

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

A customer of an electric distribution company (EDC) filed a Formal Complaint against the EDC alleging that the company abused its right-of-way through the customer's property during a transmission line rebuild project, causing damage to the customer's land and vegetation on the property. This Initial Decision sustains in part and dismisses in part the Formal Complaint and, with respect to the sustained allegations, orders remedial action by the EDC.

HISTORY OF THE PROCEEDING

Complainants Michael and Sharon Hartman filed a Formal Complaint (complaint) against PPL Electric Utilities Corporation (PPL) in March of 2019. The gravamen of the complaint is that PPL abused its right-of-way through the Hartman's property, causing damage to their land and vegetation when performing the company's Halifax-Dauphin 69 KV Transmission Line Rebuild Project (Project). PPL filed its Answer to the Complaint on March 25, 2019. This proceeding was originally assigned to Administrative Law Judge Andrew Calvelli. It was subsequently reassigned to me.

On June 27, 2019, PPL filed a Motion for Summary Judgment in which it requested that the complaint be dismissed as outside of the Commission's jurisdiction. PPL argued essentially that the complaint involved the interpretation and enforcement of a private, contractual right-of-way agreement between the parties. The Hartmans filed an Answer to PPL's Motion on July 15, 2019.

By Initial Decision dated October 4, 2019, Judge Calvelli granted PPL's Motion and dismissed the Hartmans' Complaint. The Hartmans filed exceptions to the Initial Decision on October 30, 2019.

In its April 16, 2020, Opinion and Order (April 2020 Order), the Commission granted in part and denied in part the Hartmans' exceptions and remanded the proceeding to the Office of Administrative Law Judge for further proceedings consistent with its Order. In its April 2020 Order, the Commission identified the allegations in the Complaint that were beyond the Commission's jurisdiction, as well as the allegations that were the proper subjects of further proceedings.

On February 17, 2021, attorney Robert Young filed a Notice of Entry of Appearance on behalf of the Hartmans. On November 30, 2021, PPL filed a Praecipe for Withdrawal of attorney Kimberly Krupka, and on December 1, 2021, PPL filed a Notice of Entry of Appearance for attorneys Michael J. Shafer, Devin T. Ryan and Nicholas A. Stobbe. On March 1, 2022, attorney Robert Young filed a Notice of Withdrawal of Appearance on behalf of the Hartmans. The Hartmans have proceeded throughout the remainder of this proceeding on a *pro se* basis.

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

requests propounded by the parties. During an informal, off the record call between the parties and I in early 2022, I proposed, and the parties agreed, to “re-set” discovery in the case and re-issue their various requests in order to overcome and rectify any prior procedural issues or defects. The Hartmans and PPL discussed the interrogatories that had been previously propounded by the Hartmans and resolved any issues related to PPL’s answers, culminating in my receiving an e-mail from PPL’s counsel on April 25, 2022, in which he informed me that Mr. Hartman indicated he would not be filing a Motion to Compel.

Following the discovery “re-set,” the Hartmans again submitted requests for subpoenas for a number of individuals. These requests were sent to PPL and me but were not served on the individual subjects of the requests as required by the Commission’s regulations. By e-mail to the parties dated May 17, 2022, I informed Mr. Hartman that his subpoena requests had not been served properly and instructed him that both PPL and the individuals who were the subject of the subpoenas had to be served. Proper subpoenas applications were not subsequently submitted for the subject individuals.

Pursuant to a procedural schedule established by the parties, evidentiary hearings were scheduled for August 16-17, 2022. The Hartmans served written direct testimony and exhibits on May 17, 2022.¹ On July 8, 2022, PPL served its written rebuttal testimony and exhibits. By e-mail dated July 13, 2022, the Hartmans indicated that they did not intend to serve surrebuttal testimony. Additional proposed exhibits were served by the parties and evidentiary hearings were held, as scheduled, on August 16-17, 2022. A third and final hearing was held on September 21, 2022.

At the beginning of the August 16, 2022, hearing, counsel to PPL indicated that PPL had a substantial number of objections to portions of the direct testimony and exhibits submitted by the Hartmans. I directed that we would proceed with the hearing and the cross examination of witnesses, and allow PPL to submit its objections in writing after the hearings had concluded, with an opportunity for the Hartmans to respond to the objections. To that end, a

¹ The Hartmans submitted their direct testimony as “Exhibit A.” Accordingly, I will refer to their direct testimony in this Order as either Hartman Direct or Hartman Exhibit A.

schedule was established whereby PPL's written objections would be due by October 20, 2022, and a written response to PPL's objections, if any, would be due by November 9, 2022.

PPL filed a Motion to Strike on October 20, 2022. After some initial filing difficulty with submitting a response, PPL and I ultimately received the Hartmans' response to PPL's Motion on December 12, 2022. By e-mail dated December 12, 2022, I informed the parties that, although the Hartmans' response had not initially been properly filed with the Commission by the established deadline, I would accept and consider it in ruling on PPL's Motion. I issued an Order on PPL's Motion to Strike on February 2, 2023. In the Order, I granted the Motion in part and identified the portions of the Hartmans' testimony and proposed exhibits that were stricken from the evidentiary record.

The following paragraphs from the Hartmans' Direct Testimony (Exhibit A) were stricken from the evidentiary record:

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

The following Hartman Exhibits were stricken from the evidentiary record:

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

Main Briefs were filed by the parties on March 9, 2023, and Reply Briefs were filed on March 30, 2023.

I closed the evidentiary record on May 1, 2023, to allow time for the parties, if desired, to raise any issues related to the submitted briefs. No such issues were raised.

The record in this proceeding consists of the following:

- Hartman Exhibit A (Hartman Direct Testimony)²
- Hartman Exhibit B (compilation of photographs included in Hartman Exhibit A).
- Hartman Exhibit Numbers 1, 3, 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 47, 49, 50, 51, 52, 53, 54, 55 and 56.
- PPL Statement 1 (Rebuttal Testimony of Thomas R. Erby).
- PPL Exhibits TE-1, TE-2, TE-3, TE-4, TE-4 Supplement and TE-5 (exhibits attached to PPL Statement 1).
- PPL Statement 2 (Rebuttal Testimony of William Salisbury).
- PPL Statement 3 (Rebuttal Testimony of Austin Weseloh).
- PPL Exhibits AW-1, AW-2, AW-3 and AW-4 (exhibits attached to PPL Statement 3).
- PPL Statement 4 (Rebuttal Testimony of Matthew Stutzman).
- PPL Exhibits MS-1, MS-2, MS-3, MS-4, MS-5, MS-6, MS-7, MS-8, MS-9, MS-10, MS-11 and MS-12 (exhibits attached to PPL Statement 4).
- Transcript page numbers 24-674.

FINDINGS OF FACT

1. The Complainants in this case are Michael and Sharon Hartman.
2. The Respondent in this case is PPL Electric Utilities Corporation (PPL).
3. The Complainants reside at 1650 Primrose Lane, Dauphin, PA 17018.

Hartman Direct, ¶ 1.

² As noted, paragraph nos. 11, 13, 14 (last sentence only), 16, 21, 24, 25, 26, 31, 35, 39, 41, 42, 48, 49, 76, 77, 85, 86, 89, 90, 91, 93, 94, 96, 98, 128, 136 (subsection nos. 12, 19, 20, 21, 27, 28 and 32 only) of the Hartmans' Direct Testimony were stricken.

4. PPL owns a 100-foot-wide transmission line right-of-way traversing the Complainants' property at 1650 Primrose Lane, Dauphin, PA 17018. PPL Stmt. 3, p. 3.

5. Approximately 50-feet of the right-of-way traverses the Complainants' property. PPL Stmt. 3, p. 7.

6. PPL had to rebuild certain structures and appurtenances on its transmission line right-of-way traversing the Complainants' property at 1650 Primrose Lane, Dauphin, PA 17018 as part of the Halifax-Dauphin 60 kV Transmission Rebuild Project. PPL Stmt. 1, p. 5.

7. The Project involved reconstruction of the Sunbury-Dauphin 69 kV transmission line crossing 179 landowners' properties, including the Complainants' property. PPL Stmt. 1, p. 6.

8. The Project involved rebuilding the approximately 3.57-mile-long segment of the single circuit Sunbury-Dauphin 60 kV transmission line between the Halifax tap and Dauphin Substation. PPL Stmt. 1, p. 5.

9. As part of the Project, PPL Electric installed approximately 36,992 feet of access roads to enable the Company's employees and contractors to access the work areas and PPL's facilities. PPL Stmt. 1, p. 5.

10. One of those access roads traverses the Complainants' property and is approximately 2,150 feet in length. PPL Stmt. 1, p. 5.

11. Mr. Hartman has no professional training or experience in the electronic field. Tr. 50.

12. PPL witness William Salisbury was responsible for overseeing the construction and excavation of the crane pads and access road. PPL Stmt. 2, p. 5.

13. PPL witness Salisbury has been a construction supervisor with PPL since 2011. PPL Stmt. 2, pp. 1, 5.

14. Mr. Salisbury has managed hundreds of jobsites, conducting all matters of work in distribution, transmission, and substations, relays, and fiber optics. PPL Stmt. 2, pp. 1-2.

15. Mr. Salisbury holds professional certifications with Utility Safety & Ops Leadership Network and is a Certified Utility Safety Professional. PPL Stmt. 2, pp. 1-2.

16. When constructing projects such as the one at issue, PPL follows all applicable industry accepted engineering practices, its design drawings, and its plans and adheres to all applicable permits, laws, and regulations, including Occupational Safety and Health Administration and Institute of Electrical and Electronics Engineers regulations. PPL Stmt. 2, p. 3.

17. The actual construction and excavation that takes place on a property can vary from site to site depending on site-specific circumstances. PPL Stmt. 2, p. 3.

18. The planned and permitted construction and excavation for projects may need to be changed once the work has begun because the on-site conditions may not be the same as the engineers who designed the project or developed the Erosion and Sediment Control/Restoration Plan (E&S Plan) understood them to be. PPL Stmt. 2, p. 4.

19. PPL may make changes to the construction plan to ensure the current and future safety of its workers or to improve its ability to access its facilities in a transmission line right-of-way. PPL Stmt. 2, p. 4.

20. PPL constructed and excavated the crane pads for Poles 76 and 75 in the transmission line right-of-way with safety as its priority. PPL Stmt. 2, p. 6.

21. As part of the Project, PPL needed to haul large amounts of concrete up the mountainside on the Hartmans' property. PPL Stmt. 2, p. 6.
22. To accommodate hauling large amounts of concrete up the mountainside on the Hartmans' property, PPL required crane pads and access roads that could safely withstand and support the weight of the trucks. PPL Stmt. 2, p. 6.
23. Some of the trucks carrying concrete weighed up to 27,000 pounds. PPL Stmt. 2, p. 6.
24. PPL constructed the pole pads and access road in the manner it did with rip-rap, 2-A modified and 2-B stone to safely accommodate the weight of the trucks travelling the mountainside. PPL Stmt. 2, pp. 6, 14.
25. The actual size of crane pads was determined based on site-specific circumstances, including the property's topography and slope as well as the weight of the cranes being used and future maintenance considerations. PPL Stmt. 2, p. 12.
26. When excavating and constructing the access road and crane pads in the transmission line right-of-way on the Hartmans' property, PPL relied on its E&S Plans. PPL Stmt. 2, p. 14.
27. PPL constructed the access road in a manner that will make it safely navigable by rubber-tired vehicles and by foot. PPL Stmt. 2, p. 18.
28. As originally constructed, the access road extended in several locations beyond the allowed road width of 15 feet as specified in the right-of-way agreement. Hartman Direct, ¶¶ 40, 67.
29. To correct for the excessive width, PPL clawed back the stones to within the 15-foot limit. PPL Stmt. 2, p. 18.

30. PPL did not bring to the site and apply any additional topsoil over the excavated areas. Tr. 240.

31. PPL witness Matthew Stutzman, the Forester for PPL's Harrisburg Region, reviewed and evaluated the vegetation management activities performed on the Complainants' property. PPL Stmt. No. 4, p. 2; Tr. 433, 439, 465-466, 470.

32. Mr. Stutzman operates under PPL's Pennsylvania Pesticide Applicator's license and holds an Applied Science Degree in Forest Technology from the Pennsylvania College of Technology. PPL Stmt. 4, p. 2.

33. PPL performs vegetation management in the vicinity of its electric distribution and transmission lines to ensure that customers receive safe, reliable, and reasonable service. PPL Stmt. 4, p. 4.

34. For transmission lines (line voltage at or above 69 kV), PPL adheres to its "Specification for Transmission Vegetation Management" for compliance purposes. PPL Stmt. 4, p. 4; PPL Ex. MS-2.

35. PPL uses both herbicide spraying and mechanical methods of vegetation management to control vegetation in the vicinity of its transmission lines. PPL Stmt. 4, p. 8.

36. The actual vegetation management methods employed can vary from site to site depending on the area's specific circumstances, such as topography and the types of vegetation being addressed. PPL Stmt. 4, p. 8.

37. PPL makes vegetation management decisions with safety as a primary consideration. PPL Stmt. 4, p. 8.

38. PPL’s transmission lines generally are on a trim cycle and herbicide spraying cycle that alternates every two years. PPL Stmt. 4, p. 8.

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

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

41. Herbicides are safe to use when applied in accordance with the specifications set forth in their labels, which are reviewed and approved by the U.S. Environmental Protection Agency (“EPA”) and the Pennsylvania Department of Agriculture. PPL Stmt. 4, p. 10.

42. As part of the Project, as well as the continued maintenance of the Halifax-Dauphin 69kV transmission line, PPL Electric conducted vegetation management in the portion of the transmission line right-of-way traversing the Complainants’ property. PPL Stmt. 4, pp. 10-14.

43. On June 11, 2020, PPL's Contract Pre-Planner identified and planned the application of herbicide within PPL's right-of-way on the Hartmans' property. PPL Stmt. 4, p. 11.

44. On January 5, 2021, the PPL Forester at the time, Justin Mease, reviewed the pre-plan for vegetation management in the transmission line right-of-way for the Project and approved all proposed work. PPL Stmt. 4, p. 12; PPL Ex. MS-6.

45. The herbicide application work was then relayed to PPL's maintenance contractor for review and execution. PPL Stmt. 4, p. 12.

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

47. Mr. Hartman further offered to remove certain identified saplings in lieu of the Company's planned herbicide treatment. PPL Stmt. No. 4, p. 11; PPL Ex. MS-5.

48. The Contract Pre-Planner agreed to Mr. Hartman's request but informed him that, if any incompatible tree species remained when the maintenance crews arrived, PPL's contractors would proceed with herbicide application on the property, as planned. PPL Stmt. 4, p. 11; PPL Ex. MS-5.

49. Mr. Hartman did not communicate any objection to this plan. PPL Stmt. 4, p. 11.

50. On July 16, 2021, PPL's maintenance contractor performed herbicide maintenance and application within PPL's right-of-way on the Complainants' property. PPL Stmt. 4, p. 12.

51. Upon arriving at the location on July 16, 2021, the maintenance contractor determined that the incompatible species of vegetation had not been removed. PPL Stmt. 4, p. 12.

52. PPL's contractor treated the vegetation using a High-Volume Foliar application method, with herbicide mix HV5 on PPL's Electric's Approved Herbicide Mixtures, and utilizing a pick-up truck mounted holding tank, hose reel, and application wand ("pick-up method"). PPL Stmt. 4, p. 12.

53. The High-Volume Foliar application method is a targeted approach where the applicator physically walks to the location of the vegetation to be treated and applies the herbicide mix to the leaves of the targeted species. PPL Stmt. 4, pp. 12-13.

54. This method is safer for the applicators, as they are often on unstable or steep terrain that can cause a backpack sprayer to lose balance. PPL Stmt. 4, p. 18.

55. More than 47 acres were treated with herbicide along PPL's transmission line right-of-way as part of the Project. PPL Stmt. 4, p. 13.

56. Less than 0.35 acres of herbicide application occurred within PPL's right-of-way on the Hartmans' property. PPL Stmt. 4, p. 13.

57. The allowable herbicide application rate for this herbicide is 150 gallons per acre. PPL Ex. MS-7.

58. The maximum allowable amount of herbicide that could be used on the Hartmans' property was approximately 51 gallons. PPL No. 4, p. 13.

59. PPL's contractor applied approximately 36 gallons of herbicide on the Hartmans' property. PPL Stmt. 4, p. 14.

60. The application of herbicide on the Hartmans' property was targeted to the areas with incompatible species of vegetation. PPL Stmt. 4, p. 16.

61. The herbicide application method used by the Company and its contractors does not target or damage the root system of compatible grass species. PPL Stmt. 4, p. 19.

62. The herbicide treatment is applied directly to incompatible vegetation's leaves, allowing the seed base to germinate and regrow in the area. PPL Stmt. 4, p. 17.

63. The herbicide application on the Hartmans' property also impacted non-targeted vegetation growing in proximity to the targeted vegetation. PPL Stmt. 4, p. 16.

64. PPL's spraying impacted fruit bushes planted by the Hartmans on the right-of-way, such as blackberry stems and huckleberry bushes. Hartman Direct, ¶¶ 87,108, 115.

65. The impacted, non-targeted vegetation appeared brown and wilted after the herbicide spraying. Hartman Direct, ¶¶ 87,108, 115.

66. The impacted bushes and grasses will eventually sprout new growth and re-establish over subsequent years. PPL Stmt. 4, p. 17.

67. At the time of the hearings, the vegetation on PPL's right-of-way on the Hartmans' property was regrowing and the non-targeted vegetation in the treated areas was showing signs of regrowth. PPL Stmt. 4, pp. 17-19; Tr. 478-480.

68. PPL will provide 72 hours' notice to the Hartmans in the future before vegetation management activities commence on their property. Tr. 582.

69. PPL Electric will knock on the Hartmans' door the day of the planned vegetation management before vegetation management is conducted in the right-of-way. Tr. 583.

70. PPL did not apply herbicides to the U.S. National Park Service's property located above the Hartmans' property because that was a condition of the federal permit PPL had to secure for that property. PPL Stmt. 4, p. 21.

71. No such permit was required for the Hartmans' property or any other landowner's property impacted by the Project. PPL Stmt. 4, p. 21.

72. There are areas on and near the right-of-way through the Hartmans' property where excessive erosion and water runoff are evident. Hartman Direct, ¶¶ 51-53, 57, 69; Hartman Exs. 28, 52.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a Complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A Complainant can meet that burden if he or she presents evidence more convincing than that presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a

suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlt. 1984).

If a Complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the Complainant will prevail. If the utility rebuts the Complainant's evidence, the burden of going forward with the evidence shifts back to the Complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the Complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlt. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlt. 1982).

As noted above, the Commission, in its April 2020, Order, identified various issues raised by the Hartmans in their complaint that it dismissed from consideration in this proceeding. It also identified the specific issues that were to be addressed in the remanded proceeding and for which a record was to be developed.

The following issues were dismissed by the Commission from this proceeding:

- a. Whether proper notice of activities contemplated by the easement agreement was provided (April 2022 Order, p. 14);
- b. Complainants' allegation that PPL Electric's restoration efforts showed a preference for the National Park Service and constituted discrimination in service that violated Section 1502 of the Public Utility Code (April 2020 Order, p. 20);
- c. Complainants' request for a ruling from the PUC as to the scope and validity of the existing easement agreement and whether PPL Electric is acting in accordance with or in breach thereof (April 2020 Order, p. 21);
- d. Complainants' request for monetary damages (April 2020 Order, p. 21); and
- e. Complainants' allegations regarding any environmental impact of PPL Electric's construction practices, the

reasonableness of PPL electric's environmental protection controls, or lack thereof, or any unpermitted or increases storm water discharges (April 2020 Order, p. 22).

The following issues were specifically identified as those to be considered and for which an evidentiary record was to be developed in this proceeding:

- a. Allegations about PPL Electric's vegetation management practices (April 2020 Order, p. 19);
- b. Allegations about the quality and reasonableness of PPL Electric's construction efforts (April 2020 Order, p. 19); and
- c. Allegations about the safety impact of the construction and alleged destruction of vegetation on the Complainants' property, including, but not limited to, any erosion to the soil and sedimentation on the Complainant's property and any safety hazards resulting therefrom that may be reasonably identified and the steps that PPL Electric proposes to implement in order to adhere to its statutory duty to furnish adequate, safe and reasonable service (April 2020 Order, pp. 22-23).

I address these issues below.

Initially, by way of brief background, the Project involved rebuilding a 3.57-mile-long segment of the company's single circuit Sunbury-Dauphin 69 kV transmission line between the Halifax Tap and the Dauphin Substation as a single circuit/future double circuit. Engineering for the project began in 2017, and the Project was placed into service in January 2019. PPL Stmt. 1, p. 5. The overall Project traversed the properties of 179 landowners. PPL Stmt. 1, p. 6. As part of the Project, PPL installed 36,922 feet (approximately 7 miles) of access roads for access to the company's facilities, including an approximately 2,150-foot-long access road that traverses the property of the Hartmans and neighboring landowners. PPL also installed 52 new steel poles for the new transmission lines. PPL Stmt. 1, p. 5. PPL explained that "the driver for the Project was replacing aging assets, increasing conductor size to meet the Company's standard ratings, and meeting fiber communication needs." PPL Stmt. 1, p. 6.

The portion of new access road on the Hartman's property is approximately 1,078 feet long. PPL Stmt. 1, pp. 5-6. Two new poles (poles 75 and 76) and pole pads were

constructed on this section of the Project. PPL Stmt. 2, p. 6. PPL needed to haul large amounts of concrete up a steep mountainside in order to construct and install the poles and pads. PPL estimates that each truck carrying concrete weighed approximately 27 tons (27,000 pounds of concrete and 27,000 pounds of truck weight). PPL Stmt. 2, p. 6. The access road and pole pads on Mr. Hartman's property were constructed using rip-rap, "2-A modified" and "2-B" stone. PPL Stmt. 2, p. 6. PPL argues that this size stone was necessary to provide a strong and secure foundation for the company's trucks and equipment. PPL Stmt. 2, p. 11.

PPL holds a transmission line right-of-way through the properties on which the Project at issue in this proceeding is located. The right-of-way is 100 feet wide, 50 feet of which is on the Hartman's property and 50 feet of which is on neighboring properties. PPL Stmt. 3, p. 3; PPL Ex. AW-1. The right-of-way agreement for the Hartman property gives PPL the right to "construct, operate and maintain, and from time to time to reconstruct its electric lines, including such poles, towers, cables and wires above and under the surface of the ground . . . including the right of ingress and egress to and from the said lines at all times for any of the purposes aforesaid[.] " PPL Ex. AW-1.

I will first address the issue of the reasonableness of PPL's construction activities in completing the Project.

Pole Pads

As noted above, the Project involved the construction of new pads to accommodate the new steel transmission line poles. The Hartmans argue that they are excessively large and are strewn with large rip-rap rocks. Hartman Direct, ¶72; Hartman Ex. 35; Tr. 294. They argue that the pads are much larger than other pole pads created by PPL on other private and public lands and that rip-rap, if any, used to construct pads on other properties has been removed. They argue that the rip-rap covered pads were not restored and covered with sufficient topsoil to allow for revegetation to pre-Project condition.

In addition, the Hartmans argue that PPL altered the natural slope of their property at the site of the pole pads. Hartman Direct, ¶56; Hartman Ex. 35. This occurred when PPL excavated the slope to create relatively level surfaces in the side of the mountain for the pads to allow for the placement of the new steel poles. The Hartmans argue that in excavating the new pole pads, PPL removed a significant quantity of their topsoil and used that soil on other areas of the Project rather than returning the topsoil to their property to enable proper revegetation to occur on their land. Hartman Direct, ¶73, 79. The Hartmans argue that PPL's construction of the pole pads has resulted in significant degradation of the natural beauty of the mountainside and, because proper revegetation has not occurred, unnatural erosion and stormwater runoff is occurring.

PPL presented the testimony of William Salisbury, a Construction Supervisor with the company since 2011. PPL Stmt. 2. Mr. Salisbury testified that he has managed hundreds of job sites involving work in distribution, transmission, substations, relays, and fiber optics. PPL Stmt. 2, pp. 1-2. He holds professional certifications with the Utility Safety & Ops Leadership Network (USOLN) and is a Certified Utility Safety Professional (CUSP). PPL Stmt. 2, pp. 1-2.

Mr. Salisbury testified that PPL performed all construction activities associated with the Project with safety as its main priority. PPL Stmt. 2, p. 6. He testified, as noted above, that PPL had to transport large amounts of concrete up the steep mountainside in order to construct the new poles 75 and 76 and pole pads. PPL Stmt. 2, p. 6. He explained that each truck going up the slope weighted approximately 27 tons (27,000 pounds of concrete and 27,000 pounds of truck weight) and, accordingly, required an access road and pole pads that could safely withstand and support that amount of weight. PPL Stmt. 2, p. 6. He testified that pads were constructed in the manner they were and with the materials used to prevent accidents such as a truck slipping or displacing smaller stones and possibly rolling over. PPL Stmt. 2, p. 6. PPL witness Thomas Eby also testified that the use of large stone or rip-rap as the sole material is a common construction practice on steep slopes and switchback routes on the sides of mountains, such as the Hartman's property. Tr. 353.

Mr. Salisbury further testified that the size of the pole pads 75 and 76 constructed by PPL is necessary to accommodate vehicles that may be needed for ongoing maintenance of the new poles and facilities. He explained that if the pad size was reduced, it may be necessary to re-enlarge them any time the company needed to access them with its vehicles for repairs or maintenance, resulting in costly and unnecessary additional expense. PPL Stmt. 2, p. 9. With respect to the Hartman's allegation that PPL disturbed and altered the natural slope on the mountain on their property, Mr. Salisbury testified that such alteration or disturbance only occurred to the extent necessary "for the safe installation and continued maintenance of poles 76 and 75." PPL Stmt. 2, pp 6-7.

Access Road

As part of the Project, PPL constructed a new access road to allow access by the company's vehicles and personnel to and between the new poles and pads. The new access road was constructed using the same rip-rap, "2-A modified" and 2-B stone as was used to construct the pads. PPL Stmt. 2, p. 14. The new road was excavated and built using a switchback pattern. PPL Stmt. 1, p. 9 (photo); PPL Stmt. 2, p. 14.

As explained by PPL Witness Eby, PPL submitted an E&S Plan to the Pennsylvania Department of Environmental Protection (DEP) as part of the company's request for an E&S Permit. PPL Ex. TE-1. An E&S Permit is required for earth disturbance activities where the activity is related to or caused by timber harvesting, road maintenance activities or oil and gas activities. E&S Plans are site-specific plans that include both drawings and narratives that identify plans to minimize accelerated erosion and sedimentation before, during and after earth disturbance activities. 25 Pa. Code §102.1; PPL Stmt. 1, p. 10.

PPL's E&S Plan for this Project was developed in December 2017. PPL Stmt. 1, p. 11. The E&S Plan as originally submitted provided for the use of existing access routes for access to the new pole pads. PPL Ex. TE-1. During the course of the Project, however, PPL made a number of revisions to the E&S Plan to accommodate various construction conditions as well as requests from the Dauphin County Conservation District (DCCD). PPL Stmt. 1, p. 11.

DEP approved PPL's E&S Plan and issued to the company an E&S Permit in July 2018. PPL Stmt. 1, p. 12; PPL Ex. TE-2. Final revisions to PPL's E&S Plan were made in December 2019 and reflected the final, as-built condition of the access road to poles 75 and 76. PPL Stmt. 1, p. 11. DEP and DCCD issued approval of final closure of the E&S Permit in June 2021. PPL Stmt. 1, p. 12, 14.

The Hartmans raise several allegations challenging the reasonableness of PPL's construction of the access road. They take issue with the fact that PPL constructed a new switchback access road for access to the new pole pads, rather than using existing logging roads as proposed in the originally submitted E&S Plan. The Hartmans argue that PPL constructed an unplanned and unauthorized access road on their property. Hartman Direct, ¶¶ 29, 40. They argue, among other things, that the new access road resulted in the destruction of native vegetation and permanently scarred their property. Hartman Direct, ¶ 29.

The Hartmans further argue that construction of the new access road using large rip-rap stones resulted in high, perilous road shoulders. They argue that the new road is 18 inches or higher in places creating an unsafe shoulder. Hartman Direct, ¶¶ 22; Hartman Ex. 49. The Hartmans point out that, on cross examination, PPL's witnesses could not identify any other specific areas of the overall Project where large rip-rap rocks were used. Tr. 359.

In addition, the Hartmans argue that PPL violated the right-of-way agreement by constructing the access road beyond the allowable limits of the agreement in several places. Hartman Direct, ¶¶ 40, 67. The right-of-way agreement allowed for a road width of 15 feet. The Hartmans argue that the road was constructed as wide as 24 feet in certain areas. To correct for the excessive width, PPL simply clawed back the stones to within the 15-foot limit, resulting in the excess rip-rap being piled on top of the roadway, thereby exacerbating the deep, perilous shoulder. Hartman Ex. 49.³

³ As stated by the Commission in its April 2020 Order, the Commission will not consider or address the issue of the validity or proper scope of the right-of-way agreement between the parties, since such private contractual issues are beyond the Commission's jurisdiction.

As was the case with construction of the pole pads, PPL argues that its primary concern in constructing the access road was safety. It argues that the large rip-rap rocks and the depth of the rock bed were necessary to insure a sufficiently strong and stable roadway surface to accommodate construction trucks weighing up to 27 tons. PPL Stmt. 2, p. 6. It argues that the access road was constructed in the manner it was and with the materials used to prevent accidents such as a truck slipping or displacing smaller stones and possibly rolling over. PPL Stmt. 2, p. 6. PPL witness Eby testified that the use of large stone or rip-rap as the sole material is a common construction practice on steep slopes and switchback routes on the sides of mountains, such as the Hartman's property. Tr. 353. PPL noted that it used the same stone rip-rap on at least ten miles of other access roads it built as part of this Project. PPL Stmt. 2, p. 17.

Upon review of the record evidence, I find that PPL's activities relative to the construction of the pole pads and access road were reasonable. I am persuaded by PPL's evidence that the access road and pole pads were designed and constructed with safety as the primary consideration and goal. Further, the materials used were necessary to insure safe access both during the construction of the pole pads and installation of the new steel transmission line poles, as well as for ongoing future maintenance and repair efforts. As noted, the access road and pole pads needed to accommodate trucks weighing up to 27 tons to haul concrete and materials necessary for the project. The large rip-rap rocks used by PPL would result in a solid and stable surface that could safely support the trucks. PPL Stmt. 2, p. 6. PPL explained that the use of rip-rap is a common construction practice on steep slopes and switchback routes, such as exists at the Hartman's property. Tr. 353. While the Hartmans may find the access road and pole pads aesthetically displeasing and difficult to traverse by foot, I find that the safety considerations described by PPL outweigh the Hartmans' concerns.

With respect to the Hartman's allegation that the road was constructed in a manner that was "unplanned and unauthorized" under the PPL's E&S plan as originally submitted, PPL witness Salisbury explained that it is very common in the electric industry as well as in the construction industry generally for planned construction and excavation needs to change during the course of a project. PPL Stmt. 2, p. 4. Mr. Salisbury has managed hundreds of job sites involving work in distribution, transmission, substations, relays, and fiber optics. PPL

Stmt. 2, pp. 1-2. PPL's E&S Plan for this project originally contemplated the use of existing logging roads for access to the new pole pads. PPL revised the E&S Plan during the project, however, when it determined that a new switchback road constructed using rip-rap rocks would best accomplish the company's primary goal of providing a safe and stable roadway and pole pad surfaces during both initial construction as well as during ongoing future repair and maintenance efforts. As explained above, the final revision to PPL's E&S Plan was made in December 2019 and reflected the final, as-built condition of the access road to poles 75 and 76. PPL Stmt. 1, p. 11. Both DEP and DCCD issued approval of final closure of the E&S Permit in June 2021. PPL Stmt. 1, p. 12, 14. In light of PPL's evidence and the fact that PPL's revisions to the originally submitted plan were ultimately approved by DEP and DCCD, I find that PPL's decision to construct the access road in the manner reflected in the final revisions to its E&S Plan was reasonable.

Vegetation Management / Restoration

Vegetation maintenance is part of a utility's service that is subject to regulation. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 578 A.2d 75 (Pa. Cmwlth. 1990); *PECO Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996 (Pa. Cmwlth. 2007) (Commission possesses the sole authority to regulate a public utility's vegetation management practices in its service territory); *Popowsky v. Pa. Pub. Util. Comm'n*, 653 A.2d 1385 (Pa. Cmwlth. 1985) (vegetation maintenance constitutes a utility service and must be performed in a safe, adequate, reasonable, and efficient manner).

The Hartmans allege in their complaint that PPL's vegetation management activities during the project and its restoration efforts following construction of the new poles and pads resulted in the decimation of desirable and beneficial vegetation on their property and erosion and damaging stormwater runoff on their property. They testified that they devoted a great deal of time and resources over the years to planting desirable vegetation on the right-of-way, including grasses, fruit shrubs and trees for both wildlife and aesthetic value. Hartman Direct, ¶¶ 1, 106-108, 115.

In support of their allegations, the Hartmans testified about spraying activity performed by a PPL contractor on the right-of-way in July of 2021. They allege that the spraying was performed in an unwarranted, reckless and destructive manner, causing unnecessary destruction of vegetation on the right-of-way. Hartman Direct, ¶2. The Hartmans testified that the spraying killed beneficial vegetation on their property, including ferns, blackberry stems and huckleberry bushes. Hartman Direct, ¶ 87. They argue the vegetation that was killed by the spraying in no way impeded PPL's access to the new poles, pads and powerline itself, nor could it under any stretch of the imagination interfere with the transmission lines themselves. Hartman Direct, ¶ 88, 103.

The Hartmans testified that the July 2021 spraying activity was supposed to be performed in a spot-spraying manner using a handheld sprayer. They testified that the pole pads following the spraying were completely cleared of vegetation, suggesting that the entire area of the pads and surrounding areas were sprayed with a broadcast-spray cannon, rather than more targeted spot-spraying. Hartman Direct, ¶¶ 114, 134. They argue that the vegetation immediately above the pole pads prior to the July 2021 spraying, including fruit shrubs, was robust and healthy, but was destroyed by the indiscriminate spraying. Hartman Direct, ¶¶ 105-109, 111, 113-114. They testified they were told by PPL that the company allows and spares certain taller growing vegetation that is compatible with PPL's clearance standards, and that PPL's website lists ferns, huckleberry and blackberry bushes as compatible species. The Hartmans argue that these compatible types of vegetation that were on the right-of-way on or near the pole pads, however, were killed by PPL's indiscriminate spraying. Hartman Direct, ¶ 135. The Hartmans submitted a number of photographs of the right-of-way that they argue support their allegations of excessive and indiscriminate spraying and the killing of beneficial vegetation on their property. Hartman Exs. 28-29.

The Hartmans further argue that PPL's inadequate restoration activity on their property following construction of the new access road and pole pads has contributed to and resulted in the failure of beneficial vegetation to regrow and re-establish on the right-of-way, leading to damaging erosion and stormwater runoff on the property.

The Hartmans allege that PPL's restoration activities violated a number of provisions in the company's E&S Plan, thereby constituting unreasonable service. For example, the E&S Plan requires as follows:

- Areas to be vegetated shall have a minimum 4 inches of topsoil in place prior to seeding and mulching.
- Strip topsoil from disturbed areas and stockpile in designated locations, temporarily seed and stabilize stockpiles.
- Spread topsoil and compost as needed.
- If work pad is a proposed stone pad, strip the topsoil and stockpile in accordance with the detail in this plan.
- Graded areas should be scarified or otherwise loosened to a depth of 3 to 5 inches to permit bonding of the topsoil to the surface areas and to provide a roughened surface to prevent topsoil from sliding down slope.
- Topsoil should be uniformly distributed across the disturbed area to a depth of 4 to 8 inches.

Hartman Direct, ¶ 34; PPL Ex. TE-1, p. 002.

The Hartmans testified that PPL excavated topsoil from their property on the west side of the right-of-way and used it to construct pole pad 75 on the east side of the right-of-way, which is situated largely on neighboring property. Hartman Direct, ¶ 9. Additionally, they argue that PPL failed to cover the excavated areas with the required topsoil prior to re-seeding those areas. In fact, PPL witness Eby acknowledged during cross examination that PPL did not bring in any new topsoil to put down on the portion of the right-of-way that runs through the Hartmans' property. Tr. 240. The company used the topsoil that was excavated as part of the Project to revegetate the work areas. The Hartmans argue that the new seeding failed to properly establish in the excavated areas. Hartman Direct, ¶ 34, 73, 95. They argue that the lack of topsoil resulted in the excavated areas being strewn with large, unsightly commercial rocks that smother the ground and prevent the growth of beneficial vegetation. Hartman Direct, ¶ 72.

The Hartmans further testified that the lack of topsoil and resulting failed revegetation has led to excessive erosion and stormwater runoff over their property. Hartman Direct, ¶¶ 50-52, 57, 97. They also testified that they were offered the opportunity to remove

incompatible saplings rather than having PPL apply herbicide but were never actually given that opportunity. PPL Stmt. 4, p. 11.

PPL testified that its vegetation management activities on the right-of way that runs through the Hartmans' property were all properly designed and performed pursuant to established and authorized standards and requirements. It argues that proper vegetation management on transmission line rights-of-way is important for insuring safe, reliable and reasonable electric service to customers. PPL Stmt. 4, pp. 4-5. For example, PPL testified that, on the federal level, one mandatory reliability standard requires electric utilities to develop a program to address vegetation management in transmission line corridors. PPL's "FAC-003 Transmission Vegetation Program Document" (TVPD) contains the company's program for maintaining vegetation in transmission line corridors. PPL Stmt. 4, p. 6. At the state level, the Commission, in its *I&M Standards Rulemaking Order*, established inspection, maintenance, repair and replacement standards covering, among other things, vegetation management practices that are based on accepted industry standards. 2008 Pa. PUC LEXIS 177, at 1-2. The Commission also requires, at 52 Pa. Code §57.198, biennial filings about companies' inspection, maintenance, repair and replacement plans. PPL testified that its overall goal with vegetation management in transmission line rights-of way is to "maintain the vegetation in a manner consistent with PPL Electric's statutory duty to provide safe, reliable, and reasonable service." PPL Stmt. 4, p. 8.

The company explained that it generally performs vegetation management along transmission lines in trim and herbicide spraying cycles that alternate every two years. PPL Stmt. 4, p. 8. With respect to the application of herbicides, PPL requires that all herbicide applications be performed in accordance with its "PPL EU Herbicide Application Policy." PPL Ex. MS-2. This policy requires that contractors performing herbicide applications:

- (1) [a]pply materials in accordance with the manufacturers' labels;
- (2) [h]old and maintain a Pennsylvania Pesticide Application Business License;
- (3) [e]mploy certified Pennsylvania Commercial Pesticide Applicators, who must at a minimum be certified in category 10 (Right of Way & Weeds);
- (4) [e]nsure that applications performed by Pennsylvania Registered Pesticide Technicians are performed in accordance

with Pennsylvania Pesticide Rules and Regulations; (5) [e]nsure that all herbicides are procured, transported, stored, and applied in accordance with all applicable state and federal laws; (6) [u]se only herbicide products that have been approved for use on utility rights-of-way by the US Environmental Protection Agency; and (7) [u]se only herbicide products approved by PPL.

PPL Ex. MS-3, p. 2.

With respect to the herbicide application on the right-of-way on the Hartmans' property, PPL witness Matthew Stutzman explained that a plan for the application of herbicide was reviewed and approved by the company's then Forester, Justin Mease. This approved plan was then forwarded to PPL's maintenance contractor for execution. PPL Stmt. 4, p. 12; PPL Ex. MS-6.

Mr. Stutzman testified that Mr. Hartman contacted PPL's spraying contract Pre-Planner in January 2021, at which time Mr. Hartman indicated that he did not want any herbicide sprayed on his property. PPL stmt. 4, p. 11; Tr. 415-416. The Pre-Planner and Mr. Hartman agreed that Mr. Hartman would be given the opportunity to manually remove incompatible tree saplings from the right-of-way to avoid herbicide spraying. PPL testified it informed Mr. Hartman that if there were any incompatible tree saplings when the spraying crew arrived, they would proceed with herbicide application as planned. PPL Stmt. 4, p. 11; PPL Ex. MS-5. Mr. Stutzman explained that PPL's spraying contractor arrived at the property on July 16, 2021, and determined that the incompatible tree saplings had not yet been removed by Mr. Hartman. As a result, the contractor proceeded with the herbicide spraying. PPL Stmt. 4, p. 12.

Mr. Stutzman testified that the contractor sprayed targeted, incompatible vegetation on the right-of-way using a High-Volume Foliar application method with an HV5 herbicide mix, which is a PPL approved herbicide mixture. PPL Stmt. 4, p. 12. Mr. Stutzman testified that the herbicide mixture was applied using a pick-up truck mounted holding tank, hose reel and application wand. Mr. Stutzman testified that this application technique allows for a targeted approach where the applicator walks the area and applies herbicide to the leaves of targeted vegetation, rather than broadcasting the spray from a distance over the entire right-of-

way. PPL Stmt. 4, pp. 12-13. He testified that the work was subsequently inspected by PPL personnel and found to have been properly performed in accordance with applicable PPL standards and policies. PPL Stmt. 4, p. 13; PPL Ex. MS-10. He further noted that only approximately 36 gallons of herbicide was applied on the Hartmans' property in the right-of-way, which amount was approximately 30% less than the maximum allowable amount of 150 gallons per acre. PPL Stmt. 4, pp. 13-14; PPL Exs. MS-7, MS-12.

With respect to PPL's use of herbicide on the Hartmans' property, I find that, despite their objections to its use, the Hartmans have failed to prove that its use constituted unreasonable or unsafe service as a means of vegetation management on the right-of-way. As noted above, PPL typically performs vegetation management activity along transmission lines in trim and herbicide cycles that alternate every two years. PPL Stmt. 4, p. 8. Controlling vegetation via the application of herbicide is a routine practice of PPL along transmission line routes.

PPL witness Stutzman addressed the herbicide application on the Hartmans' property. He is the company's current Forester for the Harrisburg region and performs his duties under PPL's Pennsylvania Pesticide Applicator's license. PPL Stmt. 4, p. 2. Mr. Stutzman explained that all of the herbicide mixtures and chemical components used by PPL have label and application rates that are determined and approved by the United States Environmental Protection Agency. This information is set forth in detail in PPL Electric's approved herbicide mixture document. PPL stmt. 4, p. 15; PPL Ex. MS-7. PPL applied High-Volume Foliar herbicide mixture HV5 on the Hartmans' property. This mixture is one of the company's approved mixtures as designated in PPL Ex. MS-7. Mr. Stutzman testified that the mixture was applied in an amount that was well below the allowable gallons per acre concentration. PPL Stmt. 4, p. 14; PPL Ex. MS-7.

Mr. Stutzman explained that upon their arrival in July 2021 to perform vegetation management on the right-of-way, PPL's contractor determined that there were incompatible vegetation species present throughout the areas to be treated that were intermingled with and surrounded by compatible, non-targeted vegetation species that were impacted by the spraying.

PPL Stmt. 4, p. 16. PPL chose the use of the HV5 mixture because it is formulated to attack woody-stemmed vegetation, and not to kill the root systems of desirable native grasses. PPL Stmt. 4, p. 16.

Although the Hartmans objected to the use of herbicide on their property, I cannot conclude that they have proven by a preponderance of the evidence that its use by PPL as a means of vegetation management was unreasonable or unsafe. The evidence presented by PPL demonstrates that it used an approved herbicide in an approved concentration and that it targeted non-compatible species on the right-of-way. The facts that the Hartmans preferred that herbicide not be used and that there may have been some collateral damage to other compatible, non-targeted species does not render PPL's decision to use herbicide unreasonable.

With respect to the Hartmans' allegation that PPL's spraying activities were excessive and performed in an unwarranted, reckless and destructive manner, causing unnecessary destruction of vegetation on the right-of-way, I find that PPL presented sufficient evidence to demonstrate that the spraying was performed in a reasonable manner that was intended to control non-compatible vegetation in the right-of-way. While there may have been some collateral impacts to non-targeted compatible vegetation, I cannot conclude that this rendered PPL's spraying activities unreasonable.

First, PPL witness Stutzman explained that the company's application of herbicide was, in fact, targeted and not indiscriminate, as suggested by the Hartmans. PPL used a pick-up method of application whereby the applicator drags a long hose from a tank mounted on a truck to the target area and sprays the herbicide onto targeted vegetation, rather than spraying in a "broadcast" method using a spray cannon. PPL Stmt. 4, p. 18. It is a larger version of a backpack sprayer that allows for a larger amount of herbicide to be brought to the spray area, while allowing it to be applied in a more specific, targeted manner. PPL Stmt. 4, p. 17-18.

Mr. Stutzman explained that PPL prefers to have transmission line corridors covered in grasses, wildflowers, low growing compatible shrubs and other compatible species. PPL Stmt. 4, p. 18. Accordingly, the herbicide used by PPL is designed to preserve the root

systems of native grasses so that they can recover after the spraying. PPL Stmt. 4, p. 16. He explained that other non-targeted vegetation growing near and intermingled with the targeted vegetation will be impacted by the herbicide. He explained that, when the herbicide is applied to the leaves of targeted species, the herbicide will also contact proximate, non-targeted species as well. This can cause the non-targeted vegetation to turn brown and appear dead initially. Mr. Stutzman testified that the herbicide is a post-emergent herbicide that attacks the leaves of the targeted plants, which is the feeding part of the vegetation. The herbicide does not impact the seed base. Accordingly, non-targeted vegetation that may initially appear to have been killed by the spraying will eventually recover and regenerate, since the seed base has not been impacted. Tr. 478. He testified that the compatible native grasses will eventually recover over subsequent years and continue to grow and provide beneficial cover over the sprayed areas. PPL Stmt. 4, p. 16-18. In fact, Mr. Stutzman stated that he visited the right-of-way over a year after the spraying and observed that the sprayed areas were greening and regenerating. Tr. 479.

As noted, the Hartmans also alleged that PPL's spraying killed beneficial fruit bushes they planted on the right-of-way, such as blackberry stems and huckleberry bushes. Hartman Direct, ¶¶ 87,108, 115. They argue this was the result of PPL's excessive and indiscriminate spraying, which cleared the entire pole pad of vegetation. Hartman Direct, ¶ 134. In response, PPL explained, as described above, that the herbicide used on the Hartmans' property does not impact the seed base. Accordingly, non-targeted vegetation that may initially appear to have been killed by the spraying will eventually recover and regenerate, since the seed base has not been impacted. Tr. 478. On cross examination, Mr. Stutzman stated that, based on his experience, blackberry, raspberry and huckleberry bushes recover and regrow after having been sprayed with the herbicide used by PPL. He testified that, while it may take some time, it is his experience that the bushes will eventually recover. Tr. 480-481.

While the Hartmans' dissatisfaction with the vegetation management activity performed by PPL on the right-of-way that runs through their property may be understandable, I cannot conclude, as explained above, that it renders PPL's actions unreasonable or unsafe. A public utility's determinations as to appropriate vegetation management practices and procedures to ensure its ability to provide adequate and safe service, when reasonable, should outweigh the

landscaping preferences of individual property owners where the two conflict. PPL presented credible evidence that the vegetation on the areas impacted by the Project has already begun and will continue to recover and re-establish itself.

As noted above, the Hartmans also allege that PPL's construction and vegetation management activities resulted in excessive runoff and erosion on his property. Mr. Hartman testified about areas of erosion on his property that developed following construction of the pole pads and new access road. Hartman Direct, ¶¶ 51-53, 57, 69. In addition, the Hartmans offered into evidence a number of photographs showing areas where erosion was occurring on their property. Hartman Exs. 28, 52.

PPL, as described above, explained the construction and vegetation management practices and procedures it followed in completing the Project on the right-of-way through the Hartmans' property. The company argues that the pole pads and access road were designed and constructed in a manner that would allow for future access to the facilities for upgrades, repair and ongoing maintenance with safety as a primary goal. PPL further argued that its vegetation management decisions and methods are intended to ensure that its transmission line rights-of-way are maintained in a way that will allow it to meet its statutory duty to provide safe, reliable and reasonable service. Mr. Stutzman testified that the herbicide mixture used by the company does not impact the roots of treated plants and, although non-targeted vegetation was impacted by the herbicide, it will eventually recover and regrow.

As discussed above, I find that the Hartmans did not prove by a preponderance of the evidence that (1) PPL's construction activities in building the pole pads and access road were unreasonable, (2) PPL's use of herbicides on their property was unreasonable, and (3) PPL's spraying methods, with accompanying impacts on non-targeted vegetation, were unreasonable. I am convinced by the evidence presented by the Hartmans, however, that PPL's erosion control measures were inadequate to prevent or minimize erosion on and near the right-of-way through their property. The testimony and exhibits presented by the Hartmans (Hartman Direct, ¶¶ 51-53, 57, 69; Hartman Exs. 28, 52) show that excessive erosion was occurring on portions of the right-of-way through their property, at least during the time periods reflected in the testimony

and photographs. In fact, the exhibits presented by the Hartmans show that the surfaces of the pole pads and access road were largely cleared of vegetation following the Project. This likely resulted in erosion and excess stormwater runoff following completion of the Project.

While at the time of the hearing, these areas were showing signs of vegetation regrowth, it is unclear the extent, if any, to which the vegetation on the pole pads and access road has re-established and regrown since the time periods reflected in the Hartmans' testimony and photo exhibits to the present. I do not believe that the record evidence supports imposition of a civil penalty against PPL on this issue. I am directing, however, that PPL, within 45 days of a final Commission Order in this proceeding, re-inspect the pole pads and the access road and shoulders to determine if any areas of erosion or excessive runoff are still occurring and take any necessary corrective measures to prevent or minimize future erosion, including but not limited to surface re-grading, adding additional stone material and adding additional topsoil and re-seeding areas where the soil and vegetation has washed away.

Discrimination in Service

Finally, the Hartmans allege that PPL used different vegetation management methods on property located above theirs on the right-of-way that runs through land owned by the National Park Service (NPS). Specifically, they allege that PPL did not spray herbicide on the right-of-way through the NPS property. Hartman Direct, ¶ 116. As a result, they allege that the vegetation on the NPS land has fully recovered and is much fuller and lusher, as compared to the Hartmans' property, where they allege the vegetation has not recovered. Hartman Direct, ¶¶ 55, 74-75, 116-121; Hartman Ex. 28. They further argue that the lush vegetation on the NPS property prevents erosion from occurring. Hartman Direct, ¶ 55. The Hartmans argue that the difference in vegetation management methods between the two properties constitutes unreasonable discrimination against them by PPL.

In response, PPL acknowledged the different vegetation management methods used, but testified that it did not apply herbicide to the NPS land because that was a condition of the federal permit the company obtained for the work on that property. PPL Stmt. 4, p. 21. Mr.

Stutzman testified that no such permit was required to do the work on the Hartmans' or other neighboring properties. PPL Stmt. 4, p. 21. Beyond that explanation, there is no record evidence about the design, planning, or other details, requirements or specifications governing the work to be performed by PPL on the NPS property. Without any such additional information, I am unwilling to determine whether or not PPL's activities on the Hartmans' property were, in fact, discriminatory as compared to the work performed by the company on the NPS land. The respective work performed by PPL on the two properties may have been governed by differing requirements and specifications. The record evidence does not provide this information. Accordingly, I am unable to conclude, based upon the record evidence, that the vegetation management work performed by PPL on the two properties reflected unreasonable discrimination against the Hartmans.

For the reasons set forth above, I find that (1) the Complainants have failed to prove, by a preponderance of the evidence, that PPL's construction activities related to the pole pads and access road were unreasonable or unsafe, and (2) the Complainants have failed to prove, by a preponderance of the evidence, that PPL's vegetation management activities on the right-of-way, including the difference in methods used on the Hartmans' property and the National Park Service property, were unreasonable or unsafe. With respect to PPL's erosion control efforts, I find that they were inadequate to prevent or minimize erosion and excessive water runoff on and along the right-of-way immediately following completion of the construction and vegetation management activities. Therefore, in the ordering paragraphs below, I will order PPL, within 45 days of a final Commission Order in this proceeding, to re-inspect the pole pads and the access road and shoulders to determine if any areas of erosion or excessive runoff are occurring and take any necessary corrective measures to prevent or minimize future erosion, including but not limited to surface re-grading, adding additional stone material and adding additional topsoil and re-seeding areas where the soil and vegetation has washed away.

CONCLUSIONS OF LAW

1. The Complainants, as the proponents of a rule or order in this proceeding, have the burden of proof. 66 Pa.C.S. § 332(a).

2. To satisfy the burden of proof, a litigant must establish a fact by a preponderance of the evidence, or evidence more convincing than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

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

4. The offense alleged must be a violation of the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

5. Under the Pennsylvania Public Utility Code:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.

66 Pa.C.S. § 1501.

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

7. Vegetation maintenance is part of a utility’s service that is subject to regulation. *West Penn Power Co. v. Pa. Pub. Util. Comm’n*, 578 A.2d 75 (Pa. Cmwlth. 1990); *PECO Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996 (Pa. Cmwlth. 2007); *Popowsky v. Pa. Pub. Util. Comm’n*, 653 A.2d 1385 (Pa. Cmwlth. 1985).

8. The Complainants have failed to sustain their burden of proof that PPL's construction and excavation practices were unreasonable or unsafe. 66 Pa.C.S. §§ 332(a),1501.

9. The Complainants have failed to sustain their burden of proof that PPL's vegetation management methods and activities on their property were unreasonable or unsafe. 66 Pa.C.S. §§ 332(a), 1501.

10. The Complainants have failed to sustain their burden of proof that PPL's vegetation management methods and activities on adjacent land owned by the National Park Service constituted unreasonable discrimination in service against them. 66 Pa.C.S. §§ 332(a), 1502.

11. The Complainants have sustained their burden of proof that PPL's erosion control efforts as part of the Project were inadequate to effectively control or prevent erosion or excessive water runoff on the right-of-way through portions of their property. 66 Pa.C.S. §§ 332(a), 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Michael and Sharon Hartman at Michael and Sharon Hartman v. PPL Electric Utilities Corporation at Docket No. C-2019-3008272 is dismissed in part and sustained in part as set forth above.

