

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

George D. Keller Memorial Association	:	
c/o Mark Schropp	:	
	:	
v.	:	C-2016-2568272
	:	
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 an association that alleged that the company improperly removed trees from its property. This decision finds that the complainant has failed to satisfy its 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 September 23, 2016, George D. Keller Memorial Association c/o Mark Schropp (Keller) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL), docket number C-2016-2568272. In its complaint, Keller averred that PPL's subcontractor cut down trees on its property outside of the right of way and beyond what was required to protect PPL's electric lines from hazards. Keller noted that the property is used in conjunction with a scout cabin and that

the destruction of the trees has adversely affected the property and its use as such. Keller requested that it be reimbursed for the decreased value of its real property attributable to PPL's overcutting, or alternatively for the replacement value of the mature trees that were unnecessarily and improperly cut down.

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

On October 17, 2016, PPL filed an answer in response to Keller's complaint. In its answer, PPL generally admitted or denied the various averments made in the complaint. In particular, PPL stated that all work performed by PPL on Keller's property was performed within the legal limits of PPL's right-of-way and that the trees were removed because they were "danger trees." PPL concluded that the complaint should be denied.

On November 16, 2016, a hearing notice was issued establishing an initial hearing for this matter for Monday, December 12, 2016 in hearing room 2 of the Commonwealth Keystone building in Harrisburg and assigning me as the presiding officer. Also on November 16, 2016, a prehearing order was issued setting forth various procedural rules that would govern the hearing. By agreement of the parties, the hearing was converted from an in-person hearing to a telephonic hearing.

The hearing convened on December 12, 2016, as scheduled. Dirk Berger, Esquire appeared on behalf of Keller and presented two witnesses who sponsored eight exhibits that were admitted into the record. Kimberly Krupka, Esquire appeared on behalf of PPL and presented one witness who sponsored 11 exhibits that were admitted into the record. A transcript of 88 pages was created.

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 September 26, 2016.

The record in this proceeding closed on January 6, 2017 when the transcript of the December 12, 2016 hearing was submitted to the Commission. Keller'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 George D. Keller Memorial Association c/o Mark Schropp.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. The service address is 1873 Fair Road, Schuylkill Haven, PA.
4. Mark Schropp lives at 1873 Fair Road in Schuylkill Haven, PA and is affiliated with the George D. Keller Memorial Association. Tr. 8.
5. The George D. Keller Memorial Association is a 501(c)(3) organization that presented a cabin and property for the Boy Scouts to have activities on and owns the property on which the scout cabin is located. Tr. 9.
6. Keller Exhibit Number 1 is a certified copy of the deed for the George D. Keller Memorial Association property. Tr. 9-10; Keller Exh. No. 1.
7. Keller Exhibit Number 2 is a certified copy of an agreement between Keller and Krafts farms which originally owned part of the property now owned by Keller after the construction of the right-of-way. Tr. 10; Keller Exh. No. 2.
8. Keller Exhibit Number 3 is a certified copy of an agreement between the Daniel Scott property, which was purchased by Keller, and PPL for the right-of-way. Tr. 10; Keller Exh. No. 3.

9. The right-of-way on the property is a one hundred foot right-of-way, meaning that the easement runs 50 feet from the center line of the poles to the edge of the property. Tr. 12.

10. Mr. Schropp became aware that PPL trimmed trees on the property in August, 2015 when he was notified of the activities of PPL's contractor by the assistant scout master. Tr. 12.

11. Keller Exhibit Number 4 is 11 photographs taken in October, 2015 of the fallen timber left behind by PPL. Tr. 13-15; Keller Exh. No. 4.

12. PPL removed a lot of brush from the area where the trees were removed. Tr. 16.

13. PPL sprayed an herbicide mixture to the areas in the rights-of-way that were mowed down so the undesirable trees would not return. Tr. 16, 57.

14. Keller Exhibit Number 5 is 27 photographs of the stumps of the trees that were cut down by PPL. Tr. 17; Keller Exh. No. 5.

15. Keller Exhibit Number 8 is the notification dated June 6, 2016 from PPL to Keller indicating that the company intends to rebuild the existing line that runs approximately three miles from PPL's substation in Cressona Borough to a tap point in Wayne Township. Tr. 19-21; Keller Exh. No. 8.

16. David Luckenbill is a forester who provides consulting services to private landowners and graduated from Williamsport Area Community College in 1976 with an associates degree in forest technology. Tr. 26-27.

17. Keller Exhibit Number 6 is Mr. Luckenbill's curriculum vitae. Tr. 26-27; Keller Exh. No. 6.
18. Mr. Luckenbill visited the Keller property on December 3, 2015 and observed the trees that were cut down. Tr. 28-29.
19. Mr. Luckenbill sprayed blue spray paint on the tree stumps shown in Keller Exhibit Number 5. Tr. 30; Keller Exh. No. 5.
20. Half of the stumps of trees cut down by PPL showed signs of decay. Tr. 32, 53.
21. Mr. Luckenbill measured that all of the tree stumps were beyond 50 feet from the center line of the right-of-way. Tr. 29, 35.
22. It is impossible to tell by looking at the stump whether a tree showed any disease, rot or decay above the stump. Tr. 37.
23. Eric Moncavage is a line clearance inspector for PPL's vegetation management department and has approximately 25 years of experience as either an industrial forester or a line clearance vegetation management forester. Tr. 44-45.
24. Mr. Moncavage inspects work performed by PPL's vegetation management crews along transmission and distribution lines to ensure the work is performed in accordance with PPL's specifications. Tr. 45.
25. The line at issue in this case is a 69 kilovolt (kv) transmission line that runs between different substations and provides electricity for neighborhood distribution lines. Tr. 46.

26. PPL's policy is to trim 69 kv lines back to the edge of the right of way as well as any danger or hazard trees that are adjacent to those areas and remove any tree that is defective and could fall within a few feet of the line where an arc could create an outage. Tr. 46-47.

27. If a tree falls close to an energized line, electricity can, under certain conditions, arc from the line, cause a short and create an outage. Tr. 47.

28. PPL does not take down trees beyond the right-of-way that are not a danger to their facilities. Tr. 47.

29. Mr. Moncavage met with Mr. Schropp prior to the trees being removed to review the easement. Tr. 48.

30. The agreement between Keller and Krafts farms gives PPL the right to "cut down, trim, remove, and to keep cut down and trimmed by mechanical means or otherwise, any and all trees, brush or other undergrowth on said strip of land or adjoining the same which in the judgement of the said company, its successors, assigns or lessees, may at any time interfere with the construction, reconstruction, maintenance or operation of said lines, poles, towers." Tr. 49-50; Keller Exh. No. 2.

31. The agreement between Keller and Krafts farms gives PPL the right "to spray said brush and undergrowth with chemicals for their removal and control." Keller Exh. No. 2.

32. The agreement between the Daniel Scott property, which was purchased by Keller, and PPL for the right-of-way contains the same rights as found in the agreement between Keller and Krafts farms. Tr. 51; Keller Exh. No. 3.

33. PPL Exhibit Numbers 18 thru 20 are maps of the Keller property and surrounding properties contained in the agreement between Keller and Krafts farms and the

agreement between the Daniel Scott property and PPL that Mr. Moncavage used, along with tax maps, to discern property and easement lines to determine where PPL could remove trees. Tr. 52, 62-66; PPL Exh. No. 18-20.

34. Rotting at the base of a tree could cause that tree to fail. Tr. 54.

35. PPL Exhibits Numbers 5 through 13 are photographs that Mr. Moncavage took when he visited the property with Mr. Schropp showing various locations of fallen trees and stumps, among other things. Tr. 54-55; PPL Exh. Nos. 5-13.

36. PPL Exhibit Number 6 is a photograph that shows how close the tree line is to the electric line and that the trees extend higher than the electric line. Tr. 58; PPL Exh. No. 6.

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, Keller seeks reimbursement for what it believes to be the decrease in value of its real property attributable to PPL’s overcutting of trees, or alternatively, the cost for replacement of the mature trees that were unnecessarily and improperly cut down. Therefore, Keller 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.Cmwlth.1984).

In this case, Keller argued that PPL improperly cut down trees beyond the right-of-way that were not "hazard trees" and, therefore, should not have been removed. Keller seeks to be compensated by PPL for the damage done as a result of the improper vegetation management. In support of its position, Keller presented the testimony of two witnesses: Mr. Schropp, who resides at the property, and Mr. Luckenbill, a forester who visited the property and observed the trees that were taken down. These witnesses sponsored eight exhibits that were admitted into the record in support of Keller's position that the trees were improperly removed. In response to the case presented by Keller, PPL presented the testimony of Mr. Moncavage, its line clearance inspector for PPL's vegetation management department who visited the Keller property. Mr. Moncavage testified regarding PPL's actions at the site and sponsored 11 exhibits that were admitted into the record in support of the company's position that the company at all times acted consistent with the Public Utility Code and all Commission regulations and orders.

Keller's complaint will be dismissed because substantial record evidence demonstrates that Keller has failed to carry its 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.

As an initial matter, even if substantial record evidence demonstrates that PPL violated the Public Utility Code or a Commission order or regulation when removing the trees, Keller's request that it be reimbursed for the clearing of trees on the property would still 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. Cmwlth 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 Keller monetary damages as a result of PPL's actions and that request in this proceeding will be denied.

With regard to whether PPL violated the Public Utility Code or a Commission order or regulation when removing trees from Keller's property, as a preliminary matter, it is well settled that the Commission has jurisdiction over matters involving utility 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. Cmwlth 1990) (West Penn), the Commonwealth Court stated:

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); *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 this case, however, neither party disputes that the trees that were removed were 50-65 feet from the center line and, therefore, outside the right-of-way. Tr. 29, 35, 73. What is in dispute is whether those trees that were removed were “hazard trees” and, therefore, whether their removal was reasonable. In this regard, it is noted, that the agreement between Keller and Krafts farms gives PPL the right to “cut down, trim, remove, and to keep cut down and trimmed by mechanical means or otherwise, any and all trees, brush or other undergrowth on said strip of land or adjoining the same which *in the judgment of the said company*, its successors, assigns or lessees, may at any time interfere with the construction, reconstruction, maintenance or operation of said lines, poles, towers...” Tr. 49-50 (emphasis added); Keller Exh. No. 2. The agreement between the

Daniel Scott property, which was purchased by Keller, and PPL for the right-of-way contains the same rights as found in the agreement between Keller and Krafts farms. Tr. 51; Keller Exh. No. 3. Furthermore, the agreements also allow the company “to spray said brush and undergrowth with chemicals for their removal and control.” Keller Exh. Nos. 2 and 3.

It is well settled that the Commission does not have the authority to interpret the terms of an easement. *See, Fairview Water Co. v. Pennsylvania Pub. Util. Comm’n.*, 502 A.2d 162 (Pa. 1985) (the Pennsylvania Supreme Court held that the Commission does not have jurisdiction to determine the scope and validity of an easement). In this case, however, no interpretation of the easement is required. For example, there is no need for the Commission to survey the land to draw lines of the property in question. Instead, it is clear from the language above that these agreements give PPL discretion with regard to vegetation management on Keller’s property. The Commission has the authority to review the agreement, which was properly admitted into the record, to establish that PPL has authority to determine, in its own judgment, whether a tree outside the property line should be removed and that stumps that the parties agree are 0-15 feet outside of the right-of-way are sufficiently close to reasonably be considered “adjoining land.”

Having established that PPL can determine which trees in its own judgment should be removed, Keller has not presented substantial evidence that PPL’s actions in removing the trees were unreasonable. That is, regardless of whether the trees are within the easement or not, Keller has failed to demonstrate the PPL’s actions were otherwise unreasonable.

There was significant discussion during the hearing regarding whether the trees that were removed were decayed. *See e.g.*, Tr. 17, 32, 37, 53-55, 74-75; Keller Exh. No. 5. The only evidence of such decay was of the photographs of the tree stumps that remain. Tr. 32, 53. Evidence of decay at the stump does not necessarily indicate that the tree was or was not a hazard tree. It is not possible to tell by looking at the stump whether a tree showed any disease, rot or decay above the stump. Tr. 37. In contrast, however, PPL presented the testimony of its witness demonstrating that removal of the trees was reasonable. This is particularly true given that, if a tree falls close to an energized line, electricity can, under certain conditions, arc from the line, cause a short and create an outage. Tr. 47. Keller did not effectively rebut the testimony of PPL’s witness on this issue and,

therefore, it has failed to carry its burden of proof in this case. Milkie, *supra*. Keller has not demonstrated that the judgment of the company that the tree “may at any time interfere with the construction, reconstruction, maintenance or operation of said lines, poles [or] towers” was unreasonable. There is no record evidence demonstrating that the judgment of the company in determining to remove the trees adjoining the right-of-way was unreasonable. As a result, any argument that the trees were improperly removed will be rejected.

In addition, the photographs presented by Keller do not demonstrate any unreasonable tree removal. Keller Exh. No. 4. 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. 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. The photographs show logs and branches laying about, but not in a way that is inconsistent with the surrounding environment or otherwise unreasonable. In fact, PPL’s witness, a forester with approximately 25 years of experience, testified that the removal or trimming of trees on the property was reasonable. Based on the record evidence presented in this proceeding, I agree. Keller’s own photographic evidence of the 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, Keller’s arguments that PPL improperly removed the trees from the property, and improperly cleared the property following removal of the trees, will be rejected. Keller has failed to provide substantial record evidence demonstrating that PPL’s actions in any way violated the Public Utility Code or a Commission order or regulation. While Keller may not prefer what was done to its property or how the 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.

In conclusion, Keller has failed to carry its 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 Keller in support of the 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. Keller'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 does not have jurisdiction to determine the scope and validity of an easement. Fairview Water Co. v. Pennsylvania Pub. Util. Comm’n., 502 A.2d 162 (Pa. 1985).

18. 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).

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

20. 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).

21. 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.*

22. 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).

23. 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).

24. Keller has failed to satisfy its 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 the George D. Keller Memorial Association c/o Mark Schropp against PPL Electric Utilities Corporation at Docket Number C-2016-2568272 dated September 23, 2016 is hereby dismissed.

2. That this matter be marked closed.

Date: February 8, 2017

_____/s/_____
Joel H. Cheskis
Administrative Law Judge