

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Susan Messick	:	
	:	
v.	:	C-2018-3004260
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Steven K. Haas  
Administrative Law Judge

This initial decision dismisses a formal complaint filed by a customer against her electric distribution company due to the Complainant's failure to prove, by a preponderance of the evidence, that the Respondent violated any applicable statutes, regulations or Commission orders, or otherwise provided unreasonable service.

**HISTORY OF THE PROCEEDING**

On August 23, 2018, the Complainant, Susan Messick, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) in which she alleged that PPL's contractor killed two decorative Mimosa trees in front of her house when it trimmed the trees away from its power lines that cross her property. By way of relief, she wants PPL to completely remove the old trees, purchase and plant two new trees of her choice, and be fully compensated for PPL's delay in completing this work, her stress and the loss of value of her home due to the loss of the trees.

On September 12, 2018, PPL filed an answer to Ms. Messick's complaint. In its answer, PPL admitted that its contractor trimmed the two trees at issue here but denied that the trimming caused the deaths of the trees. PPL averred that one tree was already dead and the other was fully mature and in decline at the time of the trimming. PPL denied any allegations of improper vegetation management.

By Call-In Telephone Hearing Notice dated September 14, 2018, a telephonic hearing was scheduled for October 22, 2018. On September 18, 2018, I sent to the parties a standard Prehearing Order in which I reviewed certain procedural requirements associated with participation in the telephonic hearing. Subsequently, by letter dated September 27, 2018, counsel to PPL, Kimberly Krupka, requested that the October 22, 2018 hearing be rescheduled because her witness would be unavailable for the hearing. She indicated that she contacted Ms. Messick to inform her of her request.

By letter dated October 5, 2018, Ms. Messick informed me that she did not want the October 22, 2018 hearing to be canceled. She further requested that the hearing be converted to an in-person hearing. I contacted Ms. Messick and PPL's counsel and informed them that I was going to reschedule the hearing due to the unavailability of PPL's witness, and that I would convert the hearing to an in-person hearing. Subsequently, by notice dated November 1, 2018, the parties were informed that the October 22, 2018 hearing had been canceled and that an in-person hearing had been scheduled for Wednesday, December 2, 2018, in Harrisburg, PA.

The in-person hearing was convened, as scheduled, at 10:00 a.m. on December 2, 2018 in Harrisburg. In a brief discussion with the parties prior to the start of the hearing, it was explained to Ms. Messick that the Commission does not have the legal authority to order the payment of monetary damages. *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977).

Ms. Messick testified on behalf of herself and presented six exhibits, all of which were admitted into the record. PPL was represented by Kimberly G. Krupka, Esquire, who presented the testimony of one witness and three exhibits, all of which were admitted into the

record. The record in this proceeding closed on January 7, 2019, upon my receipt of the hearing transcript, and consists of a 49-page transcript and nine exhibits.

### FINDINGS OF FACT

1. The Complainant is Susan Messick.
2. The Respondent is PPL Electric Utilities Corporation.
3. Ms. Messick resides at 2011 North Market Street, Elizabethtown, PA 17022 (service address), which is the property where the trees at issue were located (Tr. p. 7).
4. Messick Ex. 1 is a picture of the trees taken in July of 2016. (Tr. p. 12).
5. Messick Ex. 2 is a picture of the trees taken in July of 2016. (Tr. p. 12).
6. Messick Ex. 3 is a picture of the trees taken in October of 2016. (Tr. p. 13).
7. Messick Ex. 4 is an undated picture of part of one of the trees. (Tr. p. 13).
8. Messick Ex. 5 is a picture of the trees taken in December of 2018. (Tr. p. 14).
9. Messick Ex. 6 is a picture of the trees taken in December of 2018. (Tr. p. 14).
10. PPL Ex. 4 is a picture of the trees taken in October 2016. (Tr. p. 28).<sup>1</sup>

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<sup>1</sup> PPL prepared exhibits labeled PPL Exs. 1-3, but did not refer to them during the hearing or move for their admittance into evidence.

11. PPL Ex. 5 is a picture of the trees taken in 2011. (Tr. p. 29).
12. PPL Ex. 6 is a picture of the trees taken in June of 2018. (Tr. p. 30).
13. Ms. Messick moved into her current residence in May of 1983. (Tr. p. 16).
14. Ms. Messick planted the two decorative Mimosa trees at issue here in front of her house in 1986. (Tr. p. 16).
15. Patrick Eisenhauer is the Lancaster Area Regional Forester for PPL. (Tr. p. 23).
16. PPL's Lancaster region includes Elizabethtown, where Ms. Messick resides. (Tr. pp. 23-24).
17. PPL is on a four-year cycle for vegetation management in the Lancaster area whereby it inspects various sections of its lines and trims vegetation away from its lines as needed every four years. (Tr. p. 23).
18. Tree branches that contact PPL's power lines may cause service interruptions or outages if not properly trimmed periodically. (Tr. p. 24).
19. PPL proactively performs periodic vegetation management near its power lines rather than waiting to receive complaints from its customers. (Tr. p. 24).
20. For multi-phase power lines, PPL's policy is to trim trees up to 25 feet from the lines. (Tr. p. 24).
21. For single phase power lines, PPL's policy is to trim trees up to 15 feet away from the lines. (Tr. p. 25).

22. The PPL lines in front of Ms. Messick's house are multi-phase lines. (Tr. p. 25).

23. The PPL lines at the very top of the poles are PPL primary conductor lines. (Tr. p. 31; PPL Ex. 5).

24. The lines at the lowest point on the poles are communications lines that are not owned by PPL. (Tr. pp. 31-32; PPL Ex. 5).

25. The power line between the higher primary conductor lines and the lower communications lines is a PPL service line. (Tr. pp. 31, 41-42; PPL Ex. 5).

26. On December 7, 2016, PPL's contractor, Asplundh, performed tree trimming on the two Mimosa trees in front of Ms. Messick's house. (Tr. pp. 7-8).

27. Prior to the December 2016 tree trimming, the branches of the trees were in contact with the PPL service line, but they were not high enough to be in contact with the primary conductor lines at the top of the poles. (Tr. pp. 40-42; Messick Ex. 3; PPL Exs. 4-5).

28. Asplundh did not trim the tree branches the full 25 feet away from the PPL power lines because the trees were at their maximum height and, accordingly, did not present a significant risk to the primary conductor lines. (Tr. pp. 25, 31-32, 40; PPL Exs. 5-6).

29. Asplundh cleared the branches that were contacting the PPL service line. (Tr. pp. 25, 31-32, 40; PPL Exs. 5-6).

30. Ms. Messick first contacted PPL about damage to her trees in October 2017, which is when she first realized the trees were dead. (Tr. p. 8).

31. Asplundh sent two representatives to meet with Ms. Messick on October 19, 2017 to look at the trees. (Tr. p. 9).

32. PPL representative Patrick Eisenhower went to Ms. Messick's house on June 13, 2018 to meet with Ms. Messick and look at the trees. (Tr. p. 9).

33. PPL informed Ms. Messick that it would remove the trees and haul away the debris, but that it would not remove the stumps or replace the trees. (Tr. p. 9).

34. PPL cut down the trees and removed the debris from Ms. Messick's yard but will not remove the stumps or replace the trees. (Tr. pp. 8, 20-21).

35. The two trees were showing signs of stress and were in decline well before they were trimmed by Asplundh in December of 2016. (Tr. pp. 28-30; Messick Ex. 2; PPL Exs. 4-5).

36. The picture of the trees taken in 2011 shows defoliated branches at the tops of the trees, indicating that the trees were in a stressed condition at that time. (Tr. p. 30; PPL Ex. 5).

37. Pictures taken in July and October of 2016, well before the trimming occurred, show significant defoliation on the left tree. (Tr. pp. 27-28; Messick Ex. 2; PPL Ex. 4).

38. When facing the house, the tree on the left may have been struck by lightning in 2015. (Tr. pp. 16-18).

39. The average lifespan of Mimosa trees is between 20 and 30 years. (Tr. p. 29).

40. Ms. Messick's Mimosa trees were over 30 years old. (Tr. p. 16).

## DISCUSSION

A party seeking affirmative relief from the Commission bears 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); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc, denied*, 602 A.2d 863 (Pa. 1992). A preponderance of evidence is evidence that is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. Of Review*, 166 A.2d 96 (Pa.Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

In order for a Complainant to prevail, there must be a statute, regulation or order that the Commission is authorized to enforce. The complaint must set forth a thing done or omitted to be done by PPL in violation of a law that the Commission has jurisdiction to administer. 66 Pa.C.S. § 701; 52 Pa.Code § 5.21(a).

A Complainant, as the party with the burden of proof, must present sufficient evidence to make out a *prima facie* case against the Respondent. If a Complainant established 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*, 443 A.2d 1373 (Pa. Cmwlt. 1982).

Section 1501 of the Public Utility Code (Code), 66 Pa. C.S. § 1501, provides that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. Upon finding that the service or facilities of a public utility are unreasonable, unsafe or inadequate, the Commission may prescribe, by regulation or order, the reasonable, safe and adequate service or facilities that a public utility must furnish or employ. 66 Pa.C.S. § 1505.

Section 102 of the Code, 66 Pa.C.S. § 102, defines “service” as:

Used in its broadest and most inclusive sense, includes *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 . . . .

(Emphasis added).

A utility’s “service” is not merely confined to the distribution of utility service. It is well-settled that a public utility’s vegetation management is a service over which the Commission has jurisdiction to ensure it is performed in a safe, adequate, reasonable and efficient manner. *See West Penn Power Co. v. Pa. Pub.Util. Comm’n*, 578 A.2d 75 (Pa.Cmwlt. 1990) (holding that “The PUC is correct in concluding that vegetation management 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,” and that “public utility service embraces vegetation management.”); *See also PECO Energy Co. v. Township of Upper Dublin*, 922 A.2d 996, 1005-06 (Pa. Cmwlt. 1985) (Commission possesses the sole authority to regulate a public utility’s vegetation management practices in its service territory);

and *Popowsky v. Pa. PUC*, 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).

The Superior Court of Pennsylvania has ruled as follows:

When a utility's failure to maintain reasonable and adequate service is alleged, regardless of the form of the pleading in which the allegations are couched, it is for the PUC initially to determine whether the service provided by the utility has fallen short of the statutory standard required of it.

*DiSanto v Dauphin Consolidated Water Supply Company*, 436 A.2d 197, 199 (Pa. Super. 1981), quoting, *Bell Telephone Co. of Pa. v. Sanner*, 375 A.2d 93, 95 (Pa. Super. 1977).

Here, Ms. Messick alleges that PPL caused the death of two decorative Mimosa trees in front of her house when PPL's contractor trimmed the trees in December of 2016 to clear branches away from its power lines. PPL, on the other hand, avers that the trimming its contractor performed was minimal and was not the cause of the death of the trees. It alleges that the trees were at the end of their natural lifespans and had been distressed and in decline well before they were trimmed.

As explained below, I find, based upon a review of the record evidence, that Ms. Messick failed to prove by a preponderance of the evidence that PPL's vegetation management efforts on Ms. Messick's property caused the death of her trees or were otherwise unreasonable or in violation of a statute or regulation over which the Commission has jurisdiction.

Ms. Messick testified that she planted two decorative Mimosa trees in front of her house in 1986. (Tr. p. 16). She stated that PPL's contractor, Asplundh, trimmed the two trees on December 7, 2016. (Tr. pp. 7-8). She alleges that the trimming killed the trees and she wants PPL to clear the stumps of the old trees and replace the trees with new ones of her choice. (Tr. p. 8).

Ms. Messick presented several pictures of the two trees, some taken before they were trimmed, and some taken after the trimming. (Messick Exs. 1-6). The pictures show that the branches of the two trees were in contact with the PPL service line before they were trimmed. (Messick Exs. 1, 3). She testified that she first contacted PPL about damage to her trees in October of 2017, when she realized they were dead. (Tr. p. 8). It is Ms. Messick's position that the trimming in December of 2016 caused the death of the trees. (Tr. p. 8). She acknowledged on cross-examination, however, that one of the trees may have been struck by lightning in 2015 and that it was split prior to the trimming. (Tr. pp. 16-18).

PPL presented the testimony of Patrick Eisenhower, its Lancaster Area Regional Forester. Mr. Eisenhower testified that PPL is on a four-year cycle for vegetation management in the Lancaster area whereby it inspects various sections of its lines and trims vegetation away from its lines as needed every four years. (Tr. p. 23). He explained that tree branches in contact with PPL's power lines may cause service interruptions or outages if not properly trimmed periodically. (Tr. p. 24). Accordingly, PPL proactively performs periodic vegetation management near its power lines rather than waiting to receive complaints from its customers. (Tr. p. 24).

Mr. Eisenhower explained that the PPL lines that cross Ms. Messick's property at the very top of the poles are primary conductor lines. (Tr. p. 31). The lines at the lowest point on the poles are communications lines that are not owned by PPL. (Tr. pp. 31-32; PPL Ex. 5). He stated that the PPL line between its primary conductor lines and the communications lines is a PPL service line. (Tr. pp. 31, 41-42; PPL Ex. 5). These different lines can be seen clearly on PPL Ex. 5.

Mr. Eisenhower stated that the PPL lines in front of Ms. Messick's house are multi-phase lines. (Tr. p. 25). He noted that, for multi-phase power lines, PPL's policy is to trim trees up to 25 feet from the lines. (Tr. p. 24). For single phase power lines, PPL's policy is to trim trees up to 15 feet away from the lines. (Tr. p. 25).

Mr. Eisenhower testified that on December 7, 2016 PPL's contractor, Asplundh, performed tree trimming on the two Mimosa trees in front of Ms. Messick's house. (Tr. pp. 7-8). He noted that, prior to the December 2016 tree trimming, the branches of the trees were in contact with the PPL service line, but they were not high enough to be in contact with the primary conductor lines at the top of the poles. (Tr. pp. 40-42; Messick Ex. 3; PPL Exs. 4-5).

He stated that Asplundh did not trim the tree branches the full 25 feet away from the PPL power lines because the trees were at their maximum height and, accordingly, did not present a significant risk to the lines. Asplundh just cleared the branches that were contacting the PPL service line. (Tr. pp. 25, 31-32, 40; PPL Exs. 5-6).

Mr. Eisenhower explained that Ms. Messick first contacted PPL about damage to her trees in October 2017, which is when she first realized the trees were dead. (Tr. p. 8). In response, Asplundh sent two representatives to meet with Ms. Messick on October 19, 2017 to look at the trees. (Tr. p. 9). Mr. Eisenhower went to Ms. Messick's house on June 13, 2018 to meet with her and look at the trees. (Tr. p. 9). Ms. Messick was informed by PPL that it would remove the trees and haul away the debris, but that it would not remove the stumps or replace the trees. (Tr. p. 9). PPL did, in fact, have the trees cut down and removed the debris from Ms. Messick's yard, but did not remove the stumps or replace the trees. (Tr. pp. 8, 20-21). He testified that the average lifespan of Mimosa trees is between 20 and 30 years and that Ms. Messick's Mimosa trees were over 30 years old. (Tr. pp. 16, 29).

Mr. Eisenhower testified that the trimming did not cause the death of the trees. (Tr. p. 34). He indicated that the two trees were showing signs of stress and were in decline well before they were trimmed by Asplundh in December of 2016. (Tr. pp. 28-30; Messick Ex. 2; PPL Exs. 4-5). Mr. Eisenhower referred to both Ms. Messick's exhibits and those of PPL in support of his conclusion that the trimming did not kill the trees. He stated that a picture of the trees taken in 2011 shows defoliated branches at the tops of the trees, indicating that the trees were in a stressed condition at that time. (Tr. p. 30; PPL Ex. 5). He also noted that pictures taken in July and October of 2016, well before the trimming, show significant defoliation on the left tree. (Tr. pp. 27-28; Messick Ex. 2; PPL Ex. 4).

In reviewing the record evidence, including the photographs presented by both parties, I cannot conclude that the trimming service rendered by PPL's contractor either caused the death of her trees or was otherwise unreasonable.

Ms. Messick realized that her trees were definitely dead and first contacted PPL in October of 2017. The trees were trimmed by Asplundh in December of 2016. Messick exhibits 1-3 are pictures of the trees taken before they were trimmed. While they all show leaves and foliage on the trees, Exs. 2 and 3 clearly show that the tree on the left was largely bare and defoliated indicating, as explained by Mr. Eisenhower, that it was already stressed and in decline before the trimming. Ms. Messick concluded, with very little supporting evidence, that the trimming in December of 2016 resulted in the death of the trees.

Mr. Eisenhower explained that the tree branches were not contacting PPL's primary conductor lines at the top of the poles but were only contacting PPL's service line located between the higher primary conductor lines and the lower communications lines. (Tr. pp. 25, 40). He stated that the trees were already at their maximum height and did not pose a significant threat to the lines, so they were just trimmed away from the service line and not trimmed back the full 25 feet that company policy allows for multi-phase lines. (Tr. pp. 25, 31). He testified it was not necessary to trim much of the trees' canopies away from the lines. (Tr. p. 25). He noted that in order for trimming to put a Mimosa tree in significant stress, it would be necessary to remove approximately half of a tree's canopy, which Asplundh did not do. (Tr. p. 33).

Additionally, the photos provided by both Ms. Messick and PPL support PPL's position that the trimming did not kill the trees but, rather, they were in a stressed condition and in decline well before the trimming occurred in December of 2016. Messick Exs. 2 and 3, taken in July and October of 2016 respectively, show that the left tree was largely defoliated well before the trimming occurred. PPL Ex. 4, taken in October of 2016, also shows that the left tree appeared dead well before the trimming occurred. This evidence is consistent with Ms. Messick's acknowledgment that the left tree may have been struck by lightning in 2015. (Tr. pp. 16-17). Further, PPL Ex. 5 shows bare branches at the top of the right tree which, as Mr.

Eisenhower explained, indicates that the tree was in a stressed condition well before it was trimmed. (Tr. p. 30).

Ms. Messick presented evidence showing that the trees completely died sometime after they were trimmed in December of 2016. (Tr. pp. 7-8; Messick Exs. 5-6). She did not, however, present evidence proving it was the trimming performed by PPL's contractor that caused the trees to die. PPL, on the other hand, presented credible evidence showing that the trees were stressed and declining prior to the time they were trimmed by Asplundh. The record evidence shows that the trimming by Asplundh was minimal and likely not nearly extensive enough to have resulted in the death of the trees. The trees were already beyond the normal lifespan of Mimosa trees before they were trimmed. Further, as noted above, Ms. Messick herself stated that one of the trees may have been struck by lightning in 2015 and was already split before the trimming occurred. This is a much more likely explanation of the cause of the demise of the left tree.

### CONCLUSION

Upon consideration of all the record evidence, and for the reasons set forth above, I find that Ms. Messick failed to prove by a preponderance of the evidence that PPL's vegetation management efforts on her property caused the death of her trees or were otherwise unreasonable or in violation of a statute or regulation over which the Commission has jurisdiction.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. A party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a).

3. 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); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

4. This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlt. 1990), *alloc, denied*, 602 A.2d 863 (Pa. 1992). A preponderance of evidence is evidence that is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

5. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlt. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlt. 1993); 2 Pa.C.S. § 704.

6. Substantial evidence means more than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. Of Review*, 166 A.2d 96 (Pa.Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlt. 1984).

7. The offense alleged 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.

8. Public utilities must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. 66 Pa. C.S. § 1501.

