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February 17, 2017

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: John L. Horwith, Jr. v PPL Electric Utilities Corporation
Docket No: C-2016-2528323

Dear Ms. Chiavetta:

Enclosed for eFiling in the above-captioned matter are the Replies on behalf of PPL Electric Utilities Corporation, to Complainant's Exceptions.

Please note that this filing was eFiled with the Commission on the date indicated above.

Very truly yours,



GRAIG M. SCHULTZ

GMS/ejm
Enclosure

cc: John L. Horwith, Jr. (w/ enc.)
Administrative Law Judge Joel Cheskis (w/enc.); *via email only*
Patricia L. Moore (w/enc.) *via email only*
Kimberly R. Hanson (w/enc.) *via email only*
Holly M. Groth (w/enc.) *via email only*
Shelbie Frederick Bayda (w/enc.) *via email only*

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOHN L. HORWITH, JR.,

Complainant,

v.

PPL ELECTRIC UTILITIES
CORPORATION,

Respondent.

No. C-2016-2528323

**RESPONDENT PPL ELECTRIC UTILITIES CORPORATION'S REPLIES TO
COMPLAINANT'S EXCEPTIONS TO THE INITIAL DECISION ISSUED BY
THE HONORABLE JOEL H. CHESKIS ON DECEMBER 27, 2016**

AND NOW, comes Respondent PPL Electric Utilities Corporation ("Respondent PPL"), by and through its counsel, Gross McGinley, LLP, and replies to Complainant's Exceptions as follows:

Introduction

The Pennsylvania Administrative Code (the "Code") provides that exceptions may be filed by a party and served within 20 days after the initial, tentative or recommended decision is issued. 52 Pa. Code § 5.533(a). Exceptions must be "concise." 52 Pa. Code § 5.533(c). Additionally, the Code provides that each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. 52 Pa. Code § 5.533(b). Further, supporting reasons for the exceptions shall follow each specific exception. *Id.*

As it pertains to the instant case, the Exceptions filed by John L. Horwith, Jr. ("Mr. Horwith" and/or "Complainant") do not comply with the Code provisions cited above.

The five (5) exceptions listed by Mr. Horwith are nothing more than bald assertions. More specifically, Mr. Horwith's Exceptions fail to identify the finding of fact or conclusion of law to which each exception is taken. Additionally, Mr. Horwith's Exceptions fail to cite to the relevant pages of the Administrative Law Judge's ("ALJ") decision to which each exception is taken. Further, Mr. Horwith's Exceptions fail to provide supporting reasons for each exception. In light of Mr. Horwith's failure to conform to the various Code provisions cited above, Respondent PPL respectfully requests that Mr. Horwith's Exceptions be dismissed due to his lack of compliance with the Code. *See, e.g., Forward Township Municipal Authority v. Western Pennsylvania Water Co.*, 74 Pa. P.U.C. 421, 1991 WL 476309 (February 14, 1991) ("We note that the Complainant's Exception No. 3 constitutes a bald assertion. Consonant with [Section 5.533(b)], we shall deny this Exception of the Complainant."). Notwithstanding the aforementioned request for dismissal based upon nonconformity, Respondent PPL will hereinafter reply to Mr. Horwith's nonconforming Exceptions in turn.

Reply to Exception No. 1

1. Insofar as Complainant states that he disagrees with the ALJ's finding, Respondent PPL admits this allegation. BY way of further answer, it is specifically denied that the ALJ committed an error of law and/or otherwise abused his discretion in reaching his Findings of Fact and/or Conclusions of Law.

It must be noted that, as the proponent of a rule or order, the complainant bears the burden at the time of the administrative hearing. *See* 66 Pa.C.S.A. § 332(a). To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa.P.U.C. 196, 1990 WL 10702674 (February 8, 1990).

Further, such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the Respondent. *Wapensky v. PPL Electric Utilities Corp.*, 2015 WL 3815035, at *3 (Pa.P.U.C. June 11, 2015) (citing *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950)). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Id.* (citing *Norfolk & Western Ry. Co. v. Pennsylvania Public Utility Commission*, 413 A.2d 1037 (Pa. 1980)).

As it pertains to this case, the ALJ reviewed all evidence presented by the parties and concluded that Mr. Horwith failed to carry his burden of proof. *See* Initial Decision at pp. 12-17.

Reply to Exception No. 2

2. It is denied that any remaining tree stumps on Mr. Horwith's property are four (4) to ten (10) inches above the surface. To the contrary, Mr. Horwith never introduced any evidence at the time of the administrative hearing which confirmed the height of any of the tree stumps on his property. By way of further answer, the ALJ specifically concluded that the work performed by Respondent PPL on Mr. Horwith's property was consistent with its Vegetation Management Plans, and statutory obligations to its customers. In this regard, the ALJ noted:

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.

See Initial Decision at pp. 12-13.

Reply to Exception No. 3

3. It is denied that Respondent PPL failed to perform work on Mr. Horwith's property that was specifically agreed to by the parties. To the contrary, Just Mease -- PPL's Forester -- testified that the parties agreed upon the work to be performed prior to the work being done. *See* hearing transcript at pp. 41-42. *See also* Finding of Fact No. 17 ("PPL's contractors speak with landowners regarding the work to be done before the work is done.") and Finding of Fact No. 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.").

Reply to Exception No. 4

4. It is denied that Respondent PPL cut trees which were beyond its right-of-way. To the contrary, Mr. Horwith failed to introduce any demonstrating that Respondent PPL's contractors cut any trees which were beyond its right-of-way. By way of further answer, the evidence which was introduced at the administrative hearing clearly demonstrated that all work performed by Respondent PPL was consistent with its Vegetation Management Plans and statutory obligations to its customers. *See, e.g.,* Conclusion of Law No. 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.") and Conclusion of Law No. 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.").

Moreover, the evidence which was introduced at the time of the administrative hearing clearly demonstrated that all trees which were trimmed were within the applicable rights-of-way. Namely, Respondent PPL maintains right-of-ways with customers regarding the portion

of the customer's property that lies underneath transmission lines. *See* hearing transcript at p. 35. Mr. Horwith's property contains four (4) 69 kilovolt ("kV") lines and two (2) 30 kV lines. *Id.* at p. 36. The 69 kV lines have rights-of-way 100-feet wide, and the 30 kV lines have rights-of-way 150-feet wide. *Id.* Respondent PPL only removed and/or trimmed trees which were located within its rights-of-way. *Id.* at pp. 36-39.

Reply to Exception No. 5

5. It is denied that Respondent PPL left any trees in the road which North Whitehall Township was required to remove. To the contrary, the only competent evidence admitted at the time of the administrative hearing involving a tree rolling into a roadway, involved Mr. Horwith's driveway. More specifically, a segment of one of the trees that was cut rolled down the road to Mr. Horwith's driveway. *Id.* at pp. 49-50. That tree was promptly removed by Respondent PPL's contractor. *Id.*

To the extent that Mr. Horwith is now attempting to advance a new argument which was not raised at the time of the hearing, this exception must be denied. The Commission has ruled that it must base its decisions on the evidence in the record, and that it is prohibited from looking beyond the record for evidence not previously supplied to support a desired finding of fact or conclusion of law. *Pezzuto v. Metropolitan Edison Co.*, 2013 WL 6835116, at *7 (Pa.P.U.C. December 19, 2013) (citing 52 Pa. Code. § 5.431). As such, new arguments may not be raised at the exception stage of a proceeding as it deprives parties of the opportunity to respond. *Id.* (citation omitted). Any new arguments raised at the exceptions stage of a proceeding will be denied. *See id.* ("Propositions must be advanced at the evidentiary proceeding....The allegation pertaining to 'Smart Meter' charges was not included in the proceeding before the ALJ and may not now be raised. Accordingly, this Exception is denied.").

Conclusion

Based upon the foregoing reasons, Respondent PPL respectfully requests that Mr. Horwith's Exceptions be denied in their entirety.

Dated: February 17, 2017

Respectfully submitted,



By: _____

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PPL Electric Utilities Corporation

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOHN L. HORWITH, JR.,

Complainant,

v.

PPL ELECTRIC UTILITIES
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Respondent.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Respondent PPL Electric Utilities Corporation's Replies to Complainant's Exceptions to the Initial Decision Issued by the Honorable Joel H. Cheskis on December 27, 2016 was forwarded on February 17, 2017, via first class mail, postage prepaid, to the following:

Honorable Joel H. Cheskis
Public Utility Commission
400 North Street
Harrisburg, PA 17120
VIA EMAIL ONLY

John L. Horwith, Jr.
1806 Rockdale Road
Slatington, PA 18080

By: 

Graig M. Schultz