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March 9, 2023

VIA ELECTRONIC FILING

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Michael and Sharon Hartman v. PPL Electric Utilities Corporation
Docket No. C-2019-3008272

Dear Secretary Chiavetta:

Attached for filing on behalf of PPL Electric Utilities Corporation (“PPL” or the “Company”) is the Main Brief and associated Appendices A through C for the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Nicholas A. Stobbe

NAS/dmc
Attachments

cc: The Honorable Steven K. Haas (*w/attachments*)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA FIRST-CLASS MAIL AND E-MAIL

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Date: March 9, 2023



Nicholas A. Stobbe

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael and Sharon Hartman,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2019-3008272
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

**MAIN BRIEF OF
PPL ELECTRIC UTILITIES CORPORATION**

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Date: March 9, 2023

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I. INTRODUCTION

On March 5, 2019, PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) was served with the above-captioned Formal Complaint filed by Michael and Sharon Hartman (“Complainants”) with the Pennsylvania Public Utility Commission (“Commission”), concerning the Company’s construction and vegetation management activities in the existing transmission line right-of-way traversing their property as part of the Halifax-Dauphin 69 kilovolt (“kV”) Transmission Rebuild Project (“Project”). This case is a remand proceeding, as the Commission previously sustained in part and denied in part the Company’s Motion for Summary Judgment requesting that the Complaint be dismissed in its entirety. *See Hartman v. PPL Elec. Utils. Corp.*, Docket No. C-2019-3008272 (Order entered Apr. 16, 2020) (“April 2020 Order”). Under the Commission’s *April 2020 Order*, the issues on remand are limited in scope to allegations that the Company’s construction and vegetation management practices were unsafe or unreasonable. *See id.*, pp. 19, 22-23.

As explained in this Main Brief, the Complainants failed to sustain their burden of proof that PPL Electric’s construction and vegetation management practices were unsafe or unreasonable in violation of Section 1501 of the Public Utility Code. Moreover, the Complainants’ latest claim that such practices violated Section 1502 of the Public Utility Code is unfounded and outside the scope of this proceeding. Thus, the ALJ and the Commission should dismiss the Complaint in its entirety with prejudice.

II. STATEMENT OF THE CASE

On March 1, 2019, the Complainants filed a Formal Complaint (“Complaint”) against PPL Electric related to the Company’s Project alleging that the Company: (1) violated an existing right of way agreement on the Complainants’ property; (2) failed to compensate the Complainants for

damage and removal of their property; and (3) trespassed and damaged private property outside of the right-of-way. The relief requested by the Complainants included that PPL Electric be ordered to: (1) purchase a new right-of-way agreement; and (2) restore the Complainants' property to its "original" condition, including (a) restoration of topsoil and landscaping stones and boulders removed allegedly from the property, (b) removal of stone road and foreign materials PPL Electric 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. The Complaint was served on PPL Electric on March 5, 2019.

On March 25, 2019, PPL Electric filed its Answer to the Complaint. In the Answer, PPL Electric stated that it has a 100-foot right-of-way to construct, maintain, reconstruct, and repair, among other things, transmission lines with ingress and egress rights as signed by the prior landowner of the Complainants' property on February 22, 1950. Further, PPL Electric stated that after it completed an inspection, it had not located any areas where the easement agreement was violated. As such, PPL Electric requested that the Commission deny the Complaint.

The then-presiding Administrative Law Judge ("ALJ") Andrew M. Calvelli ("ALJ Calvelli") issued an Initial Call-in Telephonic Hearing Notice on April 3, 2019, scheduling an evidentiary hearing for May 16, 2019.

ALJ Calvelli later rescheduled the evidentiary hearing to June 26, 2019, by Hearing Notice dated May 10, 2019.

On May 10, 2019, ALJ Calvelli received two letters from the Complainants, 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 Commission's Office of Administrative Law Judge ("OALJ"), the Complainants requested that the telephonic hearing be changed to an in-person hearing. In their May 9, 2019, letter, the Complainants requested that an in-person hearing take place on-site at their residence.

On June 10, 2019, the Complainants sent a Motion to Compel Production of Documents from PPL Electric to the Commission's Secretary and OALJ, based upon prior discovery requests made by the Complainants to PPL Electric.

Due to the pendency of the discovery motions, on June 13, 2019, ALJ Calvelli converted the Initial Telephonic Hearing scheduled to be held on June 26, 2019, into a Telephonic Pre-Hearing Conference. Thereafter, on June 27, 2019, PPL Electric filed a Motion for Summary Judgment where it argued that the Commission lacks jurisdiction to determine the scope and validity of an easement or to order damages associated with claims of breach and, therefore, was entitled to summary judgment.

On October 3, 2019, the Complainants filed their untimely response to PPL Electric's Motion for Summary Judgment.

By Initial Decision served on October 16, 2019, ALJ Calvelli granted PPL Electric's Motion for Summary Judgment and dismissed the Complaint for lack of Commission jurisdiction. The Complainants filed Exceptions on October 31, 2019, and PPL Electric filed Replies to Exceptions on November 14, 2019.

In ruling upon the Complainants' Exceptions to the Initial Decision, the Commission held that: (1) the Complainants' Exceptions based on alleged lack-of-notice of construction activities were outside the scope of the Commission's and, therefore, dismissed¹; (2) the Commission had

¹ *April 2020 Order*, at p. 13.

jurisdiction over the Complainants' vegetation management claims and, therefore, remanded to the Office of Administrative Law Judge to develop a full record on the Complainants' vegetation management claims²; (3) the Commission had jurisdiction over the Complainants' general utility service claims related to the Company's construction practices and, therefore, remanded to the Office of Administrative Law Judge to develop a full record of those claims³; (4) rejected and dismissed the Complainants' discriminatory service claim as it related to the Company's restoration efforts on the Complainants' property and an adjacent parcel owned by the U.S. National Park Service ("U.S. NPS")⁴; (5) affirmed ALJ Calvelli's finding that the Commission lacks subject matter jurisdiction over the scope and validity of an easement agreement⁵; (6) the Complainants' claims for damages were outside of the Commission's limited jurisdiction⁶; and (7) the Complainants' environmental claims against PPL Electric were beyond the Commission's limited jurisdiction and were more appropriately raised within the Pennsylvania Department of Environmental Protection and/or an appropriate jurisdiction civil court to address.⁷

On February 17, 2021, attorney Robert Young filed a Notice of Entry of Appearance on behalf of the Complainants.

On November 30, 2021, PPL Electric filed a Praecipe for Withdrawal of attorney Kimberly Krupka.

On December 1, 2021, PPL Electric filed a Notice of Entry of Appearance for Michael J. Shafer, Devin T. Ryan, and Nicholas A. Stobbe.

² *April 2020 Order*, p. 18.

³ *Id.* p. 19.

⁴ *Id.* p. 20.

⁵ *Id.* pp. 20-21.

⁶ *Id.* pp. 22.

⁷ *Id.* at 22.

On March 1, 2022, attorney Robert Young filed a Notice of Withdrawal of Appearance on behalf of the Complainants and, since that point, the Complainants have proceeded throughout the remainder of this proceeding on a *pro se* basis.

Throughout and after the time period during which the above-described events occurred, the parties engaged in discovery and settlement discussions. Several site visits occurred at the Complainants' property during which the parties viewed the property and discussed the Complaint. Both parties propounded Interrogatories and the Complainants submitted requests for the issuance of subpoenas for various individuals. Various procedural issues arose throughout the course of this proceeding related to discovery requests propounded by the parties.

During an informal, off the record call between the parties and ALJ Steven K. Haas ("ALJ Haas") in early 2022, PPL Electric, the Complainants, and ALJ Haas agreed to "re-set" discovery in the case and re-issue their various requests in order to overcome and rectify any prior procedural issues or defects.

On April 25, 2022, PPL Electric relayed to ALJ Haas that it understood the Complainants would not be filing a Motion to Compel.

Following the discovery "re-set," the Complainants again submitted requests for subpoenas for a number of individuals. These requests were sent to PPL Electric and ALJ Haas but were not served on the individual subjects of the requests as required by the Commission's regulations.

At the direction of ALJ Haas on May 17, 2022, the Complainants were advised of the defective subpoena applications. Proper subpoena applications were not subsequently submitted for the subject individuals.

Pursuant to a procedural schedule established by the parties, evidentiary hearings were scheduled for August 16-17, 2022.

The Complainants served their written direct testimony and exhibits on May 17, 2022.

On July 8, 2022, PPL Electric served its written rebuttal testimony of four witnesses and their exhibits.

By e-mail dated July 13, 2022, the Complainants indicated that they did not intend to serve surrebuttal testimony.

The evidentiary hearings were held as scheduled on August 16-17, 2022.

A third and final day of evidentiary hearings was held on September 21, 2022.

During the August 16, 2022, evidentiary hearing, PPL Electric's counsel informed ALJ Haas and the Complainants that PPL Electric had a substantial number of objections to portions of the Complainants' testimony and exhibits. ALJ Haas directed PPL Electric to submit its objections in writing on or before October 20, 2022. The Complainants' response, if any, was due by November 9, 2022.

On October 20, 2022, PPL Electric filed its Motion to Strike a significant portion of the Complainants' testimony and exhibits.

On February 2, 2023, ALJ Haas issued an Order granting, in part, and denying, in part, PPL Electric's Motion to Strike. Specifically, ALJ Haas struck the following paragraphs from the Complainants' Exhibit A (*i.e.*, the Complainants' Direct Testimony):

11, 13, 14 (last sentence only), 16, 21, 24, 25, 26, 31, 35, 39, 41, 42, 48, 49, 76, 77, 85, 86, 89, 90, 91, 93, 94, 96, 98, 128, and 136 (subsection nos. 12, 19, 20, 21, 27, 28 and 32 only).

Further, the following of the Complainants' Exhibits were also struck from the evidentiary record:

Exhibit Nos. 2, 4, 6, 13, 14, 15, 21, 22, 23, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, and 57.

On February 9, 2023, ALJ Haas and the parties held an informal status call to discuss the status of the case and a proposed briefing schedule. As a result of that call, ALJ Haas directed the parties to file Main Briefs by March 9, 2023, and Reply Briefs by March 30, 2023.

A further status call was held on February 22, 2023.

On March 3, 2023, ALJ Haas issued a Briefing Order, memorializing the deadlines for the Main Briefs and Reply Briefs and setting page limits on the argument sections in those briefs, specifically 40 pages double-spaced for the Main Briefs and 25 pages double-spaced for the Reply Briefs.

III. QUESTIONS PRESENTED

1. Whether the Complainants failed to sustain their burden of proof that PPL Electric's construction activities in its transmission line right-of-way constituted unsafe or unreasonable service under Section 1501 of the Public Utility Code.

Suggested answer: *in the affirmative.*

2. Whether the Complainants failed to sustain their burden of proof that PPL Electric's vegetation management in its transmission line right-of-way constituted unsafe or unreasonable service under Section 1501 of the Public Utility Code.

Suggested answer: *in the affirmative.*

3. Whether the Complainants failed to sustain their burden of proof that PPL Electric's construction activities and vegetation management in its transmission line right-of-way constituted unreasonable discrimination in service under Section 1502 of the Public Utility Code.

Suggested answer: *in the affirmative.*

IV. LEGAL STANDARDS

A. BURDEN OF PROOF

Under Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), “the proponent of a rule or order has the burden of proof.” It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008). However, to establish a *prima facie* case, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁸ Mere bald assertions, personal opinions, or perceptions, when unsubstantiated by facts, do not constitute evidence.⁹

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof. *See Replogle v. Pa.*

⁸ *Lyft, Inc. v. Pa. PUC*, 145 A.3d 1235, 1240 (Pa. Cmwlth. 2016) (citing *Norfolk and Western Ry. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980)).

⁹ *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

Elec. Co., 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9, 1980); *see also Dist. of Columbia's Appeal*, 21 A.2d 883 (Pa. 1941); *Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions of Mahoning Twp., Lawrence Cnty., Pa.*, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).

In addition, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Grp. v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274, 281 n.9 (Pa. Cmwlth. 2008) (citation omitted). Although substantial evidence must be “more than a scintilla and must do more than create a suspicion of the existence of the fact to be established,” *Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted), the “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mech. and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

The Complainants filed the Complaint against PPL Electric regarding the Company's construction and vegetation management practices as part of the Halifax-Dauphin 69 kV Transmission Rebuild Project. Thus, as the proponent of a rule or order, the Complainants have the burden of proof in this case.

B. APPLICABLE LEGAL STANDARDS

Section 701 of the Public Utility Code provides that “any person . . . having an interest in the subject matter . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has

jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa. C.S. § 701.

Therefore, a complainant must generally demonstrate that the public utility violated the Public Utility Code or a Commission regulation or order.

Section 1501 of the Public Utility Code states, in pertinent part, that:

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. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service . . .

Id. § 1501. The Commission has exclusive jurisdiction to adjudicate “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services. *See Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (citations omitted).

The standard set forth in Section 1501 is reasonable, not perfect service. As noted by the Commission in *Re Metropolitan Edison Co.*, 80 Pa. PUC 663, 672 (1993), Section 1501 “does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.” *See also Beaty v. Verizon Pa. Inc.*, Docket No. C-2012-2300642, 2012 Pa. PUC LEXIS 1870, at *12 (Initial Decision Oct. 12, 2012), *adopted as modified*, Docket No. C-2012-2300642 (Order Entered July 16, 2013).

Furthermore, Section 1502 of the Public Utility Code provides that:

No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No

public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service.

66 Pa. C.S. § 1502. Therefore, to establish a violation of Section 1502, there must be: (1) discrimination of persons, corporations, or municipal corporations within the same reasonable classification of service; (2) the discrimination must concern the public utility's service; and (3) the discrimination must be unreasonable. *See id.*

V. SUMMARY OF ARGUMENT

The Complainants failed to sustain their burden of proof that PPL Electric's construction and vegetation management practices within the transmission line right-of-way violated Sections 1501 and 1502 of the Public Utility Code. Despite the Complainants' many assertions, the case is quite simple. PPL Electric constructed a portion of its Halifax-Dauphin 69 kV Transmission Rebuild Project within its existing transmission line right-of-way on the Complainants' property. As part of that Project, PPL Electric needed to construct a new road and crane pads to safely build, support, and provide access to those facilities. Given the difficult topography of this segment of the Project, which extends up a steep mountainside, PPL Electric's access road and crane pads were constructed, as necessary, with an overall goal in mind—the safe construction and continued access of the facilities.

Likewise, PPL Electric performed vegetation management on the Complainants' property to address issues with incompatible species in the transmission line right-of-way. The safest and most effective method of vegetation management under these circumstances was the application of herbicides. PPL Electric's contractor treated the requisite areas using herbicides approved by the U.S. Environmental Protection Agency ("EPA"), the Pennsylvania Department of Agriculture,

and PPL Electric. Moreover, the amount of herbicides applied was well below the allowable gallons per acre.

Yet, the Complainants dispute the Company's actions, believing PPL Electric's construction and vegetation management practices to have constituted: (1) unsafe or unreasonable service under Section 1501 of the Public Utility Code; and (2) unreasonable discrimination in service under Section 1502 of the Public Utility Code. These arguments should be rejected.

First, the Complainants' failed to establish a *prima facie* case of any of these violations. Most of the Complainants' lay testimony amounted to bald assertions and speculation about the safety and reasonableness of the Company's construction and vegetation management practices within the transmission line right-of-way. However, even if they did establish a *prima facie* case, PPL Electric's witnesses thoroughly rebutted their claims with credible and persuasive evidence. The Company's construction supervisor for this portion of the Project, William Salisbury, testified about the reasoning behind the Company's construction-related decisions, emphasizing that PPL Electric had to construct the access road and crane pads in that manner for safety reasons. Similarly, Matthew Stutzman, the Company's Forester for the Harrisburg Region, provided detailed testimony on the vegetation management practices employed, and established that the herbicides were applied in a targeted and safe manner.

Second, the Complainants' Section 1502 claim should be denied on its face. The Complainants now allege that the Company's construction and vegetation management practices constitute unreasonable discrimination in service, due to the different practices employed on the neighboring property owned by the U.S. NPS. In this remand proceeding, the issues are limited in scope to the safety and reasonableness of the Company's construction and vegetation management practices under Section 1501 of the Public Utility Code. Moreover, the Commission

previously dismissed the Complainants' Section 1502 claim premised on the different "restoration" practices used on the two properties. The same reasoning for that dismissal should apply here. Further, Section 1502 does not apply because it only regulates the discrimination in service between persons, corporations, and municipal corporations within the same customer class. However, a federal government agency is not a "person," "corporation," or "municipal corporation" as defined by Section 102 of the Public Utility Code. And even if it were, the Company's different construction and vegetation management practices on the two properties was justified. For example, herbicides were not applied to the U.S. NPS property because that was a condition of a federal permit for that property.

For these reasons, and as explained in more detail herein, the Complainants failed to sustain their burden of proof, and the ALJ and the Commission should dismiss the Complaint with prejudice.

VI. ARGUMENT

A. BACKGROUND ON THE HALIFAX-DAUPHIN 69 KV TRANSMISSION REBUILD PROJECT

The instant Complaint concerns the construction, excavation, and vegetation management performed in a small segment of the Company's Halifax-Dauphin 69 kV Transmission Rebuild Project. The Project was a part of the Company's reconstruction of the Sunbury-Dauphin 69 kV transmission line, which crosses 179 landowners' properties, including the Complainants' property. (PPL St. No. 1, p. 6.) The Project cost approximately \$12.9 million and involved rebuilding the approximately 3.57-mile-long segment of the single circuit Sunbury-Dauphin 69 kV transmission line between the Halifax Tap and Dauphin Substation as a single circuit/future double circuit. (PPL St. No. 1, p. 5.) Engineering for the Project began in 2017, and the Project

was placed in service in January 2019. (PPL St. No. 1, p. 5.) As part of the Project, PPL Electric installed 52 new steel poles along with approximately 36,922 feet (or approximately 7 miles) of access roads that enable the Company's employees and contractors to access PPL Electric's facilities in a safe, reliable, and efficient manner. (PPL St. No. 1, p. 5.)

At issue here was one of those access roads, which is approximately 2,150 feet (or approximately 0.41 miles) in length and traverses the Complainants' property as well as the properties of neighboring landowners. (PPL St. No. 1, pp. 5-6.) The portion of the access road that is located on the Complainants' property is approximately 1,078 feet long. (PPL St. No. 1, p. 6.) As noted by PPL Electric witness Eby, that 1,078 feet equals approximately 2.9% of the 36,922 feet of access roads that was constructed as part of the Project.

The Project was undertaken consistent with PPL Electric's duty to provide safe and reliable electric service to its customers. (PPL St. No. 1, p. 6.) Pursuant to that duty, the Company continually evaluates its transmission and distribution systems for areas in which it can improve on or at least maintain the current level of safety and reliability for its electric service. (PPL St. No. 1, p. 6.) For this Project, the driver was replacing aging assets (poles and conductors), increasing conductor size to meet the Company's standard ratings, and meeting fiber communication needs. (PPL St. No. 1, p. 6.)

For reference, below are photographs of the Project's segment traversing the Complainants' property:

Photograph 1 – June 19, 2022 Photograph Facing Northwest



Photograph 2 – June 19, 2022 Photograph Facing Southeast



Relevant here, the Complainants' claims involve the right-of-way for this transmission line, particularly the land stretching from Pole 76 (shown in Photograph 2) up the steep mountainside toward the next transmission line pole, *i.e.*, Pole 75. (See PPL Exh. No. TE-5.)

B. PPL ELECTRIC'S CONSTRUCTION ACTIVITIES IN ITS TRANSMISSION LINE RIGHT-OF-WAY WERE SAFE AND REASONABLE

1. Overview of PPL Electric's Construction and Excavation Practices

When undertaking construction and excavation projects, PPL Electric's main focus is safety. As such, PPL Electric follows all applicable industry accepted engineering practices, its design drawings, and its plans and adheres to all applicable permits, laws, and regulations, including Occupational Safety and Health Administration ("OSHA") and Institute of Electrical and Electronics Engineers ("IEEE") regulations. (PPL St. No. 2, p. 3.) For this Project, PPL Electric followed all of its design drawings and plans, including the applicable Erosion and Sediment/Restoration Plan ("E&S Plan") and the conditions set forth in the Erosion and Sediment Permit ("E&S Permit"). (PPL St. No. 2, p. 3.) With that said, the actual construction and excavation that takes place on a property varies from site to site depending on the site-specific circumstances. (PPL St. No. 2, p. 3.) Indeed, the way in which PPL Electric constructs and excavates in a transmission line right-of-way located on a flat, rural property may be different from how the Company conducts those practices on a steep mountainside. (PPL St. No. 2, p. 3.) As such, for safety reasons, the Company must be more mindful of the slope of roads constructed on steep mountainsides, whereas slope is not much of a concern on flat, rural properties. (PPL St. No. 2, p. 3.) For example, the Company's right-of-way traversing the Complainants' property – and that of their neighbors – is on a series of steep mountainsides; thus, the Company's construction practices within that segment of right-of-way must be extremely careful. (PPL St. No. 2, p. 3.)

It is typical for a project's planned construction and excavation to change when PPL Electric begins pursuing that work in the field. (PPL St. No. 2, p. 4.) Such changes are common not only in the electric industry but in any commercial construction and excavation project. (PPL St. No. 2, p. 4.) There are many reasons for this. For instance, the on-site conditions may not be the same as the engineers who designed the project or developed the E&S Plan understood them to be. (PPL St. No. 2, p. 4.) Further, site conditions also may change during the project due to weather and other factors outside of the Company's control. (PPL St. No. 2, p. 4.) As a result, PPL Electric must make changes to its planned construction and excavation in response. (PPL St. No. 2, p. 4.) Further, PPL Electric may determine that changes are needed to ensure the current and future safety of its workers or to improve its ability to access its facilities in the transmission line right-of-way. (PPL St. No. 2, p. 4.) Any material changes to the approved E&S Plan are reviewed by Pennsylvania Department of Environmental Protection ("DEP") and/or the applicable conservation district. (PPL St. No. 2, p. 4.)

The bottom line is that PPL Electric complies with all applicable industry accepted standards and practices, adheres to the applicable permits, laws, and regulations, and conducts its construction and excavation activities with safety as its primary focus.

2. The Complainants Failed to Establish that PPL Electric's Construction and Excavation Activities in the Transmission Line Right-of-Way Were Unsafe or Unreasonable

The Complainants erroneously contend that PPL Electric's construction and excavation practices were unsafe and unreasonable on their property. The Complainants focus their allegations on the construction and excavation of PPL Electric's crane pads and the Company's construction of the "access road," which runs up the mountainside, was required to construct the Project, and continues to enable PPL Electric to access and maintain its facilities and right-of-way. (PPL St. No. 2, p. 4.)

Specifically, the Complainants contend, among other things, that the Company improperly “disturbed the natural slope” of their property, “destroyed vegetation” incident to construction on their property, removed topsoil and mountain stone from their property, improperly removed a boulder from their property, and haphazardly left rocks and garbage on their property during and after construction. (*See* Complainants St. No. 1, ¶¶ 38, 40(6), 40(10), 40(12), 40(14), 40(16), 70-73, 136(22).)

The presiding ALJ and the Commission should reject these claims. As a preliminary matter, Mr. Hartman’s testimony on safety and reasonableness of the construction and excavation should be given no weight. At the hearing, Mr. Hartman admitted that he lacks any formal education or experience related to the safety of constructing electric facilities. (Tr. 49.) He also conceded that PPL Electric witness William Salisbury, who testified as to the safety and reasonableness of the construction and excavation activities,¹⁰ has “more training and experience in the field of electric safety than [Mr. Hartman].” (Tr. 52.) Mr. Hartman further stated that he “[has] no professional experience in the electronic [sic] field” other than his observations of PPL Electric and its contractors’ performing maintenance and construction activity on his property. (Tr. 50.) As a result, the Complainants’ allegations – particularly as related to the Company’s construction and excavation practices in the right-of-way – are mere speculation and bald assertions. Such “bald assertions, personal opinions or perceptions do not constitute evidence” that can support findings of fact in this proceeding.¹¹ Therefore, the Complainants failed to

¹⁰ (*See* PPL St. No. 2, pp. 2-6.)

¹¹ *West Penn Power Co. v. Pa. PUC*, 2019 Pa. Commw. Unpub. LEXIS 532, at *21 (Pa. Cmwlth. 2019) (“*West Penn*”); *see Mid-Atlantic Power Supply Ass’n v. Pa. PUC*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000); *Bobchock v. Unemployment Comp. Bd. of Review*, 525 A.2d 463, 465 (Pa. Cmwlth. 1987) (“[S]peculation does not amount to substantial evidence. Substantial evidence requires more than a scintilla of evidence or suspicion of the existence of a fact to be established.”); *see also W.J. Menkins Holdings, LLC v. Douglass Twp.*, 208 A.3d 190 (Pa. Cmwlth. 2019). Much like in *West Penn*, here, the Complainants have “offered nothing more than [their] personal opinion in seeking to establish [their] burden...” *West Penn*, at *24.

establish a *prima facie* case that PPL Electric's construction and excavation activities were unsafe or unreasonable.

Assuming *arguendo* that the Complainants' have established a *prima facie* case, the presiding ALJ and the Commission should give considerable weight to the Company's evidence and find that PPL Electric constructed and excavated the crane pads and access road in a safe and reasonable manner. In support of its actions, PPL Electric presented the testimony of William Salisbury, who "was responsible for overseeing the construction and excavation of the crane pads and access road." (PPL St. No. 2, p. 5.) PPL Electric witness Salisbury has been a construction supervisor at PPL Electric since 2011. (PPL St. No. 2, pp. 1, 5.) During his time with PPL Electric, Mr. Salisbury has managed hundreds of jobsites conducting all matters of work in distribution, transmission, and substations, relays, and fiber optic. (PPL St. No. 2, pp. 1-2.) Additionally, Mr. Salisbury holds professional certifications with Utility Safety & Ops Leadership Network ("USOLN") and is a Certified Utility Safety Professional. ("CUSP"). (PPL St. No. 2, pp. 1-2.) As explained by Mr. Salisbury, PPL Electric performed the construction and excavation in a safe and reasonable manner, consistent with all accepted engineering practices, design drawings, as well as all applicable permits, laws, and regulations. (*See* PPL St. No. 2, pp. 2-5.) Therefore, on these issues, PPL Electric's evidence should be afforded considerably more weight than the Complainants' evidence.

In addition, PPL Electric thoroughly rebutted the Complainants' allegations with credible, reliable, and persuasive evidence. First, Mr. Salisbury walked through these aspects of the Project and explained that PPL Electric constructed and excavated both the crane pads and access road with safety as its priority. (PPL St. No. 2, p. 6.) To construct the Project, the Company needed to haul large amounts of concrete up a steep mountainside to reconstruct Poles 75 and 76. (PPL St.

No. 2, p. 6.) Each truck going up that mountainside with a full load of concrete weighed approximately 27 tons (approximately 27,000 pounds for a load of concrete and 27,000 pounds for the truck). (PPL St. No. 2, p. 6.) Therefore, the Company required crane pads and access road that could safely withstand and support that amount of weight. (PPL St. No. 2, p. 6.) Had the Company not constructed the crane pads and access road the way that it did, the weight of the truck could have displaced the stone in the road, causing the truck to get stuck, the approximately 27,000-pound load of concrete to spill and need to be unloaded, and/or the truck and equipment to roll over, thereby placing the Company's employees and contractors in harm's way. (PPL St. No. 2, p. 6.)

Second, Mr. Salisbury responded to the Complainants' claim that the construction of the crane pads for Poles 75 and 76 disturbed the natural slope of the Complainants' property. ((PPL St. No. 2, pp. 6-7.) Although such a disturbance of the slope may have occurred, Mr. Salisbury explained that such disturbance occurred "only to the extent necessary for the safe installation and continued maintenance of Poles 76 and 75." (PPL St. No. 2, pp. 6-7.)

Third, Mr. Salisbury disputed the Complainants' claim that materials were transferred between their property and the neighboring Wech property during construction. (PPL St. No. 2, p. 7.) That said, even if that occurred, PPL Electric noted how its E&S Plan states that materials – including mountain stone and topsoil – can be transferred between multiple properties so long as it remains within the prescribed "LIMIT OF DISTURBANCE."¹² (PPL St. No. 2, p. 7.)

Fourth, Mr. Salisbury rebutted the Complainants' claims that the Company "excavated Hartman property off the [right-of-way] adjacent to [P]ole 75" and, in doing so, harmed certain vegetation both inside and outside of the right-of-way. (PPL St. No. 2, p. 8.) Construction projects

¹² PPL Electric witness Weseloh also observed that the Company has rights of ingress and egress under the right-of-way agreement for the Complainants' property. (PPL St. No. 3, p. 5.)

come with earth disturbances, “including disturbances to existing vegetation.” (PPL St. No. 2, p. 8.) Also, PPL Electric was permitted to disturb existing vegetation consistent with its rights under the applicable permits and right-of-way agreements. (PPL St. 2, pp. 8-10.) Thus, as established by PPL Electric, all of the earth disturbances under this Project were safe and reasonable.¹³

Fifth, Mr. Salisbury explained that if the crane pad size were reduced as requested by the Complainants, “PPL Electric would have to re-enlarge the crane pad any time the Company would need to access and perform maintenance on the pole.” (PPL St. No. 2, p. 9.) Therefore, “any reduction of the crane pad would be a costly and unnecessary step and, in actuality, could lead to future construction and excavation on the Hartman property.” (PPL St. No. 2, p. 9.)

Sixth, Mr. Salisbury observed that “the Company does not take an inventory of where every pebble, stone, rock, or boulder is located” during a Project. (PPL St. No. 2, p. 11.) Moreover, Mr. Salisbury was unaware of a boulder being used to construct a crane pad taken from the Complainants’ property. (PPL St. No. 2, p. 10.) Nevertheless, “[a]s a courtesy to Mr. Hartman, PPL Electric replaced a boulder that the Company thought Mr. Hartman wanted.” (PPL St. No. 2, p. 10.)

Seventh, in response to the Complainants’ allegation that “displaced rocks, too large to be moved manually, were haphazardly left behind,”¹⁴ Mr. Salisbury explained that “PPL Electric does not leave materials ‘haphazardly’ behind in a transmission line right-of-way.” (PPL St. No. 2, pp. 12-13.) The Company also “did not believe it was reasonable or prudent to incur the unnecessary

¹³ As noted by PPL Electric witness Eby (PPL St. No. 1), the Company’s excavation for the crane pads occurred within the permitted “LIMIT OF DISTURBANCE” under the approved E&S Plans, except for two small areas only approximately 12 feet outside of the right-of-way, which PPL Electric promptly addressed and restored as soon as it was made aware of the situation. While the Commission lacks jurisdiction to interpret and enforce the provisions of the E&S Plans and Permit, Mr. Eby explained that the Dauphin County Conservation District (“DCCD”) would not have closed out the E&S Permit if those minor disturbances were not addressed. (See PPL St. No. 1, pp. 15-16.)

¹⁴ (Complainants St. No. 1, ¶ 9.)

time and expense to remove rocks from a steep mountainside where, even before the Project, there were already hundreds of rocks.” (PPL St. No. 2, p. 13.)

Eighth, Mr. Salisbury rebutted the Complainants’ argument that PPL Electric’s contractors left behind “many coffee cups, plastic water bottles, cigarette butts and packs, string, and other garbage” during the construction activities. (Complainants St. No. 1, ¶ 70; *see* PPL St. No. 2, p. 13.) Notwithstanding, to the extent that the Complainants found any additional refuse remaining in the transmission line right-of-way, “PPL Electric would certainly be willing to send a crew to collect that refuse and dispose of it.” (PPL St. No. 2, p. 13.)

Ninth, Mr. Salisbury explained that “PPL Electric excavated and constructed the access road in the transmission line right-of-way on [the Complainants’] property consistent with the E&S Plans.” (PPL St. No. 2, p. 14.) Mr. Salisbury also noted that:

The Company used rip-rap, “2-A modified” stone, and “2-B” stone to construct the access road and crane pads on Mr. Hartman’s property and the [neighboring] Wech property. PPL Electric also excavated and constructed the access road using “switchbacks,” which are winding or zigzag paths, to reduce the amount of grade that it was crossing at any given time. The use of “switchbacks” is critical when, as here, trucks need to haul heavy equipment and concrete up a steep mountainside. Without them, the Company’s employees and contractors would have been unable to safely transport their equipment and construct the Project and would be unable to safely access the poles in the future.

(PPL St. No. 2, p. 14.) Indeed, the Company constructed “switchbacks” for safety reasons, which led to the access road winding onto Mr. Hartman’s property “within the transmission line right-of-way between Poles 76 and 75.” (PPL St. No. 2, pp. 14-15.) PPL Electric witness Eby also testified that “[u]tilizing large stone or riprap as the sole access road material or the top material is common practice on steep slopes and switchback areas on the side of the mountains similar to the Hartman property.” (Tr. 353.)

Tenth, Mr. Salisbury fully rebutted the Complainants' claims that the roadway was constructed in a way inconsistent with depth or amount-of-stone limitations. Mr. Salisbury made clear that there was no requirement or limitation on the depth of the amount of stone used for the road. (PPL St. No. 2, pp. 15-16.) Further, Mr. Salisbury explained that the "Company must deploy as much stone as necessary to safely navigate the access road, which is why PPL Electric constructed this access road to the depth that it did." (PPL St. No. 2, p. 16.) With this in mind, in areas of little or no grade, PPL Electric did not use smaller stone for its trucks to gain traction. (PPL St. No. 2, p. 16.) This practice is consistent with the Company's construction of other access roads in transmission line rights-of way. (PPL St. No. 2, p. 17.) Relatedly, Mr. Salisbury explained that "[t]he Company used the same stone to construct the access road on Mr. Hartman's property on at least 10 miles of the other access roads constructed as part of the Project" and that "the Company routinely uses this type of stone when constructing access roads located in the Company's transmission line rights-of-way that traverse steep or mountainous properties, such as [the Complainants'] property." (PPL St. No. 2, p. 17.)

Eleventh, regarding the Complainants' allegation that the Company failed to "smooth" the access road and that, as a result, the constructed access road is unsafe to navigate on foot or via rubber-tired vehicles,¹⁵ Mr. Salisbury established that the currently constructed access road is "as smooth or smoother than the previous access road in this transmission line right-of-way" and that PPL Electric's rubber-tired vehicles have safely navigated the access road. (PPL St. No. 2, pp. 17-18.) Further, if the access road were unsafe, PPL Electric "would not have agreed to walking the access road" with Mr. Hartman, his former attorney, and the presiding ALJ on December 2, 2021. (PPL St. No. 2, p. 18.) Notwithstanding, and in response to the Complainants' concerns regarding

¹⁵ (Complainants St. No. 1, ¶¶ 38 and 67.)

the width and height of the access road, PPL Electric sent contractors to the access road to reduce its width “back to approximately 15 feet.” (PPL St. No. 2, p. 18.) Mr. Salisbury also noted that the “access road is as safe today as it was prior to April 2020, and its construction remains consistent with standard electric utility practices.” (PPL St. No. 2, p. 18.)

In sum, PPL Electric thoroughly rebutted the Complainants’ allegations about the construction and excavation of the crane pads and access road and established that those activities were conducted in a safe and reasonable manner and consistent with all accepted engineering practices, design drawings, as well as all applicable permits, laws, and regulations. (See PPL St. No. 2, pp. 2-5.) Mr. Hartman’s lay testimony regarding the Company’s crane pad and access road construction practices was unsubstantiated and largely based on speculation and bald assertions. This, in and of itself, is insufficient for the Complainants to carry their burden of proof showing that the construction and excavation practices were unsafe or unreasonable.

For these reasons, the Complainants failed to sustain their burden of proof that PPL Electric’s construction and excavation activities in the right-of-way were unsafe or unreasonable. Therefore, the ALJ and the Commission should dismiss the Complaint with prejudice.

C. PPL ELECTRIC’S VEGETATION MANAGEMENT IN ITS TRANSMISSION LINE RIGHT-OF-WAY WAS SAFE AND REASONABLE

1. Overview of PPL Electric’s Vegetation Management Practices

As an electric distribution company (“EDC”), PPL Electric has a statutory duty to provide safe, reliable, and reasonable service to its electric customers. *See* 66 Pa. C.S. § 1501. Part of that duty includes maintaining vegetation in the vicinity of its electric distribution and transmission lines to ensure that customers continue receiving safe, reliable, and reasonable service. (PPL St. No. 4, p. 4.) Depending on the type of electric line, different rules and regulations apply to the manner in which PPL Electric controls vegetation in the vicinity of the line. (PPL St. No. 4, p. 4.)

For example, when performing vegetation management for distribution lines (*i.e.*, line voltage under 69 kV), the Company relies on its “Specification for Distribution Vegetation Management” to make sure that PPL Electric complies with those rules and regulations. (PPL St. No. 4, p. 4; *see* PPL Exh. MS-1.) For transmission lines (*i.e.*, line voltage at or above 69 kV), PPL Electric adheres to its “Specification for Transmission Vegetation Management” for compliance purposes. (PPL St. No. 4, p. 4; *see* PPL Exh. MS-2.)

Proper transmission line right-of-way management is critical to providing safe, reliable, and reasonable electric service. (PPL St. No. 4, pp. 4-5.) The best example is the August 14, 2003 blackout, when the Northeastern United States experienced the largest power blackout in North American history.¹⁶ (PPL St. No. 4, p. 5.) This blackout “affected an area with a population of approximately 50 million people in the states of Ohio, Michigan, Pennsylvania, New York, Vermont, Massachusetts, Connecticut, and New Jersey and the Canadian province of Ontario.”¹⁷ (PPL St. No. 4, p. 5.) As the Commission observed, the “economic cost” the blackout was “between \$4 billion and \$10 billion in the United States alone.”¹⁸ (PPL St. No. 4, p. 5.) This was not only an economic issue; the “[l]oss of power is a health and safety issue as well.”¹⁹ (PPL St. No. 4, p. 5.)

¹⁶ *See Application of PPL Elec. Utils. Corp. Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Constr. of the Pa. Portion of the Proposed Susquehanna-Roseland 500 kV Transmission Line*, 2010 Pa. PUC LEXIS 434, at *38 (Order entered Feb. 12, 2010) (“*Susquehanna-Roseland*”).

¹⁷ *Susquehanna-Roseland*, at *38 (emphasis added).

¹⁸ *Revision of 52 Pa. Code Chapter 57 Pertaining to Adding Inspection, Maintenance, Repair, and Replacement Standards for Elec. Distrib. Cos.*, 2008 Pa. PUC LEXIS 177, at *38 (Order entered May 22, 2008) (emphasis added) (“*I&M Standards Rulemaking Order*”).

¹⁹ *Id.* More recently, several wildfires in California were allegedly caused by tree contacts with certain Pacific Gas and Electric Company’s (“PG&E”) electric power lines, leading to several fatalities, the burning of thousands of acres, and the destruction of hundreds of buildings. *See United States v. Pac. Gas. & Elec. Co.*, 2019 U.S. Dist. LEXIS 36164 (N.D. Cal. Mar. 5, 2019); Cal. Dep’t of Forestry and Fire Protection, *CAL FIRE Investigators Determine Causes of 12 Wildfires in Mendocino, Humboldt, Butte, Sonoma, Lake, and Napa Counties*, http://calfire.ca.gov/communications/downloads/newsreleases/2018/2017_WildfireSiege_Cause.pdf.

A principal cause of this blackout was a transmission line contact with trees, which produced cascading outages. (PPL St. No. 4, p. 5.) In fact, a task force convened to investigate the blackout found that “one of the fundamental causes of the blackout was the failure to adequately maintain tree growth along transmission lines.”²⁰ (PPL St. No. 4, p. 5.) This led to several legislative and regulatory efforts to improve the electric grid’s reliability. (PPL St. No. 4, p. 6.) The Energy Policy Act of 2005 was passed, which added Section 215 to the Federal Power Act (codified as Section 824o of Title 16).²¹ This section required the Federal Energy Regulatory Commission (“FERC”) to certify an Electric Reliability Organization (“ERO”) to “develop and enforce” mandatory “reliability standards that provide for an adequate level of reliability of the bulk power system.”²² These reliability standards would be subject to FERC’s review and approval.²³ Ultimately, “FERC certified North American Electric Reliability Corporation (‘NERC’), an organization that had previously developed a series of voluntary technical standards for the industry,” as the ERO.²⁴

One of the mandatory reliability standards adopted was for electric utilities to develop a program to address vegetation management in transmission line corridors.²⁵ PPL Electric’s “FAC-003 Transmission Vegetation Program Document” (“TVPD”) sets forth the Company’s program for maintaining vegetation in transmission line corridors. (PPL St. No. 4, p. 6.) The Company must adhere to its TVPD under NERC’s mandatory reliability standards. (PPL St. No. 4, p. 6.) PPL Electric’s and the other EDCs’ transmission line vegetation management programs have been

²⁰ *I&M Standards Rulemaking Order*, 2008 Pa. PUC LEXIS 177, at *7-8 (Order entered May 22, 2008).

²¹ *See* Energy Policy Act of 2005, Pub. L. No. 109-58, § 1211 (2005); 16 U.S.C. § 824o (“Electric reliability”).

²² 16 U.S.C. § 824o(c)(1).

²³ *Id.* § 824o(d)(2).

²⁴ *New York v. FERC*, 783 F.3d 946, 950 (2d Cir. 2015).

²⁵ *See 18 CFR Part 40 Mandatory Reliability Standards for the Bulk-Power Sys.*, 2007 FERC LEXIS 588, 118 FERC ¶ 61,218 at P 735 (2007) (approving NERC Standard FAC-003-1 addressing vegetation management in transmission line rights-of-way).

very successful in improving system reliability. (PPL St. No. 4, p. 6.) For example, “[r]eported Category 1 outages (those caused by grow-ins of vegetation from inside or outside of the [right-of-way])” went “from 16 in 2007 to 0 in 2016.”²⁶ (PPL St. No. 4, p. 6.)

At the state level, the Commission also took steps to address service reliability and vegetation management. In its *I&M Standards Rulemaking Order*, the Commission established inspection, maintenance, repair, and replacement standards (“I&M standards”), which cover, among other things, vegetation management practices based on industry practices.²⁷ The Commission also created “a new regulation at 52 Pa. Code § 57.198, requiring biennial filings regarding companies’ inspection, maintenance, repair and replacement plans (‘I&M plans’) that fit within [I&M] standards’ intervals.”²⁸ However, in that rulemaking, the Commission declined to promulgate a standard regarding transmission lines and stated that it would monitor FERC’s rulemaking proceeding instead.²⁹

The Commission and PPL Electric do not take electric service reliability lightly. As an EDC, PPL Electric is required to provide reasonably reliable electric service to all of its customers without unreasonable interruptions or delay. *See* 66 Pa. C.S. § 1501. The Commission has declared that “[e]lectric service reliability is an essential and core regulatory responsibility of this Commission under the Public Utility Code.”³⁰ Therefore, “as part of their public service obligation, EDCs are required to undertake prudent operational measures to prevent or avoid outages that are preventable at a reasonable cost, and to inspect, repair and maintain their facilities in a manner consistent with prudent utility practice.”³¹ Thus, the Company’s overall objective

²⁶ *Review of Vegetation Mgmt. Practices*, 2017 Pa. PUC LEXIS 52, at *3 (Order entered Sept. 19, 2017).

²⁷ 2008 Pa. PUC LEXIS 177, at *1-2.

²⁸ *Id.* at *1.

²⁹ *Id.* at *96.

³⁰ *I&M Standards Rulemaking Order*, at *24 (emphasis added).

³¹ *Id.* at *25.

with vegetation management in transmission line rights-of-way is to maintain the vegetation in a manner consistent with PPL Electric’s statutory duty to provide safe, reliable, and reasonable service. (PPL St. No. 4, p. 8.)

In general, PPL Electric employs both herbicides and mechanical means of vegetation management to control vegetation in the vicinity of its transmission lines. (PPL St. No. 4, p. 8.) However, the actual means employed can vary from site to site depending on the area’s specific circumstances, such as topography and the type(s) of vegetation being addressed. (PPL St. No. 4, p. 8.) Safety is a paramount consideration when the Company makes its vegetation management decisions. (PPL St. No. 4, p. 8.) The Company’s focus on safety includes not only the safety of its employees and contractors but the safety of nearby residents and other members of the public. (PPL St. No. 4, p. 8.)

PPL Electric’s transmission lines generally are on a trim cycle and herbicide cycle that alternates every two years. (PPL St. No. 4, p. 8.) For, example if PPL Electric performed trim maintenance on a transmission line in 2022, that line will be revisited in 2024 on an herbicide application cycle. (PPL St. No. 4, pp. 8-9.) If special circumstances arise or if normal maintenance could not be completed in the target year, vegetation in the vicinity of a transmission line may be trimmed more frequently or during a year that would not otherwise be scheduled for maintenance. (PPL St. No. 4, p. 9.)

Regarding herbicides specifically, PPL Electric has established policies for their use and application. (PPL St. No. 4, p. 9.) As referenced in Section 8.0 of PPL Electric’s “Specification for Transmission Vegetation Management,” all herbicide applications “[s]hall be performed in accordance with the latest version of ‘PPL EU Herbicide Application Policy.’”³² (PPL Exh. MS-

³² See PPL Electric Exhibit MS-3 for a copy of the “PPL EU Herbicide Application Policy.”

2, p. 15.) Under that policy, the contractors performing the herbicide application must, among several other requirements: (1) “[a]pply materials in accordance with the manufacturers’ labels”; (2) “[h]old and maintain a Pennsylvania Pesticide Application Business License”; (3) “[e]mploy certified Pennsylvania Commercial Pesticide Applicators,” who “must at a minimum be certified in category 10 (Right of Way & Weeds)”; (4) “[e]nsure that applications performed by Pennsylvania Registered Pesticide Technicians are performed in accordance with Pennsylvania Pesticide Rules and Regulations”; (5) “[e]nsure that all herbicides are procured, transported, stored, and applied in accordance with all applicable state and federal laws”; (6) “[u]se only herbicide products that have been approved for use on utility rights-of-way by the US Environmental Protection Agency”; and (7) “[u]se only herbicide products approved by PPL [Electric].” (PPL Exh. MS-3, p. 2.)

Herbicides are safe to use when they are utilized in accordance with the specifications set forth in their labels, which are reviewed and approved by the EPA and the Pennsylvania Department of Agriculture. (PPL St. No. 4, p. 10.) For that reason, PPL Electric’s Herbicide Application Policy has several requirements for contractors to make sure that the approved herbicides are applied pursuant to their labels and by certified personnel. (PPL St. No. 4, p. 10.)

2. Overview of the Company’s Vegetation Management Performed in the Transmission Line Right-of-Way

As part of the Project, as well as the continued maintenance of the Halifax-Dauphin 69kV transmission line, PPL Electric conducted vegetation management in the portion of the transmission line right-of-way traversing the Complainants’ property. (PPL St. No. 4, pp. 10-14.) On June 11, 2020, the Company’s “Contract Pre-Planner” identified and planned application of

herbicide units within the Company's right-of-way on the Complainants' property.³³ (PPL St. No. 4, p. 11.) On October 2, 2020, the Contract Pre-Planner identified and planned the application of herbicide units within the Company's right-of-way. (PPL St. No. 4, p. 11.)

On January 5, 2021, the PPL Electric Forester at the time, Justin Mease, reviewed the pre-plan for vegetation management in the transmission line right-of-way for the Project and approved all proposed work. (PPL St. No. 4, p. 12; PPL Exh. MS-6.) The herbicide application work was then relayed to the Maintenance Contractor (*i.e.*, Penn Line) for review and execution. (PPL St. No. 4, p. 12.) One of the Complainants, Mr. Hartman, contacted the Contract Pre-Planner on January 5, 2021, and indicated he did not want any herbicide applied to his property.³⁴ (PPL St. No. 4, p. 11; Tr. 415-16.) Mr. Hartman further offered to remove the identified saplings in lieu of the Company's planned herbicide treatment. (PPL St. No. 4, p. 11; PPL Exh. MS-5.) The Contract Pre-Planner agreed to Mr. Hartman's request but also noted that, if any incompatible tree species remained when the maintenance crews arrived, the Company's contractors would proceed with herbicide application on the property, as planned. (PPL St. No. 4, p. 11; PPL Exh. MS-5.) Mr. Hartman did not communicate any objection to this plan. (PPL St. No. 4, p. 11.)

On July 16, 2021, PPL Electric's Maintenance Contractor performed herbicide maintenance and application within the Company's right-of-way on the Complainants' property. (PPL St. No. 4, p. 12.) Upon review, the Maintenance Contractor determined that the Complainants had not removed the incompatible species of vegetation in the several months since

³³ PPL Electric notes that although the Commission cannot interpret the right-of-way agreement at issue, the Company maintained that its use and application of herbicides is expressly stated in the right-of-way agreement. (*See* PPL Exh. AW-1.)

³⁴ This date was incorrectly stated in PPL Electric witness Stutzman's testimony as October 5, 2020. (PPL St. No. 4, p. 11.) The date was clarified at the hearing. (Tr. 415-16.)

discussing Mr. Hartman's plan to remove incompatible species of saplings within the Company's easement.³⁵ (PPL St. No. 4, p. 12; *see* PPL Exh. MS-5.)

In response to the incompatible vegetation, the Maintenance Contractor proceeded with the treating the incompatible vegetation using a High-Volume Foliar application method, with herbicide mix HV5³⁶ on PPL's Electric's Approved Herbicide Mixtures, and utilizing a pick-up truck mounted holding tank, hose reel, and application wand ("pick-up method"). (PPL St. No. 4, p. 12.) The High-Volume Foliar application method is a targeted approach where the applicator physically walks to the location of the vegetation to be treated and applies the herbicide mix to the leaves of the targeted species. (PPL St. No. 4, pp. 12-13.) This application was not broadcast across the entirety of the right-of-way. (PPL St. No. 4, p. 13.) Rather, the application was targeted to the areas with identified noncompatible vegetation species. (PPL St. No. 4, p. 13.)

Subsequently, on August 26, 2021, the PPL Electric Forester supervising the Project at the time reviewed the vegetation management work completed by the Maintenance Contractor. (PPL St. No. 4, p. 13.) The reviewing Forester concluded that the work was consistent with the Company's standards and approved the vegetation management work completed within the Company's easement on Mr. Hartman's property. (PPL St. No. 4, p. 13; PPL Exh. MS-10.)

In sum, more than 47 acres were treated with herbicide along the Company's transmission line as part of the Project in accordance with PPL Electric's applicable standards and policies. (PPL St. No. 4, pp. 13-14.) Less than 0.35 acres of this occurred within the Company's right-of-way on the Complainants' property. (PPL St. No. 4, p. 13.) Additionally, the allowable herbicide

³⁵ The state of the incompatible vegetation that was not removed by the Complainants within the right-of-way can be seen in PPL Electric Exhibit MS-4, which shows the three areas that were treated with herbicides. (PPL St. No. 4, p. 12.)

³⁶ PPL Electric Exhibit MS-11 contains the EPA-approved labels for the herbicides that make up herbicide mix HV5.

application rate is 150 gallons per acre. (PPL St. No. 4, p. 13; *see* PPL Exh. MS-7.) Therefore, the maximum allowable herbicide that could be used on the Complainants' property was approximately 51 gallons. (PPL St. No. 4, pp. 13-14.) Notwithstanding, PPL Electric's vegetation management contractor only applied approximately 36 gallons of herbicide within the Company's right-of-way on the Complainants' property, *i.e.*, nearly 30% less than the allowable amount. (PPL St. No. 4, p. 14; *see* PPL Exh. MS-12.) Thus, through both the method employed and the amount of herbicides that was applied, PPL Electric's herbicide application was targeted and limited in scope.

3. The Complainants Failed to Establish that PPL Electric's Vegetation Management Was Unsafe or Unreasonable

The Complainants nonetheless contend that PPL Electric's vegetation management within the transmission line right-of-way was unsafe or unreasonable. In support of their claims, Mr. Hartman, who is not a certified arborist and has never worked in the electric industry,³⁷ alleged that the herbicide application violated Section 1501 of the Public Utility Code for various reasons. For example, Mr. Hartman asserted that PPL Electric's herbicide application was conducted "in an indiscriminate manner" through the use of a "spray cannon" and that non-targeted vegetation in the area showed signs of herbicide application and were "doomed for destruction." (Complainants St. No. 1, ¶¶ 87, 114; *see also* Complainants St. No. 1, ¶¶ 129-130.) Also, Mr. Hartman alleged that herbicides applied in the right-of-way have "runoff from the powerline" and have "washed onto" the Complainants' property. (Complainants St. No. 1, ¶ 97.) The presiding ALJ and the Commission should reject these claims.

The Complainants failed to establish a *prima facie* case that the Company's application of herbicides was unsafe or unreasonable. Like the complainant in the *West Penn* herbicide

³⁷ (Tr. 45-46.)

application case,³⁸ Mr. Hartman’s claims about the safety and reasonableness of the herbicide application does not constitute substantial evidence. Rather, Mr. Hartman’s lay testimony about the alleged adverse impact of the vegetation management, the methods used to conduct the vegetation management, and the alleged safety issues with herbicides amounts to speculation and bald assertions. As noted previously, such “bald assertions, personal opinions or perceptions do not constitute evidence” that can support findings of fact in this proceeding.³⁹ Consequently, the Complainants failed to establish a *prima facie* case that PPL Electric’s vegetation management activities were unsafe or unreasonable.

To the extent that the Complainants have established a *prima facie* case, PPL Electric completely rebutted their allegations with credible, reliable, and persuasive evidence. In support of the Company’s position, PPL Electric presented the testimony of Matthew Stutzman, the Forester for PPL Electric’s Harrisburg Region, who has reviewed and evaluated the vegetation management performed on the Complainants’ property.⁴⁰ (PPL St. No. 4, p. 2; Tr. 433, 439, 465-466, 470.) Mr. Stutzman operates under the Company’s Pennsylvania Pesticide Applicator’s license and holds an Applied Science Degree in Forest Technology from the Pennsylvania College of Technology. (PPL St. No. 4, p. 2.)

Mr. Stutzman established that “[a]ll PPL Electric-approved herbicide mixtures and chemical components have label and application rates that are set by the EPA and outlined in detail within the PPL Electric-approved herbicide mixture document,” which was admitted into the record as PPL Electric Exhibit MS-7. (PPL St. No. 4, p. 15.) As noted above, herbicides are safe

³⁸ See generally *West Penn*, 2019 Pa. Commw. Unpub. LEXIS 532, at *20-24.

³⁹ *Id.* at *21.

⁴⁰ While the vegetation management in question at the Complainants’ property was reviewed and approved by the Company’s previous Forester for the Harrisburg region, Mr. Stutzman reviewed the files associated with that work, as well as conducted a post-vegetation management field visit and interviewed the contractor who performed the work (*i.e.*, Penn Line). (PPL St. No. 4, p. 10.)

to use when applied consistent with their labels and application rates. (PPL St. No. 4, p. 14.) Here, the contractor treated the areas with herbicide mixture HV5, which is one of the Company's approved mixtures, and the herbicide mixture applied was well below the allowable gallons/acre. (PPL St. No. 4, p. 14.) Nothing presented by the Complainants demonstrates that PPL Electric's herbicide application was inconsistent with the applicable labels and application rates.

In addition, the record demonstrates that incompatible species were present in the areas that were treated, thereby justifying the application of herbicides. PPL Electric explained to the Complainants on January 5, 2021, that it would proceed with applying herbicides, as originally planned, if incompatible species remained in the right-of-way when the vegetation management crews arrived at the property. (PPL St. No. 4, p. 15.) Those crews arrived several months later on July 16, 2021, providing the Complainants with considerable time to address the incompatible species in the right-of-way. (PPL St. No. 4, p. 12.) When the crews found incompatible species of vegetation in the right-of-way, they applied herbicides to those areas. (PPL St. No. 4, p. 12.) Although the Complainants dispute the presence of such incompatible species in those areas, Mr. Stutzman confirmed this fact by personally visiting the property and investigating the areas that were treated. (Tr. 433.) He also reviewed the many pictures presented by the Complainants on cross-examination and pointed out where the incompatible species could be seen in the Complainants' photographs. (Tr. 463-65.)

Furthermore, the Company's application of herbicides was targeted, not "indiscriminate" as alleged by the Complainants. (PPL St. No. 4, p. 16.) An incompatible species of brush that had been cut years prior had sucker regrowth near Pole 75. (PPL St. No. 4, p. 16.) During an herbicide cycle, the Company treats all identified incompatible brush. (PPL St. No. 4, p. 16.) Here, the brush near Pole 75 was very dense with surface rock, and the incompatible brush was surrounded

by other non-target (i.e., compatible) vegetation. (PPL St. No. 4, p. 16.) Due to the foliage height of the non-compatible vegetation, the surrounding vegetation was impacted by the treatment. (PPL St. No. 4, p. 16.) Therefore, the treatment was not indiscriminate. (PPL St. No. 4, p. 16.)

Additionally, the Company's application of herbicides has not "doomed" the treated areas. (PPL St. No. 4, pp. 16-17.) Mr. Stutzman explained that the Company prefers to have its transmission corridors generally covered in grasses, wild-flowers, low growing compatible shrubs, and other non-invasive species of ground cover, as it helps to suppress the growth of less desirable, non-compatible species, and promotes pollinator habitat. (PPL St. No. 4, p. 18.) For that reason, PPL Electric has preferred, and in this case used, High-Volume Foliar herbicide treatments such as HV5 because the HV5 mixture is not designed to kill the root systems of native grasses. (PPL St. No. 4, p. 16.) Rather, the HV5 herbicide mixture is meant to target woody stemmed vegetation. (PPL St. No. 4, p. 16.) But that does not mean that a patch of brush that contains bushes and grasses intermingled within will not be impacted by herbicide applications. (PPL St. No. 4, pp. 16-18.) If the stem density of the surrounding brush/stems is dense and there is a larger canopy area to cover the surrounding area, it is possible that non-targeted vegetation will be impacted. (PPL St. No. 4, p. 17.) This impact appears as "browning," in which the vegetation takes on a brown color in response to the herbicide, much like the foliage on the target brush. ((PPL St. No. 4, p. 16.)

Nevertheless, the impacted bushes and grasses will sprout new growth over subsequent years. (PPL St. No. 4, p. 17.) Also, because the herbicide treatment is applied directly to incompatible vegetation's leaves, the seed base can germinate and regrow in the area. (PPL St. No. 4, p. 17.) As established by Mr. Stutzman's testimony, the Company's right-of-way on the Complainants' property is regrown and green, and the non-targeted vegetation in the treated areas

are showing signs of regrowth. (PPL St. No. 4, pp. 17-19; Tr. 478-80.) Thus, PPL Electric's application of herbicides has not "doomed" the areas that were treated.

Moreover, PPL Electric used the "pick-up method" of herbicide application; the Company did not indiscriminately use a "spray cannon" as alleged by the Complainants. (PPL St. No. 4, p. 17.) As Mr. Stutzman testified, this method of High-Volume Foliar application is a larger scale version of a backpack sprayer. (PPL St. No. 4, p. 17.) The spray wand functions the same and applies the herbicide mixture similarly. (PPL St. No. 4, p. 17.) The pick-up method is more efficient, as a larger quantity of the mixture can be transported and applied to a larger area without the need to refill, like one would have to with backpack sprayers. (PPL St. No. 4, pp. 17-18.) This method is also safer for the applicators, as they are often on unstable or steep terrain that can cause a backpack sprayer to lose balance, in turn, causing injury. (PPL St. No. 4, p. 18.) This is especially the case on steep mountainsides like the transmission line right-of-way traversing the Complainants' property. (PPL St. No. 4, p. 18.) Using the pick-up method, the applicator(s) drag a long hose into the target area, creating a much safer environment to make a High-Volume Foliar application in certain areas. (PPL St. No. 4, p. 18.) Therefore, the pick-up method still targets areas designated for treatment; it is not a broadcast application where the applicator is broadcasting the herbicide mixture across the entire corridor. (PPL St. No. 4, p. 18.)

As to the Complainants' claim that PPL Electric failed to provide them with 24-hour notice of the vegetation management, the Complainants had several months to remove the incompatible species from the right-of-way before the Company's vegetation management crews visited the property in July 2021. That being said, PPL Electric has updated its processes as a courtesy to the Complainants and now will provide 72 hours' notice to the Complainants before vegetation management activities on their property, which should provide ample time for them to address the

incompatible vegetation. (Tr. 582.) PPL Electric also will knock on the Complainants' door the day of the planned vegetation management, so that they receive even more notice before vegetation management is conducted in the right-of-way. (Tr. 583.)

Finally, the Complainants' allegation about herbicide runoff completely lacks merit. Mr. Stutzman personally visited the Complainants' property on June 19, 2022. (PPL St. No. 4, p. 20.) Mr. Stutzman testified that he observed no signs of off right-of-way vegetation being affected by the Company's herbicide treatment. (PPL St. No. 4, p. 20.) Further, the foliar application was applied to the leaves of the targeted vegetation and not applied directly to the ground. (PPL St. No. 4, p. 20.) And, as noted previously, the application was well below the allowable application rates set forth within the herbicide matrix. (PPL St. No. 4, p. 20.) There also was no evidence that the herbicide applied had "washed" across Mr. Hartman's property, especially given that the wood's edge of the right-of-way corridor near Mr. Hartman's property did not show any signs of herbicide application. (PPL St. No. 4, p. 20.)

Based on the foregoing, the Complainants failed to sustain their burden of proof that PPL Electric's vegetation management activities in the transmission line right-of-way were unsafe or unreasonable. Thus, the ALJ and the Commission should dismiss the Complaint with prejudice.

D. PPL ELECTRIC'S CONSTRUCTION AND VEGETATION MANAGEMENT ACTIVITIES IN ITS TRANSMISSION LINE RIGHT-OF-WAY DID NOT CONSTITUTE UNREASONABLE DISCRIMINATION IN SERVICE UNDER SECTION 1502 OF THE PUBLIC UTILITY CODE

The Complainants also allege that PPL Electric's different construction and vegetation management practices on their property versus the neighboring property of U.S. NPS constituted unreasonable discrimination in service under Section 1502 of the Public Utility Code. (*See, e.g.*, Complainants St. No. 1, ¶¶ 2, 40, 56-60, 78, 92, 116-20, 130, 132-33.) The Complainants' Section 1502 claim should be rejected for several reasons.

Foremost, the Complainants' Section 1502 claim is outside the scope of this remand proceeding. The Complainants did not explicitly raise a Section 1502 claim regarding the Company's construction and vegetation management practices in their Complaint. (Complaint ¶¶ 4-5, attachment.) Instead, they claimed that PPL Electric's "restoration" practices employed on the Complainants' property and the U.S. NPS's property violated Section 1502 of the Public Utility Code. *April 2020 Order*, p. 20. As noted previously, the Commission previously dismissed the Complainants' Section 1502 claim regarding the different "restoration" practices. Specifically, the Commission held that "[w]hile 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." *Id.* Moreover, the scope of this remand proceeding is limited, and a Section 1502 claim regarding the Company's construction and vegetation management practices was not a part of the Commission's issues to be addressed on remand. *See April 2020 Order*, pp. 19, 22-23. Rather, the only issues to be addressed are whether PPL Electric's construction and vegetation management practices on the property constituted unsafe or unreasonable service under Section 1501 of the Public Utility Code. *See id.* Thus, the Complainants' latest Section 1502 claim is beyond the scope of this remand proceeding.

Even assuming *arguendo* that this claim is within the remand proceeding's scope, the Complainants failed to establish that Section 1502 of the Public Utility Code applies here. Section 1502 contains three critical aspects. First, there must be discrimination of persons, corporations, or municipal corporations, and such discrimination must involve persons, corporations, or municipal corporations within the same reasonable classification of service.⁴¹

⁴¹ *See id.* (permitting the "establishment of reasonable classifications of service").

Second, the discrimination must concern the public utility's "service." The term "service" is defined in Section 102 of the Public Utility Code, which states, in pertinent part, that "service" is "[u]sed 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, or contract carriers by motor vehicle, 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"42

Third, the discrimination must be "unreasonable." Consequently, a public utility can provide a reasonable preference or advantage to a person, corporation, or municipal corporation, as well as subject a person, corporation, or municipal corporation to a reasonable prejudice or disadvantage.

Here, the Complainants' Section 1502 claim fails because the federal government (*i.e.*, the U.S. NPS) is not a "person," "corporation," or "municipal corporation" as defined by Section 102 of the Public Utility Code:

- "Person" is defined as "[i]ndividuals, partnerships, or associations other than corporations, and includes their lessees, assignees, trustees, receivers, executors, administrators, or other successors in interest." 66 Pa. C.S. § 102.
- "Corporation" is defined as "[a]ll bodies corporate, joint-stock companies, or associations, domestic or foreign, their lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations, except as otherwise expressly provided in this part, nor bona fide

⁴² *Id.* § 102 (emphasis added).

cooperative associations which furnish service on a nonprofit basis only to their stockholders or members.”

- “Municipal corporation” is defined as “[a]ll cities, boroughs, towns, townships, or counties of this Commonwealth, and also any public corporation, authority, or body whatsoever created or organized under any law of this Commonwealth for the purpose of rendering any service similar to that of a public utility.”

A federal agency, such as the U.S. NPS, does not fall within any of these categories. Therefore, PPL Electric has full authority to treat the U.S. NPS’s property differently from others, including the Complainants’ property.

In addition, to the extent there was any preference given to the U.S. NPS’s property in how the construction and vegetation management were performed, such preference was reasonable. As explained previously, PPL Electric constructed the Project, including the crane pads and access road, in a safe and reasonable manner.⁴³ The actual methods utilized were site-specific, and PPL Electric constructed the Project as it saw fit consistent with its overriding goal—safety.⁴⁴

Regarding the vegetation management, PPL Electric witness Stutzman testified that PPL Electric did not apply herbicides to the U.S. NPS’s property because that was a condition of the federal permit PPL Electric has to secure for that property. (PPL St. No. 4, p. 21.) No such permit was required for Mr. Hartman’s property or any other landowner’s property impacted by the Project. (PPL St. No. 4, p. 21.) Moreover, herbicides are safer, more effective, and more efficient than mechanical means of vegetation management, especially on a sloped mountainside like the Complainants’ property, where it can be dangerous to haul and use chainsaws, pruning hand saws, brush axes, and machetes. (PPL St. No. 4, p. 21.) Therefore, PPL Electric would have preferred

⁴³ See Section VI.B.2, *supra*.

⁴⁴ See Section VI.B.2, *supra*.

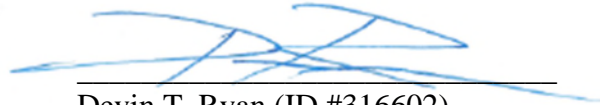
to apply herbicides on the U.S. NPS's property as well had the Company been permitted to do so. (PPL St. No. 4, p. 21.) In fact, Mr. Stutzman testified that the Company would be "addressing the National Park Service land" and that he was "working through the permitting process to treat all the incompatible vegetation on their property." (Tr. 588-89.) For such treatment, Mr. Stutzman stated herbicide application may be involved because "the National Park Service has said the herbicide is favorable in certain situations." (Tr. 589.)

For these reasons, Section 1502 of the Public Utility Code does not apply to the Company's construction and vegetation management here, and even if it does, the Complainants failed to sustain their burden of proof that a violation of Section 1502 occurred.

VII. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge Steven K. Haas and the Pennsylvania Public Utility Commission deny the Formal Complaint of Michael and Sharon Hartman in its entirety and with prejudice.

Respectfully submitted,



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Appendix A – Proposed Findings of Fact

1. The Complainants in this case are Michael and Sharon Hartman (“Complainants”).

2. The Respondent in this case is PPL Electric Utilities Corporation (“PPL Electric” or the “Company”).

3. The Complainants reside at 1650 Primrose Lane, Dauphin, PA 17018. (Complainants St. No. 1, ¶ 1.)

4. PPL Electric continually evaluates its transmission and distribution systems for areas in which it can improve on or at least maintain the current level of safety and reliability for its electric service, consistent with its duty to provide safe and reliable electric service to its customers. (PPL St. No. 1, p. 6.)

5. PPL Electric owns a 100-foot-wide transmission line right-of-way traversing the Complainants’ property at 1650 Primrose Lane, Dauphin, PA 17018. (PPL St. No. 3, p. 3.)

6. Approximately 50-feet of the aforementioned right-of-way traverses the Complainants’ property. (PPL Electric St. No. 3, p. 7.)

7. PPL Electric had to rebuild certain structures and appurtenances on its transmission line right-of-way traversing the Complainants’ property at 1650 Primrose Lane, Dauphin, PA 17018 as part of the Halifax-Dauphin 60 kV Transmission Rebuild Project (“Project”). (PPL St. No. 1, p. 5.)

8. The Project involved reconstruction of the Sunbury-Dauphin 69 kV transmission line crossing 179 landowners’ properties, including the Complainants’ property. (PPL St. No. 1, p. 6.)

9. The Project involved rebuilding the approximately 3.57-mile-long segment of the single circuit Sunbury-Dauphin 60 kV transmission line between the Halifax tap and Dauphin Substation. (PPL St. No. 1, p. 5.)

10. The Complainants dispute the reasonableness and safety of PPL Electric's construction, excavation, and vegetation management practices performed as part of the Project.

11. As part of the Project, PPL Electric installed approximately 36,992 feet of access roads to enable the Company's employees and contractors to access PPL Electric's facilities in a safe, reliable, and efficient manner. (PPL St. No. 1, p. 5.)

12. One of those access roads traverses the Complainants' property and is approximately 2,150 feet in length. (PPL St. No. 1, p. 5.)

13. PPL Electric provided notice of the Project to the Complainants. (PPL Electric Exhibit No. AW-4.)

14. The Complainants' home is approximately 100 feet from the western edge of the PPL Electric right-of-way corridor. (PPL Electric St. No. 3, p. 6.)

15. Mr. Hartman lacks any formal education or experience related to the safety of constructing electric facilities. (Tr. 49.)

16. Mr. Hartman conceded that PPL Electric witness William Salisbury, who testified as to the safety and reasonableness of the construction and excavation activities,¹ has "more training and experience in the field of electric safety than [Mr. Hartman]." (Tr. 52).

17. Mr. Hartman stated that he "[has] no professional experience in the electronic [sic] field" other than his observations of PPL Electric and its contractors' performing maintenance and construction activity on his property. (Tr. 50.)

¹ (See PPL St. No. 2pp. 2-6.)

18. PPL Electric presented the testimony of William Salisbury, who “was responsible for overseeing the construction and excavation of the crane pads and access road.” (PPL St. No. 2, p. 5.)

19. PPL Electric witness Salisbury has been a construction supervisor at PPL Electric since 2011. (PPL St. No. 2, pp. 1, 5.)

20. During his time with PPL Electric, Mr. Salisbury has managed hundreds of jobsites conducting all matters of work in distribution, transmission, and substations, relays, and fiber optic. (PPL St. No. 2, pp. 1-2.)

21. Mr. Salisbury holds professional certifications with Utility Safety & Ops Leadership Network (“USOLN”) and is a Certified Utility Safety Professional. (“CUSP”). (PPL St. No. 2, pp. 1-2.)

22. When constructing projects such as the one at issue, PPL Electric follows all applicable industry accepted engineering practices, its design drawings, and its plans and adheres to all applicable permits, laws, and regulations, including Occupational Safety and Health Administration and Institute of Electrical and Electronics Engineers regulations. (PPL St. No. 2, p. 3.)

23. The actual construction and excavation that takes place on a property varies from site to site depending on the site-specific circumstances. (PPL St. No. 2, p. 3.)

24. The planned construction and excavation for a project may need to be changed once the work is about to begin or already underway. (PPL St. No. 2, p. 4.)

25. The on-site conditions may not be the same as the engineers who designed the project or developed the E&S Plan understood them to be. (PPL St. No. 2, p. 4.)

26. Site conditions also may change during the project due to weather and other factors outside of the Company's control. (PPL St. No. 2, p. 4.)

27. PPL Electric may determine that changes are needed to ensure the current and future safety of its workers or to improve its ability to access its facilities in the transmission line right-of-way. (PPL St. No. 2, p. 4.)

28. PPL Electric constructed and excavated both of the crane pads for Poles 76 and 75 in the transmission line right-of-way with safety as its priority. (PPL St. No. 2, p. 6.)

29. As part of the Project, PPL Electric needed to haul large amounts of concrete up the mountainside on the Complainants' property. (PPL St. No. 2, p. 6.)

30. To accommodate hauling large amounts of concrete up the mountainside on the Complainants' property, the Company required crane pads and access roads that could safely withstand and support that amount of weight. (PPL St. No. 2, p. 6.)

31. Had PPL Electric not constructed those crane pads and access roads the way it did, the weight of the trucks travelling the mountainside could have displaced the stone in the road, causing the truck to get stuck, the approximately 27,000-pound load of concrete to spill and need to be unloaded, and/or the truck and equipment to roll over, thereby placing the Company's employees and contractors in harm's way. (PPL St. No. 2, p. 6.)

32. The actual size of crane pads depends on site-specific circumstances, including the property's topography and slope as well as the weight of the cranes being used. (PPL St. No. 2, p. 12.)

33. PPL Electric was permitted to disturb existing vegetation consistent with its rights under the applicable permits and right-of way agreement. (PPL St. No. 2, p.8.)

34. When excavating and constructing the access road and crane pads in the transmission line right-of-way on the Complainants' property, PPL Electric relied on its E&S Plans. (PPL St. No. 2, p. 14.)

35. PPL Electric smoothed the constructed access road as much as it reasonably could have done. (PPL St. No. 2, p. 17.)

36. PPL Electric constructed the access road in a safe way that is navigable by rubber-tired vehicles and by foot. (PPL St. No. 2, p. 18.)

37. PPL Electric performed the construction and excavation of the Project in a safe and reasonable manner, consistent with all accepted engineering practices, design drawings, as well as all applicable permits, laws, and regulations. (*See* PPL St. No. 2, pp. 2-5.)

38. On the vegetation management issues, Mr. Hartman conceded that he is not a certified arborist and has never worked in the electric industry. (Tr. 45-46.)

39. PPL Electric presented the testimony of Matthew Stutzman, the Forester for PPL Electric's Harrisburg Region, who reviewed and evaluated the vegetation management performed on the Complainants' property.² (PPL St. No. 4, p. 2; Tr. 433, 439, 465-466, 470.)

40. Mr. Stutzman operates under the Company's Pennsylvania Pesticide Applicator's license and holds an Applied Science Degree in Forest Technology from the Pennsylvania College of Technology. (PPL St. No. 4, p. 2.)

41. PPL Electric must perform vegetation management in the vicinity of its electric distribution and transmission lines to ensure that customers continue receiving safe, reliable, and reasonable service. (PPL St. No. 4, p. 4.)

² While the vegetation management in question at the Complainants' property was reviewed and approved by the Company's previous Forester for the Harrisburg region, Mr. Stutzman reviewed the files associated with that work, as well as conducted a post-vegetation management field visit and interviewed the contractor who performed the work (*i.e.*, Penn Line). (PPL St. No. 4, p. 10.)

42. For transmission lines (*i.e.*, line voltage at or above 69 kV), PPL Electric adheres to its “Specification for Transmission Vegetation Management” for compliance purposes. (PPL St. No. 4, p. 4; PPL Electric Exhibit No. MS-2.)

43. PPL Electric employs both herbicides and mechanical means of vegetation management to control vegetation in the vicinity of its transmission lines. (PPL St. no. 4, p. 8.)

44. The actual means employed can vary from site to site depending on the area’s specific circumstances, such as topography and the type(s) of vegetation being addressed. (PPL St. No. 4, p. 8.)

45. Safety is a paramount consideration when the Company makes its vegetation management decisions. (PPL St. No. 4, p. 8.)

46. The Company’s focus on safety includes not only the safety of its employees and contractors but the safety of nearby residents and other members of the public. (PPL St. No. 4, p. 8.)

47. PPL Electric’s transmission lines generally are on a trim cycle and herbicide cycle that alternates every two years. (PPL St. No. 4, p. 8.)

48. PPL Electric has established policies for the use and application of herbicides. (PPL St. No. 4, p. 9.)

49. As referenced in Section 8.0 of PPL Electric’s “Specification for Transmission Vegetation Management,” all herbicide applications “[s]hall be performed in accordance with the latest version of ‘PPL EU Herbicide Application Policy.’” (PPL Exh. MS-2, p. 15.)

50. Under that policy, the contractors performing the herbicide application must, among several other requirements: (1) “[a]pply materials in accordance with the manufacturers’ labels”; (2) “[h]old and maintain a Pennsylvania Pesticide Application Business License”; (3)

“[e]mploy certified Pennsylvania Commercial Pesticide Applicators,” who “must at a minimum be certified in category 10 (Right of Way & Weeds)”; (4) “[e]nsure that applications performed by Pennsylvania Registered Pesticide Technicians are performed in accordance with Pennsylvania Pesticide Rules and Regulations”; (5) “[e]nsure that all herbicides are procured, transported, stored, and applied in accordance with all applicable state and federal laws”; (6) “[u]se only herbicide products that have been approved for use on utility rights-of-way by the US Environmental Protection Agency”; and (7) “[u]se only herbicide products approved by PPL EU.” (PPL Exh. MS-3, p. 2.)

51. Herbicides are safe to use when they are utilized in accordance with the specifications set forth in their labels, which are reviewed and approved by the U.S. Environmental Protection Agency (“EPA”) and the Pennsylvania Department of Agriculture. (PPL St. No. 4, p. 10.)

52. As part of the Project, as well as the continued maintenance of the Halifax-Dauphin 69kV transmission line, PPL Electric conducted vegetation management in the portion of the transmission light right-of-way traversing the Complainants’ property. (PPL St. No. 4, pp. 10-14.)

53. On June 11, 2020, the Company’s “Contract Pre-Planner” identified and planned application of herbicide units within the Company’s right-of-way on the Complainants’ property. (PPL St. No. 4, p. 11.)

54. On October 2, 2020, the Contract Pre-Planner identified and planned the application of herbicide units within the Company’s right-of-way. (PPL St. No. 4, p. 11.)

55. On January 5, 2021, the PPL Electric Forester at the time, Justin Mease, reviewed the pre-plan for vegetation management in the transmission line right-of-way for the Project and approved all proposed work. (PPL St. No. 4, p. 12; PPL Exh. MS-6.)

56. The herbicide application work was then relayed to the maintenance contractor (*i.e.*, Penn Line) for review and execution. (PPL St. No. 4, p. 12.)

57. One of the Complainants, Mr. Hartman, contacted the Contract Pre-Planner on January 5, 2021, and indicated he did not want any herbicide applied to his property.³ (PPL St. No. 4, p. 11; Tr. 415-16.)

58. Mr. Hartman further offered to remove the identified saplings in lieu of the Company's planned herbicide treatment. (PPL St. No. 4, p. 11; PPL Exh. MS-5.)

59. The Contract Pre-Planner agreed to Mr. Hartman's request but also noted that, if any incompatible tree species remained when the maintenance crews arrived, the Company's contractors would proceed with herbicide application on the property, as planned. (PPL St. No. 4, p. 11; PPL Exh. MS-5.)

60. Mr. Hartman did not communicate any objection to this plan. (PPL St. No. 4, p. 11.)

61. On July 16, 2021, PPL Electric's maintenance contractor performed herbicide maintenance and application within the Company's right-of-way on the Complainants' property. (PPL St. No. 4, p. 12.)

62. Upon review, the maintenance contractor determined that the Complainants had not removed the incompatible species of vegetation in the several months since discussing Mr.

³ This date was incorrectly stated in PPL Electric witness Stutzman's testimony as October 5, 2020. (PPL St. No. 4, p. 11.) The date was clarified at the hearing. (Tr. 415-16.)

Hartman's plan to remove incompatible species of saplings within the Company's easement. (PPL St. No. 4, p. 12; *see* PPL Exh. MS-5.)

63. PPL Electric's contractor treated the vegetation using a High-Volume Foliar application method, with herbicide mix HV5⁴ on PPL's Electric's Approved Herbicide Mixtures, and utilizing a pick-up truck mounted holding tank, hose reel, and application wand ("pick-up method"). (PPL St. No. 4, p. 12.)

64. This method is safer for the applicators, as they are often on unstable or steep terrain that can cause a backpack sprayer to lose balance, in turn, causing injury. (PPL St. No. 4, p. 18.)

65. This is especially the case on steep mountainsides like the transmission line right-of-way traversing Mr. Hartman's property. (PPL St. No. 4, p. 18.)

66. The High-Volume Foliar application method is a targeted approach where the applicator physically walks to the location of the vegetation to be treated and applies the herbicide mix to the leaves of the targeted species. (PPL St. No. 4, pp. 12-13.)

67. This application was not broadcast across the entirety of the right-of-way. (PPL St. No. 4, p. 13.)

68. On August 26, 2021, the PPL Electric Forester supervising the Project at the time reviewed the vegetation management work completed by the maintenance contractor. (PPL St. No. 4, p. 13.)

69. The reviewing Forester concluded that the work was consistent with the Company's standards and approved the vegetation management work completed within the Company's easement on Mr. Hartman's property. (PPL St. No. 4, p. 13; PPL Exh. MS-10.)

⁴ PPL Electric Exhibit MS-11 contains the EPA-approved labels for the herbicides that make up herbicide mix HV5.

70. More than 47 acres were treated with herbicide along the Company's transmission line right-of-way as part of the Project. (PPL St. No. 4, p. 13.)

71. Less than 0.35 acres of herbicide application occurred within the Company's right-of-way on the Complainants' property. (PPL St. No. 4, p. 13.)

72. For this herbicide, the allowable herbicide application rate is 150 gallons per acre. (PPL Electric Exhibit No. MS-7.)

73. Thus, the maximum allowable herbicide that could be used on the Complainants' property was approximately 51 gallons. (PPL St. No. 4, p. 13.)

74. PPL Electric's contractor only applied approximately 36 gallons of herbicide within the Company's easement on the Complainants' property. (PPL St. No. 4, p. 14.)

75. There was incompatible species of vegetation present on the Complainants' property that was treated with herbicide. (PPL St. No. 4, p. 16.)

76. The application of herbicide on the Complainants' property was targeted to the areas with incompatible species of vegetation and was not indiscriminate. (PPL St. No. 4, p. 16.)

77. The herbicide application method used by the Company and its contractors does not target or damage the root system of compatible grass species. (PPL St. No. 4, p. 19.)

78. The impacted bushes and grasses will sprout new growth over subsequent years. (PPL St. No. 4, p. 17.)

79. Because the herbicide treatment is applied directly to incompatible vegetation's leaves, the seed base can germinate and regrow in the area. (PPL St. No. 4, p. 17.)

80. The Company's right-of-way on the Complainants' property is regrown and green, and the non-targeted vegetation in the treated areas are showing signs of regrowth. (PPL St. No. 4, pp. 17-19; Tr. 478-80.)

81. PPL Electric has updated its processes as a courtesy to the Complainants and now will provide 72 hours' notice to the Complainants before vegetation management activities on their property, which should provide ample time for them to address the incompatible vegetation. (Tr. 582.)

82. PPL Electric will knock on the Complainants' door the day of the planned vegetation management, so that they receive even more notice before vegetation management is conducted in the right-of-way. (Tr. 583.)

83. Mr. Stutzman personally visited the Complainants' property on June 19, 2022. (PPL St. No. 4, p. 20.)

84. Mr. Stutzman observed no signs of off right-of-way vegetation being affected by the Company's herbicide treatment. (PPL St. No. 4, p. 20.)

85. There was no evidence that the herbicide applied had "washed" across Mr. Hartman's property, especially given that the wood's edge of the right-of-way corridor near Mr. Hartman's property did not show any signs of herbicide application. (PPL St. No. 4, p. 20.)

86. PPL Electric did not apply herbicides to the U.S. National Park Service's property because that was a condition of the federal permit PPL Electric has to secure for that property. (PPL St. No. 4, p. 21.)

87. No such permit was required for Mr. Hartman's property or any other landowner's property impacted by the Project. (PPL St. No. 4, p. 21.)

88. Herbicides are safer, more effective, and more efficient than mechanical means of vegetation management, especially on a sloped mountainside like the Complainants' property, where it can be dangerous to haul and use chainsaws, pruning hand saws, brush axes, and machetes. (PPL St. No. 4, p. 21.)

89. Therefore, PPL Electric would have preferred to apply herbicides on the U.S. National Park Service's property as well had the Company been permitted to do so. (PPL St. No. 4, p. 21.)

90. Mr. Stutzman testified that the Company would be "addressing the National Park Service land" and that he was "working through the permitting process to treat all the incompatible vegetation on their property." (Tr. 588-89.)

91. PPL Electric's vegetation management practices were performed on the Complainants' property in a safe and reasonable manner. (See PPL St. No. 4, pp. 10-21.)

Appendix B – Proposed Conclusions of Law

1. Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. 66 Pa. C.S. § 332(a). It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

2. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence that makes the existence of a contested fact is more likely than its nonexistence. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008) (citation omitted).

3. It is well established that “[S]peculation does not amount to substantial evidence. Substantial evidence requires more than a scintilla of evidence or suspicion of the existence of a fact to be established.” *West Penn Power Co. v. Pa. PUC*, 2019 Pa. Commw. Unpub. LEXIS 532, at *21, 219 A.3d 716 (Pa. Cmwlth. 2019); *see also W.J. Menkins Holdings, LLC v. Douglass Twp.*, 208 A.3d 190 (Pa. Cmwlth. 2019).

4. Section 701 of the Public Utility Code provides that “any person . . . having an interest in the subject matter . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa. C.S. § 701.

5. Section 1501 of the Public Utility Code states, in pertinent part, that:

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. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. . . .

Id. § 1501.

6. The Commission has exclusive jurisdiction to adjudicate “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services. *See Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (citations omitted).

7. The standard set forth in Section 1501 is reasonable, not perfect service. As noted by the Commission in *Re Metropolitan Edison Co.*, 80 Pa. PUC 663, 672 (1993), Section 1501 “does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.” *See also Beaty v. Verizon Pa. Inc.*, Docket No. C-2012-2300642, 2012 Pa. PUC LEXIS 1870, at *12 (Initial Decision Oct. 12, 2012), *adopted as modified by the Commission*, Docket No. C-2012-2300642 (Order Entered July 16, 2013).

8. The Complainants have failed to sustain their burden of proof that PPL Electric’s construction and excavation practices were performed unsafely or unreasonably. *See* 66 Pa. C.S. § 1501.

9. Section 1502 of the Public Utility Code provides that:

No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities

or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service.

66 Pa. C.S. § 1502.

10. Therefore, to establish a violation of Section 1502 of the Public Utility Code, there must be: (1) discrimination of persons, corporations, or municipal corporations within the same reasonable classification of service; (2) the discrimination must concern the public utility's service; and (3) the discrimination must be unreasonable. *See id.*

11. The U.S. National Park Service is a federal agency and not a “person,” “corporation,” or “municipal corporation” as defined by Section 102 of the Public Utility Code, nor is it within the same classification of service as the Complainants; therefore, Section 1502 of the Public Utility Code does not apply to the Company's different construction and vegetation management practices employed on the U.S. National Park Service's property as opposed to the Complainants' property. *See id.* §§ 102, 1502.

12. To the extent there were different construction and vegetation management practices employed on the U.S National Park Service's property, those different practices were justified and reasonable under the circumstances.

13. The Complainants failed to sustain their burden of proof that the Company's construction and vegetation management practices constituted unreasonable discrimination in service under Section 1502 of the Public Utility Code.

Appendix C – Proposed Ordering Paragraphs

1. That the Formal Complaint filed by Michael and Sharon Hartman against PPL Electric Utilities Corporation at Docket No. C-2019-3008272 is hereby dismissed in its entirety with prejudice.
2. That this matter is marked closed.