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October 23, 2023

VIA ELECTRONIC FILING

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

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

Dear Secretary Chiavetta:

Attached for filing are the Exceptions to the Initial Decision of PPL Electric Utilities Corporation in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Nicholas A. Stobbe

NAS/dmc
Attachments

cc: Honorable Steven K. Haas (*via email; w/attachment*)
Office of Special Assistants (*via email; w/attachment*)
Certificate of Service

CERTIFICATE OF SERVICE

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

VIA EMAIL AND FIRST-CLASS MAIL

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Date: October 23, 2023



Nicholas A. Stobbe

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS OF PPL ELECTRIC UTILITIES CORPORATION TO THE
INITIAL DECISION**

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TABLE OF CONTENTS

	Page
I. BACKGROUND	1
II. EXCEPTIONS	4
A. EXCEPTION NO. 1: THE ID ERRED IN RULING ON EROSION AND STORMWATER RUNOFF ISSUES BECAUSE SUCH ISSUES LIE WITHIN THE JURISDICTION OF DEP AND DCCD.....	4
B. EXCEPTION NO. 2: EVEN ASSUMING <i>ARGUENDO</i> THAT THE COMMISSION HAS JURISDICTION OVER EROSION AND STORMWATER RUNOFF ISSUES, THE ID ERRED IN FINDING THAT THE COMPLAINANTS SUSTAINED THEIR BURDEN OF PROOF	7
C. EXCEPTION NO. 3: THE ID’S ORDERED RELIEF TO ADDRESS THE ALLEGED EROSION AND STORMWATER RUNOFF ISSUES IS UNSUPPORTED, INFEASIBLE, and VAGUE	9
III. CONCLUSION.....	13

TABLE OF AUTHORITIES

Page(s)

Pennsylvania Court Decisions

West Penn Power Co. v. Pa. PUC,
478 A.2d 947 (Pa. Cmwlth. 1984)10

Zane v. Friends Hosp.,
836 A.2d 25 (Pa. 2003)5

Pennsylvania Administrative Agency Decisions

Hartman v. PPL Elec. Utils. Corp.,
Docket No. C-2019-3008272 (Order entered Apr. 16, 2020).....1, 2, 5

Pennsylvania Statutes and Regulations

35 P.S. §§ 691.5, 691.4026, 7, 11

35 P.S. § 691.402(c)(1)(ii)11, 12

66 Pa.C.S. §§ 332(a), 15012

66 Pa. C.S. § 1501.....9, 10

25 Pa. Code Ch. 1026

25 Pa. Code § 102.16

25 Pa. Code § 102.4(b)(1).....11, 12

25 Pa. Code § 102.4(b)(1), (b)(4)(iv).....6

25 Pa. Code § 102.7(c).....8, 9

25 Pa. Code § 102.326

25 Pa. Code § 102.32(a)(2)3, 6

25 Pa. Code § 102.32(c).....3, 7, 8

I. BACKGROUND

On March 5, 2019, PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) was served with the above-captioned Formal Complaint filed by Michael and Sharon Hartman (“Complainants”) with the Pennsylvania Public Utility Commission (“Commission”), concerning the Company’s construction and vegetation management activities in the existing transmission line right-of-way traversing their property as part of the Halifax-Dauphin 69 kV Transmission Line Rebuild Project (“Project”). This case is a remand proceeding, as the Commission previously sustained in part and denied in part the Company’s Motion for Summary Judgment requesting that the Complaint be dismissed in its entirety.¹ Under the Commission’s *April 2020 Order*, the issues on remand are limited in scope to allegations that the Company’s construction and vegetation management practices were unsafe or unreasonable.²

On October 3, 2023, the Commission issued Administrative Law Judge Steven K. Haas’s (“ALJ”) Initial Decision (“ID”), holding that: (1) the Complainants failed to sustain their burden of proof that PPL Electric’s construction and excavation practices were unreasonable or unsafe; (2) the Complainants failed to sustain their burden of proof that PPL Electric’s vegetation management methods and activities on their property were unreasonable or unsafe; (3) the Complainants failed to sustain their burden of proof that PPL Electric’s vegetation management methods and activities on adjacent land owned by the National Park Service (“NPS”) constituted unreasonable discrimination in service against them; and (4) the Complainants sustained their burden of proof that PPL Electric’s erosion control efforts as part of the Project were inadequate to effectively control or prevent erosion or excessive stormwater runoff on the right-of-way

¹ See *Hartman v. PPL Elec. Utils. Corp.*, Docket No. C-2019-3008272 (Order entered Apr. 16, 2020) (“*April 2020 Order*”).

² See *id.*, pp. 19, 22-23.

through portions of their property.³ As such, the ID ordered PPL Electric to, “within forty-five (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.”⁴

PPL Electric supports the ID’s dismissal of most of the Complainants’ issues. However, the Company excepts to the ID’s finding that the Complainants sustained their burden of proof to show that PPL Electric’s erosion and stormwater runoff control efforts were inadequate, as well as the ID’s ordered relief based on that finding.

The Commission lacks jurisdiction to adjudicate erosion and stormwater runoff issues, as such jurisdiction lies squarely within the purview of the Pennsylvania Department of Environmental Protection (“DEP”) and local conservation districts, which, here, is the Dauphin County Conservation District (“DCCD”). In fact, the Commission recognized in its *April 2020 Order* that “environmental protection controls, or lack thereof, or any unpermitted or increased storm water discharges are outside of this Commission’s jurisdiction.”⁵ Moreover, to the extent that the Commission remanded the case for a record to be developed on, among other things, “erosion to the soil and sedimentation on the Complainants’ property,” such issues are outside the Commission’s jurisdiction. PPL Electric was required to obtain approval of its Erosion and Sediment/Restoration (“E&S) Plans and E&S Permit for the Project. DCCD, as the local conservation district tasked with enforcing these E&S Plans and Permit, performed several

³ ID at 34; *see* 66 Pa.C.S. §§ 332(a), 1501.

⁴ ID at 35.

⁵ *April 2020 Order*, p. 22.

compliance inspections throughout the Project. PPL Electric never was issued a notice of violation, and DCCD ultimately closed out the E&S Permit because PPL Electric complied with the applicable requirements governing erosion and stormwater runoff.

Critically, the Complainants could have filed a complaint with DEP regarding PPL Electric's actions in the transmission line right-of-way.⁶ Alternatively, they could have requested an informal hearing with DEP within 30 days following notice that DCCD closed out the E&S Permit, which would have enabled DEP to make a final determination within 30 days of that request.⁷ Then, any final determination by DEP would have been appealable to the Environmental Hearing Board ("EHB").⁸ The Complainants wholly failed to exhaust these administrative remedies and cannot use the instant Complaint proceeding to pursue claims that lie entirely outside of the Commission's jurisdiction.

Notwithstanding, to the extent that the Commission finds that it has jurisdiction over the erosion and stormwater runoff issues and that such issues are within the scope of this limited remand proceeding, the ID erred in concluding that the Complainants sustained their burden of proof on those claims. The record demonstrates that PPL Electric did not cause any erosion or stormwater runoff issues, as affirmed by DCCD closing out the E&S Permit for this Project and by DEP never issuing PPL Electric a notice of violation. Moreover, PPL Electric witness Eby, who is well-versed in erosion and sediment control measures, did not see any significant erosion, either on site or in the Complainants' photographs presented to him during this proceeding.

Finally, the ID's ordered relief on the erosion and stormwater runoff issues is completely unsupported and unrealistic. As stated previously, the Complainants failed to sustain their burden

⁶ See 25 Pa. Code § 102.32(a)(2) (stating that "[c]ompliance and enforcement actions under this chapter which may be pursued include . . . [r]esponse to complaints").

⁷ *Id.* § 102.32(c).

⁸ *Id.*

of proof that there are any erosion or stormwater runoff issues present in the right-of-way. Therefore, PPL Electric should not be ordered to take any further action. Furthermore, nothing in the record indicates that PPL Electric even could comply with the ordered relief in the 45-day timeframe set forth in the ID. Indeed, if the Company were to determine that it needs to “take any necessary corrective measures,” PPL Electric would have to secure approval of another E&S Plan and Permit to perform the work or else it would be unlawfully disturbing the earth in its transmission line right-of-way. PPL Electric does not control the timing of DCCD’s review and approval of an E&S Plan and Permit. Accordingly, PPL Electric cannot be expected to evaluate the Complainants’ property, prepare and submit a new E&S Plan and Permit application, secure approval of the new E&S Plan and Permit, and perform the remedial work, all within 45 days of the Commission’s Final Order. Also, the ordered relief sets forth a vague and indeterminable standard that exceeds the requirements under The Clean Streams law and the Environmental Quality Board’s (“EQB”) regulations governing erosion and stormwater runoff.

For these reasons, and as explained in more detail below, PPL Electric respectfully requests that the Commission grant these Exceptions and modify the ID accordingly.

II. EXCEPTIONS

A. EXCEPTION NO. 1: THE ID ERRED IN RULING ON EROSION AND STORMWATER RUNOFF ISSUES BECAUSE SUCH ISSUES LIE WITHIN THE JURISDICTION OF DEP AND DCCD

The ID erroneously held that the Complainants sustained their burden of proof to show that PPL Electric’s erosion control efforts as part of the Project were inadequate to effectively control or prevent erosion or excessive stormwater runoff on the right-of-way through portions of the

Complainants' property.⁹ The Commission should reverse ID's finding and ordered relief because the Commission lacks jurisdiction over erosion and stormwater runoff issues.

Erosion and stormwater runoff issues are subject to the jurisdiction of DEP and local conservation districts (here, DCCD), which are tasked with regulating erosion and stormwater runoff from earth disturbance activities, like the Project. In fact, the Commission previously held in this proceeding that stormwater runoff issues are outside of its jurisdiction and, instead, within the purview of DEP. Specifically, in the *April 2020 Order*, the Commission explained:

We decline to examine the general or specific issues raised in the Complaint because the Complainants' assertions regarding any environmental impact of PPL's construction practices, **the reasonableness of PPL's environmental protection controls, or lack thereof, or any unpermitted or increased storm water discharges are outside of this Commission's jurisdiction. These matters are squarely within the purview of the Pennsylvania Department of Environmental Protection and/or an appropriate civil court of jurisdiction to address.** Thus, we will sustain, in part, PPL's Motion for Summary Judgment, and dismiss the claims in the Complaint raising general or specific environmental challenges.¹⁰

Therefore, the "law of the case" is that stormwater runoff issues are explicitly outside the scope of this limited remand proceeding and outside the Commission's jurisdiction.¹¹ As for erosion issues, the Commission in its *April 2020 Order* directed that a record be developed on, among other things, "erosion to the soil and sedimentation on the Complainants' property."¹² However, for the same

⁹ See ID at 14, 30-31, 34; Finding of Fact No. 72; Conclusion of Law No. 11.

¹⁰ *April 2020 Order*, p. 22 (emphasis added).

¹¹ See, e.g., *Zane v. Friends Hosp.*, 836 A.2d 25, 29 n.6 (Pa. 2003) ("Among rules that comprise the law of the case doctrine are that: '(1) upon remand for further proceedings, a trial court may not alter the resolution of a legal question previously decided by the appellate court in the matter; (2) upon a second appeal, an appellate court may not alter the resolution of a legal question previously decided by the same appellate court; and (3) upon transfer of a matter between trial judges of coordinate jurisdiction, the transferee trial court may not alter the resolution of a legal question previously decided by the transferor trial court.'") (emphasis added) (quoting *Commonwealth v. Starr*, 664 A.2d 1326, 1331 (Pa. 1995)).

¹² *Id.*

reason that stormwater runoff issues are outside the Commission’s jurisdiction, erosion issues are likewise outside of the Commission’s purview.

Specifically, the EQB adopted regulations that govern earth disturbance activities and their impact on erosion, sedimentation, and stormwater runoff, pursuant to its authority under The Clean Streams Law, 35 P.S. §§ 691.5, 691.402. Under those regulations, DEP and local conservation districts, such as DCCD, are tasked with permitting earth disturbance activities and conducting investigations and enforcement actions to ensure that there are no issues with erosion, sedimentation, or stormwater runoff resulting from those activities.¹³ Here, because PPL Electric’s Project involved earth disturbance activities, as defined by EQB’s regulations,¹⁴ the Company was required to obtain approval of its E&S Plans and Permit for the Project. As required by EQB’s regulations, PPL Electric’s E&S Plans set forth, among other things, the best management practices (“BMPs”) that the Company would use “to minimize the potential for accelerated erosion and sedimentation” and to “[u]tilize other measures or controls that prevent or minimize the generation of increased stormwater runoff.”¹⁵ DEP and the local conservation district, if applicable, are empowered to enforce compliance with the E&S Plan and Permit.¹⁶

Moreover, the Complainants had clear and available administrative remedies to pursue with DEP and DCCD. The Complainants could have filed a complaint with DEP regarding PPL Electric’s actions in the transmission line right-of-way.¹⁷ Also, they could have requested an informal hearing with DEP within 30 days following notice that DCCD closed out the E&S Permit,

¹³ See 25 Pa. Code Ch. 102 (governing “Erosion and Sediment Control”).

¹⁴ See *id.* § 102.1 (defining “earth disturbance activity”).

¹⁵ *Id.* § 102.4(b)(1), (b)(4)(iv) (emphasis added); see PPL Electric St. No. 1, pp. 10-14; PPL Electric Exh. TE-1, p. 3; Tr. 269.

¹⁶ 25 Pa. Code § 102.32 (compliance and enforcement provisions).

¹⁷ See *id.* § 102.32(a)(2) (stating that “[c]ompliance and enforcement actions under this chapter which may be pursued include . . . [r]esponse to complaints”).

which would have enabled DEP to make a final determination within 30 days of that request.¹⁸ After that informal hearing, the DEP's final determination would have been appealable to the EHB.¹⁹ Yet, the Complainants failed to exhaust these administrative remedies.²⁰ Thus, the Complainants cannot use the instant Complaint proceeding to pursue claims that lie entirely outside of the Commission's jurisdiction.

In conclusion, DEP and DCCD have jurisdiction to regulate erosion and stormwater runoff issues related to earth disturbance activities under The Clean Streams Law and EQB's regulations, and the Commission lacks jurisdiction over those claims. Therefore, the ID erred by ruling on the alleged erosion and stormwater runoff issues created by PPL Electric's earth disturbance activities within the transmission line right-of-way. Thus, the ID's findings on erosion and stormwater runoff, as well as the ordered relief based thereon, should be reversed.

B. EXCEPTION NO. 2: EVEN ASSUMING ARGUENDO THAT THE COMMISSION HAS JURISDICTION OVER EROSION AND STORMWATER RUNOFF ISSUES, THE ID ERRED IN FINDING THAT THE COMPLAINANTS SUSTAINED THEIR BURDEN OF PROOF

Even if the Commission were to find that it has jurisdiction over the alleged erosion and stormwater issues, the ID erroneously concluded that the Complainants sustained their burden of proof on those points.²¹

As explained in PPL Electric's Reply Brief, the Company did not cause any erosion or stormwater runoff issues during this Project.²² The foremost evidence is that PPL Electric did not receive any notices of violation from the DEP and that DCCD closed out the E&S Permit on June

¹⁸ 25 Pa. Code § 102.32(c).

¹⁹ *Id.*

²⁰ PPL Electric notes that the Complainants were, at one time, represented by counsel in this proceeding. As such, the Complainants' failure to pursue these administrative remedies cannot be solely attributed to their lack of knowledge about the legal processes available to them.

²¹ See ID at 14, 30-31, 34; Finding of Fact No. 72; Conclusion of Law No. 11.

²² PPL RB, p. 12.

17, 2021.²³ Given that DCCD performed inspections throughout the Project and ultimately closed out the E&S Permit, PPL Electric’s compliance with the E&S Plans and Permit, which are designed to address concerns with erosion, sedimentation, and stormwater runoff, is indisputable.²⁴ The Commission cannot and should not second-guess DCCD’s conclusion that the Company complied with its requirements to employ BMPs to minimize the potential for accelerated erosion and sedimentation and to utilize measures to control stormwater runoff.

Also, PPL Electric witness Eby testified that he has not observed, and there is no evidence to suggest, that “sediment laden stormwater runoff left the project site and entered any adjacent waterway, including Clarks Creek or the Susquehanna River.”²⁵ “If this would have happened, the DEP would have issued [a notice of violation] to PPL Electric.”²⁶ However, as noted previously, DEP never issued any notices of violation to PPL Electric for this Project.²⁷

Furthermore, PPL Electric installed “storm water run-off bars” on the access road on the U.S. National Park Service’s property to help slow down and dissipate any stormwater flow that may concentrate on the access road.²⁸ These “run-off bars” are directed in a manner based on how the access road is traversing the contours of the mountain.²⁹

As for the commercial stone or “rip-rap” used for the construction, “the Company used this type of stone for the access road to help prevent erosion and stormwater run-off, not to create any such issues.”³⁰ “In fact, had the Company used a smaller type of stone on the sloped mountainside

²³ PPL RB, p. 12.

²⁴ *Id.*; *see also* 25 Pa. Code § 102.7(c) (stating that when a permittee submits a notice of termination for the E&S Permit, the “Department or conservation district will conduct a final inspection and approve or deny the notice of termination within 30 days”).

²⁵ PPL RB, p. 13.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

of [the Complainants’] property, the erosion and stormwater run-off would be severe.³¹ Although “[t]he larger stone used by the Company may move somewhat,” any “smaller stones would have been washed off the mountainside.”³² “Likewise, a paved road would create even worse stormwater run-off problems.”³³ In the end, PPL Electric “selected the best material to prevent erosion and stormwater run-off issues and . . . ensure the safety of its workers accessing the Company’s facilities in this transmission line right-of-way.”³⁴

Finally, the Complainants presented several photographs in this proceeding, including both in their direct testimony and on cross-examination of PPL Electric witness Eby.³⁵ Mr. Eby testified that he “did not see any significant erosion,” either on site or in the Complainants’ photographs presented to him.³⁶

Based on the foregoing, the ID erred in finding that the Complainants sustained their burden of proof that PPL Electric’s erosion control efforts were inadequate to effectively control or prevent erosion or excessive stormwater runoff. As such, the Commission should reverse this finding.

C. EXCEPTION NO. 3: THE ID’S ORDERED RELIEF TO ADDRESS THE ALLEGED EROSION AND STORMWATER RUNOFF ISSUES IS UNSUPPORTED, INFEASIBLE, AND VAGUE

As part of its finding that PPL Electric’s erosion and stormwater runoff measures were potentially inadequate and in violation of Section 1501 of the Code,³⁷ the ID directed that:

[W]ithin forty-five (45) days of a final Commission Order in this proceeding, PPL Electric Utilities Corporation shall 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

³¹ PPL RB, p. 13.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*, p. 14.

³⁶ *Id.*

³⁷ *See* ID at 14, 30-31, 34; Finding of Fact No. 72; Conclusion of Law No. 11.

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.³⁸

The Commission should reverse this unsupported, infeasible, and vague relief that was granted to the Complainants.

First, as explained previously, nothing in the record supports a finding that there is excessive erosion or stormwater runoff issues in the transmission line right-of-way.³⁹ Therefore, because there was no violation of the Public Utility Code, no relief can be awarded to the Complainants.⁴⁰

Second, the ordered relief ignores the requirements for commencing any remedial earth disturbance activities. If the Company were to determine that corrective actions are necessary, PPL Electric must prepare and receive approval of a new E&S Plan and Permit or else it would be unlawfully engaging in earth disturbance activities.⁴¹ As noted by PPL Electric witness Eby, “[t]he approximate cost for developing a new E&S Plan and Permit would be around \$30,000,” and it would “take approximately 10 months to develop and receive approval from the DEP.”⁴²

Despite this uncontroverted evidence, the ID ordered PPL Electric to re-inspect the access roads and pole pads to determine if any areas of excessive erosion or runoff are occurring and, if so, to remediate any identified issues within 45 days of the Commission’s Final Order.⁴³ Beyond encroaching on the regulatory authority of the bodies reviewing and approving the E&S Plans,

³⁸ ID at 35.

³⁹ See Section II.B., *supra*.

⁴⁰ See *West Penn Power Co. v. Pa. PUC*, 478 A.2d 947, 949-50 (Pa. Cmwlth. 1984) (“We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.”).

⁴¹ PPL RB, p. 21-22.

⁴² *Id.*, p. 22.

⁴³ ID at 35.

issuing the E&S Permits, and closing out the E&S Permits (*i.e.*, DEP and DCCD), nothing in the record establishes that the Company could feasibly comply with this requirement. Effectively, PPL Electric could be deemed out of compliance for issues beyond its control—the time it takes for the E&S Plan and Permit to be approved.

Third, the ordered relief sets forth a completely vague standard for re-inspecting the areas and determining whether remedial actions are necessary. The ID directs PPL Electric to “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.”⁴⁴ It is unclear what the ID means by “areas or erosion or excessive runoff” that “are still occurring,” given that the agencies tasked with regulating erosion and stormwater runoff here (*i.e.*, DEP and DCCD) did not find any issues with erosion and stormwater runoff. Also, if adopted by the Commission, PPL Electric would be held to a higher standard for minimizing the potential for erosion and stormwater runoff than DEP or DCCD would apply. The Clean Streams Law and EQB’s regulations utilize the standard “minimize the potential for accelerated erosion and sedimentation.”⁴⁵ However, the ID’s ordered relief directs PPL Electric to “take any necessary corrective measures to prevent or minimize future erosion.”⁴⁶ This direction is broad-sweeping and makes no mention of “minimiz[ing] the potential for accelerated erosion.” Indeed, “prevent[ing] or minimiz[ing]” conceivably any “future erosion”⁴⁷ is a much stricter and higher

⁴⁴ ID at 35 (emphasis added).

⁴⁵ 35 P.S. § 691.402(c)(1)(ii); 25 Pa. Code § 102.4(b)(1).

⁴⁶ ID at 35 (emphasis added).

⁴⁷ *Id.*

standard than “minimiz[ing] the potential for accelerated erosion and sedimentation.”⁴⁸ Further, the ordered relief is so open-ended and non-specific that PPL Electric will be unable to determine conclusively whether it has complied with this provision, especially if and when the Company finds that there are no areas of erosion or excessive stormwater runoff.

For these reasons, the ID’s relief granted to the Complainants is unsupported, infeasible, and vague and should, therefore, be reversed.

⁴⁸ 35 P.S. § 691.402(c)(1)(ii); 25 Pa. Code § 102.4(b)(1).

III. CONCLUSION

WHEREFORE, the Pennsylvania Public Utility Commission should grant PPL Electric Utilities Corporation's Exceptions and enter a Final Order consistent with these Exceptions that adopts the Initial Decision, as modified, to remove the findings, conclusions, and ordered relief related to erosion and stormwater runoff issues.

Respectfully submitted,



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