment every six
15 years in the rural communities?

16 A. That's correct.

17 JUDGE JANDEBEUR:

18 You made an assessment in '03 that Mill
19 Road needed to be addressed?

20 A. I or one of my staff.

21 JUDGE JANDEBEUR:

22 In '03 would be correct?

23 A. That's correct.

24 JUDGE JANDEBEUR:

25 Then you send a report to someone that

1 you need the money to contract out tree trimming on
2 Mill Road in '04?

3 A. The whole circuit, and Mill Road is included in
4 that.

5 JUDGE JANDEBEUR:

6 I understand. So you did that?

7 A. That's correct.

8 JUDGE JANDEBEUR:

9 And then you get the okay for the
10 financing?

11 A. Yes.

12 JUDGE JANDEBEUR:

13 What do you send to your procurement or
14 asset management folks that lets them know you need a
15 contract to accomplish this?

16 A. We have a priority listing that says --- it's a
17 method of prioritizing all the circuits that have come
18 up for that six years. We're possibly doing 1,400
19 miles next year. Under those circuits that we submit
20 to asset management, they look at several factors.
21 Reliability is probably the highest.

22 JUDGE JANDEBEUR:

23 And that's a priority listing that you
24 give them saying these trees on this road are worse
25 than those trees on that road, get this contract

1 first; is that correct?

2 A. We're comparing circuit against circuit.

3 JUDGE JANDEBEUR:

4 Okay.

5 A. You try to get all the elements involved that
6 you're comparing apples and apples and oranges and
7 oranges. Some of the things that we look at in the
8 ratings are weighted higher, reliability is number
9 one, and a lot of the things are on per hundred miles
10 of line and how many outages, how many --- do the
11 trees off right away or on right away.

12 And asset management then, next year it's 1,400
13 miles, they will give us back 1,400 miles --- the okay
14 to do 1,400 miles of tree trimming along a certain
15 circuit number.

16 JUDGE JANDEBEUR:

17 What criteria does PPL require of its
18 contractors for tree trimming?

19 A. There are many things, many criteria that
20 procurement and asset management go over with them.
21 There's OSHA, there's a CDL drivers license. OSHA
22 training has to be required to be working within so
23 many feet of the wires.

24 Their whole safety program is looked at by our
25 safety department. There's a whole checklist of

1 things that they have to be required --- to be on our
2 qualified contractors list.

3 JUDGE JANDEBEUR:

4 What qualifications are part of the
5 criteria that have to do with forestry, tree
6 management?

7 A. We require them to trim to a certain way of
8 trimming and they have to demonstrate that they know
9 how to trim the tree in a proper way. If they're
10 using herbicides, they have to have a Pennsylvania
11 Department of Agriculture license to use their
12 herbicides in a safe way.

13 JUDGE JANDEBEUR:

14 Is that anything that you're involved in
15 at all?

16 A. Qualifying them?

17 JUDGE JANDEBEUR:

18 Yes. Assessing whether or not a
19 potential contractor meets the criteria, is that
20 anything that the PPL forester is involved in?

21 A. No. There's an assistant forester that does
22 that. He's in asset management and he works with
23 procurement to qualify the contractor.

24 JUDGE JANDEBEUR:

25 But he is a forester?

1 A. That's correct.

2 JUDGE JANDEBEUR:

3 So there is actually a forester working
4 on the qualifications criteria, whether a particular
5 contractor needs it; it simply isn't you?

6 A. That's correct.

7 JUDGE JANDEBEUR:

8 What is the connection between an awarded
9 contract and a subcontracting out of that awarded
10 contract? What's PPL's --- well, answer that first
11 question.

12 A. The subcontractors have that same insurance
13 coverage as the primary contractor. And he has to
14 have all --- meet the criteria for everything that's
15 in the contract that's said about the tree trimming
16 and the CDL and the pesticide spraying.

17 JUDGE JANDEBEUR:

18 Does PPL actually give an okay for a
19 subcontracting out of one of its contracts, or is it
20 just presumed that they know --- I assume that the
21 original contract says if you subcontract you've got
22 to meet all of these criteria that you met?

23 A. That's correct.

24 JUDGE JANDEBEUR:

25 Do you ever actually look at a

1 subcontracted out contract?

2 A. A contract or contractor?

3 JUDGE JANDEBEUR:

4 The subcontractor is what I'm interested
5 in. Does PPL ever check those subcontracted contracts
6 to make sure that it meets the original qualifications
7 of the contractor? These are difficult questions.
8 I'm sorry they're so squirrely.

9 A. As far as I know, there is no subcontractor
10 contract.

11 JUDGE JANDEBEUR:

12 But do you ever look at that
13 subcontractor to make sure he met all the requirements
14 of the person you originally contracted with?

15 A. We spy check that. The system forester, he's
16 really the man in charge of it, the procurement of if
17 there's a subcontractor involved. My main concern is
18 that they have an insurance certificate, that they're
19 covered.

20 JUDGE JANDEBEUR:

21 Any additional Direct?

22 ATTORNEY RALSTON:

23 No.

24 JUDGE JANDEBEUR:

25 Did that drum anything for you?

1 ATTORNEY KLEMOW:

2 Yeah.

3 CROSS EXAMINATION

4 BY ATTORNEY KLEMOW:

5 Q. You said that there is --- and I don't remember
6 how you described them, but I guess the chief forester
7 in your office, he sets the criteria for trimming and
8 cutting? I don't remember how you referred to him,
9 but you said it was not you, but it was the something
10 forester?

11 A. Assistant forester.

12 Q. Is that who you work for?

13 A. No, I do not.

14 Q. Is that a completely different department?

15 A. That's correct.

16 Q. Did you ever work in that department?

17 A. No, I did not.

18 Q. Are you familiar with any of the criteria that
19 they use for training the contractors that are going
20 to cut or trim trees?

21 A. You would have to ask the assistant forester or
22 procurement.

23 Q. But are you familiar with any of them? Have you
24 seen them, do you have any knowledge of them?

25 A. I've seen some of the training manuals.

1 Q. And this training manual is a PPL training
2 manual?

3 A. No, it is not. It's a contractor's.

4 ATTORNEY RALSTON:

5 Your Honor, I'm going to object to this
6 entire line of questioning. It's completely
7 irrelevant. We've got two witnesses who are going to
8 testify that they had authority to do it from the
9 property owner. What does it matter? What do
10 training manuals and who approves subcontractors ---?

11 JUDGE JANDEBEUR:

12 So the objection is relevance?

13 ATTORNEY RALSTON:

14 Relevance.

15 JUDGE JANDEBEUR:

16 And we're in an administrative hearing
17 and it's broad. Overruled.

18 ATTORNEY RALSTON:

19 Okay.

20 JUDGE JANDEBEUR:

21 Go ahead.

22 BY ATTORNEY KLEMOW:

23 Q. So whose manuals are they?

24 A. The contractors.

25 Q. PPL, as far as you know, sets no standards for

1 the people who are going to go out and trim or cut
2 trees near their power lines, as to how they do that?

3 A. They have a specification which is part of the
4 contract.

5 Q. And does that specification instruct the tree
6 trimmer or cutter of the steps he's to take with
7 regard to a particular property owner? And let's make
8 this specific in dealing with cutting down trees ---
9 not trimming, cutting --- before they actually cut
10 them down?

11 A. Yes.

12 Q. So you've admitted there are steps that they're
13 supposed to take?

14 A. Yes.

15 Q. And what do they include?

16 A. That contractors try to contact the property
17 owners to let them know the scope of work that's going
18 to be done on their property.

19 Q. How do they determine who the property owner is?

20 A. That's up to the contractor.

21 Q. That's totally up to the contractor?

22 A. That is correct.

23 Q. And so when you have something like the one we're
24 dealing with which is in a rural area, to your
25 knowledge, how does the contractor find out who the

1 owner of the property is?

2 A. You would have to ask the contractor. There's
3 many avenues.

4 Q. And what are some of them for finding out who the
5 owner of property is, to your knowledge?

6 A. Schuylkill County has online tax maps with aerial
7 photos that shows the forest. Some contractors will
8 put an ad in the newspaper. Some contractors will go
9 door to door and knock and find out whose property
10 --- in the rural areas, a lot of people know who's the
11 next person and who's the next person. There's
12 several ways to do it.

13 Q. Let's assume that they now have determined who
14 the rightful owner is. What criteria are there, for
15 how they get permission from that owner, the procedure
16 to cut down trees?

17 A. Like I said, they talk to the people and say this
18 will describe the scope of work.

19 Q. I understand that. This case started as tree
20 trimming; correct? That's what PPL's instructions to
21 Jaflo were, if you know ---?

22 ATTORNEY RALSTON:

23 Objection.

24 JUDGE JANDEBEUR:

25 He hasn't been finished the question.

1 Mr. Ralston, at least let him get it out. I mean, I
2 can't rule on it if I haven't heard it yet.

3 BY ATTORNEY KLEMOW:

4 Q. Do you know is that how this case started, with
5 an instruction from PPL to Jaflo to trim the trees on
6 Mr. Butala's property?

7 JUDGE JANDEBEUR:

8 Hold on one second. Do you have an
9 objection?

10 ATTORNEY RALSTON:

11 Not to that question, whether he knows or
12 not.

13 JUDGE JANDEBEUR:

14 Go ahead, Mr. Owens.

15 A. The specification says you will try to trim
16 and/or remove.

17 BY ATTORNEY KLEMOW:

18 Q. Okay. Let's deal with the and/or remove. Is
19 there a difference, in what PPL wants the contractor
20 to do, when they go from trim to remove?

21 ATTORNEY RALSTON:

22 Can you ask that again?

23 BY ATTORNEY KLEMOW:

24 Q. Does PPL have any requirements that are different
25 as they relate to, we want you to trim those trees,

1 versus we want you to remove those trees? Do they
2 expect the contractor to handle each of those
3 instances any differently?

4 A. Trim or ---

5 Q. Yes.

6 A. --- removal and to contact the people and, if
7 necessary, get a signed card.

8 Q. Okay. As a forester, are you at all familiar
9 with tree removal, in the commercial area as something
10 that gets done on an everyday basis in peoples' homes,
11 on peoples' property? Are you ever involved in that
12 type of forestry?

13 A. I don't understand your question.

14 Q. Let me make it simple. As a forester engaged
15 with a company, that's involved with possibly removing
16 trees on someone else's property, is it recommended by
17 the PPL anywhere that before they do that, they get
18 written authority to do that?

19 A. In the contract it says written permission.

20 Q. In the contract of PPL with the contractor?

21 A. That's correct.

22 Q. And in fact, are you personally aware of the
23 contract in this case?

24 A. Yes.

25 Q. This particular job?

1 A. Yes.

2 Q. And in fact, are you saying then that, that
3 contract with Jaflo required that someone get written
4 consent, before trees are to be cut down?

5 A. That's correct.

6 Q. Have you ever seen that written consent from the
7 Butalas?

8 A. No, I haven't.

9 Q. To your knowledge, does it exist?

10 A. I do not know.

11 Q. Do you think that was an important factor when
12 you were providing the PUC with your investigation of
13 what took place, to tell them that our contract
14 required written authorization to remove the trees,
15 but the contractor never did that?

16 ATTORNEY RALSTON:

17 Objection, Your Honor.

18 JUDGE JANDEBEUR:

19 Based on what?

20 ATTORNEY RALSTON:

21 Okay. That's fine. I'll withdraw.

22 JUDGE JANDEBEUR:

23 It's a fair question.

24 ATTORNEY RALSTON:

25 That's fine.

1 JUDGE JANDEBEUR:

2 Go ahead and answer, Mr. Owens.

3 A. Say it again?

4 BY ATTORNEY KLEMOW:

5 Q. You conducted an investigation, in which you put
6 some language in this form stating this is what you
7 determined, about what happened in this instance. Why
8 didn't you tell the PUC, that your contract with Jaflo
9 required written authorization, to remove the trees?
10 And in this case, they did not get written
11 authorization.

12 A. When I talked to Mr. Kocher, he had said in
13 interviewing with the crew, that Mr. Butala came down
14 and asked them to have the trees removed --- cut down
15 and removed. He would bring his tractor down and he
16 may help load the logs into the tractor.

17 Q. The PPL contract ---?

18 A. Can I finish?

19 Q. Go ahead. I'm sorry.

20 A. After hearing that and somebody goes --- a
21 property owner does that much work on having the trees
22 removed --- not cut down, but removed --- to me, that
23 person by all means, was there and wanted the trees to
24 come down.

25 Q. This is based upon, of course, what Mr. Kocher

1 told you; correct?

2 A. That is correct.

3 Q. You didn't go ask Mr. Butala?

4 A. On these, I do not interview the customers.

5 Q. Does the contract that PPL has with their
6 contractors say, that you don't have to get the
7 written consent if the homeowner verbally says to you,
8 it's okay? Does it say that?

9 A. No.

10 Q. So that's not an excuse to not have the written
11 authorization; is it? That's only what you decided to
12 do in this case.

13 ATTORNEY RALSTON:

14 Objection, Your Honor. He didn't decide
15 to do anything in this case.

16 BY ATTORNEY KLEMOW:

17 Q. Well, you accepted ---?

18 JUDGE JANDEBEUR:

19 Hold on. Do you want to rephrase that
20 question?

21 BY ATTORNEY KLEMOW:

22 Q. Yes. You accepted what Kocher told you verbally,
23 what allegedly took place with him and Mr. Butala;
24 correct?

25 A. That's correct.

1 Q. And you completely put aside, the requirement
2 that Kocher was supposed to have written
3 authorization, from Mr. Butala?

4 JUDGE JANDEBEUR:

5 That's asked and answered. Hold on.
6 Mr. Owens, I suspect that you're feeling a little
7 heated right now and like you're under the gun, you
8 are not. So you need to back off of this witness.
9 Okay. He is not the bad person here.

10 ATTORNEY KLEMOW:

11 I understand, Your Honor.

12 JUDGE JANDEBEUR:

13 So back off. And you are not on the hot
14 seat, it just feels like it. Okay. Soften it up and
15 continue on with your questions.

16 BY ATTORNEY KLEMOW:

17 Q. Mr. Owens?

18 A. Yes.

19 Q. Very simply. You made a determination not to
20 make any mention of the written consent requirements
21 ---?

22 ATTORNEY RALSTON:

23 Asked and answered. He asked the same
24 question before and he said no. He made the
25 determination after hearing from Mr. Kocher that he

1 wasn't going to put in.

2 JUDGE JANDEBEUR:

3 That is on the record. Move on.

4 ATTORNEY KLEMOW:

5 Okay. That's all I have.

6 REDIRECT EXAMINATION

7 BY ATTORNEY RALSTON:

8 Q. Mr. Owens, the requirement in PPL's contract with
9 Jaflo, that there be some sort of written
10 authorization for removal, was that contemplated in
11 the context of --- let's back up one step. Are there
12 certain circumstances where, in order to maintain its
13 power lines, PPL, regardless of whether a customer
14 wants a tree removed or not, needs to cut down a tree
15 completely?

16 A. Say it again?

17 Q. Are there circumstances, when in order to
18 properly maintain PPL's power lines, you can't trim
19 the tree because it's either diseased or because
20 there's other problems with it, you need to remove the
21 tree completely where PPL has a right of way?

22 A. That's correct.

23 Q. There are instances where PPL needs to make that
24 determination regardless of whether the customer
25 agrees or not?

1 A. That's correct.

2 Q. Is the contract contemplated under those
3 circumstances when a written approval would be
4 necessary?

5 A. No.

6 Q. What does it say?

7 ATTORNEY KLEMOW:

8 Objection, Your Honor. That's not the
9 case that we're faced with today. That's not the
10 issue here. PPL was never going in to take the trees
11 down on their own because of a safety factor.

12 ATTORNEY RALSTON:

13 I understand that, Your Honor, and
14 I'll ---.

15 JUDGE JANDEBEUR:

16 What was your question again?

17 ATTORNEY RALSTON:

18 I'll make an offer of proof.

19 JUDGE JANDEBEUR:

20 All right. So you're withdrawing the
21 question and you're going to make an offer of proof
22 instead?

23 ATTORNEY RALSTON:

24 Correct. And perhaps I'll ask the
25 question again.

1 JUDGE JANDEBEUR:

2 Go ahead.

3 ATTORNEY RALSTON:

4 PPL sometimes needs to cut down trees
5 without an owner's permission. And under those
6 circumstances, written approval to do that is more
7 important than under circumstances, when a customer
8 comes out and says you have my permission to cut down
9 the trees, in fact, I want them down. And that's what
10 the testimony is going to reveal here, Your Honor.

11 Perhaps on some esoteric level, they
12 should have stopped and got it in writing. But is it
13 unreasonable, when a customer comes out along the road
14 and says, I don't want them trimmed, I want them cut
15 down, to not say okay, that's fine and then to do that
16 in conformity with the customer's wishes? That's what
17 the testimony is going to reveal.

18 JUDGE JANDEBEUR:

19 So your offer of proof is basically, an
20 offer of proof of circumstances, when cutting a tree
21 down without written approval is appropriate?

22 ATTORNEY RALSTON:

23 Correct.

24 JUDGE JANDEBEUR:

25 Do you have any problem with that?

1 ATTORNEY KLEMOW:

2 Yes, I do, Your Honor. It's not the
3 circumstances in this case. PPL has never claimed
4 that they had to cut the trees down. They're claiming
5 they only did it because they say Mr. Butala asked
6 them to do it.

7 ATTORNEY RALSTON:

8 That's the point.

9 ATTORNEY KLEMOW:

10 And you obviously don't have this
11 contract with Jaflo, that more than likely says trim
12 the trees.

13 ATTORNEY KLEMOW:

14 But that is not our issue here. And
15 quite frankly, ---.

16 ATTORNEY RALSTON:

17 It's what the testimony ---.

18 JUDGE JANDEBEUR:

19 Mr. Ralston, stop it. You're being rude.
20 Cut it out. Will you finish, please?

21 ATTORNEY KLEMOW:

22 If the homeowner walked out to me and I
23 don't know who the homeowner is, I have no idea who he
24 is. I'm in this business, I don't care what he says,
25 he's going to sign a form, so that I don't find myself

1 in a proceeding like this down the road with two sides
2 giving two versions of what happened.

3 If the homeowner was there telling him to
4 do that, it would have been very simple for him at
5 that point in time to get written authorization.

6 JUDGE JANDEBEUR:

7 That's a good point and I don't know what
8 you're going to do with that, Mr. Ralston or
9 Mr. Owens, but that's a good point.

10 ATTORNEY RALSTON:

11 Your Honor, that's a good point for a
12 conclusion, a conclusion at the end, oral argument at
13 the end of this hearing. But I'm not sure why it's a
14 question that I can't ask him whether he feels it's
15 more important in one circumstance than in the other.

16 JUDGE JANDEBEUR:

17 Why don't you simply ask Mr. Owens, in
18 what circumstances would it be appropriate to remove a
19 tree, without written authorization and we'll cut to
20 the chase?

21 BY ATTORNEY RALSTON:

22 Q. Mr. Owens, is there any circumstances in which
23 you feel it would be appropriate to remove a tree from
24 a customer's property with written authorization to do
25 so?

1 A. Yes.

2 Q. And what is that?

3 A. If there's a PennDOT road or right of way that
4 crosses private property, we cut trees down for a new
5 line if we're on PennDOT right of way. If we trim a
6 tree and it's to the point where there's a cavity in
7 the tree, or something wrong with the tree that we're
8 leaving any danger there, we'll ask them to cut it
9 down.

10 Q. And in fact, is it also appropriate when a
11 customer asks the trees to be cut down, to simply
12 comply with the customer's wishes?

13 ATTORNEY KLEMOW:

14 I'm going to object to the leading
15 questions and object to his testimony.

16 JUDGE JANDEBEUR:

17 Simply ask the question. Don't do a lead
18 in.

19 BY ATTORNEY RALSTON:

20 Q. Is it appropriate for a contractor to remove a
21 tree with oral permission from the owner?

22 A. When the owner is out there, and he's standing
23 there watching them cut the trees and he's asking
24 them, verbally asking them, and then help load the
25 logs into a tractor to remove the logs, yes. My

1 opinion, yes.

2 ATTORNEY RALSTON:

3 Nothing further.

4 ATTORNEY KLEMOW:

5 I'm objecting to that opinion. There's
6 no basis for it at all.

7 JUDGE JANDEBEUR:

8 Overruled.

9 ATTORNEY KLEMOW:

10 But that's an opinion. I would object to
11 that.

12 JUDGE JANDEBEUR:

13 Overruled.

14 ATTORNEY KLEMOW:

15 Nothing further, Your Honor.

16 JUDGE JANDEBEUR:

17 When you said you talked to Mr. Kocher,
18 was Mr. Kocher ever out on the property?

19 A. I do not know.

20 JUDGE JANDEBEUR:

21 When Mr. Kocher said to you that Mr.
22 Butala said do it, I assume do it is cut the trees,
23 and they helped Mr. Kocher load it into whatever, I
24 didn't catch that, who was the they? Who was the they
25 that helped Mr. Kocher?

1 A. His crew members.

2 JUDGE JANDEBEUR:

3 What did they load the trees into?

4 A. Into a front-end loader or tractor. A piece of
5 equipment.

6 JUDGE JANDEBEUR:

7 And that equipment belonged to Mr.
8 Butala?

9 A. That's what they're saying, yes.

10 JUDGE JANDEBEUR:

11 And you don't know if it was Mr. Butala
12 that was supposedly helping them or Mr. Butala's son?

13 A. When I interviewed them, they said it was Mr.
14 Butala. Can I say something about the size of the
15 logs?

16 JUDGE JANDEBEUR:

17 Yeah.

18 A. Mr. Butala said there was one that was 24 inches.

19 JUDGE JANDEBEUR:

20 Yes.

21 A. If you go measure the stumps, those chippers are
22 not meant to chip logs like that. It's meant to chip
23 brush.

24 JUDGE JANDEBEUR:

25 Saplings?

1 A. Uh-huh (yes). Nobody has said, where did those
2 logs go after ---?

3 ATTORNEY KLEMOW:

4 Your Honor, I'm going to object to this.
5 He's sort of acting like an attorney at this point,
6 asking questions about the process.

7 JUDGE JANDEBEUR:

8 He didn't ask a question. He just said,
9 can I say something about the logs. He said something
10 about the logs. There's no question.

11 ATTORNEY KLEMOW:

12 He's not being asked that as a witness.

13 JUDGE JANDEBEUR:

14 He wasn't. He asked if he could say
15 something and I said he could.

16 ATTORNEY KLEMOW:

17 And I would just object to it, Your
18 Honor.

19 JUDGE JANDEBEUR:

20 So noted. PPL is divided up into
21 foresting districts?

22 A. Yes.

23 JUDGE JANDEBEUR:

24 Are the separate districts handled
25 differently? For example, do you handle your seven

1 counties differently, say, than the forester to the
2 west of you?

3 A. We meet monthly to try to avoid that.

4 JUDGE JANDEBEUR:

5 But it's possible?

6 A. Yes.

7 JUDGE JANDEBEUR:

8 That one forester doesn't follow the same
9 process that the next forester does?

10 A. Sure.

11 JUDGE JANDEBEUR:

12 Does PPL use a brochure or doorknocker
13 label that alerts people that you're coming to do the
14 tree trimming?

15 A. When they're not home.

16 JUDGE JANDEBEUR:

17 Do you know if your contractor attempted
18 to let the Butala's know that they were coming?

19 A. Just from the testimony.

20 JUDGE JANDEBEUR:

21 From what you heard earlier?

22 A. Yes.

23 JUDGE JANDEBEUR:

24 Do you personally know what your tariff
25 says, with regard to yours and a customer's

1 responsibility with regard to tree trimming?

2 A. Not the whole tariff, no.

3 JUDGE JANDEBEUR:

4 Just that portion, do you know what it
5 says about tree trimming?

6 A. Parts of it.

7 JUDGE JANDEBEUR:

8 Okay. Anything else from either of you?

9 ATTORNEY KLEMOW:

10 I do, Your Honor. Because of the one
11 question you asked.

12 RECROSS EXAMINATION

13 BY ATTORNEY KLEMOW:

14 Q. You were asked by Mr. Ralston when was it
15 appropriate, in your opinion, to take the tree down
16 and you gave circumstances. One, you said, when
17 you're dealing with a PennDOT road right of way.
18 Would you agree that in this case, there's no PennDOT
19 road right of way that we're dealing with, on these
20 trees?

21 A. I believe the road is a township road.

22 Q. But the trees are not in any right of way?

23 A. As far as I know, no.

24 Q. You said, if there's some cavity or something's
25 wrong, perhaps the tree is diseased, would you agree

1 with me that that was not an issue that anybody raised
2 regarding these 19 trees?

3 A. Nobody has raised that.

4 Q. You also said that, when the owner is out there
5 telling you it's okay to cut them down, would you
6 agree with me that the contract that you have that
7 says, requires written authority to do it, it doesn't
8 give that as an exception?

9 JUDGE JANDEBEUR:

10 Limited to that, just stop right there
11 and I will allow that question.

12 A. Right. That is correct. It does not.

13 BY ATTORNEY KLEMOW:

14 Q. Is there some document or anything else that
15 tells the contractor how he determines who the owner
16 is?

17 A. Are there documents ---?

18 Q. Is there something that explains to the
19 contractor what they have to do to find out who the
20 owner of the property is?

21 A. No.

22 Q. And would you agree with me, you've heard the
23 testimony, Mrs. Butala is a co-owner of this property?
24 You heard that?

25 A. Yes.

1 Q. Have you heard anything from anybody that anybody
2 asked Mrs. Butala for her permission?

3 A. No.

4 Q. And when a man comes outside of a property, and
5 he's standing there and he may say I'm the owner, is
6 that sufficient as far as you're concerned and for
7 your contractors to make the determination of who may
8 actually own the property?

9 ATTORNEY RALSTON:

10 Objection, Your Honor.

11 JUDGE JANDEBEUR:

12 Based on?

13 ATTORNEY RALSTON:

14 Relevance. Because we're going to have
15 two people put on the stand, and identify Mr. Butala
16 as the person who they talked to. I'm not quite sure
17 why this question is relevant under those
18 circumstances.

19 JUDGE JANDEBEUR:

20 Okay. So you just think it's an
21 inappropriate witness?

22 ATTORNEY RALSTON:

23 Correct.

24 JUDGE JANDEBEUR:

25 Why don't you wait until the next

1 witness?

2 ATTORNEY KLEMOW:

3 I don't remember my question.

4 JUDGE JANDEBEUR:

5 Your question is, is the property owner
6 coming out and saying this is my property sufficient?

7 ATTORNEY KLEMOW:

8 Yes. Okay.

9 JUDGE JANDEBEUR:

10 Anything else? Thank you very much, sir.
11 Everybody still okay for a little while or you want to
12 break for lunch? It's up to you all. We'll take a
13 half-hour break until 12:30.

14 SHORT BREAK TAKEN

15 JUDGE JANDEBEUR:

16 I think we're still with you, Mr.

17 Ralston?

18 ATTORNEY RALSTON:

19 Correct. I call Allen Kocher to the
20 stand, please.

21 -----

22 ALLEN KOCHER, HAVING FIRST BEEN DULY SWORN, TESTIFIED

23 AS FOLLOWS:

24 -----

25 DIRECT EXAMINATION

1 BY ATTORNEY RALSTON:

2 Q. Will you state your name for the record, please?

3 A. Allen Kocher.

4 Q. Who are you employed by?

5 A. I am president and owner of Kocher's Tree
6 Service, Incorporated.

7 Q. How long have you operated Kocher's Tree Service?

8 A. Fifteen (15) years.

9 Q. What does Kocher's Tree Service do?

10 A. We do trimming, remove trees around houses. We
11 have a residential crew that trims and removes trees
12 from around houses, and we have a commercial side of
13 us that does utility line trimming.

14 Q. How many employees do you have?

15 A. About 16 right now.

16 Q. In 2004, how many employees did you have?

17 A. Probably around 20.

18 Q. Do your company employees wear any type of
19 equipment while they're out trimming trees?

20 A. Hard hats, safety vests, glasses, what's
21 regulated by the industry to wear.

22 Q. Does your business have trucks?

23 A. Yes.

24 Q. What type of trucks do you have?

25 A. Lift trucks, big lift trucks that lift the men up

1 in the air to trim the trees. And we have other
2 trucks, the support vehicles that, you know, say a
3 pickup or a truck we'd throw chip into.

4 Q. The lift truck, is that what's sometimes referred
5 to as a cherry picker?

6 A. Yes. The bucket truck.

7 Q. The other trucks would be those that would be
8 used to chip up the wood and then ---.

9 A. The brush, yes.

10 Q. And then into another truck which can store the
11 brush?

12 A. Yes.

13 Q. Do those vehicles have any identification
14 markings on them?

15 A. Yes, they do. They have nine foot long letters,
16 12 inches high on them that say Kocher's Tree Service
17 on the side. And then right below it is a phone
18 number that's eight inches high, approximately three
19 feet long with two phone numbers there that are nine
20 inches high, three feet long, two phone numbers on the
21 side of it.

22 Q. So it identifies not only your company, but the
23 phone numbers of the company on your truck?

24 A. On the side of the truck.

25 Q. Is that on all of your vehicles?

1 A. That's on every vehicle.

2 Q. Was it on every vehicle that you had in 2004?

3 A. Yes.

4 Q. Were you subcontracted by Jaflo to do tree
5 trimming work for PPL?

6 A. Yes.

7 Q. In 2004?

8 A. Yes.

9 Q. Can you describe for the Court how your company
10 is compensated for the tree line clearance work that
11 you do?

12 A. They'd give me a line to look at, I'd look at it,
13 give them on a price on it, and then we'd do it. We
14 were paid by the mile.

15 Q. If I understand it, you're paid per how many
16 miles of trimming work you do?

17 A. Yeah.

18 Q. Not by the hour?

19 A. Not by the hour.

20 Q. And you're not compensated by the amount of
21 trimming that you do?

22 A. No.

23 Q. Just by how many miles you can go in a given day?

24 A. Yep.

25 Q. So I'm assuming then it would be an incentive for

1 you to do as little work as possible to safely
2 maintain a line and move on to the next grouping of
3 trees?

4 A. Absolutely.

5 Q. In July of 2004 did your company do line
6 clearance work on trees surrounding PPL lines on Mr.
7 Butala's property?

8 A. Yes.

9 Q. And who from your company did that work?

10 A. Crew foreman Tim Vought was there that day. And
11 there was other crew members, but he's the only one
12 present.

13 Q. Do you employ or did you employ any members of
14 the Lebanon High School wrestling team in 2004?

15 A. No. Never. Nothing. We're 100 miles away from
16 there and I've never even been to Lebanon.

17 Q. You said that Tim Vought was the supervisor on
18 the job that day?

19 A. Yes.

20 Q. How long has he worked for you?

21 A. Since 2000.

22 Q. And was he onsite during the entire time the work
23 was done?

24 A. Yes.

25 Q. How old is he?

1 A. Thirty-five (35).

2 Q. On the day in question, which I believe was
3 identified as July 26th of 2004, did you receive a
4 call from anyone regarding Mr. Butala's property?

5 A. Yes. I received a call from Tim Vought around
6 lunchtime. And he called me and said that they had
7 trimmed two trees, and Mr. Butala didn't like how they
8 looked and he asked if we could cut them down instead
9 of trimming them.

10 Q. So Mr. Vought said that they had trimmed ---.

11 ATTORNEY KLEMOW:

12 I'm going to object to him testifying as
13 to anything that another employee said Mr. Butala
14 said. That's obviously hearsay.

15 ATTORNEY RALSTON:

16 It's an admission.

17 JUDGE JANDEBEUR:

18 Hold on.

19 ATTORNEY RALSTON:

20 That comes through the second layer of
21 hearsay as a business record which was --- I'll have
22 him testify that routinely his men call in when an
23 unusual request comes through from a customer. So as
24 a business record to a first layer of hearsay and as
25 an admission to the second layer.

1 JUDGE JANDEBEUR:

2 Are you going to have any corroborating
3 evidence?

4 ATTORNEY RALSTON:

5 Yes.

6 JUDGE JANDEBEUR:

7 I'll allow it. Continue.

8 BY ATTORNEY RALSTON:

9 Q. So if I understood your testimony, Mr. Vought
10 called and said they've trimmed two trees?

11 A. Yep.

12 Q. And then Mr. Butala came out and didn't like the
13 way that the trees were trimmed; is that correct?

14 A. Yes.

15 Q. By trimming a tree, what do you mean?

16 A. We need to trim them below the neutral wire to
17 get them safe and to get the clearance for the wires.
18 And they were running up into the wires and actually
19 into the hot wires where they weren't safe for anybody
20 to be around, so they trimmed them down. They
21 probably trimmed I'm going to guess six feet out of
22 them and he came out and didn't like the way that the
23 look of the trees were and requested that they be
24 taken down.

25 Q. And the six feet that was originally removed,

1 that would have been what was required to get ---.

2 A. The clearance for the lines.

3 Q. Okay. In your opinion, in the tree industry,
4 does it take longer to trim a tree as you have
5 described or to cut a tree down?

6 A. A lot less time to trim it.

7 Q. In fact, when you cut a tree down, you also need
8 to trim it first?

9 A. Yeah.

10 Q. Can you describe that, please?

11 A. Because we'd have to --- it says it was a bad
12 line. They were so close to the wires you couldn't
13 cut them down or somebody could have got electrocuted.
14 So they had to go up and cut short pieces off of it to
15 work it down away from the primary wire to make it
16 safe to work on to do anything to it. So they had to
17 take short pieces away from it to make sure that
18 nobody got electrocuted before they could ever cut
19 anything down.

20 Q. So in order to accomplish this task of taking a
21 tree down, they would first have to trim it?

22 A. They'd had to get it safe from the primary wires
23 and then they would be able to work on the rest of the
24 tree.

25 Q. I'm assuming that, and I think you've already

1 said, this takes longer than simply just trimming a
2 tree?

3 A. Yes.

4 Q. Was Kocher being compensated in any way for the
5 additional work that it was doing?

6 A. No.

7 Q. Why did Kocher agree to do that?

8 A. Thought we were being helpful to the customer
9 because that's what he requested. We try to be
10 helpful to the customers.

11 Q. And in fact, are you sensitive with customers of
12 PPL when you're doing work for them?

13 A. Yes.

14 Q. And just so we're clear, the work that was being
15 done here as the trees were being cut down, that was
16 taking away from work that you would have been doing
17 otherwise somewhere else and getting paid for it?

18 A. Yes.

19 ATTORNEY KLEMOW:

20 Your Honor, I have to object. All of
21 these questions are very leading.

22 JUDGE JANDEBEUR:

23 They are leading. You can just simply
24 ask the question.

25 BY ATTORNEY RALSTON:

1 Q. Okay. When a customer requests a tree to be cut
2 down, is it routine for the foreman to call you to ask
3 for permission?

4 A. Yeah.

5 Q. And did that, in fact, happen here?

6 A. Yes.

7 ATTORNEY RALSTON:

8 Nothing further.

9 JUDGE JANDEBEUR:

10 Mr. Klemow?

11 CROSS EXAMINATION

12 BY ATTORNEY KLEMOW:

13 Q. Mr. Kocher, is it common in your business that
14 you're in for you to employ summer help?

15 A. What's that?

16 Q. Is it common for you during the summer, probably
17 one of your prime seasons, to employ summer help to
18 help you?

19 A. No, we don't.

20 Q. You don't employ any ---?

21 A. We've had the same help year round, year after
22 year pretty much.

23 Q. Do you lay them off?

24 A. We don't lay anybody off. We trim trees year
25 round for PPL.

1 Q. How much work do you do for PPL?

2 A. We've probably done probably \$1,250 miles in the
3 last five or six years.

4 Q. Are you saying that's fairly evenly spaced out
5 over the 12 months of the year?

6 A. That's solid. We get done with one map, they
7 hand us another one, and we go right to the next job.

8 Q. So you're saying then that the people who work
9 for you would have been working for you in 2004 were
10 full-time year-round employees?

11 A. Yes.

12 Q. Do you know how many people were sent to the job
13 on that day?

14 A. I think there was probably around 14 guys, 15
15 guys that were there at that time.

16 Q. What was the scope of what you were going to be
17 doing on Mill Road, supposed to be doing, besides Mr.
18 Butala's property?

19 A. Tree trimming for PPL.

20 Q. I mean in terms of besides Mr. Butala's property,
21 what else were you doing on that road?

22 A. Trimming other trees on other property owners on
23 down the road.

24 Q. Do you know how many miles that you had to do on
25 Mill Road?

1 A. I don't know how many miles on Mill Road, but the
2 entire circuit was 78 miles, I think. It says 73, but
3 we had an overrun of about five miles and it was 78
4 miles all together.

5 Q. And the pieces of equipment that you had there on
6 that day were what?

7 A. There was a bucket --- one, two, three bucket
8 trucks and a chip truck, a chipper.

9 Q. And the chipper is towed behind the truck?

10 A. The truck, yes.

11 Q. To operate the cherry picker it takes how many
12 people?

13 A. There's usually two guys. One guy operating in
14 the air and there's another guy on the ground with the
15 gentleman.

16 Q. And to operate the chipper, it takes how many
17 people?

18 A. It only takes one guy to operate it, but there's
19 usually a couple guys around feeding the trimmings
20 into the chipper.

21 Q. Is it true that basically whatever you trim and
22 cut down gets tossed into the chipper?

23 A. No, that's not true.

24 Q. What happens?

25 A. Anything over three inches we cut in manageable

1 lengths and stack to the edge of the right of way.

2 Q. You don't chip anything more than three inches?

3 A. Maybe sometimes it might creep up to four inches.

4 Do we measure every piece and say this is three
5 inches, cut it and lay it along the side, no. We cut
6 in manageable lengths and smaller pieces and then all
7 the big wood would be at the edge of the right of way,
8 stacked along the edge of the right of way so if
9 there's ever a storm or anything like that, they can
10 get underneath the lines to work on the lines.

11 Q. How many chippers did you own in 2004?

12 A. Six.

13 Q. Is it safe to say that they come in different
14 capacities?

15 A. Yes.

16 Q. And isn't it true that there are chippers that
17 could do a tree that easily had a 24-inch diameter or
18 more?

19 A. There is, but I don't have any.

20 Q. What's the largest one you had back then?

21 A. I had a 12 inch I think it was.

22 Q. Are you sure?

23 A. Yeah.

24 Q. Now, you said you had 14 or 15 people there?

25 A. Yeah.

1 Q. What were they all doing?

2 A. They would be cleaning up and stacking the brush.

3 Q. Now what happens if a property owner says I don't
4 want you to stack these things here, I don't want
5 them; what do you do then?

6 A. We don't remove it. We don't remove. It's the
7 property owner's responsibility to get rid of the
8 wood.

9 Q. Now you had subcontracted from Jaflo?

10 A. Yes.

11 Q. Is there a subcontractor agreement?

12 A. I might have one at home. I don't have one with
13 me, no.

14 Q. Well, I presume that you have a lot of
15 subcontracting with Jaflo for PPL?

16 A. Yes.

17 Q. Do you ever contract directly with PPL?

18 A. No. I shouldn't say that. I do, but at some of
19 their private facilities I work at the nuclear plant.
20 I work at the Montour Preserve and that's another
21 community place where they have parks and we do safety
22 trimming on their nature trails and stuff like that so
23 that they're safe for people to walk around.

24 Q. Well, when you contract with PPL directly, is
25 there a contract or agreement between you and PPL?

1 A. Yeah, I guess.

2 Q. Well, either you have one or you don't have one?

3 A. I guess I have a subcontractor's agreement.

4 Q. I'm breaking these into the two instances. One
5 when you deal directly through PPL?

6 A. Directly with them for that small instance, I
7 don't have a subcontractor's report. They just get my
8 certificates of insurance, my Workmen's Comp, my
9 liability, my auto insurance. And then they have us
10 do the work because it's only a matter of a day or two
11 or three of work at that facility.

12 Q. And what about with Jaflo, you said that you
13 thought you might have an agreement with Jaflo for
14 this job?

15 A. I'm not sure, because it was two and a half years
16 ago, whether I had one at that time because I think I
17 signed one when I first started for them, but I
18 haven't signed anything new.

19 Q. When did you first start for them?

20 A. I think I started for them in spring of 2004.

21 Q. This would have been a few months before this
22 particular job?

23 A. What's that?

24 Q. This would have been a few months before the
25 Butala job that you signed on with Jaflo?

1 A. Yeah, probably in March or April.

2 Q. Now, when you first contracted with Jaflo, did
3 anyone explain to you whether or not there were
4 procedures that you had to follow when doing this kind
5 of work for PPL?

6 A. We knew the procedures because we working in
7 another division for another contractor.

8 Q. And so for that other contractor, you had done
9 work on ---?

10 A. PPL lines.

11 Q. But on private property?

12 A. Yes.

13 Q. In a rural area were there written procedures,
14 either from Jaflo or PPL, to you explaining what
15 you're supposed to do when it comes to initially
16 contacting the property owner and then doing work on
17 the property?

18 A. I guess so, because Mr. Butala said he was
19 contacted and we did contact him in June of 2004.

20 Q. I'm not really asking what Mr. Butala said. I'm
21 asking what is your understanding as a subcontractor
22 of Jaflo. Were you given ---?

23 A. Yes, we're to contact them.

24 Q. You're to contact who?

25 A. The property owners.

1 Q. What I'm asking you is --- strike that.

2 When you were told to go off and do a particular
3 road and down the road, how did you become aware of
4 who the property owners were?

5 ATTORNEY RALSTON:

6 Your Honor, I object to relevancy. Why
7 don't we just focus this on this particular property?

8 JUDGE JANDEBEUR:

9 If I understand your question correctly,
10 you're simply trying to figure out what the process
11 is?

12 ATTORNEY KLEMOW:

13 Uh-huh (yes).

14 JUDGE JANDEBEUR:

15 That's a fair question. Overruled.

16 A. We either knock on the door, like if we're going
17 down the road and look at this, we'll go down the road
18 and knock on the door, and if nobody's home we'll
19 leave a door hanger or if somebody's home we'll talk
20 to the owner of the house. Or if it's a tenant, then
21 they're usually able to give us a name of the property
22 owner and we'll give them a call and talk to them.

23 BY ATTORNEY KLEMOW:

24 Q. So am I safe in assuming that nobody from either
25 Jaflo or PPL gives you the names and owners of the

1 property that you're going to go out and either trim
2 or remove them from?

3 A. I'm trying to think what happened here, but we do
4 get a customer list with property owners on it for
5 every metered route.

6 Q. What is that metered route?

7 A. Where there's a tap going off, going to a house
8 where somebody gets a bill, that gives PPL record of
9 who it said the property owner would be, who lives in
10 that house at the time, and then if we have trouble
11 --- because some people, it's almost impossible to
12 catch at home. So they give you a number that you
13 could call them.

14 Q. Well, would you agree with me that a PPL bill
15 doesn't necessarily identify who owns to the property?

16 A. No, it doesn't.

17 Q. What do you have to tell you who owned the Butala
18 property when you went there to do the job in June?

19 A. I didn't have anything.

20 Q. You had no idea who owned it?

21 A. Other than the gentleman coming out of the house
22 and requesting that the trees be cut down.

23 Q. And as far as you're concerned, that's sufficient
24 for you to cut down trees on private property?

25 A. I guess at the time that was sufficient.

1 Q. Was that your normal practice during the summer
2 of '04?

3 A. Yeah, I mean if somebody comes out of the house
4 and, you know ---.

5 Q. And says I'm the property owner?

6 A. Because I think he did say he was the property
7 owner and requested that the trees be cut down.

8 Q. Well, putting aside Mr. Butala, whatever he said
9 or didn't say, I'm saying as far as you're concerned
10 when you do this and you go up to a particular
11 property, this is a 20-acre rural property and you
12 knock at the door and somebody comes to the door, you
13 don't ask for any proof, any identification to show
14 you that they are, in fact, the owners of the
15 property?

16 ATTORNEY RALSTON:

17 You're Honor, I'm going to object on the
18 grounds of relevance. He said putting aside Mr.
19 Butala. That's the only case that's of any importance
20 in this matter.

21 JUDGE JANDEBEUR:

22 That is correct.

23 BY ATTORNEY KLEMOW:

24 Q. Okay. Let's deal with Mr. Butala. Let's go
25 back. When was the first time somebody went to Mr.

1 Butala's property?

2 A. In June of 2004.

3 Q. Who was that?

4 A. Eugene Vought.

5 Q. Now, when he went there, did he have any idea who
6 owned the land where these trees were?

7 A. No.

8 Q. And at any time did anybody confirm for you other
9 than a so-called conversation with a man of who the
10 actual property owners of this land was?

11 A. Nobody confirmed that with me, but I don't handle
12 that end of my business. The right of way guy talks
13 to the people and he does that. So he might have
14 asked Mr. Butala if he was the owner of the property
15 or Mr. Butala said he was the owner. I don't know. I
16 wasn't there for the conversation between Mr. Vought
17 and Mr. Butala.

18 Q. I understand that. So when you're asked to go
19 out and cut down trees on a rural property, you don't
20 make any independent effort to try to find out who the
21 real owner of the property is?

22 ATTORNEY RALSTON:

23 Objection, Your Honor, as to relevance.

24 JUDGE JANDEBEUR:

25 I'm beginning to wonder myself, Mr.

1 Klemow?

2 ATTORNEY KLEMOW:

3 Well, my obvious answer is, Your Honor,
4 if they're going to be engaged in this business and
5 they're going to go onto properties cutting down
6 trees, the reasonable thing is for them to know who
7 owns the property. Apparently they don't have any
8 practice or procedure to do that.

9 JUDGE JANDEBEUR:

10 Hold on. That does not appear to be part
11 of your client's complaint, though. Your client's
12 complaint is --- my understanding is they cut these
13 trees down inappropriately, not that they've got the
14 wrong owner. There's no ownership issue in your
15 complaint. You don't have a standing issue at this
16 point, which I think is where the objection is
17 heading. How is relevant to Mr. Butala? He is not
18 made a challenge about ownership at all.

19 ATTORNEY KLEMOW:

20 All we've said is they had no right to
21 cut the trees down. One of the reasons --- and this
22 is why they both filed this, they don't have authority
23 from the owners to do what they did.

24 ATTORNEY RALSTON:

25 Your Honor ---?

1 JUDGE JANDEBEUR:

2 And they have alleged that they do. I
3 think we can move beyond the ownership issue to the
4 extent that you're going to make an argument that it's
5 an inappropriate service protocol for the rest of the
6 world, you've got no standing to make that call. So I
7 think you can move past that to the extent that you
8 want to bring it back to Mr. Butala or Mrs. Butala,
9 that's fine. But I didn't see that as the substantive
10 part of your complaint.

11 ATTORNEY KLEMOW:

12 We didn't know this. I had no idea that
13 they had done so little to make that determination
14 until we were getting here today, none.

15 JUDGE JANDEBEUR:

16 Okay. We've got that one the record. I
17 think you can move past this onto other issues.

18 ATTORNEY RALSTON:

19 Your Honor, I just want to respond in two
20 ways. Number one, two people directly and one person
21 indirectly are going to testify that they knew that
22 they had the right person because Mr. Butala told them
23 he was the property owner and he told them to cut the
24 trees. They're also going to identify Mr. Butala in
25 the courtroom today.

1 JUDGE JANDEBEUR:

2 That's fine. We can't presume how you're
3 going to be calling your witnesses. So we don't know
4 that yet, but now we know that. Okay.

5 BY ATTORNEY KLEMOW:

6 Q. Now let's go to the day when this happened. You
7 were not there at all; am I correct?

8 A. I showed up at the end of the day, but I was not
9 there when the job was started, no.

10 Q. Did you talk to Mr. Butala at the end of the day?

11 A. No.

12 Q. Had you ever seen Mr. Butala?

13 A. No.

14 Q. Now you went back earlier and you said that you
15 got a phone call, I think from Mr. Vought?

16 A. Yes.

17 Q. Who called to tell you that Mr. Butala said he
18 was not happy with the way two trees were trimmed and
19 he wanted them cut down; is that correct?

20 A. Yes.

21 Q. And so it's your testimony that when you guys
22 started the job, you were going to trim the trees?

23 A. Yes.

24 Q. So according to your office policy and at that
25 point Mr. Vought, he's supposed to call you and tell

1 you if a property owner wants to do something
2 differently like cut down the trees?

3 A. Yes.

4 Q. So is the first time then that you were told that
5 Mr. Butala wants to cut down the trees?

6 A. I believe so, yes.

7 Q. Well, prior to whenever this happened, you go to
8 the job to trim but now the property owner, according
9 to you and your employees, is saying cut them down.
10 So that's when you take steps to cut them down;
11 correct?

12 A. Yes.

13 Q. If that phone call doesn't come or if Mr. Butala
14 doesn't do that, you guys are going to trim?

15 A. Unless the notification guy ahead of time gets
16 permission from Mr. Butala to cut them down.

17 Q. Well, you didn't say that, and so I think you
18 need to tell us that if that's what happened in this
19 case.

20 A. Well, I'm not sure because I don't go out and get
21 the right of way. So he might have conversation with
22 three or four hundred people on the circuit, so I
23 don't go down and physically go over every section of
24 the map and go, okay, did you talk to this property
25 owner, what does he want done with this pine tree and

1 what does he want done with this maple tree, what does
2 he want done with the next tree?

3 We go over a general thing on the circuit
4 and they'll go over something, say okay, there's a lot
5 of work going up over the mountainside here or
6 something like that. We don't go into each tree in
7 detail or we could never get anything done being that
8 we do so much work.

9 Q. Based upon whatever information you had on that
10 day, your job was to trim the trees on the Butala
11 property?

12 A. And we started trimming the trees and he came out
13 and said that he did not like the way they looked and
14 requested that the trees be all cut down.

15 Q. And that's when you first find out he wants to
16 cut down the trees? That's all I'm asking?

17 A. Yep.

18 ATTORNEY KLEMOW:

19 Let's mark this Exhibit Seven.
20 (Complainant's Exhibit Seven
21 marked for identification.)

22 BY ATTORNEY KLEMOW:

23 Q. Mr. Kocher, I'm showing you what's been marked as
24 Exhibit Seven. Is that a letter that you sent to me
25 on September 20th, '05?

1 A. Yes.

2 Q. So you are the Allen Kocher who authored this
3 letter?

4 A. Yes.

5 Q. And is it true that you sent this letter because
6 I had written to PPL ---

7 A. Yes.

8 Q. --- complaining about the problem?

9 A. Yes.

10 Q. And then I guess PPL notified you, and this is
11 your response; am I correct?

12 A. Yep.

13 Q. I'd like you to look at the second paragraph, the
14 one that begins our employee, and read that.

15 A. What's that?

16 Q. And read the paragraph. I don't want to stand
17 here and read the paragraph to you. I'm going to ask
18 you some questions.

19 A. Well, that's all right. You can read it to me,
20 because I'm not a real good reader.

21 Q. Well, it says our employee, Mr. Eugene Vought, is
22 responsible for notifying property owners that tree
23 work will be done on their property. In June of 2004
24 Mr. Vought spoke with Mr. Butala regarding tree
25 trimming work that would be taking place on his

1 property. At that time Mr. Butala requested that the
2 front row of pine trees on his property be cut down
3 rather than trimmed. Correct?

4 A. Yeah.

5 Q. Now, that's not the day that all the trees were
6 cut down; correct?

7 A. No. That would be June.

8 Q. Well, if you look at the next paragraph in your
9 letter, it starts in early August.

10 A. Okay. And that was in response to your letter
11 saying it was early August and after we went through
12 and looked at our records ---.

13 Q. I don't want you to explain early August. I'm
14 simply trying to point out that there's obviously two
15 visits to Mr. Butala?

16 A. Right.

17 Q. According to your letter, in June of '04 Mr.
18 Butala tells you to cut down the trees?

19 A. Okay.

20 Q. According to your testimony today, Mr. Butala
21 doesn't tell you until after two trees have been
22 trimmed and he doesn't like it. Your testimony was
23 that's when he first tells us he wants the trees cut
24 down.

25 A. We probably didn't want to cut them down because

1 we weren't getting anything for them.

2 Q. Do you understand what I'm saying to you?

3 According to your letter that you sent to me --- and
4 by the way, this is the letter that was used in that
5 initial determination of the PUC; am I correct?

6 A. I guess. I didn't get a response from the PUC,
7 so I don't know.

8 Q. Well, you were here and you heard the discussion
9 about the BCS; am I correct?

10 JUDGE JANDEBEUR:

11 Correct.

12 ATTORNEY RALSTON:

13 There's been no testimony, Your Honor,
14 that this letter was ever --- I don't know whether it
15 was or wasn't.

16 ATTORNEY KLEMOW:

17 It's quoted, it's quoted throughout the
18 thing that this is where it came from.

19 ATTORNEY RALSTON:

20 No. Mr. Owens' statements are quoted in
21 the BCS decision. Mr. Owens' wrote the company
22 position.

23 ATTORNEY KLEMOW:

24 And when I asked him he said it came from
25 Mr. Kocher's letter.

1 ATTORNEY RALSTON:

2 No. I believe he said it came from ---.

3 JUDGE JANDEBEUR:

4 Okay. We'll let the testimony of the
5 witnesses stand for whatever it is that they said,
6 which we will have in writing. But you need to go
7 ahead with your ---.

8 BY ATTORNEY KLEMOW:

9 Q. My point is, obviously in this letter that you
10 sent to me in September, you're telling me that two
11 months approximately before the trees were cut down
12 that the property owner told you to cut them down; am
13 I correct?

14 A. I guess. I can't remember every person, every
15 place, every thing.

16 Q. This is the letter that you wrote to me.

17 A. Right. And I didn't read it and review it before
18 we come to --- I'm trying to remember.

19 Q. I'm not asking whether you read it and reviewed
20 it. This is your version to me and PPI. because you
21 carbon copied PPL.

22 A. Right. And we got together when we made this
23 letter in September of 2005, it's now October of 2006.
24 At the time we got together and wrote the letter,
25 because I do remember --- because they wouldn't cut

1 down 19 pine trees without my permission because we're
2 not getting paid for them. That's the bottom line.

3 Q. Let me just ask you a very simple question.
4 Which version is correct, the one that you put in your
5 letter of September 20th or the testimony that you
6 gave here today?

7 A. Well, the only thing that I missed in my
8 testimony today is that he spoke to Mr. Vought about
9 asking that the trees be cut down. That's the only
10 thing that I missed in my testimony today.

11 Q. Well, I'm going to ask you then. Did it happen
12 or not in June of '04? Did that take place?

13 A. Did he notify him in June of 2004? Yes.

14 Q. And did Mr. Butala tell Mr. Vought that he wanted
15 the trees cut down in June of '04?

16 A. I guess after reviewing our letter, I guess he
17 did.

18 Q. I really don't want you to guess, Mr. Kocher.

19 A. Yes. I guess ---.

20 ATTORNEY RALSTON:

21 Your Honor, I think what he's saying is
22 he doesn't have an independent recollection. And I
23 think if he wants to refresh his recollection with the
24 letter, he can do that.

25 ATTORNEY KLEMOW:

1 Well, now he knows what to say.

2 ATTORNEY RALSTON:

3 Well, that's how it works.

4 BY ATTORNEY KLEMOW:

5 Q. Let me move on; okay? Mr. Kocher, so now
6 according to this letter that you're not sure whether
7 you remember or not ---.

8 JUDGE JANDEBEUR:

9 Don't do that.

10 ATTORNEY KLEMOW:

11 I'm sorry, Your Honor.

12 JUDGE JANEBEUR:

13 We'll just quit. If we're going to get
14 real testy like that, we'll just quit and you can all
15 come back another day. Don't do that.

16 ATTORNEY KLEMOW:

17 I apologize.

18 BY ATTORNEY KLEMOW:

19 Q. Two months before, you now in this letter say
20 that he gave you permission to cut them down; correct?

21 A. Yeah, I guess. My right of way guy runs this
22 stuff by me before we cut anything down. We don't
23 just cut trees down that we're not gonna get paid for.
24 People request stuff being done all the time. They
25 got limbs over their house they want done and they

1 feel that since PPL is paying us, they feel that
2 people should, you know, that we can trim limbs over
3 their house.

4 They have all sorts of requests. They have a
5 limb where their car --- a limb hanging where their
6 car is parked. People request stuff all day, every
7 day from the crews wanting something done because
8 we're there and they're thinking PPL is paying us to
9 do whatever they want.

10 ATTORNEY RALSTON:

11 Your Honor, can I make a suggestion? I
12 think that the problem here is that this letter that
13 was written in September is a compilation of what
14 people were telling him. Why don't we just ask Mr.
15 Vought when he gets to the stand whether Mr.
16 Butala ---?

17 JUDGE JANDEBEUR:

18 I'm sure Mr. Klemow will. I'm sure that
19 he will. I don't know that he's finished with this
20 witness. Go ahead.

21 BY ATTORNEY KLEMOW:

22 Q. My question for you is, Mr. Kocher, you've heard
23 the testimony from Mr. Owen that said the contract
24 between Jaflo and PPL contains a clause that before
25 you can cut down trees on private property, you must

1 have written consent.

2 ATTORNEY RALSTON:

3 Objection. That's an incorrect
4 characterization. He said there were many exceptions
5 to that rule.

6 ATTORNEY KLEMOW:

7 He never said that was in the contract.

8 JUDGE JANDEBEUR:

9 That is correct. Rephrase your question.
10 Or I'm sorry, just tell me what it was again.

11 ATTORNEY KLEMOW:

12 He said that the contract between Jaflo
13 and PPL has a provision that requires before they cut
14 down trees on private property, they must have consent
15 in writing.

16 JUDGE JANDEBEUR:

17 This gentleman said it or Mr. Owens said
18 it?

19 ATTORNEY KLEMOW:

20 Mr. Owens said it.

21 JUDGE JANDEBEUR:

22 And I agree with that. Do you disagree
23 with that?

24 ATTORNEY RALSTON:

25 Well, I think that he said there was many

1 exceptions.

2 JUDGE JANDEBEUR:

3 I don't think he said that at all.

4 ATTORNEY RALSTON:

5 I think he talked about right of way for
6 PennDOT, when there's damage to a tree.

7 JUDGE JANDEBEUR:

8 That was in response to your question are
9 there circumstances under which a tree can be removed
10 without customer consent.

11 ATTORNEY RALSTON:

12 Your Honor, I think the other thing that
13 I would mention here is that if there is alleged to be
14 some problems with the PPL/Jaflo contract, I think
15 it's incumbent upon the Complainant to offer that as
16 an exhibit. It's the best evidence of what that
17 contract says and we don't have it here. There are
18 provisions for discovery in PUC hearings and we could
19 have been requested to give that to them during
20 discovery, we never were. It's not being offered here
21 today. I don't even have a copy of it with me.

22 JUDGE JANDEBEUR:

23 I am aware of all that. What's your
24 point?

25 ATTORNEY RALSTON:

1 I think that the testimony regarding the
2 contract should be stricken in the absence of the
3 actual contract being here under the best evidence
4 rule.

5 JUDGE JANDEBEUR:

6 No, we aren't going to do that. The
7 answer is yes, you could have subpoenaed that
8 document. You could have gotten that document in
9 discovery relying on the fact that he's going to put
10 it in, then complain because it doesn't look like Mr.
11 Ralston is going to put it in. And we don't have
12 that, so we're going to have to make the best of what
13 we have, which is the testimony.

14 And I'm going to allow Complainant to get
15 as much testimony as they can in lieu of having,
16 quote, screwed up on not getting a contract in because
17 they assumed it would get in. If that's what you did,
18 you may not have even known you needed it. Now I
19 think we're back to whether or not your question is
20 going to get answered or not. And your question was?

21 ATTORNEY KLEMOW:

22 Well, I asked him if he heard the
23 testimony when he was here.

24 JUDGE JANDEBEUR:

25 And your answer is?

1 A. I heard Mr. Owens' testimony, yes.

2 BY ATTORNEY KLEMOW:

3 Q. And the next question is, are you familiar with
4 and do you know that that is a requirement in the PPL
5 tree cutting contract?

6 A. Yeah, I guess. But if somebody comes out and
7 requests it, you ---. The crew isn't --- the first
8 thing they think of isn't oh, my gosh, legally we need
9 a signed paper for the work that we're doing to cut
10 down a tree. That's not the first thing on their
11 mind.

12 The first thing on their mind is the property
13 owner requested having the tree cut down. Can we do
14 it safely and reasonably and do a favor for the
15 customer and move along, keep everybody happy? Yeah.

16 Q. But my question to you is, between June when this
17 first conversation took place with Mr. Vought and ---?

18 A. No, I don't have a signed contract or a signed
19 piece of paper that Mr. Butala requested that the
20 trees be cut.

21 Q. And no one made any effort to get that in writing
22 between the time that you allegedly were first told
23 that and then when you actually cut the trees down?

24 A. No.

25 Q. Quite frankly, do you ever do that?

1 A. Yes, we do.

2 Q. Do you do it when you're doing subcontracting for
3 Jaflo on PPL jobs?

4 A. Yes.

5 Q. But you didn't do it in this case?

6 A. Like I say, when he came out and requested it
7 now, because we weren't going to originally cut the
8 trees down, because it was a lot of extra work that we
9 weren't going to get paid for.

10 Q. Well, if I read your letter, it says in the
11 paragraph ---.

12 JUDG JANDEBEUR:

13 Mr. Klemow, don't get repetitive. It's
14 just a warning. Don't go over the same testimony two
15 or three times. If you're not going to do that, fine.
16 If you are, please don't do it.

17 ATTORNEY KLEMOW:

18 Well, I'm going to do it a little
19 differently because of what he just said.

20 JUDGE JANDEBEUR:

21 We'll see if it will flow by smoothly.

22 BY ATTORNEY KLEMOW:

23 Q. You just said that you didn't know that you were
24 going to cut the trees down until that day. Your
25 letter says Mr. Vought told Mr. Butala at that time,

1 June of '04, that the trees would be cut down. So in
2 your letter, according to you, in June of '04 that
3 decision had been made; am I correct?

4 ATTORNEY RALSTON:

5 No, Your Honor, that's not what the
6 letter says. If you read the rest of the letter,
7 that's not what it says.

8 JUDGE JANDEBEUR:

9 And your objection is what? It's
10 mischaracterizing the letter?

11 ATTORNEY RALSTON:

12 He's mischaracterizing the letter.

13 JUDGE JANDEBEUR:

14 Mr. Klemow, you're mischaracterizing.

15 BY ATTORNEY KLEMOW:

16 Q. Well, I'll read the whole thing, because the
17 whole thing does say what was supposed to happen. Mr.
18 Vought told Mr. Butala at the time that the trees
19 would be cut down, but he needed to check with me
20 first because in the past the trees were trimmed and
21 it would require more work to cut them down than to
22 trim them.

23 Mr. Vought then contacted me regarding the issue
24 and I gave permission for the trees to be cut down at
25 the request of Mr. Butala.

1 A. Correct.

2 Q. So you gave the authority to do it in June of
3 '04?

4 JUDGE JANDEBEUR:

5 Yes or no?

6 A. I think the other Mr. Vought is the one that I
7 was saying contacted me. His son is Tim Vought,
8 contacted me the day of the work.

9 BY ATTORNEY KLEMOW:

10 Q. You wrote this letter and this is your
11 explanation and, according to you, you gave the
12 permission in June of '04? Is that what your letter
13 says?

14 A. I don't know without looking at it. I would look
15 at the trees before we approved them to be cut down.
16 I wouldn't have looked at them until we were close to
17 being at the property. Because he goes out and
18 notifies, sometimes it's two to three months ahead of
19 time on a big circuit. And he'll get the notification
20 and then when we get close, as we're going down doing
21 the work, I try to look at the work a week in advance
22 to see where to put which crew where, and that's when
23 we would make the decision on whether they would be
24 cut down.

25 Q. So let's now go to the date of the job when

1 somebody says cut down my trees, 19 trees; correct?

2 A. Yep.

3 Q. And the property owner --- that's according to
4 you is the property owner, says cut them down?

5 A. Uh-huh (yes).

6 Q. Number one, how do you know that he's the
7 property --- how do you know that Mr. Butala was the
8 property owner?

9 JUDGE JANDEBEUR:

10 Mr. Klemow, please, you're really
11 beginning to irritate me. Either that or it's getting
12 late in the day. But you have asked that at least
13 five different ways. I'm not going to revisit the
14 ownership issue.

15 BY ATTORNEY KLEMOW:

16 Q. Did you have Mr. Vought ask him to sign a written
17 document ---?

18 ATTORNEY RALSTON:

19 Asked and answered.

20 ATTORNEY KLEMOW:

21 I never asked this question. On that
22 day?

23 JUDGE JANDEBEUR:

24 We'll let it slide this time. But if I
25 hear it again, then I'm just going to go ballistic.

1 I'm giving you fair warning.

2 BY ATTORNEY KLEMOW:

3 Q. On that day, did you then tell Mr. Vought when he
4 called you and tells you that Mr. Butala wants them to
5 be cut down, did you say to Mr. Vought get him to sign
6 something?

7 A. No.

8 Q. Did you know anything about Mrs. Butala?

9 A. No.

10 Q. Did you know that --- so you didn't know she was
11 a property owner?

12 ATTORNEY RALSTON:

13 Your Honor, this is going back to the
14 ownership question.

15 JUDGE JANDEBEUR:

16 Yes, it is. Okay. Do you have other
17 Direct Examination questions --- I'm sorry, cross
18 exam?

19 ATTORNEY KLEMOW:

20 I do, Your Honor.

21 BY ATTORNEY KLEMOW:

22 Q. How tall were these trees that were cut down?

23 A. Approximately 30 to 40 feet.

24 Q. What kind of trees were they?

25 A. White pines.

1 Q. Are you able to estimate how old they were?

2 A. Not without counting the rings. I would say they
3 were probably --- they were trimmed once before, so
4 they were probably 20, 25 years old, I would guess.
5 And that's just a guess. But there is some larger
6 ones there, so I don't know.

7 Q. Do you know who the operator of the cherry picker
8 was on that day? The actual guy who was up there in
9 the trees?

10 A. There was three of them. There was Tim Vought,
11 and he is here right now. John Diehl was another one
12 and Brad Hummel was another one.

13 Q. Was anyone from Jaflo involved in this process at
14 all, other than subcontracting this to you?

15 A. No.

16 Q. Anyone from PPL, do they come and inspect or do
17 anything other than tell somebody to do this?

18 A. Yes.

19 Q. Who is that and what do they do?

20 A. Bruce Gehlman, and he is the forester for --- I
21 guess it's the Schuylkill region.

22 Q. And how was he involved in Mr. Butala's property?

23 A. He wasn't. He was on vacation that week.

24 ATTORNEY RALSTON:

25 Your Honor, I'm not sure whether the

1 complaint says that PPL did something wrong with
2 supervising the contractors either.

3 JUDGE JANDEBEUR:

4 It doesn't need to. 1501 will include
5 that.

6 ATTORNEY RALSTON:

7 Okay.

8 BY ATTORNEY KLEMOW:

9 Q. And so then is it safe to say that on Mr.
10 Butala's job there was nobody there from PPL?

11 A. No. There was nobody there that day from PPL.

12 Q. Do you know who Robert Geneczko, G-E-N-E-C-Z-K-O,
13 is?

14 A. Who?

15 Q. G-E-N-E-C-Z-K-O.

16 A. Robert Geneczko.

17 ATTORNEY RALSTON:

18 He's the supervising vice president of
19 PPL, responsible for Public Utility Commission
20 matters.

21 BY ATTORNEY KLEMOW:

22 Q. So you don't know who that is?

23 A. No, I don't know him.

24 ATTORNEY KLEMOW:

25 That's all I have.

1 REDIRECT EXAMINATION

2 BY ATTORNEY RALSTON:

3 Q. You said that the trees were 30 to 40 feet tall?

4 A. Yes.

5 Q. And you heard Mr. Butala testify that the trees
6 were up to 24 inches in diameter?

7 A. Yes.

8 Q. That's two feet?

9 A. Yes.

10 Q. And you also testified that you don't chip
11 anything over how much in diameter?

12 A. Three, four inches.

13 Q. So we're talking about pieces of wood that would
14 be in excess of three or four inches by 20 inches?

15 A. Yeah.

16 Q. What do you do with the wood that's not chipped,
17 meaning any wood that's over three or four inches?

18 ATTORNEY KLEMOW:

19 Objection, Your Honor. This witness has
20 no personal knowledge of what was done at Mr. Butala's
21 property.

22 A. I do, because I was there at the end of the day.

23 JUDGE JANDEBEUR:

24 When there's an objection, you have to
25 wait; okay?

1 ATTORNEY KLEMOW:

2 All I'm saying is that - - I'm suggesting
3 that he deal with what happened at Mr. Butala's, not
4 what they generally do.

5 JUDGE JANDEBEUR:

6 Overruled. Go ahead.

7 BY ATTORNEY RALSTON:

8 Q. You were there at the end of the day?

9 A. I was there at the end of the day and all the
10 wood was gone.

11 Q. All the wood was gone?

12 A. All the wood was gone.

13 Q. Where would you usually stack it up? Look at the
14 picture and tell me where you usually stack it up in
15 this case?

16 A. There's no pictures here.

17 Q. Hold on, she's getting them. Pick out what's
18 going to be the --- it looks like this one probably
19 would be. This would be Complainant's Exhibit Three.

20 JUDGE JANDEBEUR:

21 Let me just verify that before you show
22 it to him. Is that what we're looking at?

23 ATTORNEY RALSTON:

24 Yes.

25 JUDGE JANDEBEUR:

1 C-3.

2 A. That was before they were cut.

3 BY ATTORNEY RALSTON:

4 Q. So that's before they were cut. Actually, why
5 don't we get one then after they were cut? Here's a
6 good one. It's Complainant Exhibit Five. Where, at
7 the end of the day --- after your crew would come
8 through and would have stacked the wood, where would
9 the wood have been stacked?

10 A. All the wood would have been laid right at the
11 edge of the next row of trees back.

12 Q. So behind the stumps, in between the stumps and
13 the next row?

14 A. Yep.

15 Q. And when you were there at the end of that day,
16 was there any wood whatsoever in that area?

17 A. No, it was all gone.

18 Q. Where did your employees tell you the wood was?

19 ATTORNEY KLEMOW:

20 Objection.

21 JUDGE JANDEBEUR:

22 Hold on. You have a witness that's going
23 to answer that?

24 ATTORNEY RALSTON:

25 Yes.

1 JUDGE JANDEBEUR:

2 Move on then. Sustained.

3 ATTORNEY RALSTON:

4 Well, Your Honor, except for one point.

5 I think the fact that that person said it

6 contemporaneously to Mr. Kocher ---.

7 JUDGE JANDEBEUR:

8 And it's an administrative hearing and we

9 can get it in, but do we have the best witness here?

10 I think you do. So we'll just let it come in that

11 way.

12 ATTORNEY RALSTON:

13 Very good.

14 BY ATTORNEY RALSTON:

15 Q. Is it possible or would your crews try to chip a

16 tree that was 24 inches in diameter?

17 ATTORNEY KLEMOW:

18 Objection.

19 JUDGE JANDEBEUR:

20 Based on?

21 ATTORNEY KLEMOW:

22 When, where?

23 ATTORNEY RALSTON:

24 This job, under these circumstances.

25 ATTORNEY KLEMOW:

1 He said they didn't do that. And so now
2 he's asking would they possibly do it. Where or when?

3 JUDGE JANDEBEUR:

4 Well, it's speculative and it's
5 hypothetical, so it's not going to get you anywhere
6 with me. If you still want to ask it, I'll allow it.
7 Overruled.

8 BY ATTORNEY RALSTON:

9 Q. On July 26th, 2004 would the equipment that you
10 had on site at Mr. Butala's property, would you have
11 expected your crew to attempt to chip wood up to 24
12 inches in diameter?

13 A. No.

14 ATTORNEY RALSTON:

15 Nothing further.

16 RECROSS EXAMINATION

17 BY ATTORNEY KLEMOW:

18 Q. Was there a truck there?

19 A. No.

20 Q. There was no kind of a truck?

21 A. There was a bucket truck and a chip truck.

22 Q. And the chipper throws the stuff into the back of
23 a dump truck; doesn't it?

24 A. In the back of the big bucket truck or the chip
25 truck, yes.

1 Q. You do have a dump truck there?

2 A. It dumps, but you don't load wood in it. It
3 hauls chips.

4 ATTORNEY KLEMOW:

5 Nothing else.

6 A. Because it's a lot easier to roll it to the edge
7 of the right of way than to pick it up and haul it
8 away when you don't have to. You don't have to haul
9 the wood away. We just lay it at the edge of the
10 right of way.

11 JUDGE JANDEBEUR:

12 Anything else from either of you two?

13 ATTORNEY KLEMOW:

14 No.

15 JUDGE JANDEBEUR:

16 Hold on. Don't leave yet. When you say
17 the edge of the right of way, what right of way are
18 you speaking about?

19 A. The edge of the tree line, the next one. These
20 trees are basically right underneath the line, so we
21 just lay them back out of the way. So if like the
22 line would fall down in a snowstorm or something like
23 that and they had to walk underneath the line,
24 underneath the line is --- they're not tripping over
25 the wood to try to work over it to put the line back

1 up.

2 JUDGE JANDEBEUR:

3 That wasn't my question. You mentioned
4 the phrase in the right of way, you were talking about
5 a PPL right of way?

6 A. Like 15 feet back from the lines.

7 ATTORNEY RALSTON:

8 Your Honor, I think he may be referring
9 to a right of way. I think in reality it's an
10 easement by prescription, but I think it's an
11 incorrect use of terminology.

12 JUDGE JANDEBEUR:

13 Okay.

14 A. I should rephrase. It's stacked off to the edge
15 of the work area so that it's out of the way of any
16 work that may need to be performed on the line.

17 JUDGE JANDEBEUR:

18 You mentioned that on the day that this
19 cutting occurred, Tim Vought called you?

20 A. Yes.

21 JUDGE JANDEBEUR:

22 And he apparently told you Mr. Butala
23 didn't like how the trees looked trimmed. At that
24 point, what number of trees are we talking about, two
25 trees that were trimmed?

1 A. There was two trees trimmed and he didn't like
2 the way they looked and he said he didn't want his
3 trees looking like that, so he requested that they be
4 cut down.

5 JUDGE JANDEBEUR:

6 And at that point, are we still just
7 talking about those two being cut down?

8 A. No, we're talking about all of them.

9 JUDGE JANDEBEUR:

10 The whole row?

11 A. He didn't like them trimmed. He wanted them cut
12 down.

13 JUDGE JANDEBEUR:

14 When you showed up at the end of the day,
15 why did you show up?

16 A. I'm usually out to see the crews every day.

17 JUDGE JANDEBEUR:

18 Is there any special reason why you
19 showed up at the Butala's that day?

20 A. No. None whatsoever.

21 JUDGE JANDEBEUR:

22 Just your normal procedure?

23 A. It's normal procedure that I'm out and about.

24 Basically I usually try to check on them at start
25 time, quit time, lunch time, or throughout the day to

1 make sure they're working safely or whatever. Just
2 normal.

3 JUDGE JANDEBEUR:

4 What did you do while you were there?

5 A. It was at the end of the day. They just finished
6 cleaning up and I just looked around.

7 JUDGE JANDEBEUR:

8 Did you have any interaction with Mr.
9 Butala?

10 A. No. Never saw Mr. Butala before we met at the
11 other hearing.

12 JUDGE JANDEBEUR:

13 You said that typically you look at trees
14 a week in advance?

15 A. Yeah, they run line a week or so in advance and
16 look.

17 JUDGE JANDEBEUR:

18 Did you do that here?

19 A. Yeah. Like I said, I was down every day. So
20 when they're working, I'll go ahead and look at the
21 scope of work and say, okay, send this crew over here
22 to do this. Or on this particular road, if we get
23 like a long straightaway, we'll set our signs up and
24 work a couple trucks together and everybody will work
25 on the same road. That way you're not flagging for

1 just one truck. You have three trucks working in a
2 work zone set up for more than one truck, as compared
3 to a work zone and a work zone there or whatever.

4 JUDGE JANDEBEUR:

5 So you knew in advance of the July
6 cutting that you were going to take down 19 trees?

7 A. I guess he requested it then. I didn't really
8 --- when the crew called me that day is when I made
9 the ultimate decision. If the guy's out and requests
10 and wants them done, we usually try to accommodate the
11 people to the best of your ability.

12 JUDGE JANDEBEUR:

13 And you said the trees were about 30 to
14 40 feet high. How did you know that?

15 A. Just from the trees in the back row, that's about
16 the height that they were. And they were the same
17 way. I saw them beforehand. They were about 30 feet,
18 30 to 40 feet high I would say, because they're up in
19 the wires and they were up into the wires.

20 JUDGE JANDEBEUR:

21 What's your sense of what happened here?

22 A. My sense of what happened here?

23 JUDGE JANDEBEUR:

24 Uh-huh (yes).

25 A. I seen it one other time, a guy gave permission

1 to cut the trees down ---.

2 ATTORNEY KLEMOW:

3 I have to object.

4 JUDGE JANDEBEUR:

5 I asked him the question, so ---.

6 ATTORNEY RALSTON:

7 I realize that, Your Honor, but he's
8 about to tell us about another case.

9 JUDGE JANDEBEUR:

10 Yep, he is. Go ahead.

11 A. A guy come out and requested that we cut the
12 trees down, and come home that night and got hell from
13 his wife that they were cut down and she threw a fit
14 that he gave us permission to cut the trees down and
15 I'm wondering if maybe that instance happened here.

16 JUDGE JANDEBEUR:

17 Anything else?

18 ATTORNEY RALSTON:

19 No.

20 ATTORNEY KLEMOW:

21 Yes, Your Honor.

22 RE CROSS EXAMINATION

23 BY ATTORNEY KLEMOW:

24 Q. Is there a written work order in which you
25 directed what your employees would do on that day?

1 A. No.

2 Q. Anything in writing?

3 A. Nothing in writing.

4 Q. Did you ever cut down the wrong trees on the
5 wrong property in all the years you've been in
6 business?

7 A. No.

8 JUDGE JANDEBEUR:

9 That same issue.

10 ATTORNEY KLEMOW:

11 But the door has been opened, Your Honor.

12 ATTORNEY RALSTON:

13 He answered he hasn't.

14 ATTORNEY KLEMOW:

15 Nothing else, Your Honor.

16 JUDGE JANDEBEUR:

17 Okay. Thank you, sir.

18 One of the Voughts; right? You can come
19 on up, but we're going to give the court reporter a
20 minute.

21 OFF RECORD DISCUSSION

22 JUDGE JANDEBEUR:

23 Raise your right hand for me, please?

24 -----

25 TIMOTHY VOUGHT, HAVING FIRST BEEN DULY SWORN,

1 TESTIFIED AS FOLLOWS:

2 -----

3 JUDGE JANDEBEUR:

4 Thank you, sir. Be seated.

5 DIRECT EXAMINATION

6 BY ATTORNEY RALSTON:

7 Q. Could you state your name for the record, please?

8 A. Timothy Scott Vought.

9 Q. And with whom are you employed and in what
10 position?

11 A. Kocher's Tree Service and I'm a foreman.

12 Q. How long have you been in that position?

13 A. Foreman?

14 Q. Yes.

15 A. For five years now.

16 JUDGE JANDEBEUR:

17 Mr. Ralston, the court reporter would
18 like you to spell the last name, please?

19 A. V-O-U-G-H-T.

20 BY ATTORNEY RALSTON:

21 Q. What are your duties as foreman?

22 A. Trim trees. Make sure everybody does their job
23 right.

24 Q. Were you the foreman on the crew who trimmed the
25 trees on Mr. Butala's property which is the issue

1 we're here on?

2 A. Yes, sir, I was.

3 Q. When did that occur?

4 A. I'm sorry?

5 Q. When did that occur?

6 A. July 26th.

7 Q. Of what year?

8 A. 2004.

9 Q. Who was working with you on your crew?

10 A. There was me, Brian Hummel, Johnny Vito

11 (phonetic), and the ground guys that were there with

12 the chip truck.

13 Q. Was anyone that was there in high school?

14 A. No. We don't hire high school kids.

15 Q. Was anybody who was there in any way associated

16 with the Lebanon wrestling team?

17 A. No, sir.

18 Q. In fact, when you arrived at the Butala residence

19 that day, were there other high school aged children

20 on his property?

21 A. Yes, there was some out walking around by the

22 barn.

23 Q. Can you describe that?

24 A. There was just kids over there. They were

25 walking in and out. There was a like a little tent

1 set up there next to the barn.

2 Q. And those people had nothing to do with Kocher
3 Tree Service?

4 A. No.

5 Q. And didn't in any way trim any trees?

6 A. No.

7 Q. But they were on the property?

8 A. Yeah, on the other side of the road.

9 Q. But by the barn, so on the other side of the road
10 on Mr. Butala's property?

11 A. Right.

12 Q. After you arrived on Mr. Butala's property on
13 July 26th of 2004, did you begin doing work on the
14 property?

15 A. Yeah.

16 Q. What did you do?

17 A. Started topping the pine trees, trimming them.

18 Q. Tell the Court what is topping or trimming the
19 pine trees?

20 A. You cut them flat, right straight across, then
21 like two feet underneath the neutral for the line,
22 just to get the clearance.

23 Q. And in fact, were some of the trees that were up
24 in the neutral area, were they damaged in any way?

25 A. Yes. Some were burned by the hot wires.

1 Q. The top of the trees were actually burned by
2 being in contact with the wires?

3 A. Yeah.

4 Q. After you topped the first two trees, what
5 happened?

6 A. That's when he came out of his house.

7 Q. I want you to be very specific. Do you see the
8 person who came out of that house in the courtroom
9 today?

10 A. Yes, sir. He's to the left.

11 Q. Who is that?

12 A. Mr. Butala.

13 Q. So Mr. Butala, the person who is sitting in this
14 courtroom, came out of his house. And what did he
15 say?

16 A. He didn't like the way the trees were topped
17 because they were shorter and there was pines behind
18 them. They were all the same height. He didn't like
19 them because they were shorter than the back row.

20 Q. What did he ask you to do?

21 A. He requested to have the first row taken out so
22 they didn't look so hideous.

23 Q. What did you do --- and you've told me a couple
24 times the word hideous. Was that his words?

25 A. His words.

1 Q. His exact words?

2 A. Yeah, he was bent out of shape because they were
3 topped.

4 Q. When Mr. Butala asked you this, what did you do
5 next?

6 A. Called my boss.

7 Q. And your boss is?

8 A. Allen Kocher.

9 Q. What did you ask Mr. Kocher?

10 A. That he wasn't happy with topped trees and he'd
11 rather have them cut down.

12 Q. And what did Mr. Kocher say to you?

13 A. If we could do it efficiently, yes.

14 Q. Did you think that you could do it efficiently?

15 A. Yeah, if he hustled.

16 Q. Is customer service an important part of your
17 job?

18 A. Every day.

19 Q. Are you concerned about trying to meet customer's
20 expectations?

21 A. Yes, because if the customer ain't happy,
22 nobody's happy.

23 Q. I'm assuming if the customer's not happy, then
24 Kocher doesn't have any more work for PPL?

25 A. Right.

1 ATTORNEY KLEMOW:

2 Your Honor, I'm going to object again to
3 the leading questions.

4 JUDGE JANDEBEUR:

5 Ask the question.

6 BY ATTORNEY RALSTON:

7 Q. The trees that were cut down, what type of trees
8 were they?

9 A. Pine.

10 Q. And how tall were they?

11 A. Twenty-three (23) feet.

12 Q. How wide were the trees, the diameter?

13 A. Of the base?

14 Q. Yeah.

15 A. Twenty-four (24) inches, 25 inches.

16 Q. How many of the trees were there that you ---?

17 A. Nineteen (19) all together.

18 Q. While you were doing this work, while you were
19 cutting down Mr. Butala's trees, where was Mr. Butala?

20 A. He was there the whole time.

21 Q. Where was he specifically?

22 A. Standing down on the ground, talking to the guys
23 that were there, watching.

24 Q. Okay. And when you were finished cutting down
25 the trees, what did he say next?

1 A. After you get done cutting a pine down, you have
2 all them dead pine needles that lay around in a big
3 circle, he didn't like them all there. So he raked
4 them all up so they were all gone, and we threw them
5 in the chipper.

6 Q. So the needles went in the chipper?

7 A. Yeah.

8 Q. Can you describe the process of how you took down
9 the trees?

10 A. Well, after Al gave me the permission to cut them
11 down, I just took a saw and limbed them all up so we
12 could get underneath and everything and they'd be safe
13 to work with then.

14 Q. Did you, in fact, also have to trim them on the
15 top as well?

16 A. Yeah.

17 Q. To get them out of the wires?

18 A. Yeah.

19 Q. So before you cut down the tree, you had to do
20 what you were going to do anyway?

21 A. Right.

22 Q. Trip the tops of them?

23 A. Right. I had Johnny going through, he was
24 topping them, and I was limbing them off.

25 Q. You heard Mr. Butala say that someone told him

1 that they were going to cut the trees down because
2 they didn't want to go up, it was unsafe?

3 A. No.

4 Q. Did you hear Mr. Butala say that?

5 A. Yes.

6 Q. Why isn't that true?

7 A. Because I work around them every day.

8 Q. And you, in fact, have to go up and top them
9 anyway, even if you're going to cut them down?

10 A. Yeah.

11 Q. If you cut a tree down while the top of it was
12 still on the wires, what would happen?

13 A. You'll start rippin' poles and wires down.

14 Q. After the trees were cut down, did you place the
15 wood along the side like you normally do?

16 A. No. We helped him clean it up.

17 Q. How did you do that?

18 A. He had a little like bucket thing there, we
19 rolled a couple of them in there. And like the
20 smaller stuff, we just stacked it.

21 Q. Okay. So he asked you to not leave the wood
22 along the side of the road?

23 A. Right.

24 Q. And you agreed to do that?

25 A. Right.

1 Q. After you were all finished, did Mr. Butala
2 indicate that he was satisfied with the work that you
3 did?

4 A. Uh-huh (yes).

5 Q. And the person who said that was the same person
6 who's sitting in the room today?

7 A. Yes, sir.

8 Q. To your knowledge, were you or anyone in any way
9 compensated for the extra work that you did on
10 Mr. Butala's property?

11 A. No.

12 Q. If you hadn't done the extra work on Mr. Butala's
13 property, would you have been able to do more work
14 that day?

15 ATTORNEY KLEMOW:

16 Objection.

17 JUDGE JANDEBEUR:

18 Based on?

19 ATTORNEY KLEMOW:

20 Relevance, speculation. They were doing
21 more work that day, it's not ---.

22 JUDGE JANDEBEUR:

23 Sustained. Different question.

24 ATTORNEY RALSTON:

25 Your Honor, I think it's important

1 because there's no reason why they would have ---. I
2 mean I'm eliminating the reasons why one would do
3 what's alleged have happened here. One of them is
4 that there was a safety issue. There's no safety
5 issue. You have to do the exact same work when you
6 cut down a tree as you do when you top a tree.

7 Another one may have been some sort of
8 financial reason for doing it. That he get paid more,
9 get paid per pound of wood that he hauled out. I
10 don't know, but I think it's relevant that there
11 wasn't anything.

12 JUDGE JANDEBEUR:

13 There wasn't anything additional to do
14 that day?

15 ATTORNEY RALSTON:

16 No. There wasn't any additional
17 compensation and, in fact, they could have done extra
18 work and gotten paid more for the extra miles if they
19 hadn't spent more time on Mr. Butala's property
20 helping him do what he asked them to do.

21 JUDGE JANDEBEUR:

22 Tell me your question again?

23 ATTORNEY RALSTON:

24 The question was, one moment. Could you
25 have done more work on other roads that day if you

1 hadn't spent the extra time on Mr. Butala's property?

2 A. Yeah, we could get more mile money.

3 JUDGE JANDEBEUR:

4 When there's an objection on the table,
5 you simply have to wait until I rule on it. And I did
6 sustain you improperly. I think you're right. It's a
7 fair enough question. Go ahead.

8 BY ATTORNEY RALSTON:

9 Q. Could you have done more work?

10 A. Yes.

11 Q. The flipside of that is, because you stayed on
12 Mr. Butala's property, did you do less work than you
13 could have done?

14 A. Yes.

15 Q. How old are you?

16 A. Thirty-five (35).

17 Q. And you had some direct interaction with
18 Mr. Butala on that day; isn't that right?

19 A. Yeah.

20 Q. What were you wearing that day?

21 A. Good question. Camouflage pants, that's what you
22 see me wearing now.

23 Q. Were you wearing a sweatshirt?

24 A. No, it was the middle of summer.

25 Q. Mr. Butala said that the person that he talked to

1 was wearing a sweatshirt. You wouldn't have been
2 wearing a sweatshirt on July 26th?

3 A. No. I probably would have been wearing an orange
4 t-shirt that said Kocher's with cut-off sleeves.

5 Q. Did you have safety equipment on?

6 A. White hard hat, safety glasses, and I didn't have
7 a vest on. I was up in the bucket.

8 JUDGE JANDEBEUR:

9 You need to just slow down a little bit
10 and enunciate so that he can understand you. You were
11 describing what you had on.

12 A. I had on camouflage pants, a t-shirt with the
13 sleeves cut off, a large one that said Kocher's,
14 safety glasses and a hard hat.

15 ATTORNEY RALSTON:

16 Nothing further, Your Honor.

17 JUDGE JANDEBEUR:

18 Cross?

19 CROSS EXAMINATION

20 BY ATTORNEY KLEMOW:

21 Q. Mr. Vought, you said you've been the foreman for
22 five years?

23 A. Yeah.

24 Q. How long have you worked for Kocher?

25 A. Since 2000.

1 Q. Have you ever had occasion where you went to cut
2 down trees at a property and you asked the person who
3 owned the property for a written consent to cut down
4 the trees?

5 ATTORNEY RALSTON:

6 Your Honor, objection.

7 JUDGE JANDEBEUR:

8 Based on relevancy?

9 ATTORNEY RALSTON:

10 Yes. Based on the fact that it means
11 absolutely nothing in this instance. You can ask him
12 whether he asked Mr. Butala in writing.

13 JUDGE JANDEBEUR:

14 Well, we know that. Why don't you
15 rephrase it and be specific to Mr. Butala?

16 ATTORNEY KLEMOW:

17 Quite frankly, Your Honor, Mr. Kocher
18 said they do that, they've done it. If he has done it
19 in the past, then my obvious next question is, well
20 then, why didn't you ask Mr. Butala?

21 JUDGE JANDEBEUR:

22 So why don't you ask this gentleman if he
23 asked Mr. Butala?

24 BY ATTORNEY KLEMOW:

25 Q. Did you ask Mr. Butala for written consent?

1 A. No.

2 Q. Do you know of any jobs that you've ever done
3 prior to Mr. Butala's, where you ever had occasion to
4 ask a property owner for written consent to cut down
5 trees?

6 A. Yes.

7 Q. Is there a form that you have that you use for
8 that?

9 A. Yes, but the right of way guy fills them out.

10 Q. Well, you said that you asked somebody ---?

11 A. No, I personally don't deal with it. The right
12 of way guy goes ahead and gets all the right of way,
13 what we're supposed to do, what has to be done. And
14 then I get everything with the map, with all the
15 papers, the complaints, person by person and we go
16 through property by property.

17 Q. And so I'll go back then and ask again. Are you
18 saying that you have never asked any property owner to
19 sign a form saying they consent to cutting the trees
20 down?

21 A. No.

22 Q. Has Mr. Kocher ever said to you on any job,
23 including this one, you need to get this in writing?

24 ATTORNEY RALSTON:

25 Your Honor, I think it's beyond clear

1 that we didn't get it in writing and there was a
2 reason for it. Why doesn't he ask him, why didn't he
3 get it in writing from Mr. Butala and he'll answer.

4 JUDGE JANDEBEUR:

5 Would you like to ask that question?

6 ATTORNEY KLEMOW:

7 Quite frankly, Your Honor, I'm not quite
8 sure what mine was. But fine, I'll ask that question.

9 JUDGE JANDEBEUR:

10 Try that question.

11 ATTORNEY KLEMOW:

12 I'll have to ask him to repeat it because
13 he's the one who asked the question.

14 ATTORNEY RALSTON:

15 Why didn't you get any written approval
16 from Mr. Butala?

17 A. My turn?

18 JUDGE JANDEBEUR:

19 Yes, your turn.

20 A. Because he stood right there and asked me to do
21 it. He stood there the whole time we were cutting
22 them down.

23 BY ATTORNEY KLEMOW:

24 Q. Now, how did you know, number one, that he is Mr.
25 Butala?

1 A. Because he came out of his house.

2 Q. And?

3 A. He walked up to me and said who he was.

4 Q. What did he say his name was?

5 A. Mr. Butala.

6 ATTORNEY RALSTON:

7 This is ridiculous. He's sitting in the
8 courtroom here today and he's saying that's the same
9 person who came out of that house and told me ---.

10 JUDGE JANDEBEUR:

11 Do you all need to take a break and we'll
12 revisit this on another day? I'm saying this in all
13 seriousness, because we're starting to lose ground
14 here and both of you are getting pretty testy. If we
15 need to take a break and come back another day, we'll
16 do that.

17 ATTORNEY KLEMOW:

18 I would prefer not to, Your Honor.

19 JUDGE JANDEBEUR:

20 Okay. Then let's try not to be quite as
21 testy.

22 BY ATTORNEY KLEMOW:

23 Q. Other than somebody saying to you Mr. Butala,
24 that's my name, you don't ask anybody to prove who
25 they say they are; am I correct?

1 A. Well, he didn't look like he was robbing his
2 house.

3 Q. Pardon?

4 A. He didn't look like he was robbing ---.

5 Q. How did you know that whoever he said he was,
6 that he was the owner of the property?

7 A. I don't.

8 Q. That's true.

9 JUDGE JANDEBEUR:

10 Question?

11 BY ATTORNEY KLEMOW:

12 Q. Thank you. If there were other property owners,
13 do you have any way of knowing that?

14 A. They usually come out of their houses.

15 Q. If there are other property owners, they always
16 come out of the houses?

17 A. Yeah.

18 Q. So if there are six people who own a property,
19 you can usually count on them coming out of the house.

20 ATTORNEY RALSTON:

21 Your Honor, I'm going to object to this
22 line of questioning on this basis. If he's trying to
23 make the claim that a husband does not have the
24 apparent authority to give permission to cut down
25 trees on his property for his wife, that is a

1 ridiculous notion.

2 JUDGE JANDEBEUR:

3 I believe that you have this issue
4 squarely before me and you're beating it to death.
5 And I do believe that you can safely move on to cover
6 other issues.

7 ATTORNEY KLEMOW:

8 Can I say this, Your Honor? You're not
9 allowing me to question individual witnesses who are
10 coming up and saying they did A, B, C and I think they
11 all have to say the same thing. Are they going
12 to ---?

13 JUDGE JANDEBEUR:

14 He has. He has said the same thing.

15 ATTORNEY RALSTON:

16 I will stipulate that no one talked to
17 Mrs. Butala and end of story.

18 JUDGE JANDEBEUR:

19 And that's fine. We'll take that
20 stipulation on the record. I believe that you'll
21 agree to that stipulation. Okay. Mr. Klemow is
22 shaking his head yes.

23 ATTORNEY RALSTON:

24 Judge, no one made any effort to get any
25 written consent from either party at any time starting

1 in June through when they cut them down.

2 JUDGE JANDEBEUR:

3 And I think that you'll stipulate to that
4 as well; am I correct?

5 ATTORNEY KLEMOW:

6 Yes.

7 JUDGE JANDEBEUR:

8 There is no written consent ---.

9 ATTORNEY RALSTON:

10 We did in the Answer as well.

11 JUDGE JANDEBEUR:

12 Okay. So we're fine there. So we do not
13 need any testimony on either of those issues.

14 BY ATTORNEY KLEMOW:

15 Q. Okay. Now, at the end of this you said, if I'm
16 correct, that Mr. Butala raked up the needles?

17 A. No, we did because he didn't like all the needles
18 on the ground.

19 Q. What did Mr. Butala physically do?

20 A. Huh?

21 Q. What did Mr. Butala physically do?

22 A. Watched.

23 Q. So he had nothing to do with the cleanup?

24 A. No, besides the wood, which is not our job to do
25 anyway. We were just being nice.

1 Q. What did he do with the wood?

2 A. I don't know, took it off up behind the barn. I
3 didn't follow him.

4 Q. Are you saying he physically picked it up?

5 A. No. We rolled it into a thing and he took it
6 off.

7 Q. What kind of a thing?

8 A. A little yellow dump bucket.

9 Q. Was it operated by an engine or did you have to
10 pull it or push it?

11 A. It had an engine.

12 Q. Can you please tell me what this piece of
13 equipment was?

14 A. I have no idea.

15 Q. What did it look like?

16 A. It was just yellow. That's all I know I looked
17 at.

18 JUDGE JANDEBEUR:

19 Is this a tractor?

20 A. Yeah.

21 JUDGE JANDEBEUR:

22 So Mr. Butala helped you with a tractor,
23 with a dump bucket. You helped him put logs into the
24 front end, and he carted them up to his barn; is that
25 a fair assessment?

1 A. Yes, it is.

2 JUDGE JANDEBEUR:

3 That was painful. Keep going.

4 BY ATTORNEY KLEMOW:

5 Q. So you're saying that this was a tractor that he
6 sat on and drove?

7 A. Yeah.

8 Q. And in the back of the tractor was an area that
9 you could put logs?

10 A. No, the front.

11 Q. Is it a tractor or is it a front-end loader?

12 A. It's a little tractor with a bucket on the front
13 of it.

14 Q. Gas operated?

15 A. Yeah.

16 Q. How did it get there? Where did it come from?

17 A. He drove it.

18 Q. From where?

19 A. The barn.

20 Q. When did he do that?

21 A. When we were done, when we were raking up the
22 needles and stuff.

23 Q. How far is the barn from where you were?

24 A. Right across the street.

25 Q. And how many loads did it take to get all of

1 these trees to where you say he took them?

2 A. We just helped him with the big chunks. We
3 didn't load the whole works up.

4 Q. Well, how many trips did he make?

5 A. Three or four.

6 Q. And the rest of the trees, 19 trees, where did
7 they end up?

8 A. What are you asking me?

9 Q. Well, if he took three or four loads, would you
10 agree with me that 19 trees 30 to 40 feet high, some
11 of them with a diameter of up to 24, 25 inches, you're
12 not going to put them in three or four loads of a
13 little lawn tractor.

14 ATTORNEY RALSTON:

15 Your Honor, he didn't say it was a little
16 lawn tractor. He said that anything under three
17 inches was chipped. He's assuming a lot of facts that
18 aren't in evidence.

19 ATTORNEY KLEMOW:

20 This is a factual dispute, and Mr. Butala
21 is going to deny and has been and will deny that any
22 of this has happened. And so I think that the
23 credibility issue of, all of a sudden, where does this
24 come from and what does it do, I think they're
25 important questions because he's claiming that's that

1 what he did. He's going to deny that.

2 JUDGE JANDEBEUR:

3 Let's make it one simple question. Do
4 you know how many loads it took to get rid of the bulk
5 of the trees?

6 A. I'm going to say four or five loads. I wouldn't
7 know, I moved on.

8 JUDGE JANDEBEUR:

9 So in four or five loads, how many logs
10 fit into that dump bucket per load, estimate?

11 A. Five, six.

12 JUDGE JANDEBEUR:

13 So five to six logs times four or five
14 trips is 20 to 25 logs; correct?

15 A. Yeah.

16 JUDGE JANDEBEUR:

17 And you're saying at that point there was
18 still some left over?

19 A. Right.

20 JUDGE JANDEBEUR:

21 So you guys left the site and there was
22 still some logs left over?

23 A. Yes. My guys did keep moving their trucks, we'd
24 chip and clean up behind us.

25 BY ATTORNEY KLEMOW:

1 Q. Who loaded the logs into the tractor?

2 A. My ground guys.

3 Q. And Mr. Butala, wherever he went with them, who
4 unloaded them?

5 A. Evidently he dumped the dump bucket.

6 Q. You're saying that this is a dump bucket. Are
7 you saying that this is like what I call a front-end
8 loader where a bucket ---?

9 A. Yeah, there's a bucket on the front of it.

10 Q. And it turns?

11 A. Right.

12 Q. This is a piece of construction equipment?

13 A. No, it's not construction. Like a tractor with a
14 front end bucket on it. It didn't have a backhoe on
15 the back of it. It didn't have no other attachments
16 besides the front-end loader.

17 Q. Did Mr. Butala tell you why he wanted the logs?

18 A. No. I proceeded on with my job. All the time
19 you just make a customer happy and move on.

20 Q. You deny that Mr. Butala said something about
21 somebody said something to him about being unsafe up
22 there with the wires and whatever, and you said that
23 it's not unsafe up there?

24 A. No, it's not.

25 Q. Not a problem to be up there amongst the wires?

1 A. No, not if you know the right procedures.

2 Q. But you also pointed out that the trees were
3 burned?

4 A. Right.

5 Q. How did they get burned?

6 A. They get that way from the wind blowing, they
7 touch against, and they get singed.

8 Q. They get singed from the wires?

9 A. Right.

10 Q. So if you touched the wire the wrong way, could
11 you get electrocuted?

12 A. I ain't gonna touch the wire. I ain't that dumb.

13 Q. If somebody touches it?

14 ATTORNEY RALSTON:

15 Your Honor, he's saying that he knows how
16 to proceed without injuries.

17 JUDGE JANDEBEUR:

18 I heard him. I heard him. Let him
19 finish his questions.

20 A. If the limb's touching a wire I use a full clip,
21 which is a piece of wood with a string with a head.
22 It's got a hook with a razor, this cuts limbs. I
23 reach in with that because I can't get jolted with a
24 dead piece of wood and I clip until I get below the
25 wire and I get in there and then I proceed to cut it

1 out.

2 BY ATTORNEY KLEMOW:

3 Q. What happens to you if you touch the wires?

4 A. I'll get jolted.

5 Q. So it is potentially unsafe?

6 A. No. I don't put myself at risk.

7 Q. When you cut down a tree, you have to take off
8 the top here to get it below the wires; correct?

9 A. Correct.

10 Q. And then after that ---?

11 A. You made have to take the side one off because
12 there's a phone line cutting through the yard, you
13 might have to take another limb off because you got a
14 service wire running across the street.

15 Q. Once you have the top offs below the wires, it's
16 very easy then to cut down the tree; is it not?

17 A. Yes.

18 Q. You just cut it at the base, it falls down, you
19 do a little trimming, that's all it takes.

20 JUDGE JANDEBEUR:

21 Is there a question there?

22 ATTORNEY KLEMOW:

23 Well, I'm trying to answer him in a way
24 that he's been answering me, if you want me to do
25 that.

1 JUDGE JANDEBEUR:

2 No. I don't want you to do that. I want
3 you to ask him cross exam questions.

4 BY ATTORNEY KLEMOW:

5 Q. When you're cutting down the tree, you take it
6 off the top; correct?

7 A. Correct.

8 Q. Then you would just cut it off at the base?

9 A. No. I notch it and put it where it needed it to
10 be.

11 Q. Notching it is cutting it at the base?

12 A. No, notching is a notch.

13 Q. At the base?

14 A. Right.

15 Q. That's the procedure.

16 A. You just don't cut it right off at the ground or
17 it can fall any way.

18 Q. I understand. The notch takes seconds; doesn't
19 it?

20 A. Right.

21 Q. And then you just go around the other side of the
22 tree and you notch it again?

23 A. No, back cut it.

24 JUDGE JANDEBEUR:

25 Mr. Klemow? Either testify and get up

1 here as a witness or ask your questions, one or the
2 other.

3 BY ATTORNEY KLEMOW:

4 Q. Do you understand my question?

5 A. Wherever you're at, maybe yeah.

6 Q. Once you bend over and notch the base of a tree
7 and then you cut it so that it falls over?

8 A. Yes.

9 Q. The trees are this size (indicating), how long
10 does it take to do that?

11 A. There's a lot of stipulations. If I got just a
12 plain, straight log, nothing on it, that's what you're
13 saying, it's underneath the pole line now, it's
14 cleared off and I got a log standing there? Within
15 minutes. You just cut it, drop it, and then you cut
16 it up to firewood length.

17 Q. I didn't ask about cutting it up, I didn't get
18 into any of that. I simply asked ---

19 A. Well, I didn't know if you were going to get into
20 that next.

21 Q. --- how long does it take to notch it and then
22 cut through the base and watch the tree fall over?

23 A. Couple minutes.

24 Q. Doesn't it just take seconds?

25 ATTORNEY RALSTON:

1 Your Honor, he said a couple minutes.

2 ATTORNEY KLEMOW:

3 And Your Honor, the best answer I can
4 give is I just don't believe that.

5 JUDGE JANDEBEUR:

6 Well, that's fine. That's fine.

7 ATTORNEY KLEMOW:

8 I realize that and I think I can ask
9 that.

10 JUDGE JANDEBEUR:

11 But simply ask cross exam questions.
12 Don't antagonize, don't embellish, don't testify.

13 BY ATTORNEY KLEMOW:

14 Q. How many minutes?

15 A. Maybe one. I never timed myself.

16 Q. Now, when you're trimming the trees, if you
17 weren't cutting them down, do you do the same thing,
18 just cut off the top above the wire?

19 A. We just trim them to specs to move on.

20 Q. You don't trim it in any way in terms of how it
21 looks for shape?

22 A. If it calls for topping, we top it. If it calls
23 for V out, we V it out.

24 ATTORNEY RALSTON:

25 I'm missing what's relevant here.

1 A. On the ---.

2 JUDGE JANDEBEUR:

3 Hold on.

4 A. I'm sorry.

5 JUDGE JANDEBEUR:

6 If you all want to voice an objection, do
7 it formally. That is I object, blah, blah, blah and
8 give me the reason. Don't start talking to me.

9 ATTORNEY RALSTON:

10 I understand. Objection, Your Honor, as
11 to relevance. I'm not sure what it matters here. I
12 mean I think all of the facts are very clear here,
13 what happened in terms of --- there's disputes about
14 who said what, but they cut the trees down.

15 JUDGE JANDEBEUR:

16 In your latest question --- if I'm
17 correct, was your last question --- when you cut, do
18 you just top off or do you shape it; was that the last
19 question?

20 ATTORNEY KLEMOW:

21 Yeah.

22 JUDGE JANEBEUR:

23 And you objected to that because ---?

24 ATTORNEY RALSTON:

25 The trees are down, there was no ---.

1 JUDGE JANDEBEUR:

2 That is correct.

3 ATTORNEY KLEMOW:

4 One of the parts of their question was
5 the difference in how much more time it takes to cut
6 them down than to trim them.

7 JUDGE JANDEBEUR:

8 So what are you looking for here?

9 ATTORNEY KLEMOW:

10 My position is it takes a while to trim
11 them. It's not something that's real easy. And I
12 believe it was even asked, is it the same thing to cut
13 off the top whether you're cutting the tree down or
14 whether you're trimming it? And I suggest that that's
15 not the same. You don't do the same. You don't just
16 cut the top of a tree off when you're trimming it,
17 there's more to it than that.

18 ATTORNEY KLEMOW:

19 Your Honor, maybe if he had an expert who
20 could testify to that, that might be true, but I'm not
21 sure where it's going here.

22 JUDGE JANDEBEUR:

23 And neither am I, but I'm going to allow
24 it. Overruled. Go ahead and answer the question.
25 The question before you is, when you cut off the top,

1 do you trim and shape or you simply cut off the top;
2 is that correct?

3 BY ATTORNEY KLEMOW:

4 Q. When you're just trimming a tree?

5 A. Yes, we top it and we make it flat so there ain't
6 nothing sticking up towards the wires.

7 Q. So when trimming, you shape the top?

8 A. We don't really shape them, we just top them.

9 Are you saying do I go around the whole tree, clip it,
10 and make it look nice? No. I just trim for specs for
11 the wires.

12 Q. And so it's one cut and the top falls off?

13 A. Right.

14 Q. And if you're cutting the tree down?

15 A. You got to cut the top off, cut the limbs up off
16 the bottom.

17 Q. It's the same thing on the top; is that what
18 you're saying?

19 A. Yes.

20 Q. And when you're trimming, you make no effort to
21 at least make what you trim look presentable?

22 A. No.

23 Q. What time did you get at this job?

24 A. Between 11:00 and noon.

25 Q. What time did you finish?

- 1 A. Right around 3:00, 3:30.
- 2 Q. Where did you go after that?
- 3 A. Just moved right on down the power line.
- 4 Q. How long did you work that day?
- 5 A. Until 5:00.
- 6 Q. And moving down the power line, does that mean
- 7 Mill Road?
- 8 A. Yes. But then we went from Mill Road as soon as
- 9 we got to the stop sign, we took a right and started
- 10 down that way, which I think is 309, which was another
- 11 farm right next to his.
- 12 Q. Did you come back the next day; do you remember
- 13 that?
- 14 A. Huh?
- 15 Q. Did you come back to the same area the next day?
- 16 A. Yes.
- 17 Q. And what, continued on?
- 18 A. Yeah.
- 19 Q. Now in the trimming that you did on Mill Road,
- 20 did anybody else have their trees cut down?
- 21 A. There might have been. I don't know.
- 22 Q. You don't recall whether that happened or not?
- 23 A. I deal with a lot of trees every day, sir.
- 24 Q. Is it safe to say that your boss said there were
- 25 14 or 15 people there, that a number of them are on

1 the ground with chainsaws; am I correct or not?

2 A. No.

3 Q. Well, then you tell me who's doing what?

4 A. The ground guys chip, we do the cutting.

5 Q. While you're up in the tree, cutting the top
6 down.

7 A. No, another forearm was up in the tree cutting
8 the tops off and I was limbing up the boughs.

9 Q. Okay. The tree comes down, falls down.

10 A. Right.

11 Q. Now what?

12 A. Cut it up for firewood.

13 Q. Somebody then trims it with a chainsaw?

14 A. No, we limb them up first so there's just a post
15 standing, then we cut it down.

16 Q. I understand. How many people had chainsaws
17 there?

18 ATTORNEY RALSTON:

19 Your Honor, ---.

20 A. Three or four.

21 JUDGE JANDEBEUR:

22 Hold on. Whenever the attorney talks,
23 the witness has to hold up. What?

24 ATTORNEY RALSTON:

25 Your Honor, can I ask for an offer of

1 proof of what relevance how many chainsaws were on
2 site is?

3 ATTORNEY KLEMOW:

4 I'm just trying to find out what 14 or 15
5 people are doing there. I've yet to hear.

6 JUDGE JANDEBEUR:

7 Well, just ask him. Did you have 14
8 people and what were they doing?

9 ATTORNEY RALSTON:

10 No, he did. And that's what I was about
11 to do.

12 BY ATTORNEY KLEMOW:

13 Q. Were there 14 or 15 there?

14 A. Yeah.

15 Q. Tell me what 14 or 15 people were doing. I'm
16 trying to break it down into numbers.

17 A. I had two guys in buckets, which we're clearing
18 the tops so they're safe from the wires. I was on the
19 ground limbing them up and the other guys were
20 chipping them.

21 Q. So about a dozen of them were involved in the
22 chipping process?

23 A. It takes quite a few, yeah. Ever drag pine?

24 Q. They're just dragging whatever there is?

25 A. We're cutting and they drag it.

1 Q. Who's cutting it into pieces that Mr. Butala
2 carried off?

3 A. Cut it up in firewood?

4 Q. Yeah.

5 A. I started to until we got towards the end, then
6 the rest of the guys cut it up. I think Brian Hummel
7 stayed behind. He was the other foreman. He was the
8 last one there at the corner. I was running the
9 trimmer at the farm, the other farm.

10 Q. And your testimony is that Mr. Butala was there
11 from when you arrived until you finished?

12 A. Yeah. He came out of the house right after we
13 trimmed the first two.

14 Q. And stayed there the whole time?

15 A. Stayed there the whole time.

16 Q. Did you see Mr. Kocher when you left?

17 A. At the end of the day?

18 Q. Yeah.

19 A. Yeah, I was the first person he talked to.

20 Q. You were the first person?

21 A. Yeah, he pulls into us at the end of the day.

22 Q. You saw him. So when he pulls up, Mr. Butala is
23 still there?

24 A. No, I already moved down the road.

25 ATTORNEY RALSTON:

1 Your Honor, his testimony is they were
2 already down the road on somebody else's farm at that
3 point.

4 BY ATTORNEY KLEMOW:

5 Q. I'm sorry. I lost you. I thought you were still
6 at Mr. Butala's property?

7 A. The cleanup crew stayed behind us, they're
8 lagging. They do cleanup in the yard, they clean up
9 everything, get it put away. My job's to trim trees.

10 Q. Well, were you there when Mr. Kocher drove up?

11 A. Yes.

12 Q. Was Mr. Butala there?

13 A. Probably back at the house. I don't know. I was
14 ahead trimming.

15 Q. If you remember that Mr. Kocher was there, I'm
16 only asking you was Mr. Butala there or not when he
17 drove up?

18 ATTORNEY RALSTON:

19 Your Honor, the testimony was that he was
20 around the corner at Mr. ---.

21 A. I was on different property.

22 JUDGE JANDEBEUR:

23 There's actually conflicting testimony,
24 so let him answer the question.

25 A. Where am I at again?

1 JUDGE JANDEBEUR:

2 I think you're at you and Mr. Kocher are
3 there, was Mr. Butala outside when Mr. Kocher and you
4 were speaking? Is that a fair paraphrase?

5 A. When he drove up? Was Mr. Butala speaking to me
6 when Al came up?

7 BY ATTORNEY KLEMOW:

8 Q. I'm not asking if he was speaking to anybody.
9 Was he standing there when Mr. Kocher arrived?

10 A. Where I was?

11 Q. Wherever you claim that he was, you say he was at
12 the job from 12:30 'til 3:30. You said Mr. Butala was
13 there the whole time; correct?

14 A. Right, while we were doing his trees.

15 Q. Mr. Kocher drives up at some point before you
16 leave?

17 A. Right.

18 Q. Is Mr. Butala there or not?

19 A. No.

20 Q. Where is he?

21 A. Probably back at his house.

22 Q. Did you see that?

23 A. Yes.

24 Q. When did he go back to his house?

25 A. When we were done. He was still back, my cleanup

1 crew was behind me.

2 Q. I don't know what that means when you say your
3 cleanup crew was behind you.

4 A. You got four, five, six guys. Their job is to
5 rake up, clean up, put stuff away, and then they move
6 on. As I'm down the road further trimming, then they
7 pull up, they clean up behind me.

8 Q. This is all in the area of the 19 trees?

9 A. Yeah.

10 Q. Isn't that where Mr. Kocher comes when he arrives
11 there?

12 A. I was at the corner, the stop sign. His pine
13 trees went right to the corner where the stop sign is.

14 Q. That's still in the area of the 19 trees?

15 A. Right.

16 Q. Isn't that where Mr. Kocher came to?

17 A. Well yeah, he was there.

18 Q. When did Mr. Butala then leave if he wasn't there
19 when Mr. Kocher arrived? You have no idea?

20 A. I have no idea. I was trimming the trees.

21 Q. Well, your testimony was he was there the whole
22 time?

23 ATTORNEY RALSTON:

24 Your Honor, he's asked this question a
25 thousand times.

1 A. He was there at the time when I was trimming his
2 trees down. When they were cleaning up, I don't know
3 where he went. I moved on to trimming more trees.

4 JUDGE JANDEBEUR:

5 It's very much a who's-on-first
6 situation. You are repeating. I mean, he has
7 answered this and it is confusing, and I don't think
8 it's going to get any better.

9 ATTORNEY KLEMOW:

10 I'm worn out. I give up.

11 JUDGE JANDEBEUR:

12 Good. Okay. Did you have any redirect?

13 REDIRECT EXAMINATION

14 BY ATTORNEY RALSTON:

15 Q. Maybe I can try to clear this up. When you were
16 trimming trees farther down the road, were you at all
17 times looking to see where Mr. Butala was?

18 A. No. He was satisfied.

19 Q. Did you really care where Mr. Butala was at this
20 point?

21 A. No.

22 Q. You were on to something else?

23 A. Right.

24 Q. And you don't know if Mr. Butala was out or not
25 when your boss drove up?

1 A. Yes, sir.

2 ATTORNEY RALSTON:

3 Okay. Nothing further.

4 JUDGE JANDEBEUR:

5 You can step down. Thank you.

6 A. Thank you.

7 ATTORNEY RALSTON:

8 Your Honor?

9 JUDGE JANDEBEUR:

10 Yes.

11 ATTORNEY RALSTON:

12 I'm supposed to pick my wife up in an
13 hour in Allentown. Can I take five minutes to call
14 her and tell her to find a ride home with someone
15 else?

16 JUDGE JANDEBEUR:

17 Yes. We'll take ten.

18 SHORT BREAK TAKEN

19 JUDGE JANDEBEUR:

20 And this is Mr. Vought, this is Eugene
21 Vought?

22 ATTORNEY RALSTON:

23 Yes.

24 -----
25 EUGENE VOUGHT, HAVING FIRST BEEN DULY SWORN, TESTIFIED

1 AS FOLLOWS:

2 -----

3 DIRECT EXAMINATION

4 BY ATTORNEY RALSTON:

5 Q. State your name for the record, please?

6 A. Eugene F. Vought.

7 Q. With whom are you employed and in what capacity?

8 A. Allen Kocher. I'm foreman.

9 Q. Okay.

10 A. I do all the right of way work on utility lines.

11 Q. How long have you worked for Kocher?

12 A. Four years.

13 Q. Were you present at Mr. Butala's property on July
14 26th of 2004?

15 A. Yes, I was.

16 Q. Can you describe for the Court what you saw and
17 heard that day?

18 A. On the 26th we pulled up to his property,
19 Bradley, which is the youngest tree foreman --- the
20 tree was burning, the whole top of the tree was
21 burning. He proceeded to clean the tree, get the tree
22 out of the wire so it quits burning, and he came down
23 and he says it's above my head ---. My son, which is
24 Timothy, is senior foreman.

25 Q. Okay.

1 A. And what's nice when you go down the food chain,
2 senior foreman gets all the tough stuff.

3 Q. Okay.

4 A. So he said to him I ain't doing the tree, you do
5 it.

6 Q. Okay.

7 A. Tim proceeded to limb up the tree, top the tree.
8 The tree was topped before. The tree had five shoots
9 growing out of where it was topped before, they were a
10 lot of shoots. And you'll get those. And if we top
11 it, you're going to get five more or six more. It's
12 just how a tree grows.

13 We don't reshape. Everybody when I go right of
14 way, they want the trees reshaped. I don't get paid,
15 Allen don't get paid, none of the guys get paid to
16 reshape and make pretty trees. We get paid line
17 clearance, what PPL designates.

18 Right now, we're directional pruning. That's
19 trying to get the tree to grow away from the wires.

20 Q. But these are pine trees?

21 A. These are pine. This pine particular, the 24
22 inch, is directly growing right through a two-phase
23 and a neutral and a cable TV. The only way of doing
24 it is you got to pole clip it out, make the tree safe,
25 cut the top of the tree off, at that time Mr. Butala

1 walked out because they were commencing in trimming
2 the trees. He said I don't like the way they look.
3 And I think Mr. Number One there says this is what
4 you're gonna get, this is what we get paid for. I
5 don't like it.

6 Q. I'm sorry. You said Mr. Number One there?

7 A. That's Timothy.

8 Q. Your son?

9 A. My son. He said he don't like the way the trees
10 look. My son tells him this is what you're going to
11 get. This is how they're going to look.

12 Q. Okay.

13 A. At that time I was down the road and I seen the
14 conversation, I got somebody to trade off on flagging
15 and I walked down. My son, Timothy, says to me he
16 wants the trees down, he doesn't like the way they
17 look. I said all you can do is pick up the phone. We
18 have right of way to trim the trees.

19 Q. At this point was Mr. Butala there?

20 A. He stood right there.

21 Q. When your son told you that he wanted the trees
22 down?

23 A. Right. I said the only thing you can do is call
24 Allen or call Bruce.

25 Q. And what happened?

1 A. And secure right of way that we have permission
2 to remove the trees, which he did. He called Allen.

3 Q. Were you there when that happened?

4 A. I don't know if I stood right there when he made
5 the phone call, no. Word got back to me that, yes,
6 we're taking them. And I explained another thing to
7 him.

8 Q. To who?

9 A. To Mr. Butala. When he made that decision, I
10 told him there's another row of trees there. You take
11 out the front growth, all the back trees have a lot of
12 dead wood in them. All you're going to have is just
13 the top and dead wood. He didn't like the way they
14 looked, told him go ahead, he requested it. We don't
15 ---. If I can do his tree by making two cuts, that's
16 all I'm going to do.

17 I'm not going to stand there. I'm not going to
18 talk to him. I'm not ignorant. We try to make the
19 people like their trees, but sometimes a tree don't
20 let you make it look likable. You can only do some
21 much with a tree.

22 Q. Okay. So you explained ---.

23 A. The tree foremans that were in the buckets that
24 day, he's an ex-certified tree surgeon, I'm an
25 ex-certified tree surgeon. Johnny is an ex-certified

1 tree surgeon. Brad is a phase-two foreman. I come up
2 this food chain. I got 12 years with Asplundh. I
3 started back when we drug logs out of the woods to the
4 mill. That's how old I am.

5 Q. I understand.

6 A. I know what a tree is going to do and I know what
7 you can do to certain trees.

8 Q. Okay. If I understand you correctly, you
9 yourself explained to Mr. Butala ---.

10 A. They're gonna look ugly.

11 Q. What's going to look ugly?

12 A. The second row of trees. And after we did take
13 out the first row of trees which, like Allen said, we
14 ain't getting paid for it. We done it as a favor to
15 the man.

16 Q. Okay.

17 A. And it's just poor public relations, actually.
18 We have a lot of people ask us. I don't give away
19 nothing. He'll tell you. He gives him right of way
20 to cut down trees and I say, I'll quit this work if
21 you cut that tree down because I told the guy no.

22 JUDGE JANDEBEUR:

23 Mr. Vought, the only problem with what
24 you're saying is that when you say he and you're
25 pointing to Timothy and Mr. Kocher, I don't know which

1 one. You shouldn't do that.

2 A. Timothy gave --- he'll call Allen.

3 JUDGE JANDEBEUR:

4 I understand what you're saying and I
5 understand because I'm sitting here now, but the
6 problem is when I get a written transcript. And I
7 have he said, it means nothing to me because I don't
8 see your finger when I read the transcript.

9 A. That day if we would have not spent the time on
10 the Butala property removing pines, cleaning up a lot
11 of that, we probably could have put an extra five, six
12 hundred dollars in Mr. Allen's pocketbook. So it's
13 got to be a favor. I mean when it costs you money. I
14 like Mr. Butala, I talked to him. I got the right of
15 way. I secured the right of way back eight weeks
16 ahead of the crew. I got to be that far ahead of
17 them.

18 I tell the people when you see me walking up the
19 road, you're right, I didn't pull right out in the
20 driveway, I go look at the trees first. Then I go
21 talk to the property owner.

22 The deal is if I don't know the property owner,
23 it don't say stupid up here, I go to the County seat.
24 They give me papers that give me all the tap numbers
25 and all the people that are the owners. And when I

1 look at the sheet when it says Butala, both their
2 names on a sheet, he walks out and introduces himself,
3 I know he's the landowner.

4 If I get a piece of property that I don't know
5 who owns and I get property that they're in nursing
6 homes in New York, they're in nursing homes in
7 Florida, how do you get ahold of them? Do you know
8 what Allen told me? It's my job and that's what I do,
9 I get ahold of them. If not, I get ahold of a lawyer.
10 If not, I got to find out who is in charge of the
11 estate.

12 And I have to tell them. I have to explain to
13 them what we are going to do. And I try to do it
14 really good, because he gets on my case then.

15 JUDGE JANDEBEUR:

16 Who is he?

17 A. Mr. Kocher. I don't need Mr. Kocher --- I do my
18 job well. I try to do my job well. And yes, we do
19 get people ---. I get people lots of times, just
20 lately we had an incident ---.

21 ATTORNEY KLEMOW:

22 Your Honor, I have to object because he
23 is not being responsive to any specific question.

24 JUDGE JANDEBEUR:

25 He's simply telling a story. I'm well

1 aware of that.

2 A. We don't do this to people to get a grudge. We
3 didn't do it against Mr. Butala to do a grudge, we
4 tried to do him a favor.

5 JUDGE JANDEBEUR:

6 Okay. Let your attorney direct you.

7 BY ATTORNEY RALSTON:

8 Q. Did you see other people walking around Mr.
9 Butala's property?

10 A. There was a couple kids. I would say kids,
11 teenagers.

12 Q. Okay.

13 A. Across the street. It seems to me there was a
14 tepee or something set up and they were over there
15 having a party. And it was on the Butala property
16 across the street, over on the other side of the road
17 and I think there was a little tool shed. There's a
18 white little building in front and then there's a
19 larger barn.

20 The work that was being done was across the
21 street at the residence, right down from the
22 residence.

23 Q. In your experience as a foreman, would a Kocher
24 crew attempt to chip 24-inch diameter logs?

25 A. No.

1 Q. And if they didn't chip the logs, where would
2 they be?

3 A. Stacked up and put on the edge, safely off to the
4 side so nobody falls over the wood.

5 Q. Did you ever see any large-diameter logs on the
6 side of the road of Mr. Butala's property on the day
7 in question?

8 A. No.

9 ATTORNEY RALSTON:

10 Nothing further, Your Honor.

11 JUDGE JANDEBEUR:

12 Cross?

13 CROSS EXAMINATION

14 BY ATTORNEY KLEMOW:

15 Q. Mr. Vought, I'm not sure --- when you started,
16 you said something about a tree was burning?

17 A. Yeah.

18 Q. You mean the tree was on fire?

19 A. If there's smoke, there's fire. That's what they
20 always tell me, and it was smoking.

21 Q. When you got there that day?

22 A. Yeah. It was smoking in June. Don't get me
23 wrong, it was smoking when I showed Mr. Butala when I
24 secured right of way in June. I walked him out the
25 road. The 19 trees he's talking about, I explained to

1 him, the little ones, they were just going to be a
2 nip/tuck. The bigger ones, there was some extensive
3 work because the top was smoking.

4 We took a chunk of wood out of there that had the
5 one hot wire, a log this big, burnt this far through.

6 Q. Very simply, do you agree with me that it is not
7 safe up there if somebody doesn't do something
8 properly, they can get hurt?

9 A. In our line of work, let me explain it to you.
10 You just don't hire a person off the street. They
11 have to have training.

12 Q. Mr. Vought, are you going to tell me then that no
13 one in your line of work has ever gotten hurt on a
14 power line?

15 ATTORNEY RALSTON:

16 Your Honor, how is this in any way
17 relevant ---?

18 JUDGE JANDEBEUR:

19 There's an objection. Thank you.

20 ATTORNEY RALSTON:

21 Objection. How is this in any way
22 relevant?

23 JUDGE JANDEBEUR:

24 Relevancy. It's not relevant, it's a
25 hypothetical. Different question.

1 ATTORNEY KLEMOW:

2 Can I respond to why it became relevant?

3 JUDGE JANDEBEUR:

4 Well, you can make it relevant by asking
5 him in this property. You just can't ask him a
6 hypothetical.

7 ATTORNEY KLEMOW:

8 Well, Mr. Butala is the one who said
9 somebody said to him it's not safe, I'm not staying up
10 here. Suddenly the opposition to that was a denial
11 that that was never said to Mr. Butala. Were either
12 of them relevant, no. But now we have Mr. Butala
13 saying something wasn't safe and they're saying nobody
14 ever said that, and I'm trying to incur it's not
15 unsafe up there. It's a very small, minor thing in
16 this whole scheme of things. Why they would choose to
17 tell Mr. Butala saying that's a lie, nobody ever said
18 that ---.

19 JUDGE JANDEBEUR:

20 Now, I actually heard different testimony
21 than what you just recited. I believe Mr. Vought
22 earlier stated that there's somebody lower on the food
23 chain that did, in fact, say I'm not going up there.

24 ATTORNEY KLEMOW:

25 He did say that. I agree with you. All

1 I was asking was, isn't it true that there's a safety
2 issue up there. He's telling him the tree's on fire.

3 JUDGE JANDEBEUR:

4 Yes or no?

5 A. I can't answer with a yes. What I can answer is,
6 is we have a certain level of trimmers. The boy that
7 was up there, Dean. You talked safety and Dean, he
8 did not know how to remove the smoking log safely.

9 When you get a situation of I don't want none of
10 my crews --- if you can't do it, I don't want you to
11 do it. There's two seniors, myself and my son,
12 Timothy, that can handle it. Is it not safe? Yes,
13 it's not safe. Do we do it? Every day of the year.
14 Do we do it in bad weather? Ice storm, Poconos, yes,
15 20 hours a day. Are we alive? I'm setting in this
16 chair. I'm 57 years old. Have I been hurt? Yes.
17 Have I ever been electrocuted? I'm still here. Have
18 I got poked? Yes.

19 It's not safe, but we do it and we do it 'cause
20 we like it. We don't do it because we want to hurt
21 Mr. Butala and give him a bunch of nails and say nail
22 your tree back up. We don't do that. We try to do it
23 to their guidelines, we try to do it to Mr. Kocher's
24 orders, and we do it good. We do it well.

25 I'll stand behind every crew he has. Most of

1 them are all ex-Asplundh employees. When you come out
2 of Asplundh, you start out as a brushy. You go to
3 third class, you go to second class. You got to learn
4 knots. When you get to be a foreman, you got to take
5 a foreman's test.

6 That cherry picker you're talking about, to
7 operate an LR3, LR4, you have to sit down and take a
8 test on the truck, the safety, and what the trucks
9 insulated as.

10 It's a dangerous job, we do it every day. We do
11 it infoul weather. We do it to keep your power up.
12 We're not doing it to be mischievous and cut down a
13 person's trees wrongfully. Have I had people come out
14 and say yeah, cut a tree down and I find out, well
15 that's nice because he's a next door neighbor. Yes.
16 I do my job good. I make sure I'm talking to the
17 person.

18 And yes, if I know ahead of time, I get a written
19 slip signed saying we're going to remove it and I tag
20 and mark the tree. But when you have a person come
21 out of the house and say I don't like my trees, I says
22 fine, we're going to leave it go, and no, you're going
23 to do something about it right now, we handled it as
24 best as we could.

25 He called the boss, the boss says remove them, we

1 did it. We didn't do it mischievously. Mr. Butala
2 and me had a nice talk. It was his poodle I guess was
3 the one that was trying to bite me. I petted it
4 anyhow. He's a very nice person. As far as him not
5 notifying his wife, I talk to my wife every day. When
6 it comes to tree trimming, he should have had a
7 discussion with her.

8 ATTORNEY KLEMOW:

9 Your Honor, I have to object to this
10 testimony.

11 JUDGE JANDEBEUR:

12 You can stop him any time. You're in the
13 driver's seat. You need to stop, let him ask another
14 cross exam question. Go ahead.

15 BY ATTORNEY KLEMOW:

16 Q. Now, you said twice that you secured right of
17 ways, and can I take it to assume that what you're
18 talking about is when you went to the Butala property
19 sometime in June of '04?

20 A. Yes.

21 Q. Have you seen the letter that Mr. Kocher wrote on
22 September 20th, 2005?

23 A. No.

24 Q. Well, without getting into that he identified as
25 Mr. Eugene Vought, being you, and you went there in

1 June; correct?

2 A. Right.

3 Q. So what do you mean when you say secured right of
4 way?

5 A. I go to the landowner. I try to identify them as
6 good as I can to make sure who it is, and I usually
7 do. I'm not infallible, but I knew I was talking to
8 the right person. He said he moved up here from down
9 around the Allentown area and he worked on the
10 Commissioners or something down there. And we had a
11 good conversation.

12 The boss is going to fire me because I stand
13 around talking, but that's my job. I try to find out
14 as much as I can about the people and what they want
15 done. Then I have to go back --- these maps, this is
16 Allen's map. My map is, if I leave a door card,
17 that's pamphlet showing a diagram of what your trees
18 are going to look like, why we're doing it, why
19 there's maintenance, it's free of charge.

20 If I leave one of them, I put a red dot with a
21 red pen and I number it, and a phone number of
22 Allen's, mine ---.

23 Q. Mr. Vought, I'm going to interrupt you. I'm
24 going to try and ask you to listen to the question I'm
25 asking you. With regard to Mr. Butala specifically,

1 you said you secured right of way. I'm just asking
2 you, what did you do with Mr. Butala and what does
3 that mean?

4 A. That means I stopped at his residence, actually
5 not trying to go on the property. I stayed on the
6 township road. I looked the situation over, what work
7 had to be done to the trees. And I knew three of them
8 was going to take extensive work. That's when he
9 walked up the road and the dogs came out of the barn.
10 I reached down and he says don't pet the little one,
11 and I did anyhow.

12 And we got to talking and I said --- I
13 introduced, I have a tag on, Jaflo/Kocher Tree
14 Service, explains who I'm working for. I think Bruce
15 got it for me, but I don't have it with me. I told
16 him who I was, what company I worked for, Kocher Tree
17 Service, we're doing work for Jaflo Tree Service,
18 we're going to come through and do routine maintenance
19 tree trimming on his trees on his property.

20 And he gave to me that day, which is in
21 testimony, go ahead. I showed him the work that had
22 to be done. I showed him the tree burning. And I
23 told him how it was going to go down, actually. And
24 he says yes, if it has to be done, do it. I go back
25 on this map, I put a little green thing saying yes, I

1 talked to Mr. Butala, it's good to go. I hand the map
2 to Allen, Allen hands it to Timothy.

3 Q. Are you saying then that Mr. Butala on that day
4 in June told you you could cut down the trees?

5 A. No. He told me I could trim the trees.

6 Q. You also indicated that when you're doing this,
7 you get documents and you go to the County seat,
8 different things like that to prove ownership. You
9 mentioned that generally?

10 A. Uh-huh (yes).

11 Q. What did you have specifically with regard to the
12 Butala property?

13 A. With this map, I have a list of pole numbers.
14 Each one of these, I'd have to go into detail, but
15 each residence has a hookup for residential service,
16 is the billing address which has Mr. and Mrs. Butala
17 on it, shows ownership.

18 Q. Let me stop you for a second.

19 A. I know as Mr. Butala came out, I didn't know him
20 from pills to beans, if that's what you're trying to
21 say. And he says what are you doing here? I said I'm
22 here for PPL. The first thing I asked him, do you own
23 the property? Yes, I do.

24 Q. Please let me stop you for a second. My question
25 is specific as to what documents did you have before

1 you got to the property on that day that identified
2 that the Butalas owned the property?

3 ATTORNEY RALSTON:

4 Your Honor, I'm going to object on the
5 grounds of relevance. He testified that Mr. Butala
6 came out of his house and said he's the property
7 owner. He's saying that Mr. Butala is the person
8 who's sitting here in the room today. I'm not sure
9 what more we could have.

10 JUDGE JANDEBEUR:

11 Well, his question was what documents did
12 you have?

13 ATTORNEY RALSTON:

14 Okay. I think he already testified that
15 he had this paperwork indicating the pot and who was
16 on the account.

17 ATTORNEY KLEMOW:

18 Your Honor, it's a very simple question.
19 Documents for ownership, deed, tax bill, tax map, not
20 something that identifies a pole. And quite frankly,
21 if somebody walks out the door and says I'm the owner
22 of the property and that's what they relied on, they
23 could be making an enormous mistake.

24 ATTORNEY RALSTON:

25 But they didn't.

1 ATTORNEY KLEMOW:

2 I'm asking because he's the one who said,
3 this I what I do. I go to the County seat, I do this,
4 I do that. And so all I'm asking ---.

5 JUDGE JANDEBEUR:

6 Okay. Fair question. Overruled. Go
7 ahead and answer the question. What did you have?

8 BY ATTORNEY KLEMOW:

9 Q. What did you have?

10 A. I had his word.

11 Q. Before you got there?

12 A. Before I got there, I had this map with a paper
13 listing all the service hookups. PPL will not run a
14 meter or run a bill. It has to go, I think, through
15 the property owner, through the landlord, and the
16 landlord has to --- I know he's not a landlord. No,
17 did I go to the County seat, I didn't have a problem.

18 Yes, on certain properties I have a problem that
19 I have to go to the County seat. When a person
20 volunteers information to me that he's the owner, I'm
21 going to take him at face value.

22 Q. I'm talking about before any person walked out
23 the door?

24 A. Uh-huh (yes).

25 Q. I'm not interested in what he may have said to

1 you.

2 A. Before I even ---.

3 Q. Let me finish. You're referring to what's been
4 Respondent's Exhibit F, which is a big map?

5 A. Uh-huh (yes).

6 Q. Show me on here where this shows anything about
7 who the owner is of any of the property?

8 A. It doesn't.

9 Q. Okay. And so then you said you had something
10 else?

11 A. For every one, 521 is a grid, 518's a grid. Mr.
12 Butala lived up here. These two little numbers which
13 you almost need a magnifying glass, sometimes you do,
14 10060, that's the last two numbers of a pole. That
15 pole tells me there's a tap on it.

16 If this whole section is a farm and a horse barn,
17 I have to find out who owns this whole section in case
18 we have lines running across it. I do that. I ask,
19 if I don't get any answers or if I have a problem ---.
20 I have somebody that comes out, I had a person with
21 Alzheimer's, I know he's sick. I don't take his word
22 on it. I go back to the house and I make sure.

23 I have people that told me to cut trees down,
24 here I'll sign, you want to sign ---.

25 Q. Please let me interrupt you.

1 A. Okay.

2 Q. I'm trying to ask you the questions.

3 A. There is a paper. There is a paper, what you're
4 asking me, that has every one of these numbers on it.
5 For there to be a tap, one has to go across somebody's
6 properties.

7 Q. Okay. That's something with numbers. You still
8 haven't told me what is the document that you had that
9 said Mr. and Mrs. Butala owned this property where
10 these trees were located?

11 ATTORNEY RALSTON:

12 Your Honor, asked and answered. He has
13 said that it was verbal. We'll stipulate there was
14 nothing other than the paperwork he's talking about
15 and Mr. Butala coming out and saying I'm the property
16 owner, and Mr. Butala's in the courtroom. Maybe I'm
17 being dense, but I don't see what the issue is here.

18 JUDGE JANDEBEUR:

19 Do you wish to accept that stipulation?

20 ATTORNEY KLEMOW:

21 Yes, Your Honor.

22 JUDGE JANDEBEUR:

23 I think at this point we have about three
24 stipulations on the record; is that correct?

25 ATTORNEY RALSTON:

1 Probably, yeah. That's fair.

2 A. Can I answer?

3 JUDGE JANDEBEUR:

4 It's stipulated to, there's no more issue
5 with it. Unless you think your lawyer stipulated
6 wrong, in which case you better tell him.

7 A. This map is what I secured right of way on.
8 There's 78 mile. I average five miles to six miles a
9 day. Figure how many people I talk to. I think in
10 the last four years, Allen walked ---.

11 JUDGE JANDEBEUR:

12 You can't confer.

13 A. One lady, a Mexican, cut down her pine tree, a
14 little one.

15 ATTORNEY KLEMOW:

16 Your Honor?

17 JUDGE JANDEBEUR:

18 Mr. Vought, you can't confer. You can't
19 ask Allen how many; okay? This is just your
20 testimony.

21 A. 1400 mile, Your Honor. One complaint.

22 JUDGE JANDEBEUR:

23 Okay. Fair enough.

24 A. This is number two.

25 JUDGE JANEBEUR:

1 More questions?

2 ATTORNEY KLEMOW:

3 Just one second, Your Honor. No, Your
4 Honor.

5 JUDGE JANDEBEUR:

6 Any Redirect?

7 ATTORNEY RALSTON:

8 No, Your Honor.

9 JUDGE JANDEBEUR:

10 Thank you, sir. You may step down.

11 ATTORNEY RALSTON:

12 Nothing further, Your Honor.

13 JUDGE JANEBEUR:

14 Okay. Now I believe you need to get in
15 one exhibit at this point. Any objections to C-7?

16 ATTORNEY RALSTON:

17 Which one was C-7?

18 JUDGE JANDEBEUR:

19 C-7 came in during your case. It's the
20 Kocher Tree Service letter. Actually, let me rephrase
21 that. It didn't come in during your case, it was
22 submitted during your case.

23 ATTORNEY RALSTON:

24 I'm not sure he needs to offer that as an
25 exhibit.

1 JUDGE JANDEBEUR:

2 Well, we haven't formally stuck to
3 offering it. I'm assuming that he wants it in, and
4 I'm asking you if you have any objections to it coming
5 in?

6 ATTORNEY RALSTON:

7 Except for weight, no.

8 JUDGE JANDEBEUR:

9 So moved. Admitted. And you need to get
10 in R One through Three?

11 ATTORNEY RALSTON:

12 Yes.

13 JUDGE JANDEBEUR:

14 And you're not going to use the rest of
15 these?

16 ATTORNEY RALSTON:

17 Correct. I don't think they're relevant.

18 JUDGE JANDEBEUR:

19 Any objection?

20 ATTORNEY KLEMOW:

21 R-1 was the map?

22 ATTORNEY RALSTON:

23 Yes.

24 ATTORNEY KLEMOW:

25 Two?

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JUDGE JANDEBEUR:

Jaflo work order.

ATTORNEY RALSTON:

You have a sheet, it's orange.

ATTORNEY KLEMOW:

Yeah. I objected to that at the time.
It never was followed up or identified and I would
object to it now.

JUDGE JANDEBEUR:

Okay. So it's not coming in, I take it?

ATTORNEY RALSTON:

That's fine.

JUDGE JANDEBEUR:

So just R-1 and R-3?

ATTORNEY KLEMOW:

What was R-3?

JUDGE JANDEBEUR:

R-3 is your BCS history.

ATTORNEY RALSTON:

Yes.

JUDGE JANDEBEUR:

Yes what? You would like it to come in?

ATTORNEY RALSTON:

Yes.

JUDGE JANDEBEUR:

1 Okay. No objections to either of those.
2 So admitted.

3 ATTORNEY RALSTON:

4 Your Honor, I think we need to get you
5 several copies of the map. I will do that.

6 ATTORNEY KLEMOW:

7 Your Honor, I have to recall Mr. Butala
8 on a very quick question, but he has to ---.

9 JUDGE JANDEBEUR:

10 That's fine. We'll finish up today. I
11 assume your wife is happily waiting for you?

12 ATTORNEY RALSTON:

13 Not happily, Your Honor.

14 JUDGE JANDEBEUR:

15 Mr. Butala, if you'd return to the stand,
16 please? And sir, you remain under oath and you can go
17 ahead and be seated.

18 -----
19 EUGENE G. BUTALA, HAVING BEEN PREVIOUSLY SWORN,
20 TESTIFIED AS FOLLOWS:
21 -----

22 REDIRECT EXAMINATION

23 BY ATTORNEY KLEMOW:

24 Q. Mr. Butala, you were in the room all of the day
25 and heard all of the testimony from PPL's witnesses?

1 A. Yes, sir.

2 Q. Did you hear the testimony that the wood was cut
3 and stacked and left there, and you either removed
4 some of it up to an area near your barn or it was left
5 on the corner ---?

6 A. I don't believe that.

7 Q. Let me ask my question. Did that happen or not?

8 A. No.

9 Q. They made reference to some kind of a piece of
10 equipment that you had, and if I'm not mistaken they
11 said it was yellow and had some kind of a front-end
12 bucket on it. Did you back then or do you now own any
13 kind of equipment like that?

14 A. Well, about two months ago, I just bought a Cub
15 Cadet, that's a lawnmower.

16 Q. That's not what I'm asking you, that's a
17 lawnmower. The equipment that they described, which
18 is some kind of a front-end loader, did you own any
19 piece of equipment like that?

20 A. No, I didn't.

21 Q. Did you ever operate anything like that?

22 A. No, I didn't.

23 Q. Did you do anything on that day to transport cut
24 up pieces of wood from where it was left by Kocher to
25 another area of your property?

1 A. No, sir.

2 Q. Do you have a need for firewood?

3 A. No, sir.

4 Q. Do you have a fireplace?

5 A. No, sir.

6 Q. Do you know what happened to all of the wood that
7 was ---?

8 A. Yeah, they used a chipper and chipped it up. I
9 guess, I only seen one going in there. That's all.

10 ATTORNEY RALSTON:

11 Your Honor, I would ask to strike the
12 statement that they chipped it all up. He's now
13 saying they didn't chip it all up, he didn't see it.

14 JUDGE JANDEBEUR:

15 He didn't see it. That's fine.

16 BY ATTORNEY KLEMOW:

17 Q. Was any cut up wood and logs left anywhere on
18 your property?

19 A. No. No, sir.

20 Q. Now, from a physical standpoint, I think you
21 testified that you're 73 and you're retired?

22 A. Yes, sir.

23 Q. Are you physically able to carry ---?

24 A. No, sir.

25 Q. Why not?

1 A. Because I have a stainless steel knee in there
2 and it slips out on me when I lift up anything heavy.

3 Q. Do you do any kind of lifting?

4 A. No, I do not.

5 Q. When did you last work?

6 A. '92.

7 Q. Who did you work for?

8 A. Roland Hause (phonetic) down Philly.

9 Q. And what was the nature of your job, what was it
10 called?

11 A. I was a sit-down operator.

12 Q. Is that a physical or a mental job?

13 A. A mental.

14 Q. When you stopped working or retired, was it
15 because of some disability?

16 A. Yes, sir.

17 Q. Did you receive Social Security Disability at
18 some time?

19 A. Yes, I do.

20 Q. For what reason?

21 A. My knee.

22 Q. At any time did you tell them that you were
23 satisfied to have the trees cut down as they were?

24 A. No, sir.

25 Q. Do you recall --- I think you identified one of

1 the Voughts that were here, the senior Vought. Do you
2 recall the younger one?

3 A. No.

4 Q. Could he have been there?

5 A. I guess. I don't know.

6 Q. Did you ever see Mr. Kocher at any time?

7 A. No, sir. What Kocher?

8 Q. The gentleman who testified.

9 A. Just now?

10 Q. Well, earlier in the day? Allen.

11 A. No.

12 Q. Do you have any kind of a piece of equipment that
13 would allow you to put logs in it and move it anywhere
14 on your property?

15 A. No, sir.

16 Q. Did you see anything like that?

17 A. No, sir.

18 ATTORNEY KLEMOW:

19 That's all I have.

20 JUDGE JANDEBEUR:

21 Cross?

22 RECROSS EXAMINATION

23 BY ATTORNEY RALSTON:

24 Q. Sure. You said before that you didn't know of
25 any other high school aged children on your property.

1 You heard both of the Voughts testify about the kids
2 that were on your property that day. Do you have an
3 explanation for that?

4 A. I never seen kids like that before. I don't even
5 let nobody on my property.

6 Q. But at the time, your son was in high school?

7 A. So?

8 Q. Was he in high school at the time?

9 A. Yes.

10 Q. Okay. And did he have friends that were on the
11 property?

12 A. No.

13 Q. No?

14 A. No.

15 Q. He didn't have friends who were wrestlers?

16 A. No, you said.

17 Q. But you're sticking to your statement about there
18 being wrestlers from Lebanon?

19 A. I speak the truth, sir.

20 Q. I'm not saying that you don't.

21 A. In the face of God, I speak the truth.

22 Q. I'm not saying what you're saying you don't
23 believe.

24 A. No, I don't.

25 Q. But you're sticking by your statement that the

1 people who cut down your trees were eight or nine
2 members of the Lebanon wrestling team?

3 A. You heard the gentleman say there was a young man
4 going up the tree and that's the one I probably seen
5 going up the tree. When he was coming down I said
6 what are you going to do, and he said I'm going up
7 there. And I turned around and I walked away and I
8 went in the house.

9 Q. I understand that.

10 A. That's it.

11 Q. I understand that. But you also testified that
12 eight or nine members of the Lebanon wrestling team
13 ---.

14 JUDGE JANDEBEUR:

15 Mr. Ralston, remit your questions to the
16 ones that Mr. Klemow simply just asked. Don't bring
17 up this morning's testimony.

18 ATTORNEY KLEMOW:

19 Thank you, Your Honor.

20 ATTORNEY RALSTON:

21 One moment.

22 A. Can I speak, Your Honor?

23 JUDGE JANDEBEUR:

24 Not yet. Hold on.

25 ATTORNEY RALSTON:

1 Nothing further.

2 JUDGE JANDEBEUR:

3 Okay. What did you want to say,
4 something directly to me?

5 A. Yes.

6 JUDGE JANDEBEUR:

7 Do you want to check with your lawyer
8 first?

9 A. I also have diabetes. I take a pill every day
10 and I also have heart things and I can't ---. That's
11 what I wanted to say.

12 ATTORNEY RALSTON:

13 Did you have a heart condition two years
14 ago?

15 A. Yes.

16 JUDGE JANDEBEUR:

17 Okay. That's fair enough. Are you
18 finished?

19 ATTORNEY KLEMOW:

20 Yes, Your Honor.

21 JUDGE JANDEBEUR:

22 And you're finished?

23 ATTORNEY RALSTON:

24 Yes.

25 JUDGE JANDEBEUR:

1 Thank you very much, sir. You can step
2 down.

3 ATTORNEY RALSTON:

4 Your Honor, could we have a sidebar?

5 JUDGE JANDEBEUR:

6 Sure. Now, do you wish to step in there?
7 Sidebar doesn't get you very far on this side. Do you
8 wish to step outside?

9 ATTORNEY RALSTON:

10 Yeah, that's fine.

11 JUDGE JANDEBEUR:

12 Or do you want to just come up? If you
13 feel comfortable just coming up, just come up.

14 ATTORNEY RALSTON:

15 Well, I mean a sidebar with opposing
16 Counsel.

17 JUDGE JANDEBEUR:

18 Why don't you use the conference room?

19 ATTORNEY RALSTON:

20 With you, Your Honor.

21 SHORT BREAK TAKEN

22 JUDGE JANDEBEUR:

23 Let's go back on the record for just a
24 minute. We're going to forego closing arguments
25 today. We're going to give the parties a week to

1 discuss potential resolution amongst themselves.
2 Counsel and I will have a telephone conference
3 Wednesday, the 25th of October. I will call them at
4 9:00 a.m. And we are finished here today and we're
5 adjourned.

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HEARING CONCLUDED AT 3:08 P.M.

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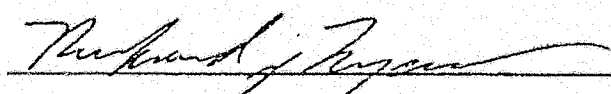
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C E R T I F I C A T E

I hereby certify, as the
stenographic reporter, that the foregoing
proceedings were taken stenographically by
me, and thereafter reduced to typewriting
by me or under my direction; and that this
transcript is a true and accurate record
to the best of my ability.



Court Reporter

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December 18, 2006

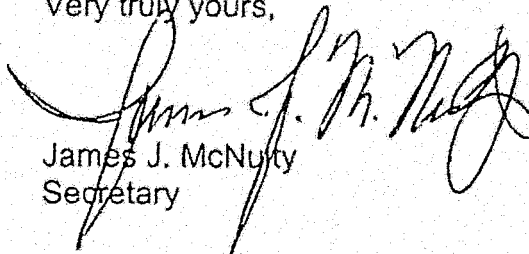
Lawrence M. Klemow
Klemow Law Firm
81 North Laurel Street
Suite 201
Hazleton, PA 18201

RE: Eugene G. and Joan A. Butala vs. PPL Electric Utilities Corporation
Docket No. C-20066076

Dear Mr. Klemow:

Enclosed please find the requested original photographs which were submitted in the above case.

Very truly yours,



James J. McNulty
Secretary

JJM:jg

Enclosures

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Formal General Information (0)

CSS	Account No. 2347046007	Docket No. C2006076
Customer Name	Joan Butala	BCS Case No. 1936358
Received Date	04/07/2006	OGC Due Date 04/17/2006

What is your complaint?
 In early June of 2004, a representative of Kocher Tree Service (apparently subcontracted by PPL Corporation for tree removal) approached me and said they were going to be trimming 19 trees in front of my property to keep the branches away from the electrical wires. In early August

What would you like the PUC to do about your complaint?
 I would appreciate either the trees being replaced by PPL Corporation outright, or being reimbursed for the cost of replacement.

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OFFICE OF GENERAL COUNSEL

Assignment Category & Details

Formal Reason	Tree Trimming Dispute
Primary Contact Person	GJOWENS-Owens, Gary J
Secondary Contact Person	ALBRIGHT-Albright, Theresa A
Tertiary Contact Person	
Assign To Section	Support Field Services-East
Special Instructions	PUC Formal Complaint Docket No. C-2006076 (also prior PUC Informal BCS No. 1936358) on Tree Trimming; referred to Gary Owens and Terry Albright for review and response back to OGC (Non-Disputable issue & no dispute was placed on account).

DOCUMENT FOLDER

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EXHIBIT
R3

Informal Case View

General			
BCS Case No.	1936358	Case Notes	Count : 1
CSS Account No.	2847045007	Received Date	09/19/2005
CSS Name	JOAN BUTALA	Due Date	10/18/2005
Name	EUGENE & JOAN BUTALA	Investigator Name	BARBUSH, BARBARA
Service Address 1	19 MILL DR	Mailing Address 1	
Service Address 2		Mailing Address 2	
Service City, State Zip	TAMAQUA, PA 18252-	Mailing City, State Zip	
PUC Address	9 MILL DRIVE,, SOUTH TAMAQUA, PA, 18252-		
Service Class	RESIDENTIAL	Case Origin	TELEPHONE
Phone Number	(570) 501-1771	Prior Case Number	
Income Level		On Track	No
Reason For Contact	PEOPLE-DELIVERED SERVICE (I.E., DELAYS IN SCHEDULING, CONDUCT OF PERSONNEL, DAMAGES) (# 5B)		
Customer Position	PPL CAME OUT AND TRIMMED/CUT DOWN 19 TREES ON HIS PROPERTY (WHICH WERE BELOW THE ELECTRIC LINES). CAN PPL DO THIS? DO THEY HAVE THE RIGHT TO CUT DOWN TREES ON SOMEONE'S PROPERTY? ADVISED CALLER WILL HAVE SOMEONE CALL HER BACK. ***** TO ELLIE OF ATTY LARRY KLEWOW'S OFFICE. ADV ELLIE TO CU SHOULD CONTACT CO TO INVEST - IF NOT SATISFIED - UTIL RPT ISSUED & PUC CAN BE CONTACTED. EXPLAINED ROW ISSUES - CLEARANCE OF LINES. LEFT DIRECT # PER HER REQ.		
Company Position			
Related Information			
Misc Info			
Heating	No	Service	On
Acct Bal Due Date	09/29/2005	Total Account Balance	125.59

Budget Bill Amount	103.00	Reported Income Amount	
Arrearage			
Date of Last Customer Contact prior to Complaint			

Type Assignment	
Case Type	Informal

Category and Section	
Primary Category	Tree Trimming
Secondary Category	
Tertiary Category	
Assign To Section	Support Field Services-East-

Ownership	
Contact Person	ALBRIGH - Albright, Theresa A
Written By	Owens, Gbry J
Written By Date	10/12/2005

Other Information		
Adults		Children
Amount Needed to Update Most Recent Payment Arrangement		Universal Service Program
		No

Informal Final Report
Details of the Company's Original Investigation
August 2, 2005
Received letter from Klemow law firm concerning cutting down of trees during August 2004 on a Mr. and Mrs. Eugene Butala's property. The letter identified a contractor of the "Koch" from Lebanon, PA. PPL does not have a contractor by this name. Further investigation showed a sub-contractor of Jaffu Tree Service did perform tree work on the Butala's property during August 2004. This tree work was maintenance tree work for PPL Electric Utilities.
Company's Final Position to the Customer
Customer gave permission to contractor to cut down the 19 trees.
Details of Company's Investigation after BCS Contact
September 20, 2005

Scher Tree Service writes letter to Klemov Law firm representing the Butala's, stating that the customer gave permission twice to cut down the 19 trees in question.

September 26, 2005

Letter sent to customer with copy of letter sent to customer's attorney. (copy attached)

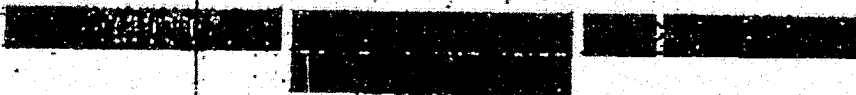
Company's Final Position to BCS

Customer gave permission to cut down the 19 trees. The customer helped in removing the logs. The customer was satisfied with the work when it was complete.

Analysis Information

Justified No

No Analysis Items Found





Decision Detail

General			
BCS Case No.	1936358	CSS Account No.	2347045007
Customer Name	EUGENE & JOAN BUTALA	Investigator Name	BARBUSH, BARBARA
Address 1	19 MILL DR	Service Class	RESIDENTIAL
Address 2		Case Origin	TELEPHONE
City, State Zip	TAMAQUA, PA 18252	Head Date	
Service Restore Amount		Current Monthly Payment	
Service Continue Amount		Service Continue Date	
Decision Issue	No	Ending Monthly Payment	
Chapter		Oral/Written	Written
Section Rule		Violation	NO
Total Balance	125.59	Closed Date	10/18/2005
Reconnect Amount		Balance Date	
Special Budget Amount		Regular Budget Amount	
Arrears Payment Plus		Final Monthly Payment	
Resolution	VERBAL CLOSE PER 10/17/05 CONVERSATION W/ATTY KLEMOW. EXPLAINED FORMAL/CIVIL PROCEDURES. SENT FORMALS TO ATTY. ADV ATTY KLEMOW CO RPT INDICATES CU GAVE PERMISSION TWICE TO CUT DOWN THE 19 TREES IN QUESTION. HE ALSO HELPED IN THE CLEAN UP OF THESE TREES.		
Terms			
Letter Description			

Action Required Options

Action

Required	<input checked="" type="radio"/> Yes <input type="radio"/> No		
WorkQ Category	<input type="text"/>		
Sub Category	<input type="text"/>		
Up Front Amount	<input type="text"/>	Up Front Due Date	<input type="text"/>
Bill Type	<input type="text"/>		
Plus Amount	<input type="text"/>		
Beginning Date	<input type="text"/>		
Write-Off Amount	<input type="text"/>		
Comments	BCS case #1936358, closed 10/18/05... VERBAL CLOSE PER 10/17/05 CONVERSATION W/ ATTY KLEWOW. EXPLAINED FORMAL/CIVIL PROCEDURES. SENT FORMALS TO ATTY. ADV ATTY KLEWOW CO RPT INDICATES CU		
Processed By	E34329	Processed Date	10/19/2005 8:19:10 AM





KOCHER'S TREE SERVICE
 256 WINDING ROAD
 ORANGEVILLE, PA 17859
 PHONE: 570-683-6605
 FAX: 570-683-6911



**DOCUMENT
 FOLDER**

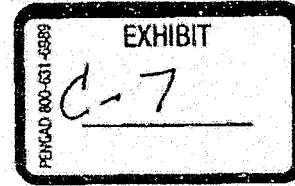
September 20, 2005

DOCKETED
 NOV 08 2006

Klemow Law Firm
 81 North Laurel St., Suite 201
 Hazleton, PA 18201

RECEIVED

NOV 08 2006



PA PUBLIC UTILITY COMMISSION
 SECRETARY'S BUREAU

C-20066076
 SCRANTON, 10/17/06

Dear Mr. Klemow,

This letter is in regard to the 19 pine trees that were cut down on Mr. & Mrs. Eugene Butala's property.

Our employee, Mr. Eugene Vought, is responsible for notifying property owners that tree work will be done on their property. In June of 2004, Mr. Vought spoke with Mr. Butala regarding tree trimming work that would be taking place on his property. At that time, Mr. Butala requested that the front row of pine trees on his property be cut down, rather than trimmed. Mr. Vought told Mr. Butala at that time, that the trees would be cut down, but he needed to check with me first because in the past the trees were trimmed and it would require more work to cut them down than to trim them. Mr. Vought then contacted me regarding this issue and I gave permission for the trees to be cut down at the request of Mr. Butala.

In early August, when the tree crew went to the property of Mr. & Mrs. Butala, he spoke with the crew and again requested that the trees be cut down. Before any work was done on the property the crew called me to confirm that the trees should be cut down rather than trimmed. I confirmed that they should cut the trees down at Mr. Butala's request. Those 19 trees were cut down and actually, Mr. Butala physically helped in the clean up of those trees. Mr. Butala asked the crew to put the logs into the bucket of his tractor with a bucket on the front and Mr. Butala hauled the wood away. As further evidence of this, you can see from the picture that the trees are completely cleaned up. Otherwise, the brush would have been chipped up and the logs would have been stacked and left along the edge of the tree line, which is proper procedure.

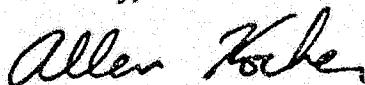
According to the crew, Mr. Butala seemed satisfied with the work that was done. I'm very surprised to see that Mr. Butala has filed a claim for the loss of the trees, especially

since he requested the trees be cut down and he waited almost an entire year in which to make this claim.

I would also like to clear up some misinformation with you. In your letter to PPL Corporation regarding this issue, dated July 11, 2005, our company was referred to as "a tree cutter from Lebanon by the name of "Koch". As you can see from the letterhead, our company name is Kocher's Tree Service and we are from Orangeville.

Please let me know if there is any other information that you may need regarding this claim.

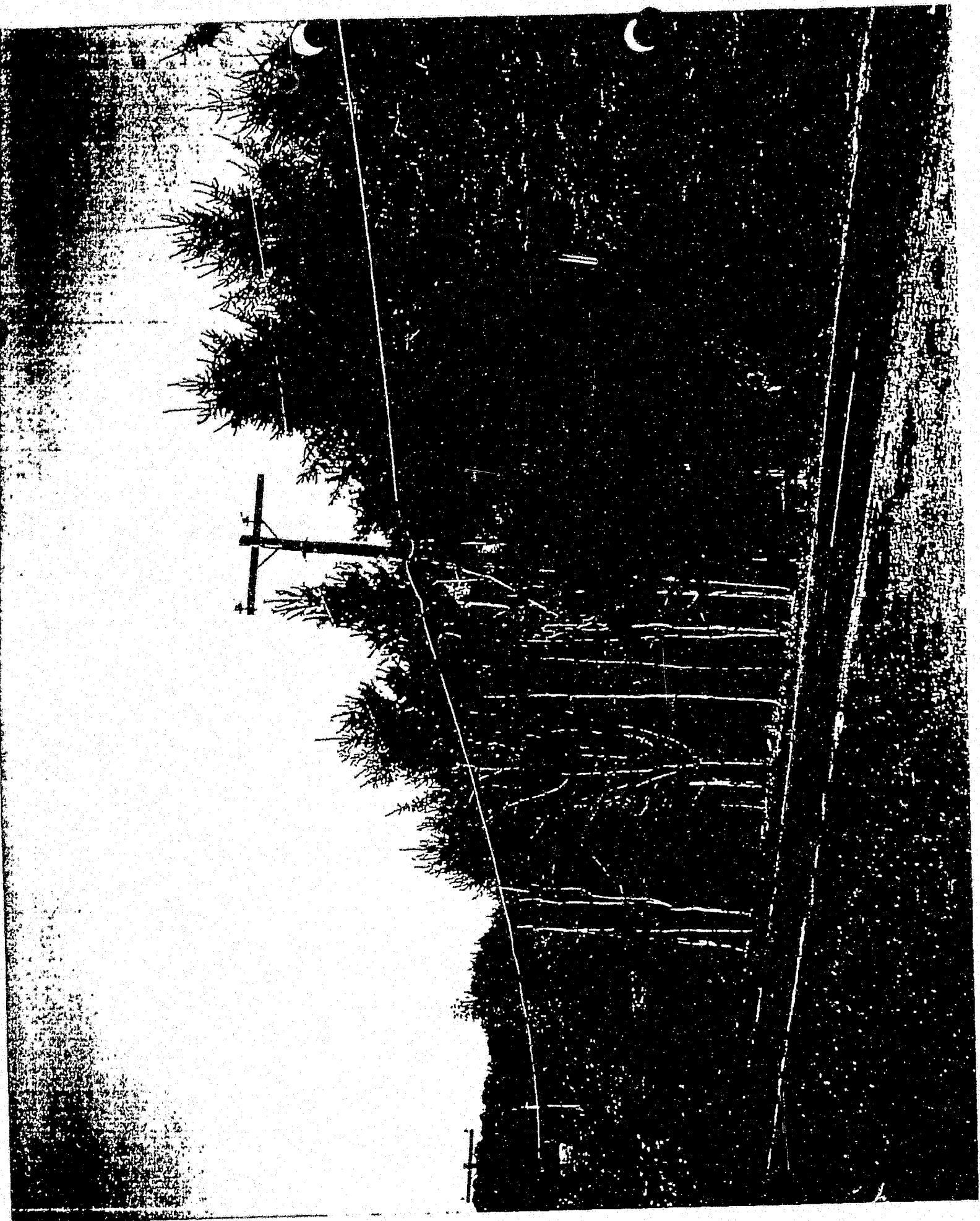
Sincerely,

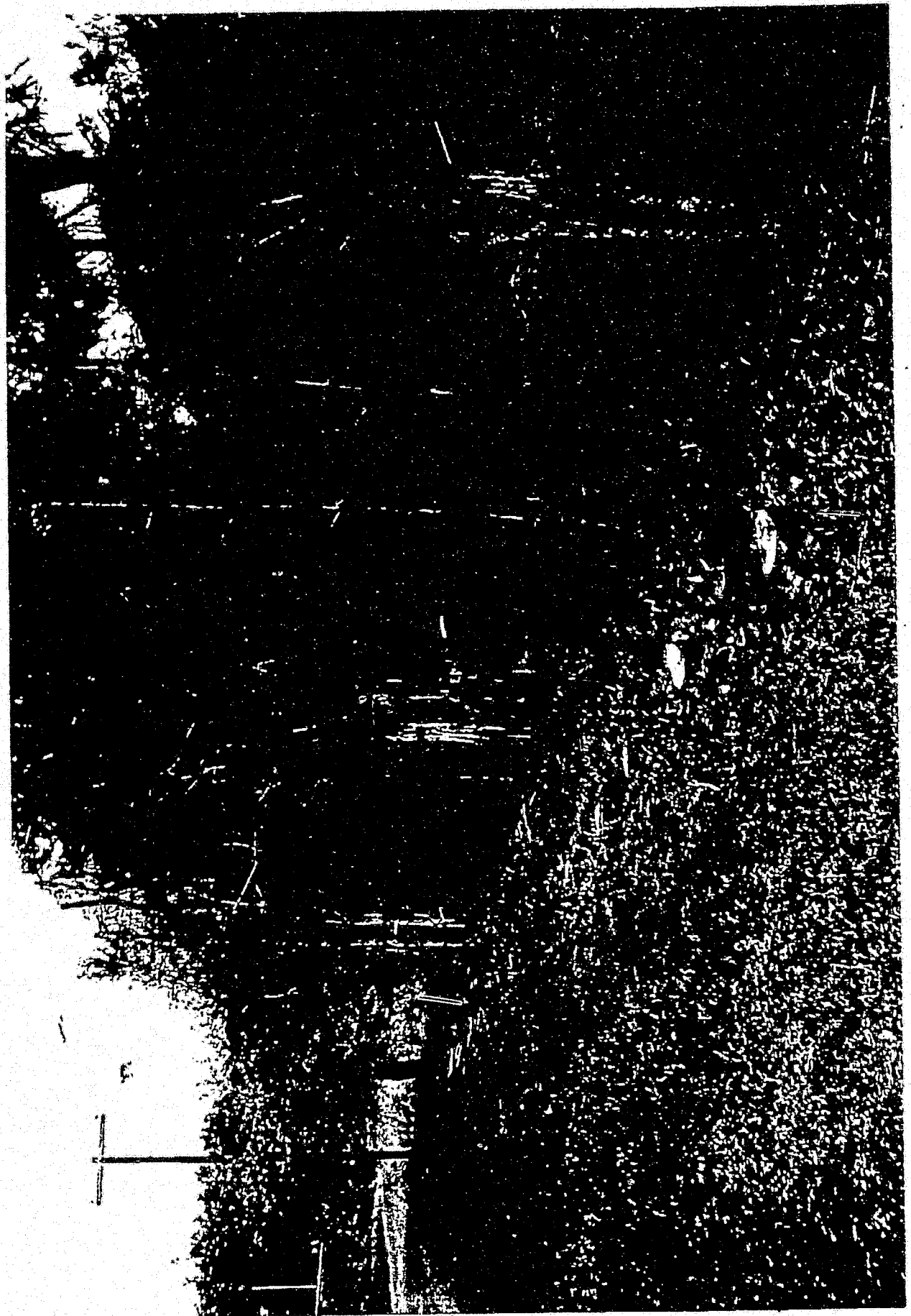
A handwritten signature in cursive script that reads "Allen Kocher".

Kocher's Tree Service
Allen Kocher

EAK/lmk

Cc: PPL Corporation









Map Number:

This Deed, made this 19th day of August in the year
nineteen hundred and ninety-four (1994)

Between, John C. Gilbert and Frances Gilbert, his wife, of Nutley, New Jersey,
hereinafter called the Grantors

A N D

Eugene G. Butala and Joan A. Butala, his wife, of Croydon,
Pennsylvania,

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT
FOLDER

DOCKETED

NOV 0 8 2006

hereinafter called the Grantees

Witnesseth, that in consideration of the sum of

in hand paid, the receipt whereof is hereby acknowledged, the Grantors do Dollars
convey unto the Grantees, their heirs and assigns, hereby grant and

ALL THAT CERTAIN Lot No. 1, as shown on the Minor Subdivision for John C. Gilbert and
Frances Gilbert, his wife, dated February 2, 1990, as recorded in the Recorder of
Deeds Office in and for the County of Schuylkill, in Map Book Volume 19, page 73,
together with a two and one-half story brick dwelling constructed thereon, located
along the northerly side of Mill Drive, Township Road #984, leading from Pa. Traffic
Route #309, State Route #0309, to Pa. Traffic Route #443, State Route #0443, situate
in the Township of West Penn, County of Schuylkill, and Commonwealth of Pennsylvania,
being more fully bounded and described as follows, to wit:-

BEGINNING at a railroad spike set in the middle of Mill Drive, Township Road #984,
leading from Pa. Traffic Route #309, State Route #0309, to Pa. Traffic Route #443,
State Route #0443; said railroad spike also marking the southwest corner of Lot No. 2,
being retained by John C. Gilbert and Frances Gilbert, his wife; thence extending
through the middle of Mill Drive, Township Road #984, the following two (2) courses
and distances: (1) South eighty-two (82) degrees fifty-seven (57) minutes thirty (30)
seconds West one hundred ninety-four and fifty-five hundredths (194.55) feet to a
railroad spike found. (2) extending along a curve to the right with a radius of six
hundred seven and nineteen hundredths (607.19) feet, a central angle of eighteen (18)
degrees forty-two (42) minutes sixteen (16) seconds, and an arc length of one hundred
ninety-eight and twenty-two hundredths (198.22) feet to a railroad spike found; thence
extending along Lot No. 4 of the Subdivision of Joseph S. and Regina H. Grey, recorded
in Map Book 12, page 30, the following two (2) courses and distances: (1) North eleven
(11) degrees thirty-nine (39) minutes forty-six (46) seconds East twenty-five and no
hundredths (25.00) feet to an iron pin found. (2) North eight (08) degrees four (04)
minutes and twenty-nine (29) seconds West two hundred twenty-eight and fifty-six
hundredths (228.56) feet to an iron pin found; thence extending along Lot No. 3 and
Lot No. 2, of the aforesaid Subdivision, North sixteen (16) degrees fifty-two (52)
minutes and no (00) seconds West three hundred sixty-seven and twenty-seven hundredths
(367.27) feet to an iron pin found; thence extending along the property of now or
formerly Charles G. Hoppes and Jennie A. Hoppes, his wife, in Deed Book Volume 1247,
page 310, the following three (3) courses and distances: (1) North eighty-seven (87)
degrees twenty-eight (28) minutes no (00) seconds East two hundred forty-four and
fifty hundredths (244.50) feet to an iron pin found. (2) North four (04) degrees
twenty-four (24) minutes twenty (20) seconds East two hundred eighty-three and ninety
hundredths (283.90) feet to an iron pipe found. (3) South eighty-eight (88) degrees
twenty-eight (28) minutes fifteen (15) seconds East five hundred six and thirty-six
hundredths (506.36) feet to an iron pin found; thence extending along property of now
or formerly Daniel Billman, in Deed Book Volume 898, page 411, South four (04) degrees
three (03) minutes thirty-six (36) seconds East three hundred sixty-four and twenty-
seven hundredths (364.27) feet to an iron pin found; thence extending along the

C-20066076
SCRANTON, 10/17/06

EXHIBIT
C-1
PENNSAID 800-631-6889

northerly side of Lot No. 3 and Lot No. 2, South eighty-two (82) degrees fifty-seven (57) minutes thirty (30) seconds West passing through an iron pin found at two hundred thirteen and eighty-three hundredths (213.83) feet, a total distance of three hundred thirty-three and eighty-three hundredths (333.83) feet to an iron pin found also marking the northwest corner of Lot No. 2; thence extending along the westerly side of Lot No. 2, South seven (07) degrees two (02) minutes thirty (30) seconds East passing through an iron pin found at four hundred forty-one and no hundredths (441.00) feet, a total distance of four hundred sixty-six and no hundredths (466.00) feet to the place of Beginning.

CONTAINING 9.9470 Acres of land. Excepting and reserving to West Penn Township 0.2230 Acres of land within the existing and proposed extended right-of-way of Mill Drive, Township Road #984, leaving a net area of 9.7240 Acres of land.

ALSO ALL THAT CERTAIN tract or parcel of land, located on the southerly side of Mill Drive, Township Road #984 and the northerly side of Pa. Traffic Route #309, S.R. #0309, together with a frame barn and other frame sheds constructed thereon, situate in the Township of West Penn, County of Schuylkill, and Commonwealth of Pennsylvania, being more fully bounded and described as follows, to wit:-

BEGINNING at a railroad spike set in the middle of Mill Drive, Township Road #984, leading from Pa. Traffic Route #309, State Route #0309, to Pa. Traffic Route #443, State Route #0443; said railroad spike also marking the southeast corner of Lot No. 3, of the Minor Subdivision of John C. Gilbert and Frances Gilbert in Map Book Volume 19, page 73; said spike being in line of property of now or formerly Daniel Billman, in Deed Book Volume 898, page 411; thence extending along the property of now or formerly Daniel Billman, the following two (2) courses and distances: (1) South four (04) degrees three (03) minutes thirty-six (36) seconds East three hundred seventy and seventy-five hundredths (370.75) feet to an iron pin found. (2) South eighty (80) degrees thirty (30) minutes forty-five (45) seconds East one thousand one and fifty-five hundredths (1001.55) feet to an iron pin found, thence extending along property of Ricky Timothy Kemmerer, and James A. Kemmerer and Ruth S. Kemmerer, his wife, in Deed Book Volume 1327, page 865, South five (05) degrees six (06) minutes forty (40) seconds East two hundred eighty-five and twenty-six hundredths (285.26) feet to an iron pin found on the northerly side of Pa. Traffic Route #309, S.R. #0390; thence extending along the northerly side of Pa. Traffic Route #309, S.R. #0309, the following thirteen (13) courses and distances: (1) extending along a curve to the right with a radius of twenty-four hundred fifty-two and eighty-five hundredths (2452.85) feet, a central angle of twelve (12) degrees eleven (11) minutes ten (10) seconds, and an arc length of five hundred twenty-one and sixty-nine hundredths (521.69) feet to a point. (2) North twenty-two (22) degrees four (04) minutes fifty (50) seconds East fifty-five and no hundredths (55.00) feet to a point. (3) extending along a curve to the right with a radius of twenty-three hundred ninety-seven and eighty-five hundredths (2397.85) feet, a central angle of one (01) degree fifty (50) minutes ten (10) seconds, and an arc length of seventy-six and eighty-four hundredths (76.84) feet to a point. (4) North sixty-six (66) degrees five (05) minutes no (00) seconds West one hundred sixty-eight and sixty-seven hundredths (168.67) feet to a point. (5) South twenty-three (23) degrees fifty-five (55) minutes no (00) seconds West eighty-five and no hundredths (85.00) feet to a point. (6) North sixty-six (66) degrees five (05) minutes no (00) seconds West five hundred seventy-six and eight hundredths (576.08) feet to a point. (7) North sixty-four (64) degrees forty-six (46) minutes forty (40) seconds West one hundred twenty and forty-seven hundredths (120.47) feet to a point. (8) North sixty-two (62) degrees forty-three (43) minutes two (02) seconds West ninety-two and fifty-two hundredths (92.52) feet to a point. (9) South twenty-six (26) degrees fourteen (14) minutes no (00) seconds West five and no hundredths (5.00) feet to a point. (10) North sixty (60) degrees forty-nine (49) minutes nineteen (19) seconds West one hundred four and nineteen hundredths (104.19) feet to a point. (11) North fifty-eight (58) degrees thirty-four (34) minutes fifty (50) seconds West ninety-eight and twenty-two hundredths (98.22) feet to a point. (12) North fifty-eight (58) degrees eighteen (18) minutes thirty (30) seconds West one hundred seventeen and eighty-seven hundredths (177.87) feet to a point. (13) North fifty-eight (58) degrees ten (10) minutes thirty (30) seconds West one hundred twenty-eight and sixty-five hundredths (128.65) feet to a point in Mill Drive, Township Road #984; thence extending through the middle of Mill Drive, Township Road #984, the following four (4) courses and distances: (1) South seventy-eight (78) degrees twenty (20) minutes fourteen (14) seconds East one hundred ten and no hundredths (110.00) feet to a rail spike found. (2) extending along a curve to the left with a radius of six hundred seven and nineteen hundredths (607.19) feet, a central angle of eighteen (18) degrees forty-two (42) minutes sixteen (16) seconds,

and an arc length of one hundred ninety-eight and twenty-two hundredths (198.22) feet to a railroad spike found. (3) North eighty-two (82) degrees fifty-seven (57) minutes thirty (30) seconds East three hundred fifty-five and sixty hundredths (355.60) feet to a railroad spike found. (4) extending along a curve to the left with a radius of six hundred twenty-two and forty-three hundredths (622.43) feet, a central angle of thirteen (13) degrees fifty-three (53) minutes thirty-nine (39) seconds, and an arc length of one hundred fifty and ninety-four hundredths (150.94) feet to the place of Beginning.

CONTAINING 8.7963 Acres of land, including the area within the right-of-way of Mill Drive, Township Road #984.

BEING THE SAME PREMISES which Joseph S. Grey and Regina H. Grey, his wife, by their deed dated August 20, 1986 and recorded in the Office of the Recorder of Deeds in and for Schuykill County in Deed Book 1379, page 582, granted and conveyed unto John C. Gilbert and Frances Gilbert, his wife, the Grantors herein.

And the Grantors do hereby covenant to and with the Grantees that the Grantors SHALL and WILL and WILL specially Warrant and forever defend the within described premises, with the hereditaments and appurtenances unto the Grantees, their heirs and assigns, against the Grantors and against every other person lawfully claiming or who shall hereafter claim the same or any part thereof, by, from or under it, them or any of them.

In Witness Whereof, the Grantors have caused these presents to be duly executed, the day and year first above written.

Sealed and Delivered
in presence of

Paris J. Butala

John C. Gilbert (SEAL)
John C. Gilbert
Frances Gilbert (SEAL)
Frances Gilbert

STATE OF PENNSYLVANIA }
COUNTY OF SCHUYLKILL } ss:

On this the 19th day of August, 1994, before me the undersigned officer, personally appeared John C. Gilbert and Frances Gilbert

known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within deed and acknowledged that they executed the same for the purposes therein contained

In Witness Whereof, I hereunto set my hand and official seal.

The address of Grantee is

Cynthia A. Smulligan

Administrator of Oaths
NOTARIAL SEAL
CYNTHIA A. SMULLIGAN Notary Public
Borough of Tamaqua, Schuylkill Co
My Commission Expires September 2, 1998

DESANTIS & MENCONI
Attorneys at Law
Tamaqua, PA

DEED

John C. Gilbert and
Frances Gilbert, his wife
To

Eugene G. Butala and
Joan A. Butala, his wife

Recorded in Schuylkill County,
Pa. in Deed Book page
GIVEN under my hand and the seal of
the said office, the date above written.

Recorder of Deeds
Schuylkill County Bar Association Form