BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Michael and Sharon Hartman	:	
	:	
v.	:	C-2019-3008272
	:	
PPL Electric Utilities Corporation	:	

HARTMAN (COMPLAINANT) REPLY BRIEF

Overview of PPL Brief

1. PPL's Brief revolved around two common themes, each erroneous. One, that the Hartman property between Pole 76 and Pole 75 was the only steep mountainous terrain found on the project, and two, the National Park Service was the only landowner that received favorable discriminatory service.
2. PPL has chosen to ignore the fact that most of the project traversed mountainous terrain, some steep, and that PPL did not install unplanned switchbacks and use rip-rap to cover access roads and crane pads on any other portion of the project, private or public. Thomas Eby, in fact testified on cross that the project included many slopes steeper than the Hartman property. Neither Eby nor Salisbury, however, could identify a single instance where switchbacks or rip-rap were utilized in the same manner on any other property within this project, private or public.
3. PPL's Brief failed to address Hartman Exhibit 50 which compares the access road constructed on Hartman property versus the access road constructed due east on neighboring private Wech property. The Pole 74 and Pole 73 access road is situated at the same level of the mountain and with the same relative slope as the Hartman property.

The Pole 74 and Pole 73 access road was not constructed with rip-rap and does not include excessively wide and deep shoulders like the shoulders PPL constructed on the Pole 76 and Pole 75 access road on our property.

4. Likewise, PPL failed to address Hartman Testimony Exhibit A Paragraphs 111 and 112, Photographs 54 and 55, Paragraph 121, Photograph 71 and Paragraph 135, Photographs 80 and 81 which compare compatible vegetation, largely ferns, blackberries, and huckle berries, that were sprayed and destroyed on Hartman property versus unsprayed and vibrant ferns, blackberries, and huckle berries among incompatible birch saplings on adjoining private Wech property above Pole 75. PPL likewise failed to address Hartman Exhibit 34 which reflects that PPL hand-cut vegetation on Rosewarne property while it applied deadly herbicides to Hartman property. Is PPL suggesting that adjoining private property on the same ROW on the same access road is subjected to different two-year cut and spray cycles?
5. We concede that we are no match for PPL and PPL's superior and unlimited legal resources. We can't recruit witnesses, much less cajole them to swear that the manufactured evidence or legal opinions of the unidentified authors are factual. We cannot and would not cajole a witness, like Salisbury, to swear that it is appropriate to seize a landowner's valuable mountain stone and topsoil for the use and enrichment of PPL.

PPL Wrote Page 20

6. 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."[1] (PPL St. No. 2, p. 7.)

7. I trust your Honor finds it ironic, as we do, that PPL/Salisbury cited the E & S Plan, the same document Salisbury testified was "ambiguous" and PPL successfully moved to be stricken from our exhibits, as justification for seizing and not returning our valuable mountain stone and topsoil. First, I haven't seen any verbiage in the PPL E & S Plan that references the removal of topsoil and mountain stone from one property owner to support construction activity on the property of a second property owner or supports the seizure of valuable personal property for PPL's use and enrichment. Second, even if PPL's E & S Plan promoted the seizure, that doesn't make PPL's seizure and conversion of our property lawful or reasonable. Finally, if it is reasonable and lawful for PPL to seize and convert our property to PPL property, then why did PPL insert the false statement that PPL segregated and secured Hartman and Wech property during the construction process in the Salisbury rebuttal statement?
8. We would never cajole a Forester, like Stutzman, to swear that the proliferation of an invasive noxious weed reflected the green up of our property or the resurrection of destroyed blackberries and huckle berries. Nor would we cajole a Forester to swear that herbicides, clearly labeled as destructive to grasses, were not designed to destroy grasses. Remarkably, PPL stuck to this false statement in the PPL Brief even though their witness, Stutzman, testified to the opposite during cross examination.

PPL Wrote Pages 35

9. 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.)

Excerpt from Salisbury Cross Examination		
Page Number	Question	Answer
551	Well Mr. Stutzman, isn't it correct that two of the three herbicides are reported as destructive to grasses, and particularly unestablished grasses of less than 2 years. Is that correct?	If used to certain concentrations, then yes.

PPL Wrote Pages 35 and 36

10. 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.

11. The bottom line, the July 16, 2021, herbicide application killed grasses as depicted in Hartman Testimony Exhibit A Paragraphs 104, Photographs 45 – 47, and Paragraph 113 and 114, Photographs 56 and 57, and Hartman Exhibits 29, 30, 31 and 55. The proliferation of an invasive noxious weed, mile-a-minute, particularly above Pole 75, dooms compatible native vegetation on our property for many years to come, Hartman Exhibit 30 (July 25, 2022 Photographs) and Hartman Exhibit 33 (University of Connecticut research paper). J. Mehrhoff, the papers author, accurately described the

proliferation and danger of mile-a-minute on our property as follows: "Mile-a-minute weed (Persicaria perfoliata) is a vigorous, barbed vine that smothers other herbaceous plants, shrubs and even trees by growing over them. Growing up to six inches per day, mile-a-minute weed forms dense mats that cover other plants and then stresses and weakens them through smothering and physically damaging them. Sunlight is blocked, thus decreasing the covered plant's ability to photosynthesize; and the weight and pressure of the mile-a-minute weed can cause poor growth of branches and foliage. The smothering can eventually kill overtopped plants." Also, "Mile-a-minute weed is primarily a self-fertile plant and does not need any pollinators to produce viable seeds. Its ability to flower and produce seeds over a long period of time (June through October) make mile-a-minute weed a prolific seeder. Seeds can be viable in the soil for up to six years and can germinate at staggered intervals."

12. I was disappointed to learn via the PPL Brief that we are not entitled to PPL's "best possible service", and that PPL can discriminate against us if PPL determines that the discrimination is reasonable. Furthermore, PPL has made it clear that they can do anything they wish on our property, not only on the Right of Way, but also 12 or 20 feet off the Right of Way, under the pretext of safety. And PPL, to include a PPL non-engineer, Salisbury, can override an E & S Plan and the opinion of a Professional Engineer without defined or documented safety conditions. PPL has not presented any evidence that the E & S Plan author, a Professional Engineer, did not complete a field visit in preparation of the E & S Plan.
13. Even if PPL's departure from the E & S Plan to destroy vegetation and remove topsoil to construct an unplanned access road on our property was appropriate for safety reasons, it

was inappropriate and unreasonable for PPL to excavate, destroy vegetation and remove topsoil and mountain stone west of the Pole 75 access road and 12 to 20 feet off the Right of Way. Particularly when the seized topsoil and mountain stone was utilized by PPL to construct the Pole 75 crane pad and was never returned. Likewise, it was not appropriate for PPL to deeply excavate our sod covered logging road and seize our large landscape quality mountain boulder to construct the Pole 76 crane pad, Hartman Testimony Exhibit A Paragraph 7 Photograph 1. PPL did not install an unplanned access road on our property for safety reasons as manufactured by PPL counsel. PPL destroyed vegetation and seized our topsoil and mountain stone to gather free construction material.

14. Which leads us to Restoration, a subject which is conspicuous by its absence in the PPL Brief. PPL's undisputed failure to return our topsoil and mountain stone and restore the needlessly destroyed native vegetation and logging road is sufficient evidence of unreasonable service. Impassable newly constructed high walls above the Pole 76 and Pole 75 crane pads, along with excessively wide, deep and unvegetated road shoulders reflect not only unreasonable and unsafe service, but also a dismal quality of service. A quality of service that falls unreasonably short of "best possible service".

Quality of Service

Page 19 of the Commission's Order

15. The Complainants have alleged, *inter alia*, that PPL's agents had taken portions of their landscaping for purposes of construction and made several misrepresentations regarding the construction timeline and post-construction property restoration. If proven, these allegations would constitute a violation of Section 1501 of the Code. PPL's construction efforts fall plainly in our broad definition of service discussed above. It is well-settled that we are not only permitted to analyze the "reasonableness" of PPL's service, but also

the **quality** (emphasis added) of that service. Therefore, we determine that on remand, the ALJ should evaluate the evidence provided by each of the parties that informs the issues of the **quality** (emphasis added) and reasonableness of PPL's construction efforts.

We submit that the below listed Hartman Exhibits and Hartman Testimony Exhibit A Photographs depict unreasonable and substandard quality of service:

1. Unrestored alterations of the natural slope of our property as depicted in Hartman Testimony Exhibit A Paragraphs 7 and 8, Photographs 1 and 2.
2. A rough, jagged, and dangerous rip-rap topped access road depicted in Hartman Testimony Exhibit A Photographs 4, 10 and 11 vs. a smooth smaller stone topped access road depicted on private Wech property, Hartman Exhibit 50, and private property on the north side of Peters and Stoney Mountains, Hartman Exhibits 53 and 56.
3. The dangerous unrestored high access road shoulders depicted in Hartman Exhibit A Photographs 8, 9 and 13 (Paragraph 50).
4. The deplorable claw-back activity depicted in Photograph 13 (Paragraph 50) that extended the entire length of the Pole 76 and Pole 75 access road which created excessively wide, deep, compacted and unvegetated shoulders and an access road topped by loose and jagged rip-rap.
5. PPL needless and careless excavation and destruction of vegetation off the Right of Way as depicted in Hartman Exhibit A Photographs 5 and 7, and Hartman Exhibit 47.
6. The needless and wasteful destruction of native ferns, blackberries and huckle berries during the overzealous construction, Hartman Exhibit 47, and abysmal restoration efforts that resulted in invasive noxious weeds and anemic grasses.
7. The uncourteous behavior of excavating large rocks from their natural location and haphazardly discarding those rocks in a manner that limited access and use of our property as depicted in Hartman Testimony Exhibit A Paragraph 70, Photograph 29 and Hartman Exhibit 47. Salisbury testified in sum and substance that PPL could not be troubled to return the rocks to their original location. We don't have the equipment to return the rocks to their original location. Please imagine PPL, or any contractor, demonstrating the same lack of respect for someone's backyard, particularly if the owner of that backyard happened to work for PPL, the PUC, or some other regulator.

8. The degradation of the poorly designed and constructed Pole 76 and Pole 75 access road and accelerated erosion of foreign material, including herbicides, as depicted in Hartman Exhibit A Photograph 75 and 76 and Hartman Exhibit 52.
9. The discarded personal litter, construction containers, and rip-rap depicted in Hartman Testimony Exhibit A Photographs 13 (Paragraph 43) and 31, and Hartman Exhibit 26.
10. The resurfacing of rip-rap on the Pole 76 and Pole 75 crane pads as depicted in Hartman Testimony Exhibit A Photographs 15 and 16 and Hartman Exhibit 35 versus quality construction and vegetation management activity on an NPS Lands crane pad, Hartman Exhibit A Photograph 17, and private lands, Hartman Exhibits 50, 53 and 56.
11. The indiscriminate destruction of compatible vegetation by herbicides in contradiction of PPL's own Vegetation Management Guidelines as depicted in Hartman Exhibit A Photographs 41 – 45, 50, 53, 54, 56, 57, 70, 77, 78 and 80.
12. The careless destruction of Pole 75 grasses as depicted in Hartman Exhibit A Photographs 45 - 47, and 66 and Hartman Exhibit 55.
13. The destruction of grasses, blackberries, huckle berries, ferns and other compatible vegetation on our property and the proliferation of an invasive noxious weed as depicted in Hartman Exhibits 28, 29, 30 and 31, and described in Hartman Exhibit 33.
14. PPL's failure to properly ascertain our property line as depicted in the PPL E & S Plans, PPL Electric Exhibit TE – 1 Attachments 114 and 115, and Hartman Testimony Exhibit A Paragraph 29.
15. PPL's failure to identify us as the owners and contact for Vegetation Management activity on our property as depicted in Hartman Exhibit 34 and notify us of the impending herbicide application.

PPL's rests its case on a non-engineer

PPL Wrote, Pages 5 and 6:

16. 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.) 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.

17. It is undisputed that Salisbury/PPL did not follow the Professional Engineer's, Scott's, design drawings for the Pole 76 and Pole 75 access road and crane pads. Without authorization by the DCCD and PA DEP, Salisbury/PPL departed from the filed E & S Plans. PPL waited one year to file PPL's unsupported and unauthorized variance with the DCCD.

18. 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.)

19. Again, PPL's paid Professional Engineer, Scott, not Salisbury, is qualified to make the determination allegedly made, but not documented, by Salisbury. It defies logic that

modern best in its class 2018 cement trucks cannot safely navigate the exiting access road that was navigated during the 1950s by inferior equipment. Concerning PPL's continued reference to our "steep mountainside", I, on numerous occasions, navigated the original access road via tractor, lawn mower and pick-up truck. The terrain between Pole 76 and Pole 75 can best be described as rolling or gentle mountainside terrain. I have personally operated tractors and implements, including balers and hay wagons, on steeper sloped fields on our Dauphin County family farm.

20. Salisbury and PPL have failed to specify any verifiable condition that existed in the "field" to justify any departure from the E & S Plan. If the Professional Engineer never visited the approximate three-mile project, as implied, then we suggest the lack of due professional care, and the entire E & S Plan is suspect. Also, as argued previously, our case does not rest on the construction of a new road, but rather the unreasonable destruction of erosion deterrent vegetation, and the harvest and improper disposal of our topsoil and mountain stone incident to access road construction. Each a departure from the E & S Plan and recognized best management practices to deter accelerated erosion.

21. We submit that the use of rip-rap as a road-top and crane pad cover, itself, violated the best management practices detailed in the E & S Plans and construction practices generally. Your Honor's attention is invited to Hartman Exhibit 37. Per Wikipedia, "Riprap is human-placed rock or other material used to protect shoreline structures against scour and water, wave, or ice erosion. Ripraps are used to armor shorelines, streambeds, bridge abutments, foundational infrastructure supports and other shoreline structures against erosion." We don't have to rely on Wikipedia. In our collective experience, has anyone ever chosen to construct a driveway topped with rip-rap? Has anyone ever chosen to cover

their future lawn or farm field with rip-rap, and then grind the rip-rap into the soil and overseed? I testified that in 25 years, including December 2018 during PPL's construction activity, I never observed that the existing or under-construction PPL access road was muddy or rutted. It is much more likely that a PPL contractor, whose identity was withheld during Salisbury's testimony and by PPL counsel during discovery, had a ready supply of rip-rap. And the contractor decided to discard the rip-rap on our property as a substitute for finer and more expensive stone. How else can one explain the construction of a 24 feet wide road when the E & S Plan called for a 15 feet wide road. We submit that the application of rip-rap as a road cover itself reflects unreasonable, unsafe and unreliable service. There is no wonder why both Eby and Salisbury could not identify a single application of rip-rap on any of the reported 179 properties associated with this project.

22. Below, please find excerpts from the cross examination of Salisbury. We submit that Salisbury is not the expert or resource PPL has held him out to be. Salisbury could not identify the contractor that made the decision to construct the 24-foot road or the switchback. We respectfully suggest that Salisbury was a malleable figurehead witness.

Excerpts from Salisbury Cross Examination		
Page Number	Question	Answer
94	Mr. Salisbury, were you present when the road was constructed?	I was present at certain times. I was running a lot of jobs at the time throughout the entire project so I was not always present ever minute of the workday. But I was there at your property when the road was being built and throughout that project.
95	Who was responsible for making the decision, for example, a 24 foot rod versus a 15-foot road, the buying of construction materials to use? Who else made that decision?	We had an E & S Plan that was ambiguous in the way of, you know, certain things that happened that you find when you get to a location need to be changed on the ambiguous plans that they have. As long as we stayed within the LOD, we were good. Those decisions are typically made by the contractors performing the work with the approval of myself and Mr. Eby.
99		Salisbury was not sure if Eby was present when the road was constructed
100		Does not know the name of the contractor that made the decision that PPL had to install switchbacks.
102	Well, since you brought that question up, can you point to any other place on Peters Mountain south side or north side where you have riprap on the top of an access road other than our property?	I do not. I do not recall.
111		I do not believe we put any switchbacks on the North Side of Peters mountain,
112	Do you see any riprap on the access road on the north side of the Peters Moutain?	I do not see what looks like some native rock, maybe No. 2.
114		And as I recall, sir, we came to your property and tried to put down topsoil, but appeared not enough to appease the needs that you had. I mean, that was an additional cost, you know, that was incurred on the project to try to, you know, help remedy with the landowner.
116		After hearsay objections PPL stipulated that the company did not truck in topsoil to our property. Salisbury's statement, above, was false
128	At the time that you were on the property doing the construction, did you believe that we - the Hartman's owned the entire wide of right-of-way in the limit of destruction?	I'll be honest, your honor, you know, I don't often consider the names, sir, anything of the people that, you know, own these property lines, that is something that's more of a right-of-way issue. You know, in construction we stay focused on safety, reliability and falling in line with what we need to do as far as the environmental controls like the limited disturbance.
152	You wouldn't take a farmer's crop of corn, would you, to build a crane pad?	I wouldn't consider it very safe.

Crane Pad Restoration

PPL Wrote Page 21

23. 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.)

24. The fallacy of "Salisbury's" statement is best evidenced by Hartman Exhibit A Photograph 17 and Hartman Exhibits 53 and 56 which depict crane pads that were either reduced/restored or originally constructed on private and NPS Lands to match the natural slope of the mountain. Each crane pad was constructed at the relatively same level and grade as the Pole 76 and Pole 75 crane pads, Hartman Exhibit A Photographs 1 and 2, and Hartman Exhibit 35.

25. William Salisbury, at the time unidentified during informal discovery conversations with PPL counsel, failed to accompany PPL contractors during their PPL sanctioned April 2019, visit to our property to discuss PPL construction and restoration activity. Why didn't PPL's purported Construction Supervisor attend the meeting? Had Salisbury attended the meeting his testimony would have changed dramatically. I would have confronted Salisbury, in person and on-site, with the excessive size of the Pole 75 and Pole 76 crane pads versus other crane pads on private and NPS Lands on Peters Mountain. Likewise, I would have confronted him with fresh evidence that the crane pads were constructed with our topsoil and mountain stone excavated from the new

access road, and off-limit property on the west side of the ROW, and beyond, Hartman Exhibit 47.

26. PPL counsel must be commended for their incredible guile. PPL counsel knowingly sacrificed contractors, that they knew would never cooperate with, nor testify for, us, in exchange for a shielded employee, Salisbury, that never answered a single interrogatory, and that would testify as coached and directed. Not a bald assertion, but rather a professional opinion from a career law enforcement officer that has been played by PPL counsel for the past four years. PPL counsel that offered, then reneged on their promise to present the contractors at the Hearing, and available for cross examination.

27. I have repeatedly asked PPL counsel "why?", "what have we ever done to PPL?" The question has never been answered. I doubt it ever will.

PPL wrote Pages 23 and 24

28. 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,[2] 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.)

29. There is no evidence that Salisbury observed the pre-existing Pole 75 access road. One sure give-away that he had not was his description of the sod-covered logging road I personally

mowed and managed as a “dirt path”. Under no stretch of the imagination could a loose, jagged, rip-rap topped access road be smoother than the pre-existing un-stoned partially vegetated access road and sod covered logging road. I personally navigated the original access road via foot, walk behind and riding lawn mowers, tractors, and a pick-up truck on numerous occasions from 1997 through 2018, pre-construction. Salisbury’s “purported” statement that the road is smoother now than prior to construction is another example of PPL counsel’s manufactured false testimony that a PPL employee, Salisbury, swore was true.

Hartman Testimony Exhibit A Photograph 10

Hartman Testimony Exhibit A Photograph 27

30. Again, had Salisbury attended the April 2019 meeting at our property, I would have confronted him with the fact that PPL topped the Pole 75 and Pole 76 crane pads with jagged rip-rap, unlike all the other crane pads and access roads on private property and NPS Lands on Peters Mountain, Hartman Exhibits 50, 53 and 56. Salisbury's testimony in this matter would have changed dramatically. Precisely why we requested an in-person Hearing, preferably an on-site Hearing.

PPL Wrote

31. 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.) (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.)

32. There is no evidence that Salisbury observed the access road post construction, December 2018, or after April 2020. The access road is not "consistent" with the due east access road

constructed on neighboring private property, Hartman Exhibit 50. Eby and Salisbury, on cross examination, could not identify a single similarly situated access road on the entire project that was topped with loose, jagged rip-rap. I personally navigated the original access road via foot, walk behind and riding lawn mowers, tractors, and a pick-up truck on numerous occasions from 1997 through 2018, pre-construction. Salisbury's statement is false.

33. During 2021, PPL Counsel Kim Krupka, accompanied by PPL employee Thomas Eby, visited the powerline. Kim Krupka, a self-reported hiking enthusiast, gingerly navigated the access road using her umbrella as a walking stick and her other hand steadied by Thomas Eby, Hartman Exhibit A Paragraph 22, an eyewitness account. The opinion of access road safety was best addressed by a second eyewitness, Sharon Hartman. Sharon Hartman testified "Yes. I have walked on them and I have slipped a few times and I just don't do it anymore because I am afraid I will break an ankle or break a bone", Page 80 of transcript. Sharon further testified that our daughters and grandchildren are forbidden to hike or ride anything on the ROW due to the unsafe rip-rap covered access road. Of greater danger is the rip-rap that has been haphazardly scattered off the access road, and concealed by invasive noxious weeds and vines, Hartman Exhibits 31 and 36.

July 16, 2021 Herbicide Application

PPL Wrote Footnote 35

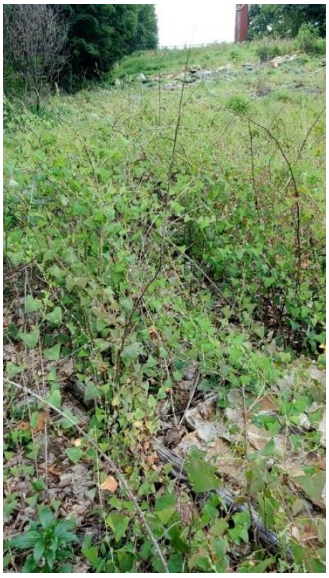
34. The state of the incompatible vegetation that was not removed by the Complainants within the right-of-way can be seen in PPL Electric Exhibit MS-4, which shows the three areas that were treated with herbicides. (PPL St. No. 4, p. 12.)

35. The incompatible vegetation depicted on PPL Electric Exhibit MS-4, the second photograph, is located on the eastern half of the Right of Way, the private property of Douglas Wech. The first photograph, facing north, does not depict a single piece of incompatible vegetation on our property above Pole 75. The third photograph, facing south, does not depict any incompatible vegetation on our property below Pole 76. We submit that Stutzman, the PPL contractor, and PPL counsel, could not and has not identified any incompatible vegetation on our property to justify the indiscriminate and unreasonable July 16, 2021, herbicide application. Furthermore, had PPL afforded us due notice of the herbicide application we could have and would have managed all incompatible vegetation situated on the entire Right of Way property of Hartman, Wech and Rosewarne in a single 24-hour period.

Hartman Exhibit A Paragraph 106 Photograph 48 Blackberries and Ferns, depicts no incompatible vegetation above Pole 75 on June 4, 2020. During October 2020, I personally destroyed any birch saplings on our property above Pole 75.

Hartman Testimony Exhibit A Paragraph 108 Photograph 50 – Skeletal remains of Blackberries and Ferns above Pole 75 on September 9, 2021

Hartman Exhibit 30 Blackberry skeletal remains engulfed by mile-a-minute July 25, 2022



PPL wrote Page 32

36. 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,

37. PPL's representation concerning the quantity of herbicide application is second- or third-party hearsay, is undocumented and patently unreliable. More important than the quantity, however, is the strength of the mixture. As revealed during cross examination, Stutzman and PPL never identified or debriefed the Penn Line employee or contractor that administered the herbicide. Accordingly, Stutzman/PPL has no idea of the quantity and strength of the herbicide applied, much less the application method.

PPL wrote Page 36:

38. 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 36 25275679v2 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.)

39. PPL's promised Vegetation Management activity notice, above, reflects reasonable and safe service. Conversely, PPL's July 2021 failure to provide notice, due either to a software glitch or careless contractor, was unreasonable and unsafe.

40. Page 2 of the Nufarm Polaris Herbicide Label, PPL Electric Exhibit MS -11, under "Directions for Use": "It is a violation of Federal Law to use this product in a manner inconsistent with its labeling. Do not apply this product in a way that will contact workers or other persons either directly or through drift. Only protected handlers may be in the area during application." It was unconscionable, unreasonable, and unsafe for PPL/Penn Line to apply herbicides on our property without notice. The label also warns the applicator as follows: "Do not use on food crops or Christmas Trees." PPL/Penn Line applied the herbicides directly to blackberries and huckle berries. Blackberries that were ripening, Hartman Exhibit A Paragraph 107 Photograph 49.

PPL wrote Page 37

41. 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.)

42. First, Stutzman was not present when the herbicide was applied. Second, a photograph is worth a thousand words. We presented dozens of photographs which depicted herbicide runoff, drift, and blanketed destruction, to include Hartman Exhibit A Photographs 58, 59, and 76. Photographs 58 and 59, taken by me within days of the herbicide application, depicted the destruction of huckle berries situated off the Right of Way by direct application or drift. Stutzman's undocumented findings, eleven months after the herbicide application, are without merit. PPL stated, above, 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.) The statement further demonstrates PPL's desire not to let the truth get in the way of a good cover-up. First PPL has not identified any "targeted" incompatible vegetation on our property. Second, PPL's statement suggests that the herbicides that destroyed ALL vegetation on our property above the Pole 75 crane pad (Hartman Exhibit A Photographs 45, 66, and 70), most of the grasses on the Pole 75 crane pad (Hartman Exhibit A Photographs 46 and 47), a swath of grasses below the three blackberry canes on the Pole 76 crane pad (Hartman Exhibit A Photographs 56 and 57), the weeds on the Pole 76 access road shoulder (Hartman Exhibit A Photographs 41, 73 and 74), and the brush on our property below Pole 76 (Hartman Exhibit A Photographs 42, 43, 44, and 76), without ever touching the ground. Remarkably, an individual that PPL identified as a Forester, Stutzman, swore that the false statement was true.

Reply to PPL Alleged "Statement of the Case"

PPL wrote:

43. 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.

44. PPL failed to disclose that despite numerous 2019, 2020 and, 2021 informal and formal discovery requests, PPL never identified William Salisbury, or any PPL employee for that matter, that actively participated in the construction, or supervision of the construction, of the Pole 76 and Pole 75 crane pads and access road. Furthermore, PPL failed to produce or present any emails, notes, memoranda, reports, logs, diary entries or work orders to corroborate Salisbury's testimony. We had no idea of Salisbury's role or testimony until we received the Salisbury rebuttal statement in or about July 2022, nearly three- and one-half years after our formal complaint was filed. Salisbury's uncorroborated testimony, particularly considering the material misstatements revealed during cross examination, must be reviewed with great skepticism.

PPL wrote:

45. 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.

46. PPL is aware that on May 18, 2022, we sent copies of our subpoena requests, including the identify of witnesses and documents requested, to each of the subcontractors; Burns and McDonnell, MJ Electric, Newville Construction Services, Contract Land Services, Penn Line and ECI. PPL counsel is aware that PPL directed each subcontractor not to cooperate with us in any manner, and that the subcontractors complied with PPL's directive.

Summary

47. PPL's case is built on the testimony of employees whose next paycheck is contingent on conformity. More importantly, PPL testimony, largely dictated by PPL counsel, is uncorroborated. PPL expects the PUC to rule that PPL's actions on our property were reasonable and non-discriminatory because PPL counsel said they were reasonable and non-discriminatory.
48. Our testimony, however, is corroborated. Corroborated by dozens of photographs which depict the overreaching and unreasonable destruction of our private property in a manner that has made our property unsafe and vulnerable to accelerated erosion.
49. Our property has not been restored. Topsoil necessary for the development and maintenance of erosion deterrent vegetation is buried under the Pole 76 and Pole 75 crane pads along with our mountain stone. Not a single huckle berry or blackberry survived the one-two punch of PPL's unreasonable construction and herbicide activity. Native vegetation that took decades to develop, flourish and bear fruit, was wiped out for the sake of corporate expediency. If PPL had demonstrated only a modicum of respect for

our property, its native vegetation, topsoil, and mountain stone, PPL would have saved ratepayers and PUC countless resources. We certainly have better things to do than bear the burden of PPL's greed. If PPL is looking for a victim, I respectfully suggest they look elsewhere.

50. PPL has suggested that Your Honor accept the uncorroborated proclamations of paid PPL Counsel. We respectfully request that Your Honor evaluate the unwarranted and unreasonable destruction of our property. Our witnesses are the exterminated never to return native vegetation, the seized and unreturned topsoil and mountain stone, and the excessively wide, deep, and unvegetated access road shoulders. Please order PPL to restore our property as referenced in our original Brief.
51. Please consider PUC sanctions and fines for the unreasonable, unsafe, and bad faith activity referenced in our Brief and Reply Brief. Please forward our Brief and Reply Brief to the appropriate Department or Agency for further investigation. Please identify the anonymous authors of the numerous false and imaginary statements attributed to Salisbury and Stutzman. It is our desire that these individuals be prohibited from imposing the same deplorable tactics and discovery irregularities on future PUC Complainants.

March 30, 2023

Secretary
PA Public Utility Commission
Commonwealth Keystone Building
2nd Floor, Room – N201
400 North Street
Harrisburg, PA 17120

Subject: C-2019-3008272 Michael and Sharon Hartman v. PPL

Complainant Reply Brief

Dear Secretary,

I hereby certify that on or about March 30, 2023, I served a true copy of our Reply Brief upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party) via email.

Honorable Steven K. Haas
Administrative Law Judge
PA Public Utility Commission

Devin Ryan, Esquire
Nicholas Stobbe, Esquire
Post and Schell
dryan@postschell.com
nstobbe@postschell.com

Michael Hartman

Dated this 30th day of March 2023