

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

Michael and Sharon Hartman

Public Meeting April 16, 2020

3008272-OSA

v.

Docket No. C-2019-3008272

PPL Electric Utilities Corporation

**JOINT STATEMENT OF COMMISSIONER JOHN F. COLEMAN, JR. AND
COMMISSIONER RALPH V. YANORA**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Michael and Sharon Hartman (Complainants) to the Initial Decision in the above-captioned proceeding. The Complainants allege that PPL Electric Utilities Corporation (PPL) violated an existing right of way (ROW) agreement on their residential property and failed to compensate them for damage and removal of their property. In response, PPL filed an Answer and a Motion for Summary Judgment (Motion). An Initial Decision (ID) was issued granting the Motion and dismissing the Complaint for lack of subject matter jurisdiction.

It is clear from the allegations and the requested relief that this complaint revolves around the issues of property rights (specifically easements) and money damages. We agree with the ID that the Commission does not have jurisdiction to hear these claims. However, the Complainants do raise concerns related to general utility service and vegetation management over which the Commission does have jurisdiction. We cannot conclude that PPL has met the standard for a motion for summary judgment¹ with respect to the latter jurisdictional issues. The Commission should consider these independently of non-jurisdictional issues for purposes of summary judgment. Therefore, we support a limited remand to the Office of Administrative Law Judge for such further proceedings as may be deemed necessary.

However, we do not agree with the direction to the Administrative Law Judge (ALJ) to conduct a *de facto* investigation of PPL's construction and vegetation management practices. As with any formal proceeding, the Complainants here have the burden of proving, by a preponderance of evidence, that PPL violated some provision of the Public Utility Code, a Commission order, or regulation.² The Complainants' burden of proof includes the obligation to make a *prima facie* case. It is not the ALJ's job to take up issues *sua sponte* in an investigatory manner. If the Commission wants an investigation of PPL's practices with respect to this construction project, the Commission can refer the matter to its Bureau of Investigation & Enforcement for whatever further action may be warranted.

¹ 52 Pa. Code § 5.102.

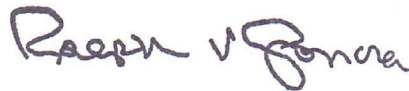
² 66 Pa. C.S. § 332(a).

We recently made an error in burden shifting in a vegetation management case, and we were reversed by the Commonwealth Court for doing so.³ In that complaint case, the Commonwealth Court described the complainant's evidence as consisting entirely of his property's description and his personal opinion, unsubstantiated concerns and speculation. The Commonwealth Court found that the complainant did not meet his burden of proof and substantial evidence did not support the Commission's decision sustaining the complaint. It is clear that the Commission must maintain the standard burden of proof and must carefully consider the evidentiary record to decide if the burden has been met by a complainant in all complaint cases, including vegetation management cases.

For these reasons, we agree with the proposed outcome to remand the complaint for further disposition of the jurisdictional issues. However, because we do not agree with the directions to the ALJ, we will be concurring in result only.



JOHN F. COLEMAN, JR.
COMMISSIONER



RALPH V. YANORA
COMMISSIONER

Date: April 16, 2020

³ West Penn Power Co. v. Pa. Pub. Util. Comm'n, 219 A.3d 716 (Pa. Cmwlth. 2019).