

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

DOCKET No. C-2020-3019763

Lawrence Kingsley,
Complainant

v.

PPL Electric Utilities,
Respondent

**COMPLAINANT’S MEMORANDUM,
DATED OCTOBER 5, 2020**

Overview

On 5/11/20 I filed a formal complaint against PPL Electric Utilities (“PPL”) which sought to protect my property from overly aggressive cutting or removal of trees by PPL. I asked PUC to formalize two agreements by PPL:

1. The agreement the which the parties reached on 3/22/20, in response to my informal complaint (PUC Case No. 3682784), where PPL avowed that “any future trimming work would only happen with your prior approval.”¹
2. The separate agreement which PPL offered PUC to “Notify all property owners prior to start of any work involving initial clearing and maintenance

¹ Quoted from PUC’s commentary on my prior complaint.

procedures on previously cleared lines.”²

Absent a new ruling by PUC, neither agreement is enforceable inasmuch as there is no penalty if PPL, as it appears intent, continues “business as usual:” namely, the felling trees, hacking off tree limbs, or poisoning vegetation—as well as ground water—anywhere that PPL wants priority for electrical wiring.³

PPL has never obtained an easement on my property for so-called “vegetation management,” which is really mismanagement when the tree trimming is neither authorized nor proportionate. My trees have yet to recover from PPL’s “butchering” of them five years ago. My trees cannot withstand additional stress, such as losing major limbs to indifferent chainsaw workers.

Routinely, PPL places its commercial interests above the property rights of its customers. PPL should be held not only to a reasonable standard fair play, but to its own commitments.

Every Pennsylvanian who values trees and clean drinking water is at risk just as I am, and PUC should protect Commonwealth residents against a Boston-based company with a poor environmental and safety record.⁴

² See PPL’s Specification For Initial Clearing and Control Maintenance Of Vegetation on Or Adjacent To Electric Line Right-of-Way through Use Of Herbicides, Mechanical, And Hand-clearing Techniques, LA-79827-8. PPL’s capitalization is retained.

³ PUC recognizes that PPL’s practices are controversial.³ See: <https://www.expertlaw.com/forums/showthread.php?t=102818>.

⁴ PPL’s ownership and hostility to responsible environmental policies are explained below.

PPL's Procedural Violation

On June 10, 2020 PUC's Chief Administrative Law Judge, The Hon. Charles E. Rainey, Jr., ordered PPL, within ten days, of a resolution conference, to file a report with PPL, setting forth:

- (a) The date of the conference;
- (b) Who participated for each party;
- (c) A statement whether a full resolution, including withdrawal of Complaint, was achieved, and, if not, whether the parties consent to have this case set for mediation by the mediation staff of the Commission; and
- (d) A statement of any issues which have been resolved, if a full resolution was not achieved.

There is no indication in PUC's online file that PPL ever complied with this order, and if PPL did so, it violated 52 Pa. Code §§ 1.54(a), which requires service upon parties in a proceeding: PPL never served its report on me.

Although the parties conferred by phone on 6/23/20 and appeared to narrow their differences, PPL wants *carte blanche* to act as it pleases, perhaps when no one is "watching." If PPL submitted a report to Judge Rainey, it may well be distorted, but in any event PPL's failure to comply with 52 Pa. Code §§ 1.54(a) shows the same instinct for sly or underhand behavior at issue in this complaint.

ARGUMENT

PPL's answer to my complaint offers a general denial without explaining its reasoning or trying to refute any of the matter-of-fact statements and requests for relief in my complaint. PPL thus avoids the key issues of this complaint and preposterously addresses information on PUC's complaint form which was never in question. By addressing extraneous subjects, PPL is trying to lay red herrings.

Ignored by PPL, the essence of this complaint is expressed by my supplemental pages which are incorporated into my complaint and made explicit via ¶¶ 4-5 of PUC's complaint form (e.g., "Use additional paper if you need more space"). PPL does not try to defend the fact that it has a history of descending on neighborhoods and cutting trees and tree limbs without warning.

In Schuylkill County, for example, a woman came home from work and found out that PPL had cut down 20-30 trees on her property without notifying her. As a lover of nature, she was devastated. Her trees were not even endangering PPL lines since there were none: PPL destroyed her trees so as to string new lines to a neighboring house. PPL claims to have knocked once before destroying the 20-30 trees, but finding no one at home, felt entitled to proceed with no further notice (if there was any in the first place).⁵ PPL might as well be operating under a no-knock

⁵ See <https://www.wnep.com/article/news/local/schuylkill-county/property-owner-upset-after-trees-cut-down-with-no-notice/523-4bfaa223-79a9-4a43-a2db-584a0ea23fb2>. or cases like

warrant used in drug raids. There a warrant may be signed, but served on blameless residents, as when Breonna Taylor of Louisville, KY was killed in her own home.⁶ It is this kind of ruthless swooping down on unsuspecting, possibly absent property owners that PPL is placing at risk, for once trees or tree limbs are felled, it is too late to object.

In no way does my complaint attempt to limit PPL's options for reliable electrical service. I simply ask for due process, including notification of customers like me of the timing and scope of work which PPL intends. This notification should be verifiable, not just a knock on the door—or none at all—when no one is home. Before PPL's contractors proceed, I ask for an opportunity to question work which seems excessive, and if necessary, reasonable time—for example, three weeks—to contest particulars of this work either through PUC or a temporary injunction. This procedure is advisable because the loyalty of PPL's contractors is to PPL, not to the property owner. Tree trimming and removal are a highly competitive business in Pennsylvania with few barriers to entry, and PPL's

George D. Keller Memorial Association v. PPL Electric Utilities Corporation (PUC Case. No. C-2016-2568272).

⁶ Charles Roehm in Manheim reported: “When PPL has work to do on your property, its employees don't contact you beforehand to tell you why they are there. This inconsiderate action happened several times to me when PPL was trimming trees and recently when it was replacing telephone poles. . . . When I called about the project, I asked them why they never contacted us before they started their work. Their answer was that they have the ‘right of way’ and they did not have to contact anyone.” See “Public utility is inconsiderate,” https://lancasteronline.com/opinion/letters_to_editor/public-utility-is-inconsiderate-letter/article_24267842-a975-11e9-90b3-33dfe20d514e.html.

contractors will go to great lengths to retain PPL's business.⁷ These contractors thus have a tendency to err on the side of excess. PPL calls them "foresters," but the typical worker was never trained in anything except the use of a chainsaw. PPL may have one or more mid-managers who understand forestry, but they are not known for joining chainsaw contractors at each job site.

My complaint is only about preventative maintenance when wiring is intact, and it would be easy to carve out exceptions under other conditions—for example, emergencies or maintenance in rural areas where the nearest homeowner may be thousands of feet away from high voltage trunk lines. If there are ever frivolous complaints, the filer can be sanctioned. However, PPL's aversion to simple notification requirements and due process shows that PPL wants freedom for its contractors to invade anyone's private property and "amputate" trees at will. Answering only to itself, PPL also wants freedom to poison vegetation (along with wells).

PPL's Hostility to Pennsylvania

PPL would seem to care less about its Pennsylvania customers, than about profits for its corporate parent in Massachusetts. Public Partnerships, LLC, abbreviated "PPL," is a subsidiary of PCG Partnerships. PCG is incorporated in

⁷ Through the doctrine of *respondeat superior*, there is no practical difference between PPL and its contractors—I include both by "PPL."

Delaware, but has its principal offices in the financial district of Boston at 40 Broad Street. “PPL operates regulated utilities throughout the United States and the United Kingdom, delivers natural gas to customers in Kentucky and generates electricity from power plants in Kentucky.”⁸ PPL is known for hard knuckle, cost-saving tactics in opposition to the will of the communities in which it operates.⁹ In *PPL Elec. Utilities Corp. v. City of Lancaster*, 125 A.3d 837 (Pa. Cmmw. Ct. 2015) PPL denied the City of Lancaster the standard practice of “overbuilding” utility wires with additional networking designed to manage the city’s traffic lights.¹⁰ In *PECO Energy v. Township of Upper Dublin*, 922 A.2d 996, Pa. Commw. Ct. (2007), PPL overrode a municipality’s interest in preserving shade trees.

PPL stonewalled Pennsylvania Treasurer Joe Torsella by refusing to release unredacted documents relating to hundreds of thousands of dollars of unclaimed property which Treasurer Torsella wanted to return to rightful Pennsylvania owners.¹¹

⁸ Memorandum Opinion, *PPL Corp. et al v. Riverstone et al*, Delaware Court of Chancery Case No. 2018-0868-JRS.

⁹ PPL nonetheless engages in token PR activities. This year PPL thus awarded seven high school students \$2,000 scholarships as Future Environmental Leaders. This \$14,000 cost represents a 0.000000018 plus chunk of the \$7.77 billion revenue earned by PPL’s parent company in 2019.

¹⁰ Justices Bernard L. McGinley and Bonnie Brigance Leadbetter dissented from this decision.

¹¹ See <https://www.patreasury.gov/newsroom/archive/2019/05-10-Ppl-Corporation.html>.

EPA stopped PPL's majority-owned Talen Energy from expanding its Brunner Island plant in York County and fined the company \$1 million dollars for polluting the Susquehanna River.¹² Later, Talen claimed that "PPL fraudulently transferred money from its sale of 11 hydroelectric dams in Montana to add to its own profits, then spun-off liabilities of worker pension funding and environmental cleanup costs at Colstrip [the local Montana facility] to Talen."¹³

PPL is currently a defendant in a class action lawsuit, alleging wage theft of its own employees, brought by Lancaster resident Ralph Talarico in the U.S.D.C. for the Eastern District of PA (Case No. 5:17-cv-02165-JLS).

In Manheim, PA a woman with Parkinson's Disease failed to pay PPL's late fee. PPL shut off her service, and 17 hours later her house burned down, killing her. PUC fined PPL \$50,000 for failing to inform her of her rights and mishandling the billing. PPL also had to pay an additional \$400,000 to charity to settle PUC's allegations.¹⁴

The Millersville, PA wife of a utility worker accused PPL of negligence in the

¹² See https://lancasteronline.com/news/local/earl-twp-sewage-plant-upgrade-brunner-island-power-plant-cooling-water-discharge-permits-held-up/article_53e23552-0def-11e4-bece-0017a43b2370.html.

¹³ See <https://www.mtpr.org/post/legal-fight-continues-over-colstrip-pension-cleanup-costs>.

¹⁴ See https://lancasteronline.com/news/ppl-pays-settlement-in-shut-off/article_8d8669ef-c15a-56d2-8725-036ad87c54d0.html.

wrongful death of her husband, who was killed in gas explosion. The widow accused PPL of failure to have a proper policy “for expeditiously shutting off electricity during a known, significant gas leak with explosive levels.”¹⁵

Amtrak had to sue PPL over a Lancaster County electrical substation needed for the railroad. Amtrak offered compensation which PPL refused.¹⁶

PPL-owned land is the site of a pipeline cutting through an Indian burial ground and scenic areas where eight protesters were arrested for trying to block this pipeline.¹⁷

Elsewhere, PPL and its subsidiaries spend millions of dollars combatting EPA over carbon pollution standards,¹⁸ and in Pennsylvania PPL has adopted other environmentally unfriendly policies. The PA DEP had to sue a PPL power plant over a toxic waste spill that caused pollution in Northampton County.¹⁹ In 2010 PPL sued the National Park Service, seeking the right to cut trees in the Delaware

¹⁵ See <https://www.prnewswire.com/news-releases/wrongful-death-lawsuit-filed-against-honeywell-and-others-in-pennsylvania-home-explosion-300743959.html>.

¹⁶ See <https://www.docketbird.com/court-documents/National-Railroad-Passenger-Corporation-v-4-0446-Acres-More-or-Less-of-Land-and-Fixtures-et-al/MEMORANDUM-SIGNED-BY-HONORABLE-JEFFREY-L-SCHMEHL-ON-3-6-19-3-6-19-ENTERED-AND-COPIES-E-MAILED/paed-5:2017-cv-01752-00061>.

¹⁷ See https://lancasteronline.com/news/local/8-pipeline-protesters-plead-guilty-to-trespassing-are-fined-100-each/article_ee818eb4-ad36-11e4-acc4-ab06d4a06fe2.html.

¹⁸ See <https://www.nrdc.org/sites/default/files/Price-of-Pollution-Politics-PPL>.

¹⁹ See <https://www.waterworld.com/environmental/article/16214552/court-upholds-penn-deps-15m-fine-against-ppl>.

Water Gap and Appalachian Trail.²⁰

Merely since Feb.15, 2018, there are 35 pages on PUC's Website, each with multiple complaints about PPL regarding issues like funny billing, overcharges, and disputed "vegetation management." I have my own account of funny billing by PPL, where I had to pay out of my own pocket to keep the lights on in my fiancée's estate, but PPL then refused to bill the estate directly for the same period. It is not too late to rectify this injustice, and I ask leave to add it to my complaint.

Legal Factors

Unlike other cases where PPL prevailed, my complaint is not limited by any easement or right of way deeded to PPL.

Unlike the *Peco* and *Lancaster* cases, where there was an attempt to usurp PUC's authority by municipalities, this complaint asks PUC to exercise its inherent authority to regulate PPL in a reasonable fashion.

Even when allowed, PPL's so-called "vegetation management must be performed in a safe, adequate, reasonable . . . manner" according to *Popowsky v. Pa. P.U.C.*, 653 A.2d 1385 (Pa. Cmwlth 1985). However, excessive, unannounced cutting of trees is neither safe nor reasonable for anyone except PPL.

²⁰ See https://m.citizensvoice.com/news/business/ppl-sues-seeking-to-trim-lines-in-delaware-water-gap/article_7643ea36-31b3-5bec-ab02-4368dbeebf4e.html; <https://www.prnewswire.com/news-releases/susquehanna-roseland-line-receives-final-federal-approval-172279901.html>.

This case is distinguished from *Carl R. Nolan v. PPL Electric Utilities Corporation*, PUC Docket No. C-2018-2640728, because I am not asking PUC to regulate the use of herbicides (as to their type, certification, and toxicity): I am asking PUC to regulate PPL re: procedural due process (e.g., notification of homeowners about intended “vegetation management”) and substantive due process, whereby Pennsylvania homeowners are being deprived of their assets without due compensation or a hearing.

Contrary to PPL, PUC has absolute authority under 66 Pa. C.S. § 508 not only to supervise public utilities, but to vary, reform, and revise contracts or any other aspect of the public welfare which PPL threatens:

The commission shall have power and authority to vary, reform, or revise, upon a fair, reasonable, and equitable basis, any obligations, terms, or conditions of any contract heretofore or hereafter entered into between any public utility and any person, corporation, or municipal corporation, which embrace or concern a public right, benefit, privilege, duty, or franchise, or the grant thereof, or are otherwise affected or concerned with the public interest and the general well-being of this Commonwealth. Whenever the commission shall determine, after reasonable notice and hearing, upon its own motion or upon complaint, that any such obligations, terms, or conditions are unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest and the general well-being of this Commonwealth, the commission shall determine and prescribe, by findings and order, the just, reasonable, and equitable obligations, terms, and conditions of such contract. Such contract, as modified by the order of the commission, shall become effective 30 days after service of such order upon the parties to such contract.

See also: P.A. Acts 2019-118 § 2103:

The commission shall have continuing supervisory control over the terms and conditions of contracts and arrangements as described in section 2102 (relating to approval of contracts with affiliated interests) so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over the modifications or amendment of contracts or arrangements as it has over such original contracts and arrangements.

Clearly, protecting Pennsylvania property rights is within the scope of PUC's oversight and the economic well-being of Pennsylvanians.

Regardless of current policies, PPL's assumption that it can invade private property on a whim is contrary to Article 1 § 1 of Pennsylvania's Constitution. Article 1 § 1 recognizes as "inherent and indefeasible rights . . . acquiring, possessing and protecting property" and pursuing one's happiness. Article 1 § 9 grants citizens security in their houses "and possessions from unreasonable searches and seizures." Article 1 § 11 guarantees "due course of law" in legal proceedings, which are wholly absent when PPL inflicts devastating damage on property without warning or compensation.

"The rights afforded under Article I, Section 1 of the Pennsylvania Constitution are generally coextensive with the federal due process clause of the 14th Amendment of the United States Constitution, which provides no state shall

deprive any person of life, liberty, or property, without due process of law.”²¹ As our Supreme Court held, “[t]he requirements of Article I, Section 1 of the Pennsylvania Constitution are not distinguishable from those of the 14th Amendment . . . [and courts] may apply the same analysis to both claims.”²²

While state and federal rights in Pennsylvania are substantially coextensive, Pennsylvania due process rights are more expansive in that, unlike under the Fourteenth Amendment, a violation of due process occurs, even if no prejudice is shown, when the same entity or individual participates in both the prosecutorial and adjudicatory aspects of a proceeding.” *Stone & Edwards Ins. Agency v. Dep’t of Ins.*, 636 A.2d 293, 297 (Pa. Cmwlth. 1994). PPL’s arrogation to itself of the right to decide which homeowner’s trees are to be sacrificed, while PPL agents wield the actual chainsaws, implicates this ruling. Also see *R. v. Dep’t of Public Welfare*, 636 A.2d 142.

However, I exclude federal claims from this complaint because adequate relief can be granted under Pennsylvania laws—namely, the statutory powers of PUC and Article 1 of the Pennsylvania constitution. Neither PPL nor PUC can overturn the Pennsylvania Constitution, and not even the Legislature can do so without

²¹ Quoted from *Simbarashe Madziva v. The Philadelphia Housing Authority*, No. 1215 C.D. 2013 (Pa. Cmwlth. 2014).

²² *Pa. Game Comm’n v. Marich*, 666 A.2d 253 (Pa. 1995) at 255 n.6; accord *Robbins v. Cumberland Cnty. Children & Youth Servs.*, 802 A.2d 1239 (Pa. Cmwlth. 2002).

approval by the electorate and proceedings about Article 1 that have never occurred.

Requested Relief

No action by me is responsible for this complaint. Instead, PPL has brought difficulties on itself by stringing wiring through the wooded backyards of customers, often within the reasonable “curtilage” around houses that PPL cannot condemn under 52 Pa. Code § 57.91(b).²³ Generally, this curtilage is considered to be 300 feet; whereas, PPL’s transmission line, connecting other houses, is within 40 feet of my house. Any attempt by PPL to construe its entire service areas in the context of eminent domain which has never sought would be absurd.

As a general rule, the modern preference is that electrical wiring should go underground for aesthetic reasons and the danger of electrocution from fallen wires. Section 57.84 of PUC regulations (52 Pa. Code §57.84) states that new distribution lines located within 100 feet of a development are to be placed underground “if practicable.” However, the “if practicable” qualification leaves too much room for equivocation by PPL since nothing prevents universal burying of wiring under any circumstances—phone companies, Comcast, and builders regularly tear up brownfields and greenfields to lay cable or pipes. The only

²³ In condemnation proceedings this code requires a public utility to furnish the following notice from PUC: “Generally, curtilage includes the land or buildings within 300 feet of your house which are used for your domestic purposes.”

obstacle to relocation of all overhead wiring in central and eastern Pennsylvania is the profit motive of PPL's Boston owners. As proof of concept in a sense, PPL has connected substations with underground wiring in Derry Township (near Hershey), and, but for PPL's instinct for saving cost, burial of residential wiring throughout Pennsylvania is the long-term solution to complaints like mine.

PPL easily could lay its wiring in a narrow trench dug within the eight feet on each side of streets owned by the government. The problem thus is not trees themselves, but rather PPL's placement of wiring in wooded backyards instead of burying the wiring or using conventional poles on the street. If PPL were to adhere to modern standards for wiring, the cost savings just in repetitive "vegetation management" and litigation over the former would be enormous. Whether above or below ground, PPL also could defray rebuilding costs, as well as open a new profit center, by including fiber optic cables in the new construction. Fiber is considered the future of Internet connectivity because of the increased speed and volume of data that fiber can handle compared to traditional wiring, and completing the "last mile" to every home or business represents a huge revenue opportunity for PPL, who should have taken advantage of it already. .

Meanwhile, one solution to PPL's opposition to any change in its business practices might be a Website under PUC auspices. There PPL could list addresses and dates of intended work, and homeowners who opt in could automatically

receive an email message about this work. Since PPL cannot be trusted to do more online than it does offline, PUC, rather than PPL, should operate this site.

Conclusion

In sum, fair and equitable resolution of my complaint is in the public interest since other property owners face a similar threat from PPL—namely, unannounced property invasion, poisoning of aquifers, and destruction or weakening of trees which provide shade, hospitality to songbirds, stability to the soil, carbon dioxide reduction, aesthetic value, and increased property valuations. The profit motive of PPL's Boston parent does not supersede Commonwealth rights and individual liberties in Pennsylvania, which PUC should defend.

For too long PPL's Boston owners have acted as overlords trying to colonize Pennsylvania and overrule local interests. PPL's ability to invade private property without warning and to demolish, jeopardize, or diminish assets like shade trees and shrubbery or to poison wells with herbicides is dangerously totalitarian. The tariff purporting to give PPL this right is far too broad and is unconstitutional under Article I of Pennsylvania's Constitution.

Insistence on due process in the form of notification and opportunity for a hearing create a simple solution which is long overdue. PUC should stop PPL from running roughshod over municipal regulations, the state constitution, and individual liberties. Plainly, PPL is out of control and should be reigned in.

Dated: Lancaster, PA
October 5, 2020

Respectfully submitted,

A handwritten signature in cursive script that reads "Lawrence Kingsley".

Lawrence Kingsley
Lawrence Kingsley, *Pro Se*
2161 W. Ridge Dr.
Lancaster, PA 17603
717-884-9459