

August 31, 2020 Motion to Compel

Hartman vs, PPL - C-2019-3008272

Summary of PPL's willful, unreasonable, excessive and unauthorized excavation of pristine mountain property and unwarranted destruction of native vegetation to construct a roadway and crane pads that did not conform to a Dauphin County Conservation District permit and terms of an existing ROW agreement. **(Attachment 1)** PPL then failed to restore vegetation and the slope and contour of our mountain property (our back yard) to any semblance of its original condition, but rather littered our property with waste and commercial rocks. The roadway and unrestored adjoining excavated area beyond the approved disturbance boundary pose an unreasonable threat to Clarks Creek and neighboring homes due to erosion and storm water run-off, and will never support native vegetation.

Failure to Furnish advance Notice to Landowner

1. Despite our November 2017 written request for construction detail, **(Attachment 2)** 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. Instead, in a July 17, 2018 letter addressed to our home, PPL wrote: **"Every effort will be made to avoid disturbing you or your property."** **(Attachment 3)** Nothing could be further from the truth.





2. PPL also failed to provide notice of PPL's intent **not** to utilize an existing access road, but rather excavate virgin territory, build impassable high walls and destroy natural vegetation to construct the foreign material roadway and crane pads. Furthermore, PPL failed to honor repeated requests to identify the contractors/subcontractors that completed the excavation activity on our property. On August 19, 2020, twenty months after the excavation was completed, we independently identified the contractor as MJ Electric, a subsidiary of Quanta Services, Inc. and the subcontractor as Newville Construction.



Misrepresentation to Dauphin County Conservation District

3. In or about January 2018, PPL filed an Erosion and Sediment Control Plan (E & S Plan) 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.

(Excerpts - Attachment 4)

4. In contradiction to Section 2.14 of PPL's E & S Plan filed with the DCCD, PPL chose an alternate route that permanently disturbed and scarred our property on and off the ROW, to include a decapitated evergreen off the ROW, below. In contradiction to Sections 2.1, 2.12 and 2.14 of PPL's E & S Plan, PPL excavated surface areas far beyond the perimeter of the newly constructed roadway and crane pads to harvest vegetation, topsoil and mountain stone to construct the crane pads.



5. Section 1.3 of the E & S Plan represented that PPL offered the landowner the option to re-vegetate, or not, the newly constructed roadways, as follows: **“Following construction, most sections of the access routes will be covered with site and/or clean fill soils and re-vegetated**

with permanent seeding as indicated in the E & S Plans. Some areas of roadways may remain in improved condition depending on the preference of each specific property owner.”

6. In contradiction to the E & S Plan, PPL not only failed to afford us this option, but also told us that the foreign material roadway would remain over our objection. The roadway has since eroded greatly, facilitates additional stormwater runoff and prevents revegetation far beyond the approved 15 foot access road. The access road depicted in the photograph below was in fact constructed in an area that was depicted as undisturbed in the PPL E & S Plan Attachment 114. E & S Attachment 114 depicts the access roadway to be constructed on the east and opposite side of crane pad 75 on our neighbor’s property.



7. PPL’s E & S Plan misrepresentations and departures that adversely impacted our property and native vegetation included the following:

1. Section 1.3, page 1 -2, PPL falsely stated that “To the extent practical, access routes have been selected by utilizing the existing ROW and existing roadways (paved and gravel). The proposed grading for any potential widening of existing access routes is shown on the plans.
2. Section 1.3, page 1 – 2, PPL falsely stated that “Following construction, most sections of the access routes will be covered with site and/or clean fill soils and re-vegetated with permanent seeding as indicated in the E & S Plans. Some areas of roadways may remain in improved condition depending on the preference of each specific property owner.”
3. Section 1.3, page 1 – 2, PPL falsely stated that “The pre-development and post-development net impervious increases is considered de-minimis, due to the relatively

minor earth disturbance resulting from construction at each structure location taken over the significant length of the Project.”

4. Section 2.2, page 2 – 1, PPL falsely stated that “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 vegetated.”
5. Section 2.3, page 2 – 1, PPL falsely stated that “The increase in impervious areas for the Project have been determined to be de minimis, therefore there should be no impacts with regards to water quality or resistance to erosion on existing downstream watercourses resulting from stormwater runoff from the project site.”
6. Section 2.7, page 2 – 3, PPL falsely stated that “The Grading Limits shown within the E & S Plans represent the anticipated boundary of where the construction activities may disturb natural ground. The Limit of Disturbance (LOD) represents the Project extents and does not accurately reflect the actual areas of planned earth disturbance. Many aspects of the transmission line construction within the LOD will not disturb the natural ground.”
7. Section 2.12, page 2 – 5, PPL falsely stated that “Earthwork has been limited to only areas where construction access is needed to install the new structures or conductors. All areas within the project boundary but outside of the LOD shall be protected from disturbance.”
8. Section 2.14, page 2 – 5, PPL falsely stated that “By utilizing the existing ROW and access routes, soil compaction throughout the project area is minimized. PPL proposes to utilize and maintain these existing routes to the maximum extent possible. By using the existing routes, soil compaction within the ROW will be constrained to only proposed pads and any access roads required for construction.”
9. Section 2.15, page 2 – 6, PPI falsely stated that “The applicant is proposing to install a stone surface which will allow stormwater to permeate through the area and will encourage surface waters to enter the ground in a fashion that currently exists. Very little, if any, stormwater is expected to runoff from the proposed work areas.”
10. Section 2.17, page 2 – 6, PPL falsely stated that “the overall project Site will be re-vegetated/restored to match existing cover conditions and drainage patterns. In most areas, the Site will be topsoiled and revegetated to meadow grass condition in accordance with the permanent stabilization BMP’s specified in this Plan.”

Permanent Disfiguration of Mountain Property (Our Back Yard)

8. In so doing, PPL destroyed native vegetation to include wild azaleas and blueberry bushes, blackberry patches, autumn olive, ferns, honeysuckles and mountain laurel. Furthermore PPL obliterated existing foot trails and logging roads and constructed high walls that permanently

obstructed foot and vehicle (tractor) access to portions of our property. Note the depth of the “water bar” PPL recently excavated on the roadway between Poles 75 and 76. PPL characterized this April 2020 activity as restoration. My wife and I characterize it as spiteful, wanton destruction, and retribution for our complaint. Especially when one compares the roadway and water bars constructed on our property versus the roadway and water bars constructed on neighboring NPS lands and an intersecting powerline ROW utilized to reconstruct the powerline.

Our Property:

First Water Bar



Note depth of Second Water bar



Pole 77 to Pole 76 Roadway that isn't comfortable or safe to walk or drive on



Linden Lane Roadway and Water Bar on second intersecting powerline:



National Park Service Roadway



9. PPL excavated and harvested native vegetation, topsoil and mountain stone from non-disturbed areas depicted in the E & S Plans to construct the crane pads. PPL left our property permanently scarred, and devoid of native vegetation in areas that should have been off-limits to excavation equipment. Note the uprooted sod and mountain stone in a location 20', or more, from the access road and crane pad.



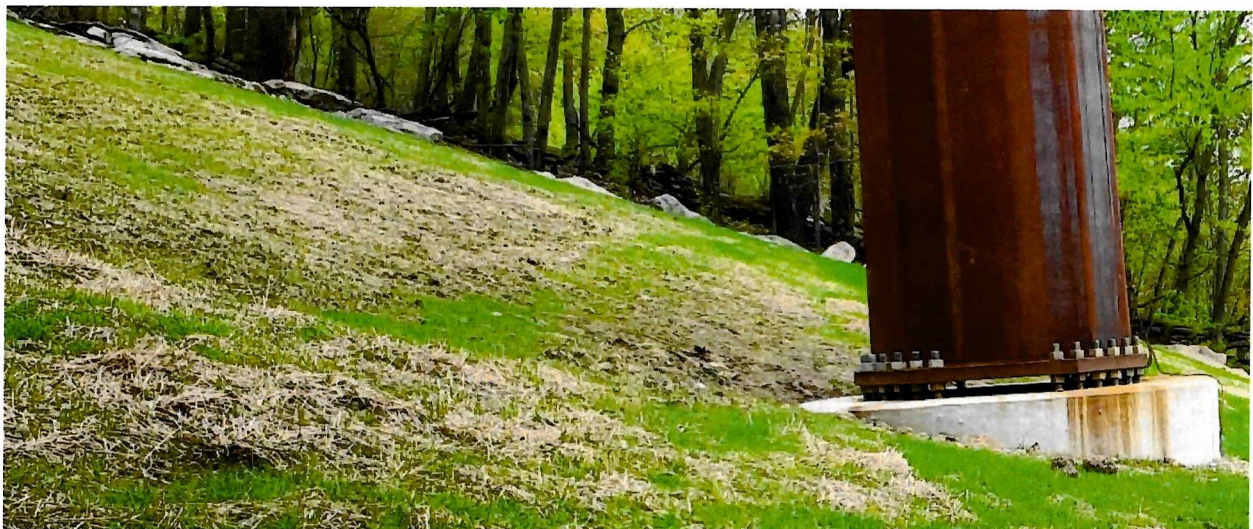
Removal of Landowner's Property, Earth and Stone, for PPL's Financial Enrichment

10. A substantial portion of the topsoil and mountain stone harvested from our property to construct the crane pads was deposited onto our neighbor's property. PPL refused to replace excavated topsoil and mountain stone harvested from our property and utilized to build the crane pads. The residual scarred and rutted subsoil has not and will not ever support natural vegetation. Pre-existing vegetation, to include wild blueberry and azalea shrubs, blackberries, autumn olive, ferns, honeysuckles and mountain laurel were forever scraped from the landscape. As a result, the former virgin territory off the roadway is now devoid of both topsoil and native vegetation.

Hartman Crane Pad 75 Post April 20, 2020 Restoration pre-seeding. Note the re-surface of large commercial blue rocks, stained white by lime. PPL's ROW Specialist falsely told us the crane pads would be trimmed and covered with topsoil prior to vegetation.



NPS Crane Pad 74 Post Restoration



11. PPL's ROW Specialist failed to honor a promise to reduce the size of the crane pads after pole installation, and return topsoil and mountain stone, including iconic boulders, removed from our property. In some instances boulders were haphazardly moved and deposited in areas that prevent access to our property, or in a manner that destroyed or prevented

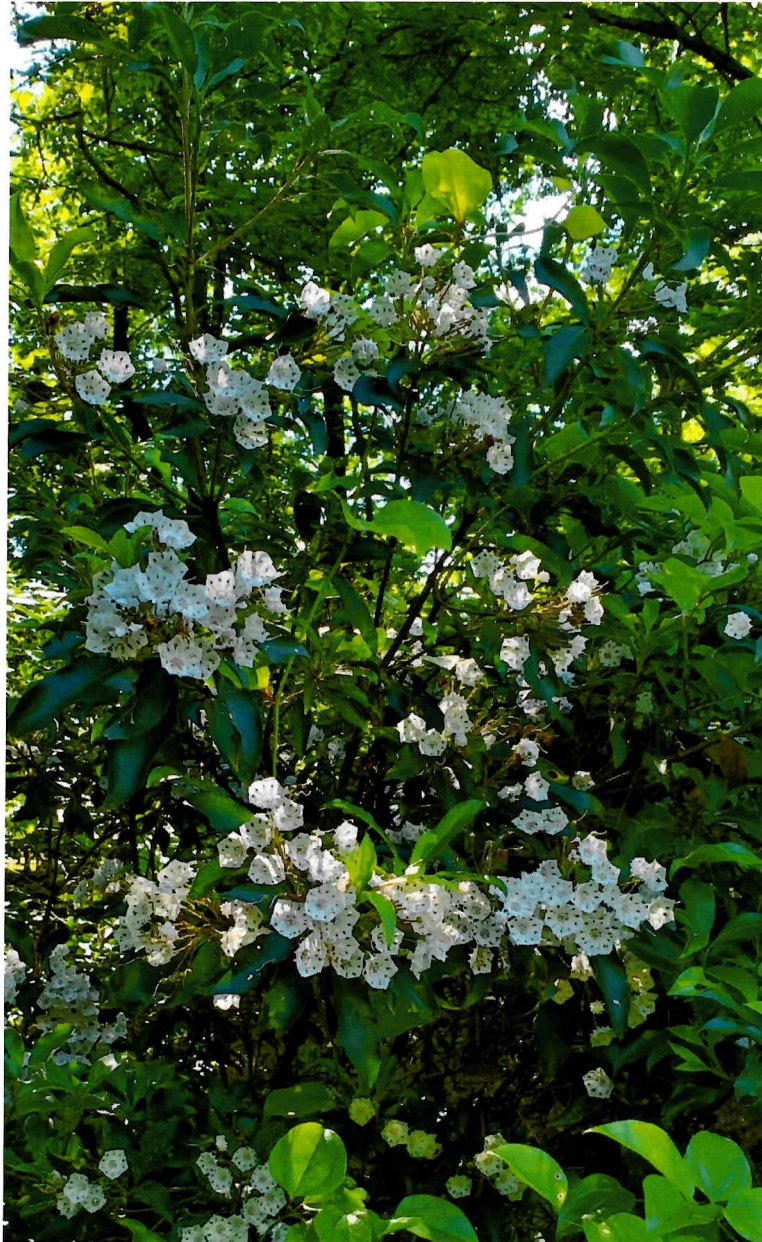
vegetation, as depicted in the photo, below. PPL failed to smooth excavated areas off the roadway and on private property off the ROW.



12. After PPL constructed the crane pads with our topsoil and mountain stone, PPL covered the earthen crane pads with large foreign material stone. Instead of hauling in approved topsoil to cover the stone, PPL further excavated our soil to cover the stone or tilled the stone into the subsoil. The subsoil has not and will not support natural vegetation on the crane pads. During the winter of 2020, the thin layer of soil eroded significantly as evidenced in the photo of crane pad 75, above and below.



13. Presently, August 31, 2020, 20 months after the original excavation and construction, the crane pads are devoid of vegetation, a barren wasteland as depicted above, with no defense against erosion and stormwater run-off. PPL's plan to reapply a grass mixture during the late summer/fall of 2020 is doomed for failure during the first summer 2021 dry spell due to lack of topsoil and nutrients. Furthermore, grass is no replacement for the native flowers and shrubs which adorned our original natural landscape.

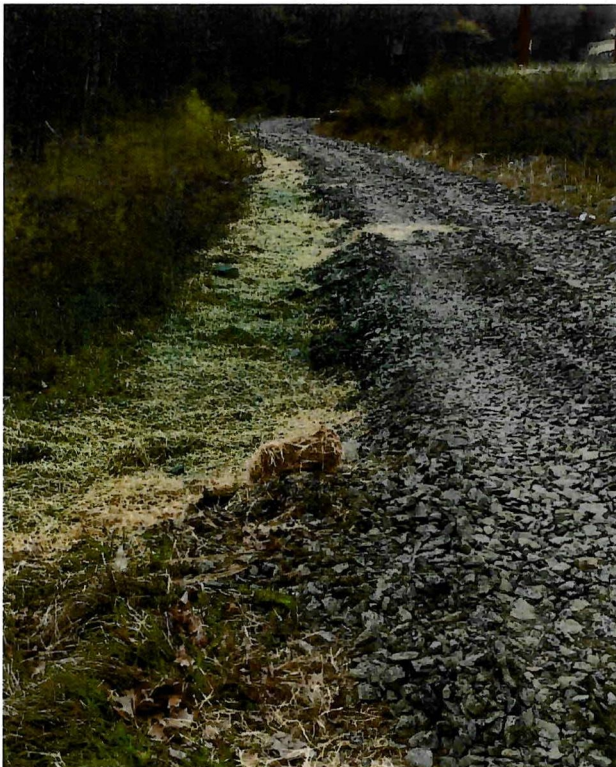




Soil Erosion and Water Run-Off onto Our Property from Roadway Construction

14. PPL, in contradiction to the E & S Plan, constructed the roadway with an extreme combination of rocks, stone and gravel of various sizes. 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 our property and prevents re-vegetation efforts.

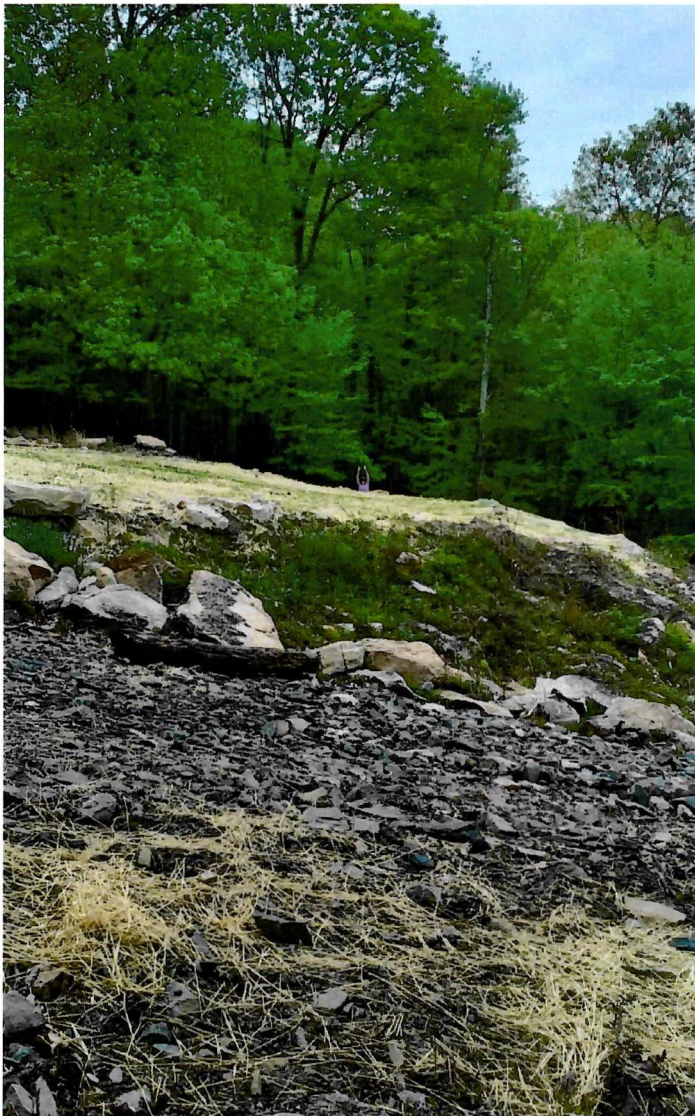
15. The newly constructed roadway greatly exceeded the 15 foot width approved by DCCD. PPL's ROW Specialist failed to honor a promise to smooth the roadway during the Fall of 2019 restoration process. During the week of April 20th, 2020, in a purported restoration effort that is best described as retaliation for this formal complaint, PPL reduced the 18 – 24 foot roadway to approximately 15 feet by excavating the sides and dumping the large stone residue on top of the roadway. To add insult to injury, PPL further excavated the water bars to a width and depth I have never witnessed on any roadway. The result is an incredibly dangerous and impassable high shoulder roadway, and an absolute eyesore. An eyesore that will guarantee storm water runoff and zero vegetation for the rest of our lives.



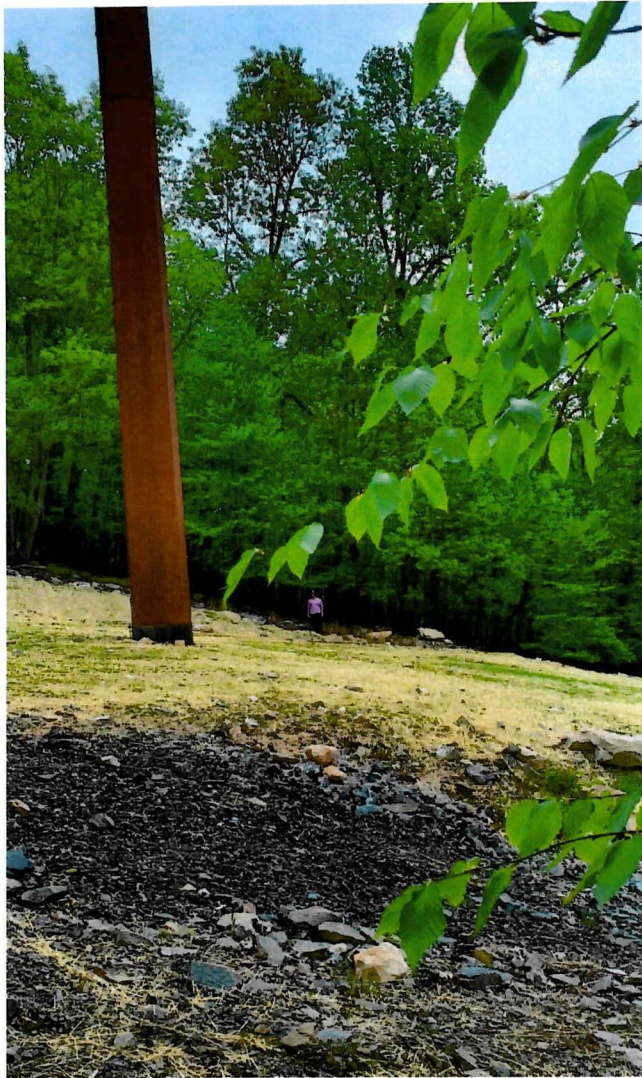


16. In their over-zealous attempt to harvest topsoil and stone to construct crane pads, PPL excavated private property off the ROW. PPL greatly exceeded the 100 foot ROW and Limit of Disturbance. PPL excavated a 120 foot wide swath of property to construct Crane Pad 75 and 117 foot wide swath to construct Crane Pad 76. In so doing, PPL destroyed native vegetation, damaged and killed trees off the ROW. To date, the known damage off the ROW includes a 15 year old Norway Spruce Tree, a 100 year old oak tree and countless azaleas, blueberry and blackberry shrubs. Additional trees may succumb in future years to the operation of heavy equipment over root systems off the ROW.

Crane Pad 75 120 foot wide earth and vegetation disturbance



Crane Pad 76 117 foot wide earth and vegetation disturbance



Decapitated Norway Spruce 60 feet to the west of Pole 76



Excavation off the ROW west of the Pole 75 Crane Pad, and well beyond the earth disturbance limits cited in the E & S Plans, Attachment 114.



Stately oak tree that succumbed to heavy equipment disturbance between Poles 75 and 76 reflected in below photo



17. Furthermore, the road was constructed without safeguards to prevent storm water run-off and erosion. The roadway began to degrade immediately after construction. Storm water and small gravel immediately washed off the roadway and ROW onto our property and Clarks Creek, a class A waterway. Note a muddy Clarks Creek, a direct result of PPL storm water runoff.



Preferential Treatment Afforded Neighbors (Are all landowners created equal?)

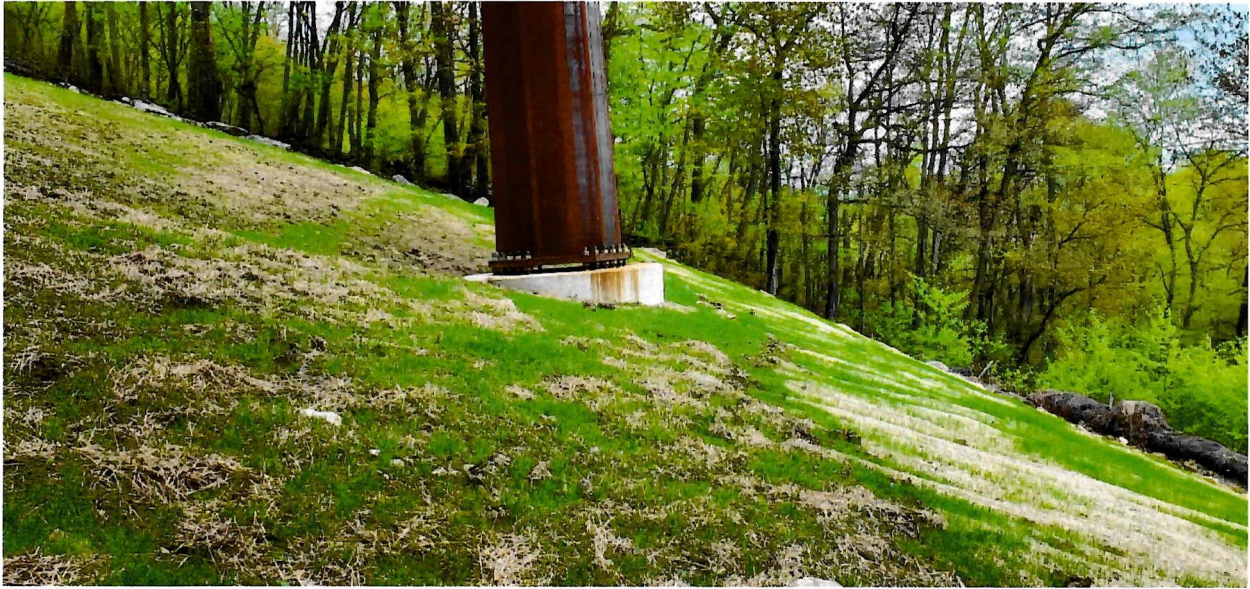
18. PPL made personal visits to seven neighborhood ROW property owners pre-construction. The PPL representatives offered construction detail, and negotiated new ROW agreements which included financial compensation. When we learned of the compensation received by our neighbors and confronted PPL, PPL told us that the neighbors received financial compensation because the ROWs were modified from 50' to 100'. PPL, however, had a pre-existing 100' ROW agreement associated with each property that was filed with Dauphin County effective 1990, and negotiated the new ROW agreements accordingly. If PPL truly believed the ROWs were

only 50 feet, they never shared that belief with our neighbors when they negotiated the new ROW agreements.

19. Only two of the neighboring properties that received additional compensation were impacted by the PPL construction activity. In each of those instances the ground disturbance was minimal and fully remediated, and the slope and topography of the property remained unchanged and unscarred.

20. PPL agreed, pre and post construction, to fully restore National Park Service Lands that border our property, and were covered by the same original 1950 ROW agreement. PPL mulched NPS access roads to prevent any disturbance pre-construction, and agreed to remove stone and re-vegetate all access roads post construction. Pre-restoration, PPL applied smaller sized stones to construct crane pads and roadways on NPS lands that would be easier to vegetate and maneuver. PPL agreed to remove all foreign materials, groom the existing soil and add topsoil if necessary to restore NPS property. PPL agreed to reduce the size of the Crane Pads and return the property to its natural slope and topography. During the spring of 2020 PPL restored NPS lands as depicted below.





Compare to Purported "Restoration" efforts on Hartman Property



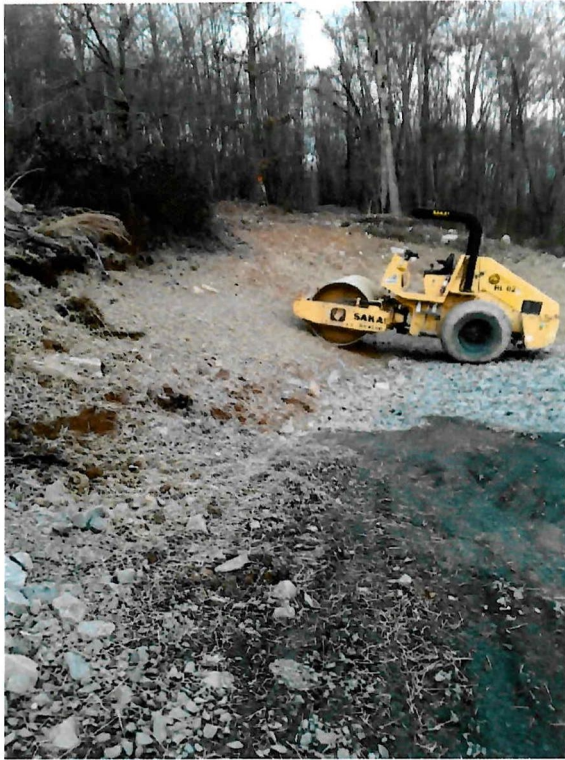




Unreasonable manipulation of original ROW Agreement

21. The new construction exceeded the terms, conditions and authority of the original ROW. The original \$500 ROW agreement did not address, nor could the Fetterhoff's envision, the complete, unreasonable and excessive scarring and devastation of the natural Peter's Mountain landscape caused by the recent construction. We have lost the use and enjoyment of our property for the past 20 months, and the foreseeable future, due to the destruction of native vegetation, and the abysmal restoration effort. Our property is forever modified and scarred by the washed-out roadway and crane pads.

22. The original 1950s powerline construction improved the landowner's access to their remaining property. The new construction has reduced, and in some instances permanently obstructed, our access to our remaining property. The photograph below depicts the removal of a gently sloped logging road that connected our property with our neighbor to the east and Linden Road, an emergency exit, by automobile, from our property.



23. The original ROW did not address or authorize:

1. The excavation and 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 our home and basement.
4. The construction of permanent crane pads that forever altered the natural slope and topography of the mountain.

24. The best evidence that the ROW did not address or authorize these four items is the fact that each was remediated and restored on NPS lands by PPL.

25. Furthermore, PPL's manipulation of the original ROW is unreasonable due to repeated bad faith misrepresentations made to us during the past 2 years, most notably:

1. Despite our November 2017 written request for construction detail, PPL failed to furnish advance notice of PPL's intent to modify the natural slope of our mountain property, construct a permanent roadway, destroy vegetation, limit re-vegetation and construct two large crane pads with materials harvested from our property.

2. In or about January 2018, PPL filed an Erosion and Sediment Control Plan (E & S Plan) with the Dauphin County Conservation District (DCCD) which falsely reported that PPL planned to improve an existing access road on our neighbor's property to install new powerline poles with minor earth disturbance.
3. In a July 17, 2018 letter addressed to our home, PPL wrote: **"Every effort will be made to avoid disturbing you or your property."**
4. In contradiction to PPL's E & S Plan filed with the DCCD, PPL chose an alternate route that permanently destroyed vegetation, and disturbed and scarred our property on and off the ROW.
5. PPL excavated surface areas far beyond the perimeter of the newly constructed roadway to harvest top soil and mountain stone to construct excessive crane pads that wantonly destroyed existing vegetation and forever altered the slope and landscape of our property.
6. The E & S Plan falsely represented that PPL offered the landowner the option to re-vegetate, or not, the newly constructed roadways, as follows: **"Following construction, most sections of the access routes will be covered with site and/or clean fill soils and re-vegetated with permanent seeding as indicated in the E & S Plans. Some areas of roadways may remain in improved condition depending on the preference of each specific property owner."** (Emphasis added)
7. Post construction and notice, PPL flatly refused our repeated requests to remove the commercial stone and re-vegetate the roadway.
8. At the same time, PPL agreed to remove commercial stone from crane pads and roadways constructed on NPS lands immediately adjacent to our property. It should be noted that NPS lands adjacent to our property cannot be viewed from the Appalachian Trail that is situated on the opposite side (north) of the mountaintop.
9. Furthermore, all storm water run-off bars installed on NPS lands direct water west in the direction of our property, an unwarranted threat to our home and surrounding vegetation.
10. When I presented this inequity to PPL counsel, counsel replied that PPL may have a different ROW agreement with the NPS.
11. We have since obtained a copy of PPL's ROW agreement on NPS lands. Our ROW agreements are identical in form and content.
12. We confronted PPL with the fact that PPL contractors trespassed and excavated our property off the ROW.

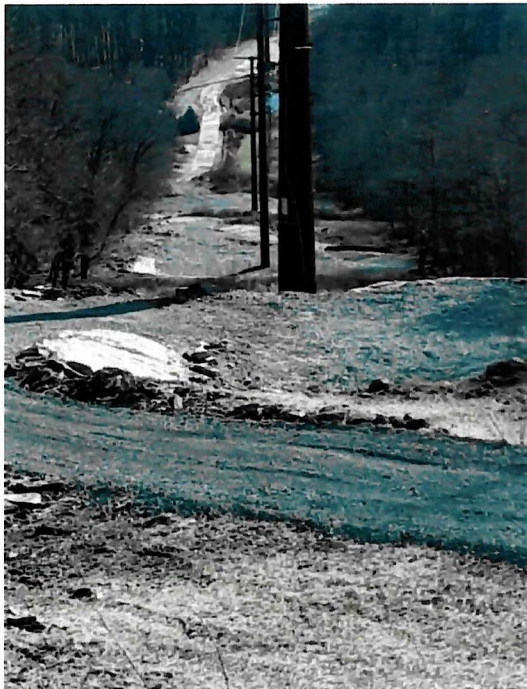
13. A PPL ROW Specialist flatly denied that PPL ever excavated our property beyond the ROW.
14. I requested an in-person meeting and a second PPL ROW Specialist admitted that PPL excavated our property off the ROW.
15. We confronted PPL with the fact that PPL harvested topsoil and mountain stone from our property and deposited same on our neighbor's property to construct the crane pads.
16. A PPL surveyor, in person, told me that we owned the entire 100' ROW, and that PPL simply redeposited our topsoil and mountain stone on our property.
17. A PPL ROW Specialist later admitted that we owned 50' of the 100' ROW, and that PPL had in fact harvested topsoil and mountain stone from our property to construct crane pads on our neighbor's property.
18. A PPL ROW Specialist told me that PPL would remove the commercial stone from the crane pad, reduce the size of the crane pad and return topsoil and mountain stone, including an iconic boulder evident on google earth photos, to our property.
19. PPL later refused to perform any of these promised restoration efforts.
20. Post ineffective restoration and re-vegetation, a PPL ROW Specialist and construction foreman/superintendent told me that the crane pads would remain as is, and no topsoil would be returned to our property.
21. PPL's acquisition team made personal visits to seven neighborhood ROW property owners pre-construction and negotiated new ROW agreements which included financial compensation. A PPL ROW Specialist falsely told me that the neighbors received financial compensation because their ROWs were modified from 50' to 100'.
22. PPL, however, had a pre-existing 100' ROW agreement associated with each property that was filed with Dauphin County effective 1990.
23. We also learned that the PPL acquisitions team negotiated compensation with our neighbors for the exchange of 100' ROW agreements, not the exchange of a 50' ROW agreement for a 100' ROW agreement.

24. On December 17, 2018, we filed an informal complaint with the PUC, Case # 3671881, when we recognized PPL's intended wanton abuse of our land and vegetation.
25. **On January 12, 2019, the PUC closed our informal complaint based on PPL's representation that PPL would restore our property when the project was complete.**
26. That representation proved false. During the spring of 2019 and spring of 2020 PPL refused to restore our property to its pre-construction condition. Today, August 31, 2020, 20 months following construction, the crane pads and access road shoulders remain devoid of vegetation due to PPL's abysmal restoration effort.
27. During the period May 2020 – August 2020, PPL, in bad faith, agreed to Mediation without any intention to compromise or restore our property, but rather to delay resolution of this matter.
28. Since December 2018, a twenty month period, PPL Right of Way Specialists and outside counsel have refused our repeated verbal and formal written requests to identify the contractor/subcontractor responsible for excavation of our property, to include the unwarranted destruction of vegetation and the unauthorized removal of our topsoil and mountain stone to construct a foreign material roadway and crane pads.
29. On August 19, 2020 we independently identified the contractor, MJ Electric, (MJE) a subsidiary of Quanta Services, Inc., and the subcontractor, Newville Construction, (Newville) that performed excavation and construction activity on our property for PPL.
30. We contacted a representative for each firm that was familiar with the project. Each told us that PPL prohibited them from discussing the engagement and construction activity on our property with us.
31. In so doing, PPL has adversely impacted our ability to obtain an agreement with MJE and Newville to restore our property, recover damages from MJE and Newville, and gather evidence to support our PUC Complaint.

Before Construction: Smaller Powerline on left straddles our property



After Construction



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Michael Hartman

August 31, 2020