

Michael and Sharon Hartman
1650 Primrose Lane
Dauphin, PA 17018
(717) 257-2327

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July 15, 2019

Honorable Andrew M. Calvelli
Administrative Law Judge
PA Public Utility Commission
400 North Street 2nd Floor West
Harrisburg, PA 17120

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OFFICE OF C.A.L.J.
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Re: Michael and Sharon Hartman v. PPL Electric Utilities Corporation Docket No: C-2019-3008272

Response to PPL's June 27, 2019 Motion for Summary Judgment

Motion to Compel PPL to honor Complainant's May 2, 2019 Request for Document Production

Dear Judge Calvelli:

Enclosed please find the Hartman's Response to PPL's Motion for Summary Judgment and second request to compel PPL to comply with your complainant's May 2, 2019 Request for Document Production.

I trust that your honor, like your complainant, is disappointed by PPL's conduct in this matter. Within moments of a Pre-Hearing Conference wherein PPL reported its compliance with complainant's discovery demands, its pledge to make witnesses available to your complainant with a simple telephone call, and its acceptance of a July 17, 2019 hearing date, PPL filed a

Motion for Summary Judgment citing the PUC's lack of jurisdiction in this matter. PPL was well aware of the detailed nature of our Formal Complaint when filed; four (4) months ago. As referenced in our formal response, this is not PPL's first deceptive lulling tactic in this matter.

The focus of our complaint, and we submit this case, is the integrity and reasonableness of PPL's actions. If your honor denies PPL's 11th hour motion we trust we will get an answer.

We also trust that your Honor, not PPL, will decide if the PUC has jurisdiction in this matter under the broad authority of Title 66 PA C.S.A. Section 1501, and deny PPL's Motion for Summary Judgment.

Furthermore, we respectfully request that your honor compel PPL to honor our May 2, 2019 Request for Document Production immediately. To date, more than 60 days since submission, PPL has superficially responded to only 4 of our 20 requests for document production. PPL's 134 page production consists essentially of communications among your complainant's and PPL, and public documents associated with PPL's Erosion and Sediment Control Plan (ESCP); a plan we will demonstrate was approved under false representations by PPL.

To that end, we respectfully requested that PPL make their ESCP Project Engineer, Joseph Scott, available for questioning. Joseph Scott has failed to respond to your complainant's repeated telephone messages and email communications.

Respectfully yours,



Michael Hartman

Complainant

cc: Graig M. Schultz

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION - NO. C-2019-3008272

Michael and Sharon Hartman,

Complainants,

v.

PPL Electric Utilities Corp.,

Respondent.

COMPLAINANTS MICHAEL AND SHARON HARTMAN RESPONSE TO RESPONDENT PPL ELECTRIC UTILITIES CORP'S MOTION FOR SUMMARY JUDGMENT

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1. On or about March 1, 2019, Complainant filed a formal complaint.
2. Recently, your complainant's independently recovered a copy of PPL's January 2018 Erosion and Sediment Control/Restoration Plan (ESCP) reportedly prepared by Joseph C. Scott, a Professional Engineer and filed with the Dauphin County Conservation District (DCCD).
3. A review of the plan disclosed evidence that PPL misled both the DCCD and your complainant.
4. The ESCP falsely reported that PPL planned to improve an existing access road to install new powerline poles with minor earth disturbance.
5. In contradiction to PPL's ESCP filed with the DCCD, PPL chose not to improve or use the access road, but instead excavated your complainant's property and constructed a new roadway over virgin territory. To make matters more egregious, PPL excavated your complainant's property beyond the boundary of the road to harvest fill to construct large crane pads situated on both your complainant's property, and the property of your complainant's neighbor. Furthermore, post construction, a PPL ROW Specialist told your complainant that PPL intended to reduce the size of the crane pads during the restoration process and return a

portion of your complainant's earth and stone. The restoration team failed to honor her promise.

6. The ESCP falsely represented that PPL offered the landowner, your complainant, the option to re-vegetate, or not, the newly constructed roadways. Quote from PPL's ESCP:

- "Some areas of roadways may remain in the improved condition depending on the preference of each specific property owner."

7. In contradiction to the ESCP, PPL not only failed to afford this option to your complainant, but also told your complainant that the foreign material roadway would remain over the objection of your complainant.

8. On July 18, 2018, via the United States Mail, PPL lulled your complainant with the following representation concerning the upcoming construction project:

- "Every effort will be made to avoid disturbing, emphasis added, you and your property"

9. PPL's lulling letter is consistent with the following PPL ESCP misrepresentations to the DCCD:

- "The pre-development and post-development net impervious increase is considered de Minimis due to the relatively minor earth disturbance resulting from construction at each structure..."
- To ensure compliance with vegetation management requirements, vegetative growth within ROWs located in wooded areas will be maintained as brush areas or meadow areas. After construction is complete, construction pads and access roads will be fully restored or revegetated.

10. Please note the embedded photographs taken by your complainant months after PPL's abysmal restoration efforts. It is evident that PPL did not make every effort, as represented, to avoid disturbing complainant's property when PPL constructed a foreign surface road over virgin territory, and excavated earth far beyond the new roadway, in some instances beyond the ROW. Furthermore, it is evident that the earth disturbance was not minor, as falsely represented to the DCCD.



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11. Attached to your complainant's response, and incorporated by reference, is Complainant's summary of PPL actions that your complainant respectfully submit reflect PPL's unreasonable use and degradation of complainant's property and the environment to the detriment of the public. The photograph, below, depicts sediment from the PPL road washing off the ROW. What it doesn't depict is the water that already washed down the mountain that threatens our home, and the homes of our neighbors.



12. Your complainant further submits that PPL's disparate treatment of various landowners reflects PPL's lack of integrity and reasonableness in this matter. During November 2017, a PPL ROW Specialist told your complainant that complainant's neighbors were compensated to modify their ROWs from 50' to 100' incident to the new construction. The ROW Specialist stated that PPL did not intend to compensate your complainant for the new and undefined construction. Your complainant since learned, however, that PPL already possessed a 100' ROW on the neighbors' properties, and in fact negotiated new ROWs under the premise that PPL already possessed a 100' ROW. Your complainant's will offer one or more neighbors at the hearing that will testify that they were advised orally and in writing, and as reflected in their deeds, that PPL possessed a 100' ROW on their prospective properties before and after purchase 15 to 20 years ago. And when the PPL Acquisition Team re-negotiated said ROWs, the PPL representatives made no mention of a 50' ROW, but rather negotiated a new 100' ROW.

13. Your complainant submits that PPL's actions, pre and post-construction, were not completed in good faith, but rather reflect a complete lack of integrity on PPL's part. Furthermore, your complainant maintains that PPL's actions were unreasonable and violate Title 66 C.S.A. PA Section 1501, excerpt below:

- Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.

14. Accordingly your Complainant submits that adjudication of this matter does fall within the jurisdiction of the Pennsylvania Public Utility Commission and this honorable court.



Michael and Sharon Hartman

Complainants

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Complainant's Response to Summary Judgment Attachment

Complainant's summary of PPL actions

Failure to Furnish advance Notice to Landowner

1. Despite a November 2017 written request by your complainant for construction detail, PPL failed to furnish advance notice of PPL's intent to modify the natural slope of our mountain property to construct two large crane pads and a foreign material access road; neither of which were addressed or envisioned pursuant to the original ROW agreement.
2. PPL also failed to provide notice of PPL's intent not to utilize an existing access road, but rather excavate virgin territory and destroy natural vegetation to construct the foreign material roadway.

Misrepresentation to Dauphin County Conservation District

3. In or about January 2018, PPL filed an Erosion and Sediment Control Plan (ESCP) with the Dauphin County Conservation District (DCCD) which falsely reported that PPL planned to improve an existing access road to install new powerline poles with minor earth disturbance.
4. In contradiction to PPL's ESCP filed with the DCCD, PPL not only chose an alternate route, but also excavated surface areas far beyond the perimeter of the newly constructed roadway.
5. The ESCP falsely represented that PPL offered the landowner the option to re-vegetate, or not, the newly constructed roadways.
6. In contradiction to the ESCP, PPL not only failed to afford this option to your complainant, but also told your complainant that the foreign material roadway would remain over the objection of your complainant.

Permanent Disfiguration of Mountain Property (Our Back Yard)

7. In so doing, PPL obliterated existing foot trails and logging roads and constructed high walls that permanently obstructed foot and vehicle (tractor) access to portions of your complainant's property.
8. PPL moved the excavated virgin territory earth and stone to construct the crane pads.
9. PPL left your complainant's property permanently scarred.

Removal of Landowner's Property, Earth and Stone, for PPL's Financial Enrichment

10. A substantial portion of the earth moved from your complainant's property to construct the crane pads was deposited onto your complainant's neighbor's property.

11. PPL failed to replace excavated topsoil utilized to build the crane pads. The remaining subsoil will never support natural vegetation.
12. The former virgin territory off the roadway is now devoid of topsoil and natural vegetation due to PPL's abysmal attempt at re-vegetation.
13. PPL failed to smooth excavated areas off the roadway and on private property off the ROW.
14. PPL's ROW Specialist failed to honor a promise to reduce the size of the crane pad post pole installation, and return earth and natural rocks removed from your complainant's property.
15. After PPL constructed the crane pads with your complainant's earth and stone, PPL covered the earthen crane pads with large foreign material stone. Instead of hauling in approved fill to cover the stone, PPL further excavated your complainant's earth to cover the stone. The subsoil has not and will not ever support natural vegetation on the crane pads.

Soil Erosion and Water Run-Off onto Our Property from Roadway Construction

16. PPL, in contradiction to the ESCP, constructed the roadway with an extreme combination of stone and gravel of various sizes.
17. PPL haphazardly scattered many of the large rock component of the mix, in some instances off the ROW, which permanently impedes foot and vehicle traffic on your complainant's property and thwarts re-vegetation efforts.
18. The newly constructed roadway greatly exceeds the 15 foot width approved by DCCD.
19. PPL graded and damaged private property off the ROW to construct the roadway.
20. Furthermore, the road was constructed without safeguards to prevent storm water run-off and erosion.
21. The roadway began to degrade immediately after construction. Storm water and small gravel immediately washed off the roadway and ROW onto your complainant's property.
22. In some places the roadway is now impassable and is an eyesore, and consists mostly of the large foreign material stone that now litters and degrades your complainant's property.
23. PPL's ROW Specialist failed to honor a promise to smooth the roadway during the restoration process.

Preferential Treatment Afforded Neighbors

24. PPL made personal visits to seven neighborhood ROW property owners pre-construction and negotiated new ROW agreements which included financial compensation.

25. PPL falsely told your complainant that the neighbors received financial compensation because the ROWs were modified from 50' to 100'.
26. PPL, however, had a pre-existing 100' ROW agreement associated with each property that was filed with Dauphin County effective 1990.
27. Only two of the neighboring properties were impacted by the PPL construction activity.
28. In each of the two instances the ground disturbance was minimal and fully remediated, and the slope and topography of the property remain unchanged and unscarred.
29. PPL incurred great expense and made great concessions to the Federal Government, complainants' neighbor to the north.
30. PPL mulched access roads to prevent any disturbance pre-construction, and agreed to remove and re-vegetate, all access roads post construction.
31. PPL applied smaller sized stones to construct crane pads that will be easier to vegetate.


New ROW Agreement is Appropriate

32. The new construction exceeded the terms, conditions and authority of the original ROW.
33. The original ROW agreement did not address, nor could the Fetterhoff's envision, the complete scarring and devastation of the natural Peter's Mountain landscape caused by the recent construction.
34. Your complainants have lost the use and enjoyment of their property for the past 7 months, and the foreseeable future due to the abysmal restoration effort and vegetation failure.
35. Your complainant's property is forever modified and scarred by the washed-out roadway and crane pads.
36. The original powerline construction improved the landowner's access to their remaining property. The new construction has reduced, and in some instances permanently obstructed your complainant's access to your complainant's remaining property.
37. The original ROW did not address or authorize:
 1. The removal of topsoil and natural rock from the property
 2. The construction of a permanent foreign material roadway that would eliminate ground vegetation.
 3. The construction of a hard surface roadway that would facilitate storm water run-off and erosion that would threaten Clarks Creek and lower elevation property; at the time grain producing farm fields, now houses.
 4. The construction of crane pads that forever altered the natural slope and topography of the mountain.

38. Furthermore, the original ROW should be stricken due to repeated bad faith misrepresentations made to your complainant during the past year, most notably:

1. A July 17, 2018 written notice from PPL that "Every effort will be made to avoid disturbing you and your property".
2. A false cover story that neighbors were compensated to modify their ROW from 50' to 100' when PPL knew that it already possessed a 100' ROW on the neighbors' properties, and in fact negotiated new ROWs under the premise that PPL already possessed a 100' ROW.
3. The false representation that your complainant, the landowner, had no say whether the foreign material roadway would remain permanent, when in fact PPL represented to DCCD that the option of a permanent stone vs re-vegetated access road was the option of the landowner.
4. The false representation, in writing, that PPL did not grade and destroy your complainant's property off the ROW, which PPL later admitted was false.
5. The false representation that your complainant, the landowner, would be present and have input during PPL's restoration effort during spring 2019.
6. The false representation that the size of the crane pads would be reduced post installation, and that soil and natural rock, particularly a giant landscape boulder, would be returned to original location.
7. The false representation that the road would be smoothed to permit use by the landowner.

39. Finally, PPL's 70 year history of poor conservation and soil preservation efforts, and aggressive herbicide applications that exterminated native grasses, flowers and shrubs, has effectively converted the 100' ROW to a 110' ROW as acknowledged by PPL ROW Specialists during an April 25, 2019 visit.



Michael and Sharon Hartman

Complainants

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