

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John L. Horwith, Jr.	:	
	:	
v.	:	C-2016-2528323
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Joel H. Cheskis
Administrative Law Judge

INTRODUCTION

This decision dismisses a complaint filed against an electric distribution company by a customer who alleged that the company improperly removed trees from his property and failed to correct the perceived errors when requested to do so. The complainant also averred that he sustained injuries as a result of the company's actions. This decision finds that the complainant has failed to satisfy his burden of demonstrating that the company violated the Public Utility Code, a Commission order or regulation or a Commission-approved company tariff with regard to the service provided.

HISTORY OF THE PROCEEDING

On January 31, 2016, John L. Horwith, Jr. filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or the company), Docket Number C-2016-2528323. In his complaint, Mr. Horwith argued that PPL improperly removed trees and that some trees were pushed over instead of cut. Mr. Horwith also argued that it is impossible for him to maintain the area due to

tree stumps and branches on the ground, including a hole that was not filled in after the tree was removed and which caused him injury when he rode his four-wheeler over it. For relief, Mr. Horwith requested that PPL pay for his medical expenses, reimburse him for the cleared trees and no longer strip trees from his land.

The formal complaint was served on PPL electronically by the Commission's Secretary.¹

On February 29, 2016, PPL filed an answer in response to the complaint. In its answer, PPL admitted or denied the various averments Mr. Horwith made in his complaint. In particular, PPL denied that it improperly removed any trees or performed improper maintenance of its right of way. PPL provided a history of the vegetation maintenance performed by the company on Mr. Horwith's property and concluded that the complaint should be denied.

On March 7, 2016, a telephonic hearing notice was issued establishing an initial telephonic hearing for Monday, April 11, 2016 and assigning Administrative Law Judge Ember S. Jandebaur as the presiding officer. A prehearing order dated March 8, 2016 was issued setting forth various procedural rules that would govern the hearing.

The hearing convened on April 11, 2016, as scheduled. Mr. Horwith appeared pro se. Graig Schultz, Esquire appeared on behalf of PPL. During the hearing, ALJ Jandebaur determined that the hearing should be converted to an in-person hearing. Tr. 15.

As a result, on May 2, 2016, a corrected hearing cancellation/reschedule judge and hearing change notice was issued establishing a further in-person hearing for this case for Friday, July 1, 2016 in the Scranton state office building and assigning me as the presiding officer. Prehearing Order #2 was issued setting forth the various rules that would govern that hearing.

¹ PPL has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702, and has agreed to electronic service instead under the Commission's Waiver of 702 program. Service is listed in the Audit History of the Commission's docketing system for this case as having been effected on February 9, 2016.

By letter dated May 27, 2016, however, counsel for PPL requested that the hearing scheduled for July 1, 2016 be continued. There was no opposition to the requested continuance. As a result, the requested continuance was granted via order dated June 3, 2016. A hearing cancellation/reschedule notice was issued on June 1, 2016 establishing a further hearing for this matter for Tuesday, July 26, 2016 at 11:00 a.m. in the Scranton state office building.

The hearing convened on July 26, 2016, as scheduled. Graig Schultz, Esquire appeared on behalf of PPL. Mr. Horwirth, however, failed to appear. Mr. Horwirth was reached by telephone at which time he indicated that he believed the further hearing was scheduled for July 28, 2016. The parties agreed to engage in settlement discussions at that time and both parties consented to my involvement in those discussions as a settlement judge consistent with the Commission's regulations. 52 Pa.Code § 5.223(c); *see also*, 52 Pa.Code § 5.231(c). As a result of those discussions, the parties agreed that PPL would perform various actions at Mr. Horwirth's property to satisfy the complaint. The parties were given 90 days for these actions to be performed and advised that if the settlement had not been reached, an in-person hearing in Harrisburg would be scheduled.

On August 30, 2016, PPL submitted a letter indicating that a settlement would not be achieved and requesting that the in-person hearing in Harrisburg be scheduled. As a result, a hearing notice was issued on September 6, 2016 establishing a further hearing for October 27, 2016 beginning at 10:00 a.m. in hearing room 2 in Commonwealth Keystone building in Harrisburg. Prehearing Order #3 was issued confirming the establishment of the further hearing on October 27, 2016 and informing the parties that all other aspects of the Prehearing Order #2 dated May 3, 2016 remain in effect.

The hearing convened on October 27, 2016, as scheduled. Mr. Horwith again appeared pro se and presented oral testimony and sponsored one exhibit that was admitted into the record. Mr. Schultz again appeared on behalf of PPL. Mr. Schultz presented one witness who sponsored one exhibit that was admitted into the record. A transcript totaling 74 pages was created.

The record in this proceeding closed on November 18, 2016 when the transcript of the October 27, 2016 hearing was submitted to the Commission. Mr. Horwith's complaint is ready for disposition. For the reasons discussed below, the complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant in this case is John L. Horwith, Jr.
2. The Respondent in this case is PPL Electric Utilities Company.
3. The service address is 1806 Rockdale Road, Slatington, PA.
4. Justin Mease has been employed by PPL since 2003, first as a utility worker doing general clearing, then line inspector and then as a forester. Tr. 29-30.
5. Mr. Mease is part of PPL's vegetation management group. Tr. 30-31.
6. PPL operates under three different federal vegetation management plans that address clearances of right-of-ways based on the size of the line. Tr. 32-34.
7. PPL maintains right-of-ways with customers regarding the portion of the customer's property that lies underneath the transmission lines. Tr. 35.
8. PPL has four 69 kilovolt (kv) lines and two 30 kv lines that cross Mr. Horwith's property. Tr. 36.
9. The 69 kv lines have rights-of-way 100 feet wide and the 30 kv lines have rights-of-way 150 feet wide. Tr. 36.

10. A hazard tree is a tree that PPL deems unsafe for the line because it has some defect in it, including being dead, dying or diseased. Tr. 36.

11. Trees were removed from Mr. Horwith's property in 2010 and then again in 2013 for the 30 kv lines and in 2014 for the 69 kv lines. Tr. 37.

12. The trees that were removed from Mr. Horwith's property were standard trees found in most of PPL's right-of-ways: walnut, oak, hickory, poplar. Tr. 38.

13. PPL removes trees that are directly below any lines or that could fall within 10 feet of the line. Tr. 38.

14. PPL uses contractors to perform tree removal service. Tr. 39.

15. No vegetation contractor would use a bulldozer to remove a tree because there is no control over where the tree falls. Tr. 40-41.

16. Most of the wood after the tree falls would be broken down and stacked on site in small piles for wildlife habitat and to break down into the eco-system. Tr. 41.

17. PPL's contractors speak with landowners regarding the work to be done before the work is done. Tr. 41-42.

18. Mr. Horwith and the contractor agreed that the wood from the fallen trees would be stacked on the right-of-way in a manner that would allow Mr. Horwith to access the wood with his four wheeler for his use or converted to mulch. Tr. 42.

19. PPL Exhibit Number 6 is a compilation of 18 photographs taken by Mr. Horwith of the trees cut down on his property. Tr. 43; PPL Exh. No. 6.

20. The first two photographs depict hardwood plants that have been converted to mulch by a mower and a herbicide applied to the stump. Tr. 44-46; PPL Exh. No. 6.

21. The rights-of-way for the 30 kv lines are maintained the same as the rights-of-way for the 69 kv lines. Tr. 45.

22. The third photograph is of a stump that was cut parallel to the slope in the ground with the remaining wood laying on the ground around the stump. Tr. 46-47; PPL Exh. No. 6.

23. The fourth and sixth photographs show stacks of wood from walnut trees near a ravine in an unmaintained area on Mr. Horwith's property. Tr. 48-49; PPL Exh. No. 6.

24. The fifth photograph is of more trees that were taken down. Tr. 48-49; PPL Exh. No. 6.

25. The seventh photograph is of one of the trees that was taken down where the tree rolled down the road to Mr. Horwith's driveway and the PPL crew removed the tree from the driveway. Tr. 49-50; PPL Exh. No. 6.

26. The eighth and ninth photographs show a stack of firewood taken from the same tree. Tr. 50; PPL Exh. No. 6.

27. The tenth photograph depicts a tree taken down that leans against a smaller tree to avoid the trunk rolling down the bank. Tr. 50; PPL Exh. No. 6.

28. The eleventh, twelfth, thirteenth and sixteenth photographs show wood from fallen trees stacked in piles. Tr. 50-51; PPL Exh. No. 6.

29. The fourteenth photograph shows the four 69 kv lines and the cleared right-of-way. Tr. 50-51; PPL Exh. No. 6.

30. The fifteenth photograph shows additional trees that have been uprooted. Tr. 51; PPL Exh. No. 6.

31. The seventeenth photograph depicts a portion of a tower for the two 30 kv lines. Tr. 51-52; PPL Exh. No. 6.

32. The eighteenth photograph is of the top of various walnut trees. Tr. 52; PPL Exh. No. 6.

33. It is not the standard practice of PPL's vegetation management plan to cut off the top of trees. Tr. 52.

34. Mr. Horwith expressed to Mr. Mease his desire to have certain holes on his property filled in that he believed were not properly filled in and some of the wood that was cut relocated. Tr. 52-53.

35. Mr. Horwith showed Mr. Mease what work he wanted corrected on his property when Mr. Mease visited Mr. Horwith's property on May 4, 2016 and drove the right-of-way with Mr. Horwith. Tr. 53-54.

36. There was no evidence to show that a bulldozer was used to push over any trees. Tr. 54-55.

37. Horwith Exhibit Number 1 is a tri-fold brochure captioned "Transmission Line Vegetation Management: Keeping your electric service reliable." Tr. 62-64; Horwith Exh. No. 1.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Mr. Horwith seeks 1) reimbursement for medical expenses related to an injury he sustained as a result of the removal of trees on his property, 2) reimbursement for clearing of trees on his property, 3) to not have his property stripped of trees and 4) to have his property properly cleared following the removal of trees. Mr. Horwith, therefore, has the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm’n, 768 A.2d 1217 (Pa.Cmwlth. 2001) (Milkie); *see also*, Burleson v. Pa. Pub. Util. Comm’n, 443 A.2d 1373 (Pa.Cmwlth 1982).

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment

Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlt.1984).

In this case, Mr. Horwith generally testified during the hearing that PPL improperly cleared trees from his property. In support of his testimony, Mr. Horwith presented 18 photographs that he believes demonstrate that PPL cleared trees by pushing them over, never cleaned up the debris, topped off trees and failed to remove tree stumps, among other things. Tr. 20-24; PPL Exh. No. 6.² Mr. Horwith added that PPL did not make the repairs he requested to fix the problems. Tr. 25. Mr. Horwith concluded that he was injured as a result of PPL's improper removal of the trees. Tr. 66-67. In response, PPL presented the testimony of Justin Mease, a regional forester who has worked for PPL since 2003. Tr. 29-30. Mr. Mease provided extensive testimony regarding PPL's vegetation management plan and addressed the concerns raised by Mr. Horwith in the photographs he presented. Mr. Mease concluded that PPL at all times acted consistent with its statutory obligations to provide service to its customers. Tr. 57-58.

Mr. Horwith's complaint will be dismissed because he has failed to carry his burden to demonstrate that PPL violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with respect to the service provided to him.

As an initial matter, it is well settled that the Commission has jurisdiction over matters involving vegetation management within a right of way. Section 1501 of the Public Utility Code provides, among other things, that "every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities." 66 Pa.C.S. § 1501. In West Penn Power Company v. Pa. P.U.C., 578 A.2d 75 (Pa. Cmwlt. 1990) (West Penn), the Commonwealth Court stated:

² Although Mr. Horwith took these photographs, they were admitted into the record as PPL Exhibit Number 6.

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

* * * *

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

Id. at 77 (affirming the Commission’s decision to impose a fine on the utility for the removal of 74 trees from a customer’s property). The Court noted that the Public Utility Code defines “service” as “any and all acts done, rendered or performed, and any and all things furnished or supplied, and any and all facilities used, furnished or supplied by public utilities.” Id., *citing*, 66 Pa.C.S. §102.

The Court concluded that: “The PUC is correct in concluding that vegetation maintenance is a service and that West Penn’s clearing of the entire 40 foot right of way and West Penn’s removal of trees outside of the right of way did not constitute reasonable and adequate service.” Id.; *see also*, PECO Energy Company v. Township of Upper Dublin, 922 A.2d 996 (Pa. Cmwlth 2007)(Commission possesses the sole authority to regulate a public utility’s vegetation management practices in its service territory) and Popowsky v. Pa. P.U.C., 653 A.2d 1385 (Pa. Cmwlth 1985)(vegetation maintenance constitutes a utility service and must be performed in a safe, adequate, reasonable and efficient manner); *see also*, 66 Pa. C.S. § 2802(20). The Court concluded, in part, that “public utility service embraces vegetation management.” Id.

Furthermore, in the Electricity Generation Customer Choice and Competition Act, the General Assembly declared it to be the policy of the Commonwealth that “reliable electric service is of the utmost importance to the health, safety and welfare of the citizens of the

Commonwealth.” 66 Pa.C.S. § 2802(12). Additionally, Section 2802(20) of the Public Utility Code provides that:

(20) Since continuing and ensuring the reliability of electric service depends on adequate generation and on conscientious inspection and maintenance of transmission and distribution systems, the independent system operator or its functional equivalent should set, and the commission shall set through regulations, inspection, maintenance, repair and replacement standards and enforce those standards.

66 Pa.C.S. § 2802(20). In addition, the Commission has adopted various regulations in response to these legislative mandates. For example, Section 57.193 of the Commission’s regulations provides:

§ 57.193 Transmission system reliability.

- (a) An electric distribution company shall install and maintain its transmission facilities, and ensure that its transmission facilities are operated, in conformity with the applicable requirements of the National Electrical Safety Code. An electric distribution company shall operate its transmission facilities in conformance with the operating policies, criteria, requirements and standards of [the North American Energy Reliability Corporation] and the appropriate regional reliability council, or successor organizations, and other applicable requirements.

52 Pa.Code § 57.193(a).

It is against this legal backdrop that Mr. Horwith’s complaint is evaluated. *See also, Yanling Chen and Jianming Hu v. Metropolitan Edison Co.*, Docket No. C-2013-2397061 (Opinion and Order entered Nov. 5, 2015) (noting that the company did not act unreasonably when it removed the trees in question); *Roger McCall v. Pennsylvania Electric Co.*, Docket No. C-2009-2105240 (Opinion and Order entered June 7, 2010) (company’s excessive trimming violated Section 1501). In applying this legal standard to the record evidence presented in this case, it is clear that Mr. Horwith has failed to satisfy his burden to demonstrate that PPL violated

the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company when providing service to him.

The photographs presented by Mr. Horwith do not demonstrate any unreasonable tree removal. The photographs clearly show that the area is very rural and heavily forested. When transmission lines run through such areas, substantial tree removal must occur in order for PPL to satisfy its statutory and regulatory obligation to furnish and maintain adequate, efficient, safe and reasonable service and facilities to all its customers. Some of the photographs show wood chips or debris scattered around a stump that would reasonably be expected after a tree is removed. Other photographs show wood neatly stacked in piles or in a manner consistent with the surrounding areas. Other photographs show trunks or branches left on the ground in a reasonable manner. There is no evidence that trees were pushed over, as Mr. Horwith argued. Such evidence could include tree stumps toppled over with exposed tree roots. Other evidence could include trees with uneven tears in the trunks, instead of clean cuts that would be made by a saw. None of the trees shown in the photographs admitted into the record of this proceeding were in such condition. Furthermore, it is not unreasonable that wood chips or debris would remain scattered around tree stumps, or that tree stumps would remain, as shown in the photographs.

In general, the photographs appear to be consistent with work performed pursuant to a vegetation management plan and necessary to comply with specific clearances required between transmission lines. In fact, PPL witness Mease, a forester with approximately 13 years of experience, testified that the removal or trimming of trees on Mr. Horwith's property was necessary for PPL to comply with its statutory service to its customers and with the company's vegetation management plan. Tr. 57-58. Based on the record evidence presented in this proceeding, I agree. Mr. Horwith's own photographic evidence of his property does not show any unreasonable action by PPL's contractor. This is particularly true when considering PPL's statutory and regulatory obligations to provide adequate, efficient, safe and reasonable service and facilities.

As a result, Mr. Horwith's arguments that PPL improperly removed the trees from his property, and improperly cleared his property following removal of the trees, will be denied. PPL has effectively rebutted the evidence presented by Mr. Horwith by demonstrating that the work performed was reasonable yet Mr. Horwith has not adequately responded to the evidence presented by PPL. As noted above, the burden of going forward with evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the complainant. Milkie, supra. While Mr. Horwith may not be satisfied with how his property was left following PPL's removal of the trees, there is no evidence that PPL acted unreasonably. Rather, the evidence supports PPL acting in a manner consistent with its statutory obligations to all of its customers.

With regard to Mr. Horwith's requests that he be reimbursed for the clearing of trees on his property or medical expenses related to an injury he averred he sustained as a result of the removal of the trees from his property, these requests will also be denied. It is well settled that the Commission may not exceed its jurisdiction and must act within it. City of Pittsburgh v. Pa. Pub. Util. Comm'n., 43 A.2d 348 (Pa. Super 1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. Hughes v. Pa. State Police, 619 A.2d 390 (Pa. Cmwlt 1992). As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. §§ 101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. Feingold v. Bell, 383 A.2d 791 (Pa. 1977). The statutory array of Commission remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. Id. at 794. As a result, the Commission cannot award Mr. Horwith monetary damages as a result of PPL's actions and those requests in this proceeding will be denied.

In conclusion, Mr. Horwith has failed to carry his burden to demonstrate that PPL in any way violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. The evidence presented by Mr. Horwith in support of his complaint does not demonstrate any unreasonable actions taken by the company. Rather, the

photographs demonstrate the company acting consistent with its statutory and regulatory obligations to furnish and maintain adequate, efficient, safe and reasonable service and facilities. Mr. Horwith's complaint will, therefore, be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

4. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

5. The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa.Superior 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwlth 23, 480 A.2d 382 (1984).

9. Every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities. 66 Pa.C.S. § 1501.

10. Public utility service embraces vegetation management. West Penn Power Company v. Pa. P.U.C., 578 A.2d 75 (Pa. Cmwlth 1990).

11. The Commission possesses the sole authority to regulate a public utility's vegetation management practices in its service territory. PECO Energy Company v. Township of Upper Dublin, 922 A.2d 996 (Pa. Cmwlth 2007).

12. Vegetation maintenance constitutes a utility service and must be performed in a safe, adequate, reasonable and efficient manner. Popowsky v. Pa. P.U.C., 653 A.2d 1385 (Pa. Cmwlth 1985).

13. The Public Utility Code defines "service" as "any and all acts done, rendered or performed, and any and all things furnished or supplied, and any and all facilities used, furnished or supplied by public utilities." 66 Pa.C.S. § 102.

14. Reliable electric service is of the utmost importance to the health, safety and welfare of the citizens of the Commonwealth. 66 Pa.C.S. § 2802(12).

15. Since continuing and ensuring the reliability of electric service depends on adequate generation and on conscientious inspection and maintenance of transmission and distribution systems, the independent system operator or its functional equivalent should set, and the commission shall set through regulations, inspection, maintenance, repair and replacement standards and enforce those standards. 66 Pa.C.S. § 2802(20).

16. An electric distribution company shall install and maintain its transmission facilities, and ensure that its transmission facilities are operated, in conformity with the applicable requirements of the National Electrical Safety Code. An electric distribution company shall operate its transmission facilities in conformance with the operating policies, criteria, requirements and standards of the North American Energy Reliability Corporation and the appropriate regional reliability council, or successor organizations, and other applicable requirements. 52 Pa.Code § 57.193(a).

17. The Commission may not exceed its jurisdiction and must act within it. City of Pittsburgh v. Pa. Pub. Util. Comm'n., 43 A.2d 348 (Pa. Super 1945).

18. Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967).

19. Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. Hughes v. Pa. State Police, 619 A.2d 390 (Pa. Cmwlth 1992).

20. As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. §§ 101, *et seq.*

21. The Commission's jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. Feingold v. Bell, 383 A.2d 791 (Pa. 1977).

22. The statutory array of Commission remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. Feingold v. Bell, 383 A.2d 791 (Pa. 1977).

23. PPL was acting within the scope of its vegetation management plan at all times with respect to the tree trimming and removal work that was performed on Mr. Horwith's property.

24. All of the trees that were either cut, trimmed or removed on Mr. Horwith's property were necessary to comply with specific clearances in the vegetation management plan.

25. Mr. Horwith has failed to satisfy his burden of proof in this proceeding by a preponderance of the evidence to demonstrate that PPL in any way violated the Public Utility Code, a Commission Order or regulation or a Commission-approved tariff. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by John L. Horwith, Jr. against PPL Electric Utilities Corporation at Docket Number C-2016-2528323 dated January 31, 2016 is hereby dismissed.
2. That this matter be marked closed.

Date: December 27, 2016

/s/
Joel H. Cheskis
Administrative Law Judge