**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held April 16, 2020

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

Andrew G. Place

John F. Coleman, Jr., Statement

Ralph V. Yanora, Statement

Michael and Sharon Hartman C-2019-3008272

v.

PPL Electric Utilities Corporation

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Michael and Sharon Hartman (Hartmans or the Complainants) on October 31, 2019, to the Initial Decision of Administrative Law Judge (ALJ) Andrew M. Calvelli served on October 16, 2019, in the above-captioned proceeding. PPL Electric Utilities Corporation (PPL or the Respondent) filed Replies to Exceptions on November 14, 2019. For the reasons discussed below, we shall: (1) grant, in part, the Complainants’ Exceptions; (2) deny, in part, the Complainants’ Exceptions; (3) modify the ALJ’s Initial Decision; and (3) remand this matter to the Office of Administrative Law Judge (OALJ) for further disposition as deemed necessary, consistent with this Opinion and Order.

# History of The Proceeding

On March 1, 2019, the Hartmans filed a Formal Complaint (Complaint) alleging that PPL: (1) violated an existing right of way agreement on the Hartmans’ property; (2) failed to compensate the Hartmans for damage and removal of their property; and, (3) trespassed and damaged private property outside of the right of way (ROW). Complaint at 2. The relief requested by the Complainants included the following: (1) PPL should be ordered to purchase a new right of way agreement; (2) PPL should be ordered to restore the Hartmans’ property to its original condition to include: (a) restoration of topsoil and landscaping stones and boulders removed allegedly from the property; (b) removal of stone road and foreign materials PPL placed on the Complainants’ property; (c) installation of water runoff protection and soil erosion control measures; (d) replacement of vegetation to include native shrubs that were indiscriminately destroyed during construction; (e) restoration of pre-existing access logging roads that were destroyed; and (f) restoration of the property to its original topography. Complaint at 3. The Complaint was served on PPL on March 5, 2019.

On March 25, 2019, PPL filed an Answer to the Complaint. In the Answer, the Respondent stated that it has a 100-foot ROW to construct, maintain, reconstruct, repair, etc. transmission lines with ingress and egress rights as signed by the prior landowner on February 22, 1950. PPL states that after it completed an inspection, it had not located any areas where the easement agreement had been violated. PPL requested that the Commission deny the Complaint.

The ALJ issued an Initial Call-in Telephonic Hearing Notice on April 3, 2019 scheduling the hearing for May 16, 2019. The initial hearing was later rescheduled to June 26, 2019 by Hearing Notice dated May 10, 2019. On May 10, 2019, the ALJ received two letters from the Hartmans, the first dated May 2, 2019 and the second dated May 9, 2019. In the May 2, 2019 letter, addressed to the Commission’s Secretary and the OALJ, the Hartmans requested that the telephonic hearing be changed to an in-person hearing. In their May 9, 2019 letter, the Hartmans requested that an in-person hearing take place on site at their home, which is the subject property in the Complaint.[[1]](#footnote-1)

The Initial Telephonic Hearing was converted to a Call-In Prehearing Conference by Notice dated June 13, 2019. Subsequently, on June 13, 2019, the Hartmans filed a Motion to Change the Telephonic Hearing to an In-person Hearing and a Motion to have an On-site In-person Hearing.

On June 10, 2019, the Hartmans sent another letter, addressed to the Commission’s Secretary and OALJ. That letter was a Motion to Compel Production of Documents from PPL, based upon prior discovery requests made by the Hartmans to PPL (and referenced in the Hartmans’ May 9, 2019 letter). Interim Order at 1-2.

Due to the pendency of the discovery motions, on June 13, 2019, ALJ Calvelli converted the Initial Telephonic In-Person Hearing scheduled to be held on June 26, 2019, to a Telephonic Pre-Hearing Conference.

On June 27, 2019, PPL filed a Motion for Summary Judgment in which it argued that the Commission does not have jurisdiction to determine the scope and validity of an easement or to order damages associated with claims of breach, and therefore, it is entitled to summary judgment. PPL asked that the Complaint be dismissed with prejudice.

On October 3, 2019,[[2]](#footnote-2) the Hartmans filed their response to the Motion for Summary Judgment. The Hartmans argued, *inter alia*, that: (1) PPL unreasonably used and degraded their property and the environment to the detriment of the public; (2) PPL’s disparate treatment of various landowners reflects PPL’s lack of integrity and reasonableness in this matter; (3) PPL’s actions, both pre- and post-construction, were not in good faith but, rather reflect a complete lack of integrity; and, (4) PPL’s actions were unreasonable and violate Section 1501 of the Public Utility Code (Code).[[3]](#footnote-3) The Complainants therefore submitted that the Commission has jurisdiction over this matter.

By Initial Decision served on October 16, 2019, the ALJ granted PPL’s Motion for Summary Judgment [[4]](#footnote-4) and dismissed the Complaint for lack of jurisdiction. I.D. at 11-12. As previously noted, the Complainants filed Exceptions on October 31, 2019, and PPL filed Replies to Exceptions on November 14, 2019.

# Discussion

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993);](file:///C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file:///C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

In the Initial Decision, ALJ Cavelli made thirteen Findings of Fact and reached six Conclusions of Law. I.D. at 5-6, 11. We shall adopt and incorporate herein by reference the ALJ’s Findings of Fact and Conclusions of Law unless they are either expressly or by necessary implication overruled or modified by this Opinion and Order.

**A. Legal Standards**

Initially, we note that this case is before us on a Motion for Summary Judgment. Motions for summary judgment are governed by Section 5.102 of our Regulations, which provides, in relevant part, as follows:

**§ 5.102. Motions for summary judgment and judgment on the pleadings.**

**\* \* \***

(d) *Decisions on motions.*

1. *Standard for grant or denial on all counts*. The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law.

52 Pa. Code § 5.102.

Summary judgment is available when the pleadings, depositions, and other documents show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Summary judgment should be granted only when the right to relief is clear and free from doubt. In determining the absence of a genuine issue of material fact, the Commission must view the record in the light most favorable to the non-moving party and resolve any doubts against the entry of the judgment. *Day v. Volkswagonwerk Aktiengesellschaft*, 464 A.2d 1313, 1316 (Pa. Super. 1983). In this proceeding, PPL bears the burden of demonstrating clearly that there is no genuine issue of material fact; however, as the non-moving party, the Complainant must allege facts showing that an issue for trial exists. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Commonwealth v. Diamond Shamrock Chemical Co*., 391 A.2d 1333 (Pa. Cmwlth. 1978).

The provisions at 52 Pa. Code § 5.102 serve judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 557 (Pa. Cmwlth. 1989).

**B. ALJ’s Initial Decision**

The ALJ determined that PPL is entitled to judgment as a matter of law because the Commission does not have jurisdiction to hear the claims raised in the Complaint, as those claims revolve around property rights (most specifically easement rights) and money damages. The ALJ concluded that the Commission does not have jurisdiction to award damages, because the legislature has withheld from the Commission the power to award damages, citing the Pennsylvania Supreme Court’s decision in *Elkin v. Bell Telephone Co. of Pa*., 420 A.2d 371 (Pa. 1980) (citing *Feingold v Bell of Pennsylvania*, 383 A.2d 791 (Pa. 1977)). I.D. at 7.

Next, the ALJ addressed the Hartmans’ property rights claims and concluded that the Commission is not the proper forum for resolving property rights controversies. Rather, such controversies are a matter for a court of general jurisdiction. I.D. at 8. Furthermore, the Pennsylvania Supreme Court has held that the Commission does not have jurisdiction to determine the scope and validity of an easement. *See, Fairview Water Co. v. Pa. PUC*, 502 A.2d 162 (Pa. 1985). *Id.*

The ALJ stated that, consistent with the cited legal authority, the Complaint must be dismissed because it revolves exclusively around the issues of property rights and money damages. He further noted that the requested relief also exclusively speaks to the issues of property rights and monetary compensation. I.D. at 9. The ALJ concluded that the property rights and damages must be first determined by a court of competent jurisdiction before the Commission could adjudicate a claim for unreasonable service under Section 1501 of the Code. I.D. at 9

**C. Exceptions and Reply Exceptions**

As stated above, the Complainants have not properly formatted their Exceptions to strictly comply with the requirements of Section 5.533 of the Code. 52 Pa. Code § 5.533.[[5]](#footnote-5) Upon our reading of the Complainants’ Exceptions, it appears that they have made six allegations that can be classified into five categories and that may fall under the Commission’s jurisdiction.[[6]](#footnote-6)

First, the Complainants allege that they were denied notice of PPL’s reconstruction plans. Exc. at 1. Specifically, the Complainants argue that PPL failed to provide proper notice of the proposed construction and as alluded to above, many of the notices that were provided were inaccurate or untimely. *Id*. at 1-2.

Next, the Complainants contend that PPL’s actions constituted unreasonable service under Section 1501 of the Code. *Id*. at 2.

Third, Complainants argue that PPL willfully and unreasonably failed to protect the public interest when it: (1) constructed a roadway over pristine mountain property without authorization from the local conservation district; (2) constructed the roadway on the Complainants’ property in violation of a permit to construct it on a neighboring property; (3) threatened the Complainants’ property and the environment when PPL’s contractors disturbed the property outside of the right of way; and, (4) that PPL’s use of herbicide for vegetation management and “indiscriminate use of excavation equipment” is unreasonable. *Id*.

Fourth, the Complainants contend that PPL failed to restore their property to any semblance of its original condition and that, as a result, possible erosion and storm water run-off pose an unreasonable threat to a nearby creek and surrounding private property. *Id*. In addition, the Complainants allege that PPL has discriminated against them in providing financial compensation and superior vegetation restoration to the National Park Service, the party that owns the land to the north of Complainants. *Id*. at 15.

Fifth, the Complainants allege that PPL, its contractors, and subcontractors failed to conduct their business affairs in an open and honest manner and thus have not acted in the public interest as evidenced by the above allegations and the Complainants’ allegation that, despite their written request for construction details, PPL failed to furnish advanced notice of its intent to modify the natural slope of their property. *Id.*  Furthermore, based upon the Complainants’ response to the Motion for Summary Judgment,[[7]](#footnote-7) and the Exceptions, it appears that the Complainants are not only questioning the candor of PPL’s contractors and subcontractors, but also the sufficiency of PPL’s oversight of its contractors. Response to Motion at 8-10; Exc. at 2. Additionally, the Complainants question the competency of PPL’s contractors and sub-contractors. More specifically, the Complainants’ allege that PPL’s contractors’ practice of using the Complainants’ soil and rocks to construct the crane pads and failure to replace them post-construction was unreasonable. Exc. at 2-3. Finally, the Complainants allege that PPL misrepresented to the Dauphin County Conservation District (DCCD) that it would revegetate the newly constructed roadways at the landowner’s option and PPL unilaterally denied the Complainants’ request for revegetation of the roadway on their property.

In its’ Replies to Exceptions, PPL alleges that the Exceptions filed by the Complainants must be dismissed for failure to comply with the Code and because the common nexus of the Complainants’ Exceptions is reliance upon financial damages and a violation of the ROW agreement, which are issues plainly outside of Commission jurisdiction. Reply Exc. at 2-3. PPL first alleges that the Commission must dismiss the Exceptions because they are not tied explicitly to any Finding of Fact or Conclusion of Law. *Id*. at 2. Furthermore, PPL claims that dismissal of Complainants’ Exceptions for failure to conform is in line with previous Commission decisions. *Id.*; *See e.g. Forward Twp. Mun. Auth. v. W. Pennsylvania Water Co.*, 74 Pa. P.U.C. 421 (Order Entered Feb. 15, 1991); *Fulton v. PECO Energy Co.*, Docket No. C-2004-2502, 2005 WL 1838683, at \*3 (Order Entered June 29, 2005).

Furthermore, PPL alleges that the ALJ properly rejected all of the Complainants’ arguments because all of PPL’s actions that the Complainants believed to be unreasonable “exclusively relate to property rights and monetary damages.” Reply Exc. at 3. For these reasons, PPL states that the Commission should affirm ALJ Calvelli’s Initial Decision and dismiss the Complainants’ Exceptions. *Id.* at 5.

**D. Disposition**

Based upon our review and consideration of the pleadings, the Initial Decision, Exceptions, and Reply Exceptions we will grant in part, the Complainant’s Exceptions and modify the Initial Decision that granted PPL’s Motion and dismissed the Complaint without a hearing. In summary, upon review of the pleadings, there are five categories of claims raised by the Complainants in their Complaint: 1) notice claims; 2) general utility service claims; 3) vegetation management claims; 4) real property claims; and 5) environmental claims. Regarding the Complainants’ notice and real property claims, we agree with the ALJ that we lack subject matter jurisdiction and therefore must dismiss those claims, as discussed further below. Regarding the environmental claims, we are compelled also to dismiss such claims for lack of subject matter jurisdiction, as discussed further below.

Regarding the vegetation management claims and general utility service claims, the ALJ failed to properly recognize such claims as being within the Commission’s jurisdiction. Vegetation management disputes and utility service claims are squarely within our jurisdiction to hear and adjudicate. As discussed further below, at this stage of the proceeding, after accepting as true all facts alleged in the pleadings, we cannot say with certainty that the Complainants would not be entitled to relief under any circumstances as a matter of law. Accordingly, we grant the Complainants a hearing on these claims, consistent with the discussion below.

As a preliminary matter, we note that the Complainants are appearing *pro se*. In *Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F‑00163617 (Order entered July 14, 1993), we held that, in the normal course, we would not dismiss a *pro se* complaint without first providing a hearing during which the *pro se* complainant could further explain his or her position and the factual basis for the complaint. The concern was expressed that, in general, *pro se* complainants may find it difficult to navigate through pre-hearing motions and should be given the chance to orally describe their basic issue and supporting facts.

There are some cases where we found that a hearing would not enable a complainant to better explain his or her position or provide additional facts that would alter the inevitable conclusion that this Commission lacks jurisdiction to entertain the Complaint in the first instance. *See, Vata v. Philadelphia Gas Works*, Docket No. C‑2009-2149960 (Order entered August 24, 2010). In this case, however, it is not an inevitable conclusion that the Commission lacks jurisdiction to entertain certain aspects of the Complaint.

The ALJ correctly found that the Commission does not have subject matter jurisdiction over any “damage actions” or disputes regarding the scope or validity of ROW agreements. *See, Elkin v. Bell Telephone Co. of Pa*., 420 A.2d 371, 375 (Pa. 1980); *Fairview Water Co. v. Pa. PUC*, 502 A.2d 162 (Pa. 1985). PPL averred that each of PPL’s actions that the Complainants consider to be unreasonable are exclusively related to property rights or monetary damages. Reply Exc. at 3. However, it appears that several of the allegations made in the Complainants’ Response to Motion for Summary Judgment and Exceptions can be reviewed independently from the ROW or any of the alleged damage to the Complainants’ property.

In its Reply Exceptions, PPL likens the instant Complaint to our recent determination in *Kohrs v. PPL*, and avers that given the similarities between the cases, the ALJ properly dismissed the instant Complaint. Reply Exc. at 5; *Kohrs v. PPL Electric Util. Corp*., Docket Nos. C-2018-3006013 and C-2018-3006421, 2019 WL 5297907, \*6-7 (Order Entered October 2, 2019). We disagree. First, in *Kohrs*, the Complainant was represented by counsel and had not filed a response to the Motion for Judgment on the Pleadings. *Kohrs v. PPL*, 2019 WL 5297907, \*6. Secondly, in *Kohrs*, the Complaint was strictly limited to PPL exceeding the ROW in question and the damage that could result from its actions. Unlike the instant case, in *Kohrs,* there was no indication that PPL was providing inadequate service in violation of Section 1501 of the Code. *Id*. In the instant case, there is at a minimum at least one allegation that there has been a violation of Sections 1501 and 1502 of the Code.[[8]](#footnote-8)

It must be recognized that the Commission has broad jurisdiction over a utility’s service. In addition, “service” is not limited to the distribution of electrical energy but includes “any and all acts” related to that function. *West Penn Power Co. v. Pa. PUC*, 578 A.2d 75, 77 (Pa. Cmwlth 1990) (litigant was attempting to “cloak” their property disputes as service issues to attempt to get relief from the Commission). Reply Exc. at 3. It is with these premises in mind, that we shall address each of the Complainant’s Exceptions in turn.

1. **Notice Claims**

The Complainants raise allegations of repeated incidents of lack of notice by PPL. First, the Complainants alleged that PPL failed to furnish notice of its intent to modify the natural slope of the Complainants’ property to construct two large crane pads and a foreign material access road and its intent to excavate new territory for the roads, build impassable high walls and destroy natural vegetation to construct the new road and crane pads.

Although the Complainants’ offer no detailed basis to support their Exceptions, PPL did not offer any Replies to these Exceptions. While a utility is required to provide a copy of its Conduct/Internal Practices governing the manner in which public utility employees or their agents interact with landowners along proposed rights of way for the siting of a transmission line,[[9]](#footnote-9) there is no similar requirement for existing ROWs in our Regulations. Furthermore, while such a copy is provided to the landowner at the time the original eminent domain process occurs, that document or information may not be transferred to subsequent owners unless the applicable information and details are set forth in the actual easement document. In addition, while a courtesy notice might be a good business practice, it is not required by our Regulations and may or may not be required by any other document, such as the easement. This issue is a matter for examination by a court of competent jurisdiction, as the Commission lacks jurisdiction to interpret what notice may be required under the ROW agreement.

We therefore determine that the issue of proper notice of activities contemplated by the easement agreement are outside our subject matter jurisdiction and should be raised before a court of competent jurisdiction.

1. **Vegetation Management Claims**

It is well-settled that we have subject matter jurisdiction over a public utility's vegetation management practices. *See,* Pa. C.S. §§ 1501, 102; *see also,* *West Penn*, 578 A.2d 77 (Pa. Cmwlth. 1990); *see also,* *PECO Energy Co. v. Township of Upper Dublin*, 922 A.2d 996, 1004-05, 1009 (Pa. Cmwlth. 1985) (*PECO Energy*). The Commission is the proper forum to receive evidence and adjudicate complaints challenging the reasonableness and adequacy of PPL’s vegetation management. *See,* *PECO Energy*, 922 A.2d at 1009 (citing 66 Pa. C.S. § 701 and *Newton Twp. v. Phila. Elec. Co*., 594 A.2d 834 (Pa. Cmwlth. 1991)).

The Complainants have alleged that PPL’s use of pesticides and methods of vegetation management are unreasonable. More specifically, the Complainants discussed the shrubs and saplings that were damaged or removed to make way for a stone service road. Complaint at 3 and 14; Reply to Motion for Summary Judgment at 8‑9. Furthermore, in their Exceptions, the Complainants’ alleged that PPL’s vegetation management over the last seventy years has exterminated native plant species that do not endanger PPL’s powerlines. Exc. at 2.

After accepting as true the above facts alleged in the pleadings, we cannot say with certainty that the Complainants would not be entitled to relief under any circumstances as a matter of law.

In disposing of the Preliminary Objections, the ALJ agreed with the Company and viewed the primary basis for all the claims in the Complaint as a real property dispute. However, it is important that we carefully identify and address all relevant claims. In our opinion, a dismissal of the instant Complaint, in its entirety, would be an abdication of our responsibility and oversight over PPL's vegetation management practices based on the allegations in the Complaint. In other words, we would be throwing out a claim over which we have jurisdiction (vegetation management dispute) to dismiss the claims over which we lack jurisdiction (real property dispute).

A public utility has a duty to maintain safe, adequate and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. *See*, 66 Pa. C.S. § 1501. In particular, Section 1501 of the Code, 66 Pa. C.S. § 1501, provides, in pertinent part, as follows:

**§ 1501. Character of service and facilities**

“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. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.”

66 Pa. C.S. § 1501.

The term “service” is defined broadly under Section 102 of the Code, in relevant part, as follows:

“Service.” 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 … in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them …”

66 Pa. C.S. § 102.

The Commonwealth Court has stated that Section 102 of the Code clearly indicates that a utility's “service” is not confined to the distribution of electrical energy but includes “any and all acts” related to that function. *West Penn Power*, 578 A.2d at 77.

More specifically, the Commonwealth Court has held that a utility's service includes vegetation management and the Commission is within its jurisdiction to determine whether a utility's tree clearing constitutes reasonable and adequate service. *Id.* (affirming the Commission’s order that concluded that vegetation management is a service and that the utility's clearing of an entire 40-foot right of way and removal of trees outside of the right of way did not constitute reasonable and adequate service); *see* *also,* *PECO Energy v. Township of Upper Dublin*, 922 A.2d 996, 1009 (“Vegetation management is an essential part of providing safe, reliable electric service and is squarely within the PUC's regulatory jurisdiction”… the Commission is the appropriate forum for complaints filed pursuant to 66 Pa. C.S. §701 related to an electric utility’s tree trimming and cutting practices); *see also, Popowsky v. Pa. PUC*, 653 A.2d 1385 (Pa. Cmwlth. 1985) (Popowsky) (vegetation maintenance constitutes a utility service and must be performed in a safe, adequate, reasonable and efficient manner).

With vegetation management, the Commission may determine whether the policies of a company are consistent with the statutory requirement that service offered by the company is just, reasonable, adequate and safe. 66 Pa. C.S. § 1501. The Commonwealth Court of Pennsylvania has previously ruled:

We agree with the positions advanced by PECO and the PUC. First, we conclude that public utility service embraces vegetation management. The PUC has full authority to enforce the provisions of the Code. *W. Penn Power*. Certain acts, done while rendering utility service, fall within the ambit of the PUC's jurisdiction under [66 Pa. C.S. § 1501](https://www.lexis.com/research/buttonTFLink?_m=fb6a3923c30ceb9983fb662267bb97ab&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b922%20A.2d%20996%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=93&_butInline=1&_butinfo=66%20PA.C.S.%201501&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzk-zSkAb&_md5=d6127daede41700da048c1a07c8ac252) over character of utility service. *See*, [*W. Penn Power, 578 A.2d at 77*](https://www.lexis.com/research/buttonTFLink?_m=fb6a3923c30ceb9983fb662267bb97ab&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b922%20A.2d%20996%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=94&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b578%20A.2d%2075%2c%2077%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzk-zSkAb&_md5=daac5be07d4e87f378964aa3bac9ac56)*.* In particular, vegetation management activities by an electric utility fall within the Code's definition of service in [66 Pa. C.S. § 102](https://www.lexis.com/research/buttonTFLink?_m=fb6a3923c30ceb9983fb662267bb97ab&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b922%20A.2d%20996%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=95&_butInline=1&_butinfo=66%20PA.C.S.%20102&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzk-zSkAb&_md5=097ebf4ef1ed581d87934570da055d79). *Id.* Utility service “is not confined to the distribution of electrical energy, but includes ‘any and all acts’ related to that function.” *Id.*, citing [66 Pa. C.S. § 102](https://www.lexis.com/research/buttonTFLink?_m=fb6a3923c30ceb9983fb662267bb97ab&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b922%20A.2d%20996%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=96&_butInline=1&_butinfo=66%20PA.C.S.%20102&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzk-zSkAb&_md5=98070abab6da3e790136d388f57fee05). *See also,* [*Popowsky, 653 A.2d at 1389*](https://www.lexis.com/research/buttonTFLink?_m=fb6a3923c30ceb9983fb662267bb97ab&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b922%20A.2d%20996%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=97&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b653%20A.2d%201385%2c%201389%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzk-zSkAb&_md5=42ac9038e82f18b617673770938e3fc3)(“utility’s maintenance of vegetation is a regulated service even though fault, either on the part of the utility or the customer, has no relevance to the existence of vegetation maintenance as a service.”).

*PECO Energy Company v. Township of Upper Dublin*, 922 A.2d 996, 1005-06 (Pa. Cmwlth. 2007) (footnotes omitted).

Additionally, the Commission recognizes the importance of proper vegetation management and has established oversight requirements:

**§ 57.198. Inspection and maintenance standards.**

 (a)  *Filing date and plan components*. Every 2 years, by October 1, an EDC shall prepare and file with the Commission a biennial plan for the periodic inspection, maintenance, repair and replacement of its facilities that is designed to meet its performance benchmarks and standards under this subchapter. . . .

\* \* \*

 (f)  *Clearance of vegetation*. The plan must include a program for the maintenance of clearances of vegetation from the EDC’s overhead distribution facilities.

\* \* \*

 (n)  *Inspection and maintenance intervals*. An EDC shall maintain the following inspection and maintenance plan intervals:

\* \* \*

   (1)  *Vegetation management*. The Statewide minimum inspection and treatment cycle for vegetation management is between 4-8 years for distribution facilities. An EDC shall submit **a condition-based plan** for vegetation management for its distribution system facilities explaining its treatment cycle.

52 Pa. Code § 57.198 (emphasis added).

We, too, consistently have found that vegetation management falls within our purview. *See,* *Boczar v. PPL Electric Utilities Corp.*, Docket No. C-20016332 (Order entered February 10, 2003); *Megan Mohn v. PPL Electric Utilities Corp*., Docket No. C-2012-2301470 (Order entered October 11, 2012); *Yanling Chen and Jianming Hu v. Metropolitan Edison Company*, Docket No. C-2013-2397061 (Order entered November 5, 2015); *Gene R. Wagner v. West Penn Power Company*, Docket No. C‑2014-2434494 (Final Order entered April 30, 2015); *Richard and Sandy Lehet v. PPL Electric Utilities Corporation*, Docket No. C-2014-2449983 (Order entered October 28, 2015); *Marlene Broman v. West Penn Power Company*, Docket No. C-2013-2356237 (Order entered April 23, 2014); *Jan and Joyce Spirat v. Metropolitan Edison Company*, Docket No. C-2013-2367044 (Order entered September 11, 2014); *Sarah Bernardi v. West Penn Power Co.*, Docket No. C-2014-2453852 (Order entered May 5, 2016); *Stavnicky v PPL Electric Utilities Corp*., Docket No. C-20043368 (Final Order entered July 13, 2005).

In a recent ruling, the Commission considered at length, PPL’s vegetation management plans with regard to transmission facilities and adjudicated claims associated with the proper application of same. *See, Richard and Sandy Lehet v. PPL Electric Utilities Corporation,* Docket No. C-2014-2449983 (Order entered October 28, 2015). The Hartmans’ allegations of improper vegetation management fall squarely within this Commission’s subject matter jurisdiction and the ALJ is directed to fully develop the record on remand of this issue.

**3. General Utility Service Claims**

As discussed above, the Complainants made several allegations about the quality of PPL’s service in relation to the improvements made upon the lines above the Complainants’ property. Among these issues are, including but not limited to: (1) an allegation of lack of good faith and honesty by PPL’s contractors and subcontractors; (2) an allegation of unreasonable service in PPL’s method of construction; and (3) an allegation of discrimination in service.

The Complainants have alleged, *inter alia,* that PPL’s agents had taken portions of their landscaping for purposes of construction and made several misrepresentations regarding the construction timeline and post-construction property restoration. If proven, these allegations would constitute a violation of Section 1501 of the Code. PPL’s construction efforts fall plainly in our broad definition of service discussed above. It is well-settled that we are not only permitted to analyze the “reasonableness” of PPL’s service, but also the quality of that service. Similarly, if PPL’s conduct is found to be a violation of Section 1501, we are permitted to judge that conduct and assess a civil penalty subject to the test set forth in Section 69.1201(c) of the Code. 52 Pa. Code § 69.1201(c)(1)-(10). We note that, while it is rare for a utility to be engaging in activities that rise to the level of fraud or misrepresentation, we are empowered to make such a determination pursuant to Section 69.1201(c)(1) of the Code. 52 Pa. Code § 69.1201(c)(1). Therefore, we determine that on remand, the ALJ should evaluate the evidence provided by each of the parties that informs the issues of the quality and reasonableness of PPL’s construction efforts.

Lastly, the Complainants’ alleged that PPL’s restoration efforts showed a clear preference for the National Park Service. Complaint at 20, Exc. at 15. While the Code has a provision for the discrimination in service in Section 1502 of the Code, 66 Pa. C.S. § 1502, we have not interpreted that provision to include the restoration of property impacted by activities of a utility in order to supply service to the public. Therefore, we will decline to consider this allegation.

We direct the ALJ to determine the safety impact of the construction and alleged destruction of vegetation on the Complainants’ property, including, but not limited to, any erosion to the soil and sedimentation on the Complainants' property and any safety hazards resulting therefrom that may be reasonably identified and the steps that PPL proposes to implement in order to adhere to its statutory duty to furnish adequate, safe and reasonable service.

**4. Real Property Claims and Requested Relief in the Form of Monetary Damages to the Complainants**

Regarding the Complainants’ real property claims in the pleadings, when viewing the factual assertions in the pleadings in the light most favorable to the Complainants, it means, *inter alia*, that PPL is attempting to increase the width of the right of way that crosses the Complainants’ land in breach of the existing right of way agreement and that the existing right of way agreement does not authorize PPL to remove vegetation, topsoil, landscaping stones from the Complainants’ property nor was PPL authorized to build a construction roadway over their property. Attachment to Complaint at 3. It also means that the Complainants are entitled to receive just compensation from PPL for the removal of their property outside of the easement boundaries. *Id*.

As correctly recognized by the ALJ, it is well-settled that we lack subject matter jurisdiction to determine the scope and validity of an easement agreement because such is a matter involving the equitable jurisdiction of the Courts of Common Pleas to adjudicate real property disputes. *See,* *Fairview Water Co. v. Pa. PUC*, 502 A.2d 162 (Pa. 1985); *see also,* I.D. at 7-8 (citations referenced *supra*). Because both parties admit that there exists a document that purports to provide PPL the property rights it claims to possess, our inquiry must end with respect to the real property claims set forth in the Complaint. *See,* *Stavnicky*; *Eleanor Daly-Sergi v. PPL Electric Utilities Corporation*, Docket No. C-20031906 (Order entered January 31, 2005). Therefore, we affirm the ALJ’s Initial Decision to the extent of the dismissal of the portion of the Complaint seeking a ruling from the Commission as to the scope and validity of the existing easement agreement burdening the Complainant's property and whether PPL is acting in accordance with or in breach thereof.

We also sustain, in part, PPL's Motion for Summary Judgment and dismiss that portion of the Complaint seeking an award of monetary damages related to PPL's alleged damage to the Complainants’ property. Complaint at 1-2. The Complainants claim that PPL’s construction activity would be at worst theft of the Complainants’ property without just compensation and at best corporate enrichment. The Complainants’ requested relief is in the form of monetary damages. It is well-settled that we lack jurisdiction to award monetary damages to Complainants in adjudicating a complaint properly brought before this Commission. *See,* *Poorbaugh v. Pa. PUC*, 666 A.2d 744 (Pa. Cmwlth. 1995). To the extent the Complainants wish to seek relief related to PPL’s alleged trespass and alleged construction and removal of property outside the existing easement boundaries, such are matters to be pursued by the Complainants before the Courts of Common Pleas, in accordance with applicable common law and the Eminent Domain Code, 26 Pa. C.S. § 101 et seq., and not in an administrative proceeding before the Commission. Accordingly, we dismiss the portion of the Complaint claiming entitlement to just compensation and seeking an award of monetary damages related to PPL’s alleged activity, because we have no authority to examine these types of claims or forms of requested relief.

**5. Environmental Claims**

Lastly, the Complainants alleged that PPL’s construction has caused significant damage via water runoff to private property as well as Clarks Creek, a Class A waterway. Complaint at 8-9; Response to Motion for Summary Judgment at 9; Exc. at 2.

We decline to examine the general or specific issues raised in the Complaint because the Complainants’ assertions regarding any environmental impact of PPL’s construction practices, the reasonableness of PPL's environmental protection controls, or lack thereof, or any unpermitted or increased storm water discharges are outside of this Commission's jurisdiction. These matters are squarely within the purview of the Pennsylvania Department of Environmental Protection and/or an appropriate civil court of jurisdiction to address. Thus, we will sustain, in part, PPL's Motion for Summary Judgment, and dismiss the claims in the Complaint raising general or specific environmental challenges.

With that said, as articulated above under the vegetation management claims, the Complainants alleged that the construction of the stone road killed surrounding vegetation which aided in preventing environmental and property damage. This specific allegation, despite being connected to environmental considerations, relates to the Complainants’ vegetation management claims. Thus, as noted above, to make a determination whether PPL's construction practices constitute adequate, safe and reasonable service, in accordance with 66 Pa. C.S. § 1501, we direct the ALJ to examine on remand the impact of the construction on the Complainants’ property, including but not limited to, any erosion to the soil and sedimentation on the Complainants’ property and any safety hazards resulting therefrom that may be reasonably identified, and the steps that PPL proposes to implement in order to adhere to its statutory duty to furnish adequate, safe and reasonable service.

Accordingly, we will grant, in part and deny in part, the Complainants’ Exceptions; we will sustain, in part, the ALJ’s decision to grant PPL’s Motion for Summary Judgment; we will modify the Initial Decision, consistent with this Opinion and Order; and remand this matter to the Office of Administrative Law Judge for such proceedings as may be deemed necessary, consistent with this Opinion and Order.

# Conclusion

In light of the above discussion, we shall: (1) grant, in part, the Complainants’ Exceptions; (2) deny, in part, the Complainants’ Exceptions; (3) modify the ALJ’s Initial Decision; and (3) remand this matter to the Office of Administrative Law Judge for further disposition as deemed necessary, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed by Michael and Sharon Hartman on October 31, 2019, to the Initial Decision of Administrative Law Judge Andrew M. Calvelli served on October 16, 2019, are granted, in part and denied in part, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Andrew M. Calvelli served on October 16, 2019, is modified, consistent with this Opinion and Order.

3. That the Formal Complaint filed on March 1, 2019, by Michael and Sharon Hartman against PPL Electric Utilities Corporation, at Docket No. C‑2019‑3008272, is remanded to the Office of Administrative Law Judge for such further proceedings as may be deemed necessary and the issuance of an Initial Decision on Remand, consistent with this Opinion and Order.

**BY THE COMMISSION,**

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Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 16, 2020

ORDER ENTERED: April 16, 2020

1. Interim Order issued June 13, 2019 (Interim Order) at 1. [↑](#footnote-ref-1)
2. We note that the Hartmans’ response to the Motion for Summary Judgment was filed beyond the time allowed by our Regulations. Section 5.102(a) of the Commission’s procedural regulations, states that a response is due within twenty days of the filing of a motion. 52 Pa. Code § 5.102(a). Thus, the Hartmans’ response was due on or before July 17, 2019. Given, however, that the Complainants are proceeding *pro se*, the Commission will construe its regulations liberally, overlook the lateness of the filing and consider the Complainants’ response. Our Regulation at 52 Pa. Code § 1.2(a) provides that the rules of procedure may be “liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable” and that “[t]he . . . presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.” We apply this portion of the code especially in cases of *pro se* Complainants. 52 Pa. Code § 1.2(d). [↑](#footnote-ref-2)
3. 66 Pa. C.S. § 1501. [↑](#footnote-ref-3)
4. We note that the Initial Decision classified the motion as a Motion for Judgment on the Pleadings. [↑](#footnote-ref-4)
5. Consistent with the liberal construction of our procedural rules in proceedings involving *pro se* litigants, we will consider the Complainants’ Exceptions, despite the fact that those Exceptions are not in conformity with the Commission’s procedural rules. [↑](#footnote-ref-5)
6. The Complainants made several allegations in their Exceptions and reiterated many additional points that plainly fall outside of Commission jurisdiction. The ALJ correctly concluded that any issues involving the Respondent’s ROW agreement and any financial harm that may have been inflicted upon the Complainants must be brought before the Commonwealth Court. I.D. at 11. [↑](#footnote-ref-6)
7. The Respondent’s Petition was filed as a Motion for Summary Judgment but was reviewed as a Motion for Judgment on the Pleadings because no dispositions, answers, interrogatories, admissions, or supporting affidavits have been filed in this case. I.D. at 5. [↑](#footnote-ref-7)
8. 66 Pa. C.S. §§ 1501 and 1502. [↑](#footnote-ref-8)
9. *See*, 52 Pa. Code § 69.3102. [↑](#footnote-ref-9)