Post & Schell P.C.
ATTORNEYS AT LAW

17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
717-731-1970 Main
717-731-1985 Main Fax
www.postschell.com

Nicholas A. Stobbe

nstobbe@postschell.com
717-612-6033 Direct
717-731-1985 Direct Fax
File #: 140074

March 30, 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 Reply Brief 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

Michael and Sharon Hartman
1650 Primrose Lane
Dauphin, PA 17018
Email: angelgah@comcast.net

Date: March 30, 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.	:	

REPLY BRIEF OF PPL ELECTRIC UTILITIES CORPORATION

Michael J. Shafer (ID # 205681)
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Phone: 610-774-2599
Fax: 610-774-4102
E-mail: mjshafer@pplweb.com

Devin T. Ryan (ID #316602)
Post & Schell, P.C.
12th Floor, 17 North Second Street
Harrisburg, PA 17101-1601
Phone: 717-612-6052
Fax: 717-731-1985
Email: dryan@postschell.com

Nicholas A. Stobbe (ID #329583)
Post & Schell, P.C.
12th Floor, 17 North Second Street
Harrisburg, PA 17101-1601
Phone: 717-612-6033
Fax: 717-731-1985
E-mail: nstobbe@postschell.com

Of Counsel:

Post & Schell, P.C.

Date: March 30, 2023

Attorneys for PPL Electric Utilities Corporation

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Pennsylvania Court Decisions

Pennsylvania Administrative Agency Decisions

Pennsylvania Statutes and Regulations

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"). As explained in the Company's Main Brief, 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*"). Also explained in the Company's Main Brief, 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.

On March 9, 2023, PPL Electric and the Complainants filed their respective Main Briefs.

As explained in PPL Electric's Main Brief, the Complaint should be denied in its entirety and with prejudice because 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.

Herein, PPL Electric submits its Reply Brief, which is focused on addressing any arguments or issues raised by the Complainants' Main Brief that were not previously addressed by the Company.

II. SUMMARY OF ARGUMENT

Nothing in the Complainants' Main Brief establishes that PPL Electric violated Section 1501 or 1502 of the Public Utility Code, by conducting its construction and vegetation management practices in the transmission line right-of-way traversing the Complainants' property. Although the Company addressed the Complainants' construction and vegetation management allegations in its Main Brief, the Complainants present several arguments in their Main Brief that warrant response and, ultimately, rejection by the ALJ and Commission.

First, the Complainants assert in their Main Brief that PPL Electric failed to follow its E&S Plans and Permit. As the ALJ previously held in this proceeding, the Commission lacks jurisdiction to interpret and enforce the E&S Plans and Permit. Nevertheless, to the extent that the Commission considers the Complainants' allegations about the E&S Plans and Permit, PPL Electric rebutted all of their claims and demonstrated that PPL Electric complied with the E&S Plans and Permit. Critically, the Pennsylvania Department of Environmental Protection ("DEP") and the Dauphin County Conservation District ("DCCD"), which are the agencies actually responsible for enforcing the E&S Plans and Permit, closed out the E&S Permit. Moreover, DCCD performed several compliance inspections throughout the Project, and the Company was never issued a notice of violation. Therefore, the Commission should defer to those agencies and find that PPL Electric complied with its E&S Plans and Permit.

Second, the Complainants assert that Company's vegetation management practices were unreasonable. According to the Complainants, the herbicide mixture applied to the treated areas (*i.e.*, herbicide mixture HV5) is designed to destroy grasses. Although two of the three herbicides making up herbicide mixture HV5 could be destructive to grasses <u>if used to a certain concentration</u>, that does not mean that any amount or use of those two herbicides, including as components of the

HV5 herbicide mixture, would destroy grasses. In fact, the concentrations in herbicide mixture HV5 are much lower than the concentrations in other mixtures that are designed to destroy grasses.

Third, the Complainants' allegations about erosion and stormwater run-off should be rejected. The record demonstrates that PPL Electric did not cause any erosion or stormwater runoff issues, as affirmed by the DEP and DCCD closing out the E&S Permit for this Project and never issuing PPL Electric a notice of violation. Moreover, PPL Electric witness Eby, who is well-versed in erosion and sediment control measures, did not see any significant erosion, either on site or in the Complainants' photographs presented to him during this proceeding.

Fourth, the Commission should deny the Complainants' requested relief because the Complainants failed to meet their burden of proof. However, even if they met that burden, their requested relief would impose a series of vague and unreasonable requirements, as part of the purported "restoration" of the transmission line right-of-way. In fact, the Complainants' requested relief, if granted, would require PPL Electric to incur significant time and expense. More importantly, the requested relief would create unsafe conditions in the right-of-way.

Fifth, the Complainants' Main Brief sets forth several items of extra-record evidence. It is well-established that extra-record evidence cannot be introduced and relied on at the briefing stage. As such, the ALJ and the Commission should strike and disregard such extra-record evidence.

For these reasons, and as explained in PPL Electric's Main Brief, the Commission should deny the Formal Complaint with prejudice.

III. REPLY ARGUMENT[1]

A. THE COMPLAINANTS' ALLEGATIONS ABOUT PPL ELECTRIC'S FAILURE TO FOLLOW THE E&S PLANS AND PERMIT ARE BASELESS

In the Order granting in part and denying in part PPL Electric's Motion to Strike, the ALJ properly struck the Complainants' testimony concerning PPL Electric's alleged failure to follow its E&S Plan and Permits because such issues were outside of the Commission's jurisdiction.[2] Indeed, the ALJ held that:

> Any testimony and exhibits involving the interpretation of PPL's E&S plan and whether PPL's construction activities in completing the project violated the E&S plan will be stricken as beyond the Commission's jurisdiction. In addition, any testimony and exhibits involving the general environmental impacts of PPL's construction activities, the reasonableness of its environmental protection controls, or unpermitted or increased stormwater runoff will also be stricken.[3]

The ALJ further declared that "[t]he law is clear in Pennsylvania that the Commission does not have jurisdiction over claims involving violations of Municipal law or environmental regulations that are beyond the scope of the Code or a Commission order or regulation."[4]

Yet, in their Main Brief, the Complainants attempt to resuscitate those issues and circumvent the ALJ's express ruling. Specifically, the Complainants present a series of allegations

---

[1] At various points throughout the Complainants' Main and Reply Briefs, the Complainants allege that PPL Electric has engaged in a purported "cover-up." (*See, e.g.*, Hartman MB, pp. 32-33; Hartman RB, p. 22.) Nothing of the sort occurred. Although the Complainants lodge baseless accusations about the Company's testimony and exhibits, the Complainants did not object to the admission of PPL Electric's testimony and exhibits. (*See* Tr. 92, 168, 372, 401.) The Complainants also were afforded an open and fair opportunity to vet the claims of PPL Electric, including multiple rounds of discovery and the option to submit written surrebuttal testimony in response to PPL Electric's rebuttal testimony. Notably, the Complainants never filed a Motion to Compel after discovery was "reset" by the ALJ, nor did they submit written surrebuttal testimony. Moreover, the Complainants had three full days of evidentiary hearings to cross-examine PPL Electric's witnesses about their testimony and exhibits. Lastly, it is not the Company's fault that the Complainants failed to file and serve applications for subpoenas in compliance with the Commission's regulations. Even though the ALJ explained at a status conference how to correct the defects with their applications, the Complainants never corrected those issues. Therefore, nothing required those individuals to comply with the Complainants' demands for documents or testimony. (*See* Hartman RB, p. 24.)

[2] *See Hartman v. PPL Elec. Utils. Corp.*, Docket No. C-2019-3008272, p. 8 (Order granting in part and denying in part Motion to Strike entered Feb. 2, 2023) ("*Motion to Strike Order*").

[3] *Id.*

[4] *Id.* (citations omitted).

in their Main Brief that PPL Electric failed to follow the E&S Plans and Permits. (Hartman MB, pp. 8-18.) However, the Complainants contend that "[a]ny reference to PPL's E & S Plan, Exhibit TE-1, within [their] Brief relates to PPL's failure to follow PPL's own vegetation management and restoration guidelines."[5] (Hartman MB, p. 8.)

The Complainants' justification for raising these issues outside the Commission's jurisdiction is meritless. The bottom line is that the Complainants are still claiming that PPL Electric "fail[ed] to follow" the E&S Plans and Permit. (Hartman MB, p. 8.) If the Commission were to consider and rule on these allegations, the Commission would be adjudicating whether the Company's actions complied with the E&S Plans and Permit. However, as the ALJ properly held, jurisdiction over such issues resides exclusively with the DEP and DCCD.[6] Therefore, all of these allegations about PPL Electric's alleged failure to follow the E&S Plan and Permits should be dismissed. Nevertheless, to the extent that the Commission considers these allegations, the Commission should disregard them entirely.

As a preliminary matter, the Complainants entirely lack the qualifications to interpret and determine PPL Electric's compliance with the E&S Plans and Permit. Mr. Hartman admitted that he has never: (1) prepared an E&S Plan; (2) submitted an E&S Permit; or (3) worked for a county conservation district or DEP, which are the actual entities tasked with interpreting and enforcing the E&S Plans and Permits. (Tr. 46-47.) Moreover, Mr. Hartman is "not familiar with the term notice of violations," which is a basic term used in DEP enforcement matters.[7] (Tr. 52.) Mr. Hartman also does not know what constitutes a "field change," "minor amendment," or "major

[5] The Complainants also assert in their Main Brief that PPL Electric's "restoration" activity "on similarly situated neighboring private and public property" was "discriminatory." (Hartman MB, p. 1.) PPL Electric notes that the Commission previously dismissed this claim in its *April 2020 Order*. *See April 2020 Order*, p. 20. Any attempt by the Complainants to revive that claim should be disregarded entirely.

[6] *See Motion to Strike Order*, p. 8.

[7] *See generally Lester v. Pa. Dep't of Envtl. Prot.*, 153 A.3d 445 (Pa. 2017); *Smith Butz, LLC v. Pa. Dep't of Envtl. Prot.*, 142 A.3d 941 (Pa. Cmwlth. 2016); *Stambaugh v. Pa. Dep't of Envtl. Prot.* 11 A.3d 30 (Pa. Cmwlth. 2010).

amendment" under DEP's Chapter 102 regulations for E&S Plans. (Tr. 52-53.) The Complainants' lack of understanding about these terms is critical. For example, PPL Electric's change to the path of the access road was a "field change" to the E&S Plans, which, contrary to the Complainants' allegations otherwise, does not require prior approval before it is made. (Tr. 232.) That "field change" was later memorialized in the revisions to the E&S Plans and submitted to DCCD at DCCD's request. (Tr. 232-33.) Therefore, the Complainants' allegations about the E&S Plans and Permit's requirements completely lack support.

In addition, none of the Complainants' allegations has merit. PPL Electric rebutted, in detail, the Complainants' allegations concerning E&S Plan and Permit compliance in its testimony and exhibits. (*See, e.g.*, PPL St. No. 1; PPL Exh. TE-3.) As explained in that testimony and exhibits and in this section, the Complainants' allegations should be rejected.

First, the Complainants erroneously allege that PPL Electric's actions contradicted Section 1.3 of the E&S Plan, which stated, "To the extent practical, access routes have been selected by utilizing the existing ROW and existing roadways (paved and gravel)." (Hartman MB, pp. 9-10.) Mr. Eby explained that "[t]he original plan was to utilize the existing access road rout[e] within the ROW on the Hartman property," but "an alternate route needed to be constructed for safety reasons," as explained in PPL Electric witness Salisbury's testimony. (PPL Exh. TE-3, pp. 2-3.) Specifically, the "[s]witchbacks" constructed by PPL Electric "allow for the access road to climb the mountain at less of a steep grade by zigzagging back and forth within the ROW" and "were added to the access road within the approved 'LIMIT OF DISTURBANCE' of the project for safety reasons." (PPL Exh. TE-3, p. 2.) "And later upon the request of the DCCD, the access road route as built in the field was accounted for and documented in REV-6 of the approved E&S Plans (see, e.g., PPL Electric Exh. TE-1, p. E&S-115)." (PPL Exh. TE-3, p. 2.) Thus, there were sound

and practical reasons to not use the existing roadway in the transmission line right-of-way, and PPL Electric's change to the access road's path was a permissible "field change" to the E&S Plans.

Second, the Complainants claim that PPL Electric failed to adhere to Section 1.3 of the E&S Plan, which provided that "[f]ollowing construction, most sections of the access routes will be covered with site and/or clean fill soils and re-vegetated with permanent seeding as indicated in the E & S Plans" and that "[s]ome areas of roadways may remain in improved condition depending on the preference of each specific property owner." (Hartman MB, p. 10.) However, Mr. Eby confirmed that "[t]he access road and pad construction and restoration methods as called out on the approved E&S Plans were followed by PPL Electric contractors." (PPL Exh. TE-3, p. 4.) "Specifically, pages E&S-114 and E&S-115 show black and white circles filling the access road, which, as stated on the legend of the E&S Plans, means 'STONE TO REMAIN AFTER CONSTRUCTION.'" (PPL Exh. TE-3, p. 4.) As Mr. Eby explained, "The statement in Section 1.3 of the E&S Plan regarding landowner preference of roadway restoration is referring to temporary access roads." (PPL Exh. TE-3, p. 4.) Here, "[t]he portion of access road on the Hartman property was never considered to be temporary, as there was already an existing road within the ROW that was planned to be improved and maintained after construction." (PPL Exh. TE-3, p. 4.)

As for the re-vegetation language, the "areas considered as vegetated pre-construction were brought back to a vegetated state." (PPL Exh. TE-3, p. 3.) Under DEP's Chapter 102 regulations, "if a project would increase permanent impervious surface, the permittee is required to manage the increased stormwater from the increased impervious surface with post-construction sediment control measures ('PCSMs')." (PPL Exh. TE-3, p. 3.) In this case, "DEP and DCCD approved and terminated the E&S Permit for the project, which proves their concurrence that the pre-

development and post-development net impervious increases were considered de minimis." (PPL Exh. TE-3, p. 3.)

Third, the Complainants contend that PPL Electric failed to follow Section 2.2 of the E&S Plan, which provided that "[t]o ensure compliance with vegetation management requirements, vegetative growth within ROWs located in wooded areas will be maintained as brush areas or meadow areas" and that "[a]fter construction is complete, construction pads and access roads will be fully restored or vegetated." (Hartman MB, pp. 10-11.) As explained previously, PPL Electric brought back the areas as vegetated pre-construction to a vegetated state, and DEP and DCCD closed out the E&S Permit for the Project, which is irrefutable evidence of their concurrence. The Commission cannot and should not second-guess the agencies tasked with enforcing the E&S Plans and Permit, particularly when the DCCD performed inspections throughout the Project and before closing out the E&S Permit. (*See* PPL Exh. TE-4.) Also, PPL Electric presented detailed testimony and exhibits on its vegetation management practices within the transmission line right-of-way at issue. (*See* PPL St. No. 4.) As explained in PPL Electric's Main Brief and this Reply Brief, PPL Electric's application of herbicides was just and reasonable.[8]

Fourth, the Complainants assert that PPL Electric violated Section 2.12 of the E&S Plan, which stated that "[e]arthwork has been limited to only areas where construction access is needed to install the new structures or conductors" and that "[a]ll areas within the project boundary but outside of the LOD shall be protected from disturbance." (Hartman MB, pp. 11-12.) The Complainants also claim that that PPL Electric failed to comply with the following language from the E&S Plan:

[8] Also, as the Complainants acknowledge on page 11 of their Main Brief, the E&S Permit was closed out by the time of PPL Electric's application of herbicides. It is antithetical that the herbicide application could be held to violate requirements in an E&S Plan that was no longer effective.

> 9. AT NO TIME SHALL CONSTRUCTION EQUIPMENT BE ALLOWED TO ENTER AREAS OUTSIDE THE LIMIT OF DISTURBANCE BOUNDARIES SHOWN ON THE PLAN MAPS. THESE AREAS MUST BE CLEARLY MARKED AND/OR FENCED OFF BY THE CONTRACTOR BEFORE CLEARING AND GRUBBING OPERATIONS BEGIN.

(Hartman MB, p. 14.)

PPL Electric witness Eby explained that the "[e]xcavation occurred within the permitted 'LIMIT OF DISTURBANCE' under the approved E&S Plans, except for two small areas, each approximately 12 feet outside of the ROW, which PPL Electric promptly addressed and restored as soon as the Company was made aware of the situation." (PPL Exh. TE-3, p. 1.) "The one area was on the east side of the STR-76 pad, and the other was on the west side of the ROW where the access road enters STR-75." (PPL Exh. TE-3, p. 1.) Mr. Eby "would not consider these two small areas approximately 12 feet outside of the ROW to be 'far beyond' the boundary in relation to a 100-foot-wide ROW many miles in length." (PPL Exh. TE-3, p. 1.) As shown in the E&S Plans, the 'LIMIT OF DISTURBANCE' is indicated by a bold red line (see, e.g., PPL Electric Exh. TE-1, p. E&S-115, Legend)." (PPL Exh. TE-3, p. 1.) "The LOD encompassed the entire ROW width, and under the approved E&S Permit, earth disturbance [was] allowed anywhere within the LOD boundary." (PPL Exh. TE-3, p. 1.) Although "[t]he access roads and work pads shown on the E&S Plans are the planned/anticipated construction areas designed for the project," the "field conditions often warrant slight variation to the actual location of the access roads and pads." (PPL Exh. TE-3, p. 1.) "Therefore, the entire ROW width is permitted as the LOD, to allow for construction flexibility in the field while staying in compliance with the E&S Plans and Permit." (PPL Exh. TE-3, p. 1.)

Fifth, the Complainants allege that PPL Electric failed to comply with Section 2.14 of the E&S Plan, which stated:

> By utilizing the existing ROW and access routes, soil compaction throughout the project area is minimized. PPL proposes to utilize and maintain these existing routes to the maximum extent possible. By using the existing routes, soil compaction within the ROW will be constrained to only proposed pads and any access roads required for construction.

(Hartman MB, p. 12.) According to the Complainants, "PPL, without justification or attribution, did not utilize the existing 70-year access road between Pole 76 and Pole 75." (Hartman MB, p. 12.) Also, the Complainants believe that "[i]n contradiction to its own best management practices, PPL constructed a new access road and compacted soil that greatly exceeded the necessary 15 feet, admittedly as wide as 24 feet, a 60% overage." (Hartman MB, p. 12.) As explained previously, PPL Electric needed to construct an alternate access road route for safety reasons. (PPL Exh. TE-3, pp. 2-3.) Moreover, PPL Electric sent contractors out to the access road to reduce its width to approximately 15 feet "in response to Mr. Hartman's concerns." (PPL St. No. 1, p. 27.) "Nothing that the Company or its contractors did during the Project rendered the access road unsafe to navigate by foot or by vehicle," the "access road is as safe today as it was prior to April 2020," and the access road's "construction remains consistent with standard electric utility practices." (PPL St. No. 2, p. 18.)

Sixth, the Complainants claim that PPL Electric violated Section 2.17 of the E&S Plan, which provided that "the overall project Site will be re-vegetated/restored to match existing cover conditions and drainage patterns" and that "[i]n most areas, the Site will be topsoiled and revegetated to meadow grass condition in accordance with the permanent stabilization BMP's specified in this Plan." (Hartman MB, pp. 12-13.) The Complainants also make allegations about the topsoil, vegetation, and scarification provisions in the E&S Plans. (Hartman MB, pp. 14-18.)

As explained previously, PPL Electric brought back the areas that were vegetated pre-construction to a vegetated state, and DEP and DCCD closed out the E&S Permit for the Project.

Moreover, "the construction sequence and methodology outlined in the E&S Plans are general guidelines to assist in limiting sediment laden runoff from the construction site." (PPL St. No. 1, p. 16.) "In areas where the stone is to be removed, PPL Electric must restore these areas back to a permanently stabilized vegetated state, with a requirement of 70% vegetation coverage." (PPL St. No. 1, p. 16.) This 70% vegetation coverage requirement was for the entire Project, not every parcel involved in the Project. (Tr. 240.) Here, "[t]he Company achieved this restoration requirement throughout the project area, as evidenced by DCCD closing out the E&S Permit on June 17, 2021." (PPL St. No. 1, p. 16.) "There is no requirement to truck in topsoil for all restored areas of the project disturbance." (PPL St. No. 1, p. 16.) And, as noted previously, DEP and DCCD closed out the E&S Permit for the Project, evidencing PPL Electric's compliance with these provisions in the E&S Plan. (*See* PPL Exh. TE-4.) Also, DEP never issued any notices of violation to PPL Electric related to the Project. (PPL St. No. 1, p. 18.)

The Complainants' only response to this incontrovertible evidence of PPL Electric's compliance is their speculation that DEP and DCCD failed to find, but should have found, these purported violations. (Hartman MB, pp. 18-19.) Nothing supports their baseless position, especially since DCCD performed inspections throughout the Project and issued several earth disturbance inspection reports, and PPL Electric took remedial actions to address their concerns before, ultimately, the E&S Permit was closed out for the Project. (*See* PPL Exh. TE-4.)

For these reasons, the Complainants' allegations about the E&S Plans and Permit wholly lack merit and should be denied by the Commission.

B. THE COMPLAINANTS' CLAIMS ABOUT EROSION AND STORMWATER RUN-OFF SHOULD BE DENIED

In their Main Brief, the Complainants also allege that PPL Electric's construction and vegetation management activities caused "accelerated erosion" and resulted in stormwater run-off

entering their property. (Hartman MB, pp. 15-17, 21, 26, 30, 38.) Specifically, the Complainants have alleged that erosion and stormwater run-off issues have been created by: (1) the Company's failure to re-vegetate the crane pads, access road and shoulders, and other parts of the transmission line right-of-way; (2) PPL Electric's herbicide application in the transmission line right-of-way; (3) the Company's placement of commercial stone or "rip-rap" in the transmission line right-of-way; and (4) the access road's alleged diversion of stormwater off of the right-of-way onto the Complainants' property. (*See* Hartman MB, pp. 1, 6-8, 10, 12, 15-17, 21, 25-26, 30, 37-38; Hartman St. No. 1, ¶¶ 51-53, 64.) The Complainants also assert that erosion and stormwater run-off issues from Poles 76 and 75 (situated on their property) have in fact "damaged [their] property, Clarks Creek, a Class A waterway, the Susquehanna River and ultimately the Chesapeake Bay." (Hartman St. No. 1, ¶ 56).

The Commission should reject the Complainants' arguments. In actuality, PPL Electric did not cause any erosion or stormwater runoff issues during this Project. The foremost evidence is that PPL Electric did not receive any notices of violation from the DEP, and DCCD closed out the E&S Permit on June 17, 2021. (PPL St. No. 1, p. 20.) Given that DCCD performed inspections throughout the Project, PPL Electric's compliance with the E&S Plans and Permit, which are designed to address concerns with erosion and sediment control, is indisputable. (PPL St. No. 1, pp. 10, 18.)

Furthermore, PPL Electric witness Eby testified that he has not observed, and there is no evidence to suggest, that "sediment laden stormwater runoff left the project site and entered any adjacent waterway, including Clarks Creek or the Susquehanna River." (PPL St. No. 1, p. 20.) "If this would have happened, the DEP would have issued [a notice of violation] to PPL Electric."

(PPL St. No. 1, p. 20.) However, as noted previously, DEP never issued any notices of violation to PPL Electric for this Project. (PPL St. No. 1, p. 20.)

Also, PPL Electric installed "storm water run-off bars" on the access road on the U.S. National Park Service's property to help slow down and dissipate any stormwater flow that may concentrate on the access road. (PPL St. No. 1, p. 21.) These "run-off bars" are directed in a manner based on how the access road is traversing the contours of the mountain. (PPL St. No. 1, p. 21.)

As for the commercial stone or "rip-rap" used for the construction, "the Company used this type of stone for the access road to help prevent erosion and stormwater run-off, not to create any such issues." (PPL St. No. 1, p. 21.) "In fact, had the Company used a smaller type of stone on the sloped mountainside of [the Complainants'] property, the erosion and stormwater run-off would be severe. (PPL St. No. 1, p. 21.) Although "[t]he larger stone used by the Company may move somewhat," any "smaller stones would have been washed off the mountainside." (PPL St. No. 1, p. 21.) "Likewise, a paved road would create even worse stormwater run-off problems." (PPL St. No. 1, p. 21.) Ultimately, PPL Electric "selected the best material to prevent erosion and stormwater run-off issues and . . . ensure the safety of its workers accessing the Company's facilities in this transmission line right-of-way." (PPL St. No. 1, p. 21.)

Lastly, the Complainants presented several photographs in this proceeding, including both in their direct testimony and on cross-examination of PPL Electric witness Eby. (*See, e.g.*, Hartman St. No. 1, ¶¶ 79-80; Tr. 306-13.) Mr. Eby testified that he "did not see any significant erosion," either on site or in the Complainants' photographs presented to him. (Tr. 306-13.)

Based on the foregoing, the Complainants' allegations about erosion and stormwater run-off lack merit and should be rejected.

C. THE COMMISSION SHOULD REJECT THE COMPLAINANTS' VEGETATION MANAGEMENT CLAIMS

In their Main Brief, the Complainants continue to allege that PPL Electric's vegetation management practices within the transmission line right-of-way on their property were unreasonable. (Hartman MB, pp. 1, 4-11, 13-16, 21-22, 24-25, 30-39.)

PPL Electric addressed the Complainants' vegetation management claims in its Main Brief. (PPL MB, pp. 25-38.) However, certain of the Complainants' vegetation management claims warrant further response. Accordingly, through this Reply Brief, PPL Electric specifically responds to the Complainants' allegations about: (1) the herbicide mixture applied within the transmission line right-of-way; and (2) the "Mile-A-Minute" in the transmission line right-of-way.[9] (*See* Hartman MB, pp. 4, 5, 16, 36-38.)

1. PPL Electric's Application of Herbicide Mixture HV5 Was Reasonable and Appropriate

The Company properly selected and applied herbicide mixture HV5 in the transmission line right-of-way. The Complainants try to dispute the Company's application of this herbicide mixture, alleging that "[t]wo of the three HV5 herbicide labels make clear that the herbicide would kill grasses" and that "HV5 is formulated to kill vegetation." (Hartman MB, p. 4.) They claim that "fact[s]" contravene PPL Electric witness Stutzman's testimony that the HV5 herbicide mixture "was not designed to kill the root systems of native grasses." (Hartman MB, pp. 4, 36.)

The Complainants misconstrue Mr. Stutzman's actual testimony and miscomprehend the herbicides' labels. As explained in PPL Electric's Main Brief, the Company selected herbicide mixture HV5 for this property to help maintain the grasses in the treated areas. (PPL St. No. 4,

[9] PPL Electric also notes that the Complainants mischaracterize the vegetation management performed on the neighboring Rosewarne property. Specifically, they assert that PPL Electric applied herbicides to the Complainants' property but only hand-cut vegetation on the Rosewarne property. (Hartman RB, p. 2.) In actuality, PPL Electric witness Stutzman clarified that "[w]e did a little bit of both on the Rosewarne property," as the Company "applied herbicide" and "hand cut brush." (Tr. 437.)

pp. 16-19.) The HV5 mixture is meant to target woody stemmed vegetation and is not designed to kill the root systems of native grasses. (PPL St. No. 4, p. 16.) However, non-targeted vegetation could be impacted, appearing as browned grass, if the stem density of the surrounding brush/stems is dense and a larger canopy area is covering the surrounding area. (PPL St. No. 4, pp. 16-17.)

Furthermore, Mr. Stutzman clarified that "[i]f used to a certain concentration," then two of the three herbicides used in herbicide mixture HV5 could be destructive to grasses. (Tr. 551-52) (emphasis added). That does not mean that any amount or use of those two herbicides, including as components of the HV5 herbicide mixture, would destroy grasses. Rather, Mr. Stutzman explained that the herbicides could destroy grasses when used in certain amounts.

Here, herbicide mixture HV5 consists of three herbicides at the following concentrations per 100 gallons of water: (1) 12 fluid ounces ("fl oz") of Method 240SL; (2) 8 fl oz of Polaris; and (3) 1.5 fl oz of Escort. (PPL Exh. MS-7.) Nothing presented by the Complainants establishes that these amounts of herbicides per 100 gallons of water would kill the root systems of native grasses. In fact, PPL Electric's list of approved herbicide mixtures sets forth several herbicide mixtures that are intended to control grasses, including HVA, LVA, ULVA, LV1, and LV2. (*See* PPL Exh. MS-7.) Critically, those herbicide mixtures have much higher concentrations of herbicides per 100 gallons of water, including the Polaris herbicide. For example, herbicide mixture HVA consists of 4 quarts of Rodeo (*i.e.*, 128 fl oz) and 12 fl oz of Polaris per 100 gallons of water, and herbicide mixture LVA consists of 4 gallons of Rodeo (*i.e.*, 512 fl oz) and 64 fl oz of Polaris per 100 gallons of water. (PPL Exh. MS-7.) By comparison, herbicide mixture HV5 only has 21.5 fl oz of herbicides per 100 gallons of water, 8 fl oz of which is Polaris.

Thus, as established through Mr. Stutzman's testimony and exhibits, PPL Electric selected and applied herbicide mixture HV5 to treat the incompatible vegetation while not destroying the root systems of the native grasses. (*See* PPL St. No. 4, pp. 16-19.)

2. The Complainants' Allegations about "Mile-A-Minute" Should Be Rejected

The Complainants contend that PPL Electric's vegetation management practices have caused a "proliferation of mile-a-minute" on their property. (Hartman MB, pp. 37-38.) As alleged support, the Complainants principally rely on photographs and multiple hearsay documents about the effects of mile-a-minute. (*See* Hartman MB, pp. 37-38.) The Complainants also point to PPL Electric witness Stutzman's acknowledgement that clearing out everything on a section of ground "could" result in mile-a-minute growing faster than it otherwise would have grown. (Tr. 636.)

The Commission should reject the Complainants' allegations about mile-a-minute. First, the Complainants' claims are based on hearsay documents, namely a Pennsylvania Department of Transportation ("PennDOT") "publication entitled Invasive Species Best Management Practices" and a "paper written by J. Mehrhoff of the University of Connecticut." (*See* Hartman MB, pp. 37-38.) Although the ALJ admitted these documents into the record,[10] uncorroborated hearsay cannot form the basis of any findings of fact in this proceeding.[11] Therefore, any arguments based upon that hearsay, particularly in Paragraph 92 of the Complainants' Main Brief, should be disregarded.

Second, the Complainants omit that the Company did not introduce any mile-a-minute to the transmission line right-of-way. (Tr. 631-32, 647-48.) PPL Electric's "herbicides are post-

[10] (*See* Tr. 68-73); *see also Motion to Strike Order*, pp. 14.

[11] *See e.g., Sule v. Phila. Parking Auth.*, 26 A.3d 1240, 1243 (Pa. Cmwlth. 2011) ("[I]t is well-settled that hearsay evidence, properly objected to, is not competent evidence to support a determination of an agency"); *Chapman v. Unemployment Comp. Bd. of Review*, 20 A.3d 603, 610, n.8 (Pa. Cmwlth. 2011); *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976) ("Hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding of the Board, if it is corroborated by any competent evidence in the record, but a finding of fact based solely on hearsay will not stand.").

emergent herbicides." (Tr. 631.) Therefore, "the seed-base for the mile-a-minute was already there and establishing itself prior to [the Company's] herbicide treatment." (Tr. 631.)

Third, the Complainants failed to prove that PPL Electric's application of herbicides destroyed vegetation that would have prevented the mile-a-minute from growing. Mr. Stutzman testified that he has seen "pristine agricultural areas that [the Company] ha[s] not treated" with herbicides, "where mile-a-minute literally consumed every piece of vegetation in that area." (Tr. 648.) In other words, even if the Company did not apply herbicides to the treated areas, the mile-a-minute would likely overtake vegetation in the transmission line right-of-way. As such, Mr. Stutzman concluded that the transmission line right-of-way on the Complainants' property "has just as good of chance to bounce back now as it would in two years, when mile-a-minute would've consumed everything anyways." (Tr. 648-50.)

For these reasons, the Commission should reject the Complainants' allegations about the mile-a-minute in the transmission line right-of-way.

D. THE COMMISSION SHOULD DENY THE COMPLAINANTS' REQUSTED RELIEF

1. The Complainants' Requested Relief Is Unreasonable and Not in the Public Interest

In their Main Brief, the Complainants request the following on pages 39-40:

> a. Return topsoil removed from our property to construct the Pole 75 and Pole 76 crane pads.
>
> b. Replace native vegetation (huckleberry, blackberry, ferns, honeysuckle, mountain laurel, a Norway Spruce and white oak) destroyed by excavation activity beyond the prescribed excavation activity detailed in the original PPL E & S Plans Attachments 114 and 115, to include vegetation destroyed by excavation activity off the ROW.
>
> c. Remove rip-rap and revegetate the new Pole 75 access road, and re-establish the access road as depicted on the original PPL E & S Plans Attachments 114 and 115.

> d. Remove rip-rap dumped on top of the Pole 76 access road during the April 2020 claw-back procedure, and remove stone that has washed off the road as depicted in Hartman Exhibit 52.
>
> e. Construct a swale or water bar that prevents higher elevation neighboring property stormwater runoff from entering our property off the ROW as depicted in Hartman Testimony Exhibit A Paragraph 57, Photographs 19, 20, and 21 and Hartman Exhibit 52.
>
> f. Scarify the existing Pole 76 access road shoulder and add topsoil to return the shoulder to grade.
>
> g. Destroy the mile-a-minute that has overtaken our property above Pole 75 following the July 2021 herbicide application.
>
> h. Replace native vegetation (huckleberry, blackberry, and ferns) above Pole 75 and below Pole 76, and re-seed Pole 75 and Pole 76 grasses that were destroyed by the July 2021 herbicide application.
>
> i. Remove the rip-rap that is unsafe to walk or ride on, litters our property, and smothers and prevents vegetation necessary to protect our property from accelerated erosion.
>
> j. All disturbed areas must be restored consistent with PPL's own Restoration Standards as detailed in the E & S Plans, below:
>
> **AREAS WHICH ARE TO BE TOPSOILED SHALL BE SCARIFIED TO A MINIMUM DEPTH OF 3 TO 5 INCHES – 6 TO 12 INCHES ON COMPACTED SOILS -- PRIOR TO PLACEMENT OF TOPSOIL. AREAS TO BE VEGETATED SHALL HAVE A MINIMUM 4 INCHES OF TOPSOIL IN PLACE PRIOR TO SEEDING AND MULCHING. FILL OUTSLOPES SHALL HAVE A MINIMUM OF 2 INCHES OF TOPSOIL.**

(Hartman MB, pp. 39-40.)

At the outset, the Complainants' requested relief should be denied because the Complainants failed to meet their burden of proof that PPL Electric violated the Public Utility Code, a Commission regulation, a Commission order, or the Company's Commission-approved tariff. Indeed, unless PPL Electric violated the law, the Commission lacks the power to award

relief in a customer complaint proceeding.[12] Therefore, the Complainants are only entitled to relief if they establish that PPL Electric's activities within the transmission line right-of-way violated the Public Utility Code. Here, however, the Complainants failed to meet their burden of proof, as explained more fully in the Company's Main Brief and elsewhere in this Reply Brief. Thus, no relief can be granted to the Complainants.

In addition, the Complainants' requested relief would lead to unsafe conditions. As explained by PPL Electric witness Salisbury:

> 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 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.) Also, as explained by PPL Electric witness Eby, the Company constructed the access road the way it did "to help prevent erosion and stormwater runoff." (PPL St. No. 1, p. 21.) Indeed, "had the Company used a smaller type of stone on the sloped mountainside of Mr. Hartman's property, the erosion and stormwater run-off would be severe." (PPL St. No. 1, p. 21.) "In the end, the Company selected the best material to prevent erosion and stormwater run-off issues and . . . ensure the safety of its workers accessing the Company's facilities in this transmission line right-of-way." (PPL St. No. 1, p. 21.) Given that the Complainants have no

[12] *See West Penn Power Co. v. Pa. PUC*, 478 A.2d 947 (Pa. Cmwlth. 1984) (holding that the Commission could not grant relief to the customer complainants without a finding that the utility breached its duty under Section 1501 of the Public Utility Code); *Peoples Cab Co. v. Pa. PUC*, 137 A.2d 873 (Pa. Super. 1958) (finding that the Commission does not have the authority to regulate or control the management decisions of a utility absent a finding that the management decision would adversely affect the public); *Philadelphia Suburban Water Co. v. Feinstein*, 383 A.2d 997 (Pa. Cmwlth. 1978) (holding that the Commission may not allocate the amount of a disputed water bill between the utility and the customer where the complainant had not met its burden of proof).

formal training or experience with regard to the safety and construction of utility facilities, including potential erosion, the Commission should not grant the Complainants' requested relief that would create unsafe conditions. (*See* Tr. 46-52.)

Relatedly, the Complainants' requests for certain restoration activities are vague and should be denied. Should the Commission grant those requests, the Company would not have sufficient guidance to effectively pursue those restoration activities. For example, the Complainants request that the Company "replace native vegetation." (Hartman MB, pp. 39-40.) No specifics are provided on what would be deemed sufficient to "replace" the allegedly damaged vegetation. Similarly, the Complainants request that the Company "revegetate" the access road. Again, as explained by PPL Electric witnesses Eby and Salisbury, the constructed access road was pursued with safety as the Company's primary goal. (PPL St. No. 1, p. 21; PPL St. No. 2, p. 14.) Beyond not defining what "revegetate" would look like, the requested revegetation may entirely frustrate the safety considerations the Company had when constructing the access road in the first place. Moreover, without sufficient specificity as to how the Company could go about "revegetating" and replacing "native vegetation," PPL Electric would lack the necessary clarity to comply with the Commission's direction.

Additionally, to "[d]estroy the mile-a-minute" as requested by the Complainants, the Company would have to apply herbicides to the areas where mile-a-minute is present. (Tr. 642.) PPL Electric witness Stutzman explained that treating mile-a-minute that is on the ground is not a concern from an electric service reliability standpoint. (Tr. 642.) The times that PPL Electric treats mile-a-minute is when "it's consuming trees" and "growing up on things"; however, the Company does not target mile-a-minute when it is on the ground. (Tr. 642.) Applying herbicides to the mile-a-minute on the ground in the transmission line right-of-way would deviate from the

Company's vegetation management practices and require PPL Electric to incur unnecessary time and expense. Moreover, the bulk of the Complainants' vegetation management issues are with the application of herbicides. The Complainants offer no solutions on how to "destroy" the mile-a-minute without treating the areas with herbicides, which appears to run contrary to their herbicide claims and other requested relief.

Further, a significant portion of the Complainants' requested relief hinges on the Commission's interpretation and enforcement of the E&S Plans and Permit. As explained more fully in Section III.A, *supra*, the Company's compliance with the E&S Plans and Permit is beyond the Commission's jurisdiction and the scope of this remand proceeding and, therefore, the Commission cannot interpret or enforce PPL Electric's compliance with said E&S Plan. *See April 2020 Order*, p. 22. Also, much of the Complainants' requested relief would require the Company to develop a new E&S Plan and obtain a new E&S permit. (PPL St. No. 1, p. 22.) As noted by PPL Electric witness Eby, "[t]he approximate cost for developing a new E&S Plan and Permit would be around $30,000 and take approximately 10 months to develop and receive approval from the DEP." (PPL St. No. 1, p. 22.)

Lastly, by the Complainants' own admission, the Complainants never developed an estimate of the costs associated with their requested relief and never performed any analysis about the regulatory and legal approvals that would be required to institute such relief. (Tr. 61-62.) Without such analysis, it would be unreasonable to grant the requested relief.

Based on the foregoing, the Commission should deny the Complainants' requested relief.

2. To the Extent that the Commission Considers Imposing Civil Penalties for Any Alleged Violations, No Such Penalties Are Warranted

As explained previously, the Complainants failed to sustain their burden of proof that PPL Electric violated the Public Utility Code, any Commission regulation or order, or the Company's

Commission-approved tariff. Moreover, the Complainants do not request the imposition of civil penalties in their Main Brief. Nevertheless, assuming *arguendo* that the Complainants did sustain their burden of proof and that the ALJ and the Commission evaluate whether a civil penalty should be imposed, a civil penalty is not warranted under the circumstances of this case.

The Commission's policy statement at 52 Pa. Code § 69.1201(c) sets forth a series of factors (*i.e.*, the *Rosi*[13] factors) that the Commission considers in determining whether a civil penalty for violating a Commission order, regulation, or statute is appropriate and, if so, the amount of such penalty. *See* 52 Pa. Code § 69.1201(c)(1)-(10). Here, the *Rosi* factors weigh in favor of PPL Electric, and a civil penalty is not appropriate in this case.

First, the conduct was not of a "serious nature." *Id.* § 69.1201(c)(1). There was no willful fraud or misrepresentation. PPL Electric's employees and contractors merely pursued the Project in a manner that was consistent with the E&S Plans and Permit. Indeed, the DCCD would not have closed out the E&S Permit if material issues remained that were inconsistent with the Permit. (*See* PPL St. No. 1, p. 16.) And, at all times relevant to the Complaint, the Company pursued vegetation management in accordance with PPL Electric's "FAC-003 Transmission vegetation Program Document," the Company's "Specification for Transmission Vegetation Management," and the Company's "Herbicide Application Policy." (PPL St. No. 4, p. 14.)

Second the resulting consequences of the Company's conduct were not "of a serious nature." *Id.* § 69.1201(c)(2). The record demonstrates that there was no personal injury or material property damage, despite the Complainants' contentions.

Third, the conduct was not "intentional." *Id.* § 69.1201(c)(3). Indeed, if the Commission finds that a violation of the Code, a Commission Order, or the Company's approved-tariff

[13] *See Rosi v. Bell Atlantic-Pa., Inc.*, Docket No. C-00992409, 2000 Pa. PUC LEXIS 5 (Order entered Mar. 16, 2000).

occurred, the record is clear that, at all times relevant to the Complaint, the Company and its contractors acted consistent with the documents governing the Project. If a violation of the same is found, it certainly was not intentional.

Fourth, PPL Electric took several steps to try to address the Complainants' issues. As explained by PPL Electric witness Eby, the Company took the following steps in response to the Complainants' concerns: (1) "[r]elocating the temporary access road from outside of the right-of-way corridor to back within the right-of-way, rather than modifying the E&S Plans to reflect the new location of the access road outside of the right-of-way corridor"; (2) "[s]ending contractors out to the access road to reduce its width to approximately 15 feet"; (3) "[r]eplacing a boulder that Mr. Hartman believed was moved from his property during the construction of the Pole 76 crane pad"; and (4) "[m]eeting with Mr. Hartman on several occasions to hear his concerns and try to develop reasonable remedial actions." (PPL St. No. 1, p. 27.) Also, "[t]o the extent that Mr. Hartman has found any additional refuse remaining in the transmission line right-of-way," PPL Electric would dispatch "a crew to collect such refuse." (PPL St. No. 1, p. 27.) The Company also 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. (Tr. 583.)

Fifth, the Complainants were the only customers affected, as the dispute relates solely to the Company's construction and vegetation management practices within the Company's validly held transmission line right-of-way traversing the Complainants' property. *See id.* § 69.1201(c)(5).

Sixth, if a violation is found, the Commission should consider PPL Electric's strong compliance history. *See id.* § 69.1201(c)(6).

Seventh, there is no need for a civil penalty to deter future violations. *See id.* § 69.1201(c)(8). As noted previously, PPL Electric already has tried to address the Complainants' concerns. Further, if the Commission were ultimately to find a violation but not impose a civil penalty, PPL Electric would still take the steps necessary to help avoid any future violations.

Eighth, past Commission and appellate decisions in comparable cases warrant no civil penalty. *See id.* § 69.1201(c)(9). Indeed, in *West Penn Power Co. v. Pa. PUC*, 2019 Pa. Commw. Unpub. LEXIS 532 (Pa. Cmwlth. 2019), the Commonwealth Court reversed an Order of the Commission requiring an electric distribution company to forego herbicide application on the complainant's property, holding that "Complainant offered nothing more than his personal opinion in seeking to establish his burden that West Penn's proposed herbicide use would harm his property and was, thus, unreasonable." *Id.* at *24. Here, as explained previously, the record shows that PPL Electric has performed all vegetation management and construction work in accordance with the relevant governing documents. Moreover, the Complainants offered nothing more than layperson evidence to dispute otherwise.

Ninth, the Commission should consider other relevant factors. 52 Pa. Code § 69.1201(c)(10). At all times material to this proceeding, PPL Electric has acted in good faith. The Company engaged in "good faith discussions with Mr. Hartman" and "responded to over 75 separate discovery requests and produced nearly 700 pages of documents." (PPL St. No. 1, p. 24.) "And, when PPL Electric discovered additional materials responsive to the requests, the Company supplemented its discovery responses." (PPL St. No. 1, p. 24.) Although the Complainants may

disagree, PPL Electric has tried to be responsive to the Complainants' concerns both before and during this litigation.

Based on the foregoing, if the Commission were to find a violation, the Commission should not impose a civil penalty on PPL Electric.

E. THE COMPLAINANTS' MAIN BRIEF SETS FORTH EXTRA-RECORD EVIDENCE THAT SHOULD BE STRICKEN AND DISREGARDED

In their Main Brief, the Complainants improperly attempt to introduce and rely on several items extra-record evidence. As some examples, the Complainants assert that "[i]t is common knowledge that most heavy motorized equipment accidents occur on winding roads" and that "[i]t stands to reason that a 27-ton concrete truck is much more likely to topple-over on a 'switchback' than on a straight access road like the original Pole 75 access road on the Wech property." (Complainants MB, p. 24.) These and the other instances of extra-record evidence are conspicuous in the Complainants' Main Brief, as they are not accompanied by any citations to the record.

It is well-established that parties cannot present new evidence at the briefing stage.[14] Accordingly, extra-record evidence in briefs is commonly stricken[15] because including extra-record materials in a party's brief "brings up hearsay problems and problems associated with the right to respond to evidence."[16]

---

[14] *See, e.g., Pa. PUC v. Nat'l Fuel Gas Distrib. Corp.*, 1993 Pa. PUC LEXIS 95, at *7-10 (Order entered July 30, 1993); *Petition of the Borough of Cornwall for a Declaratory Order*, 2016 Pa. PUC LEXIS 3, at *24-26 (Jan. 6, 2016) (Recommended Decision), *adopted as modified*, Docket No. P-2015-2476211 (Order entered Aug. 11, 2016); *see also* 66 Pa. C.S. § 332(c).

[15] *See, e.g., Trucco v. PPL Elec. Utils. Corp.*, 2002 Pa. PUC LEXIS 21, at *5 (Order entered Mar. 29, 2002) (noting that ALJ Paist "struck those portions of the Complainants' Main Brief which referenced extra-record evidence, including those various exhibits attached to that Main Brief"); *Application of Kenneth Scott Cobb, t/a Kennys Transp. Serv.*, 2012 Pa. PUC LEXIS 1802, at *24 (Nov. 16, 2012) (Initial Decision) (granting motion to strike the applicant's brief "for attempting to introduce new facts and documents into evidence not previously offered or admitted into the record at the hearing of September 5, 2012"), *became final without further action*, Docket No. A-2011-2280175 (Order entered Jan. 7, 2013); *see also* 52 Pa. Code § 5.501(a)(2) (stating that briefs must contain "[r]eference to the pages of the record or exhibits where the evidence relied upon by the filing party appears").

[16] *Pa. PUC v. Pa. Power & Light Co.*, 1995 Pa. PUC LEXIS 190, at *232 (July 28, 1995) (Recommended Decision) ("*PP&L*").

Here, the Complainants' extra-record evidence was introduced for the first time in their Main Brief. By waiting until the briefing stage to present this evidence, the Complainants denied PPL Electric an opportunity to review and inspect that evidence, to cross-examine witnesses about that evidence, and to present evidence in rebuttal. Therefore, it would violate PPL Electric's due process rights for any findings of fact to be based upon or influenced by the Complainants' extra-record evidence. Also, the Complainants failed to demonstrate any good cause for the admission of such evidence after the record closed or any material changes in fact or law that would warrant reopening the record. *See* 52 Pa. Code §§ 5.431, 5.571. Thus, although PPL Electric has decided not to burden this court with the time and expense of ruling on a Motion to Strike the portions of the Complainants' Main Brief, the ALJ and Commission should not rely on the Complainants' extra-record evidence to make any findings in this proceeding.[17]

[17] *See PP&L*, 1995 Pa. PUC LEXIS at *232; *Petition of Pa. Power Co. for Approval of Interim POLR Supply Plan*, 2006 Pa. PUC LEXIS 56, at *3 (Order entered Apr. 28, 2006) (observing that "ALJ Gesoff ignored Reliant's Reply Brief, due to the extra-record evidence contained within").

IV. CONCLUSION

WHEREFORE, as explained above and in PPL Electric Utilities Corporation's Main Brief, the Company respectfully requests that Administrative Law Judge Steven K. Haas recommend and the Pennsylvania Public Utility Commission issue an Opinion and Order denying the Formal Complaint of Michael and Sharon Hartman in its entirety and with prejudice.

Respectfully submitted,

Michael J. Shafer (ID # 205681)
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Phone: 610-774-2599
Fax: 610-774-4102
E-mail: mjshafer@pplweb.com

Devin T. Ryan (ID #316602)
Post & Schell, P.C.
12th Floor, 17 North Second Street
Harrisburg, PA 17101-1601
Phone: 717-612-6052
Fax: 717-731-1985
Email: dryan@postschell.com

Nicholas A. Stobbe (ID #329583)
Post & Schell, P.C.
12th Floor, 17 North Second Street
Harrisburg, PA 17101-1601
Phone: 717-612-6033
Fax: 717-731-1985
E-mail: nstobbe@postschell.com

Of Counsel:

Post & Schell, P.C.

Date: March 30, 2023

Attorneys for PPL Electric Utilities Corporation