

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Marlene Broman
v.
West Penn Power Company

Public Meeting held September 20, 2018
2485454-OSA
C-2015-2485454

MOTION OF COMMISSIONER DAVID W. SWEET

This matter comes to us via exceptions filed by both the Complainant, Marlene Broman, and the Respondent, West Penn Power Company, to the Initial Decision (ID) of Administrative Law Judge Jeffrey A. Watson (ALJ). The ID dismissed Ms. Broman's objection to the removal of certain trees from a right-of-way across her property based on a finding that a prior complaint had addressed this issue but sustained her allegation that West Penn had failed to provide reasonable and adequate service and imposed a civil penalty.

In its Exceptions, WPP alleges that the ID erred in concluding that Ms. Broman met her burden of proof, as the ID (1) failed to apply *res judicata* to the remainder of the Complaint; (2) incorrectly found that Complainant's Exhibit J is inconsistent with WPP's Vegetation Management Plan (VMP), and (3) is not based on substantial facts of record. WPP also takes Exception to the imposition of a civil penalty for \$5,000.

Ms. Broman excepts to the ID's holding that *res judicata* applies and questions the VMP which she claims changed each time she was given it. She points out that the present complaint was about the growth of trees and shrubbery at the nearby transmission tower, which she says WPP is not maintaining and which was not the subject of the first complaint. She points out that two ALJs have ruled that WPP did not meet the standard of reasonable and adequate service.¹

To be clear, the prior complaint filed by Ms. Broman is closed, and despite Ms. Broman's testimony that she did not realize that the ALJ's ID in that case had been overturned by subsequent Commission Order, that case is not before us. In addition, the findings and conclusions by the Commission in that case are final and are not in question here. Rather, the actions of WPP in its subsequent treatment of Ms. Broman are the basis of this case now.

In a thorough and detailed analysis, ALJ Watson determined that Ms. Broman did not prove her allegations that there were maintenance issues on the left side of the ROW but did prove that WPP failed to provide reasonable and adequate service regarding WPP's plans to perform maintenance on the ROW across Ms. Broman's property. WPP provided a brochure which depicts a "wire zone/border zone" approach meant to be representative of its VMP but which WPP did not intend to use, according to its own witness². Rather, WPP's witness stated that the additional width of this ROW would result in the maintenance of only the 100 feet

¹ *Marlene Broman v. West Penn Power Company*, Docket No. C-2013-2356237 (Order entered April 23, 2014)(granting the exceptions of WPP and reversing the ID of ALJ Dunderdale).

² WPP objected vigorously when the Complainant attempted to introduce the brochure at the beginning of the hearing, and then presented a witness who acknowledged providing it to Complainant as a standard educational tool for property owners. Tr. 232.

anticipated by the VMP. This, and the lower voltage on this transmission line, did not trigger the use of the method spelled out in the brochure provided. In addition, Ms. Broman testified that she had been told repeatedly by WPP representatives that the WPP VMP was mandated by the FERC, that WPP had to comply, and that the PUC had no jurisdiction over the matter.

Despite repeated requests for citations to the federal requirements, WPP failed to provide the requested citation until the evidentiary hearing, when WPP called its own attorney as a witness. Mr. Flannery³ admitted that the FERC requirements mandated that the maintenance of transmission corridors carrying lines of 200 kV and above, and lower voltage lines that are integral to the grid include the removal of trees and other incompatible vegetation in the ROW.⁴ The subject line is only 138 kV.

More alarming is the testimony of WPP's witness that he did not have nor has he ever received the utility's vegetation management policy, relying instead on the contractors' specification book to determine what vegetation and trees would need to be removed. Tr. 282.

While, on its face, the prospect of having the utility clear-cut a lesser width of ROW might be quite acceptable to the underlying property owner, in this situation, it was the uncertainty caused by the inconsistency of the information in the brochure and what was told to Ms. Broman by WPP personnel and representatives which caused the problem. The brochure informed the landowners that the "wire zone/border zone" would be applied. When the property owner believes that the "wire zone/border zone" standard is to be applied, then the "border zone" runs to the full width of the ROW, here 180 feet. The brochure, however, shows the "border zone" is only 15 feet further than the width of the conductors, or "wires," which may be considerably less wide. Tr. 188. WPP, however, sees the full area to be managed as 50 feet on either side of the center of the ROW, or twice the width of the area where trees would need to be removed according to the brochure's graphic.

To add to the confusion, the WPP witness testified that WPP uses the "wire zone/border zone" approach on ROWs wider than 100 feet, while if the ROW is less than 100 feet, the incompatible vegetation will be controlled edge-to-edge. Tr. 147. This distinction is not made in the brochure. To the WPP witness, the width of the ROW determines the level of vegetation removal, and here, using a 100-foot ROW, all incompatible vegetation would need to be removed edge-to-edge. Tr. 251. He explained that it is the voltage of the line, not the actual width of the ROW that determines the level of vegetation removal, Tr. 265, which is not explained in the brochure.

The ID found that the utility's plan to manage only 100 feet of the 180-foot ROW, the method used to determine the ROW width, its effect on what management plan was used, and the failure to provide a reasonable explanation and authority for those determinations to Ms.

³ Note that Mr. Flannery was called upon to discuss his interactions with Ms. Broman and was not acting as attorney of record in this matter.

⁴ FERC Electric Reliability Standard FAC-003-2, requiring the trimming of trees and other vegetation growing in or adjacent to the ROW, noting that each utility's plan must conform to requirements of state or local authorities and any applicable ROW or easement agreement with the property owner. This Standard was enacted following a widespread blackout caused by cascading following a vegetation-related outage.

Broman, was unreasonable. This was not because he thought that WPP should manage the entire ROW, but because the information provided to Ms. Broman in the form of the brochure caused confusion regarding the width of the area to be subject to vegetation removal. WPP's failure to provide a consistent, clear plan following the final determination of the earlier complaint constitutes another violation. I agree with the ALJ that when a utility operates its facilities over a ROW, the underlying property owner has the right to be told, in a timely and thorough fashion, what maintenance will be performed on that ROW, and on what basis that determination was made.

The Commission has long been an advocate for vegetation management that will ensure the safe and reliable electric service in the Commonwealth and has instituted policies to support such service. The VMP requirement is one such policy, and electric distribution companies are required to develop the plans and to update them every few years.⁵ The other side of this policy, however, is the expectation that the utility will treat the property owners fairly by letting them know exactly what to expect in the way of ROW maintenance. The communication must be clear and the plan must be reasonable. Because this was not the case, the complaint is sustained.

Although the ID contains an analysis which results in a civil penalty of \$5,000, the civil penalty is eliminated here as the severity of the violation is not as egregious as the Company's actions in *West Penn Power Co. v. Pa. PUC*, 578 A.2d 75 (Pa. Cmwlth. 1990).

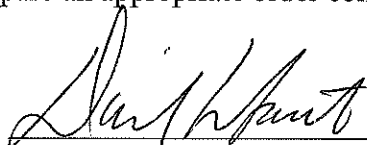
Accordingly, I move to deny in part the Exceptions of both WPP and Ms. Broman and to modify the ID of ALJ Watson.

THEREFORE,

I MOVE:

1. That the Exceptions filed by West Penn Power Company are granted in part and denied in part.
2. That the Exceptions filed by Marlene Broman are granted in part and denied in part.
3. That the Initial Decision of Administrative Law Judge Jeffrey A. Watson is modified consistent with this Motion..
4. That the Office of Special Assistants prepare an appropriate order consistent with this Motion.

September 20, 2018
DATE



DAVID W. SWEET
COMMISSIONER

⁵ I note, however, that these plans are filed but that notice is not published, which prevents any interested party from questioning their content and terms.