

Michael and Sharon Hartman
1650 Primrose Lane
Dauphin, PA 17018
Tel Numbers (717) 921-8708 and (717) 315-9473
Email: angelgah@comcast.net

November 13, 2023

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NOV 13 2023 AM 8:48

Honorable Rosemary Chiavetta
Secretary Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120


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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Complainant's Michael and Sharon Hartman's Reply Exceptions in the above-referenced proceeding. Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,





/s/ Michael Hartman

/s/ Sharon Hartman

Complainant

Michael and Sharon Hartman

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael and Sharon Hartman

v.

PPL Electric Utilities Corporation

C-2019-3008272

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Complainant's Reply Exceptions to PPL Exceptions to October 3, 2023 Initial

Decision

PPL's Exceptions include undocumented, uncorroborated, and untrue assertions, as follow:

PPL undocumented, uncorroborated, and untrue assertion number one

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.

Truth

Pennsylvania § 102.5. Permit requirements (Erosion and Sediment Control), require a Permit for earth disturbances equal to or exceeding one acre, as follows:

(a) Other than agricultural plowing or tilling activities, animal heavy use areas, timber harvesting activities or road maintenance activities, a person proposing an earth disturbance activity that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance, or an earth disturbance on any portion, part, or during any stage of, a larger common plan of development or sale that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance.

Your complainant's Proposed Order and Judge Haas's ID Order do not require any earth disturbance. Re-grading an existing stone access road so that it deters the flow of sediment laden stormwater runoff onto our property and Clarks Creek is not an earth disturbance. Likewise, adding topsoil to establish and maintain erosion deterrent vegetation is not an earth disturbance.

Both measures would be strongly endorsed by the PA DEP, DCCD, and Conservation Reserve Enhancement Program (CREP) authorities.

Furthermore, it is well established that the size of the Complainant's property within the right of way is less than one acre. Accordingly, PPL would not be required to obtain a permit regardless of the nature and extent of the restoration activity ordered by the Commission.

Again, PPL counsel has manipulated an employee, Thomas Eby, to swear to a false and misleading statement.

PPL undocumented, uncorroborated, and untrue assertion number two

As explained in PPL Electric's Reply Brief, the Company did not cause any erosion or stormwater runoff issues during this Project. Emphasis added.

Truth

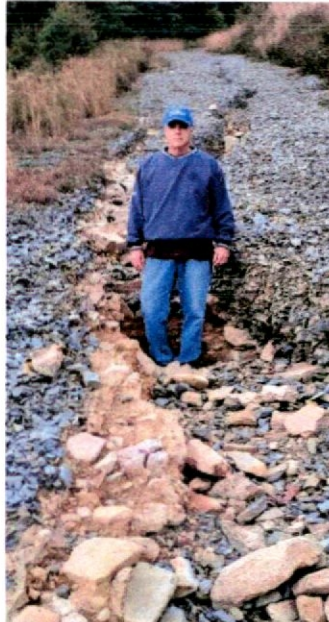
PPL has failed to introduce a single photograph or present a third party objective witness to support this bold untrue assertion.

Your Complainant's Exhibit A Photographs, below, document erosion and sediment laden stormwater runoff issues on the Project that directly impact and endanger your Complainant's property, on and off the right-of way, and Clarks Creek, a High Quality – Cold Water Fishery and Special Protection Stream.

Hartman Exhibit A Paragraph 58 Photograph 19 depicts that NPS Pole 73 and Pole 74 access road stone from Wech property along with sediment laden stormwater has washed off the ROW in the direction of our residence.



Hartman Exhibit A Paragraph 59 Photograph 20 and Paragraph 60 Photograph 21 depict erosion of the Pole 73 and Pole 74 access road upslope of your Complainant's property, our Primrose neighbors, and Clarks Creek.



Hartman Exhibit 52 depicts the erosion of the Pole 76 access road in contradiction to PPL's bold undocumented, uncorroborated, and untrue assertions. The photographs depict the path of unsafe sediment laden stormwater runoff in the direction of our residence and Clarks Creek.



PPL undocumented, uncorroborated, and misleading assertion number three

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. 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, 2021.

Reality

PPL failed to present a single PA Department of Environmental Protection (DEP) or Dauphin County Conservation District (DCCD) witness to back-up this bold irrelevant assertion. The PA DEP and DCCD closure of the Permit for the Project, in whole, doesn't prove that PPL followed the E & S Plan and Permit conditions for each of the reported 179 properties involved, and certainly not your Complainant's property. Thomas Eby, during cross examination, testified that PPL did not have to meet Permit requirements on our property.

Hearing Transcript - Cross Examination of Thomas Eby			
Page Number	Line Number Start	Question	Answer
180			To Eby's knowledge, no one from DEP ever visited the site
Thomas Eby testified in sum and substance that PPL was not required to satisfy DEP Permit conditions on the Complainant's' property, only the Project in its entirety			
196	11	So you applied to have this permit closed while there was hardly any vegetation on crane pad 75 and 76; correct?	I did, but I'd like to clarify that. It's 70 percent throughout the project, correct.

PPL undocumented, uncorroborated, and untrue assertion number four

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.

Truth

Your complainant sought the assistance of unpaid legal counsel, Robert Young, because our Discovery requests, Motions to Compel, and request for a Hearing were not addressed or honored over an extended period.

Furthermore, PPL, PA DEP, and DCCD failed to furnish us notice that Permit closure was imminent or that the Permit was in fact closed. No-one ever advised us that we had appeal rights. PPL's counsel "conclusion" is not only inaccurate but reflects counsel's propensity to present untrue assumptions as fact.

PPL erroneous self serving assertion number five

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.

Truth

The truth is that PPL's BMPs failed. The Commission must consider our testimony and dozens of photographs that demonstrate that PPL's BMPs failed, and that your Complainant's and neighboring properties have been subjected to, and will continue to be subjected to, unsafe accelerated erosion and sediment laden stormwater as pictured, above.

PPL undocumented, uncorroborated, and untrue assertion number six

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."

Truth:

There has been no testimony that Thomas Eby visited our property during or immediately after a rainstorm. Furthermore, the assertion defies a simple reality, GRAVITY. Clarks Creek is situated downslope of our property and the PPL access roads depicted in the above photographs.

It is a fairy tale to suggest that the sediment laden stormwater that caused the approximate 30-inch-deep gullies in the PPL access roads within 400 yards of Clarks Creek never entered Clarks Creek. And if common sense isn't enough, please consider the below photograph I took of Clarks Creek below our residence following a rainstorm.

Hartman Exhibit A Paragraph 61 Photograph 22



PPL undocumented, uncorroborated, and untrue assertion number seven

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.

Reality

Please review our testimony and photographs and reach your own conclusion.

Please also consider the below excerpts from our cross examination of Mr. Eby. Mr. Eby's answers reflect that PPL failed to follow PPL's own E & S Plan and reported best management practices. No independent objective third party, including the PA DEP and DCCD that closed the Permit, determined, or reported that PPL's activity on our property was REASONABLE.

Hearing Transcript - Cross Examination of Thomas Eby				
Date	Page Number	Line Number Start	Question	Answer
8/16/2022	180			To Eby's knowledge, no one from DEP ever visited the site
Thomas Eby testified in sum and substance that PPL was not required to satisfy DEP Permit conditions on the Complainant's' property, only the Project in its entirety				
8/16/2022	196	11	So you applied to have this permit closed while there was hardly any vegetation on crane pad 75 and 76; correct?	I did, but I'd like to clarify that. It's 70 percent throughout the project, correct.
The permitted Limit of Disturbance (LOD) was 100 feet. Admittedly, PPL did not follow and adhere to the PA DEP Permit on the Complainant's' property, and did not replenish vegetation destroyed outside of the LOD				
8/16/2022	211	13	Isn't it a fact you excavated 120 feet property on a 100-foot right-of-way?	So I addressed - I believe I addressed this specifically in my testimony where there are two specific locations. That excavation did occur outside the LOD, approximately 12 feet in each of those locations.
8/16/2022	213	2	Judge- To your knowledge, the company did not replant huckleberry bushes or necessarily replant the type of bushes that were there previously, correct?	Correct
Eby's incredible testimony that the introduction of an invasive noxious weed incident to PPL's July 2021 herbicide application would satisfy the PA DEP's 70% vegetation requirement.				
8/16/2022	221	23	For example, if the property is covered by mile a minute, invasive weed, that would not satisfy the 70% coverage; would it?	Yes it would.

8/16/2022	228	9	And to clarify, Mr. Eby, you didn't see it (mile-a-minute) on the Hartman property until after the herbicide application of July of 2021. Correct?	I'm trying to recall when, specifically. So no, I didn't see it specifically during construction or restoration, no.
8/16/2022	228	16	And when you say invasive, is it also an undesirable invasive plant?	Yes. In general, that is the consensus.
8/16/2022	228	19	And is it also considered to be a form of vegetation that does little to assist in erosion control?	Yes
8/16/2022	255		In your testimony that the green patches that you see on the drone photo that you can confirm that that is grass?	No, I can't confirm the vegetation, the green vegetation in the drone photograph.
PPL materially deviated from PA DEP Permit and E and S Plan without seeking approval from the PA DEP or DCCD				
8/16/2022	230	5	When PPL chose to install a switchback in contradiction to E & S attachments 114 and 115 on Hartman property, did PPL get those changes approved prior to making those changes?	Those, no we didn't
Eby's acknowledgement that PPL failed to follow E & S Plan, specifically Attachment 002, topsoil restoration requirements				
8/16/2022	239	6	Areas to be top-soiled shall be scarified, I guess, to a maximum depth of three to five inches; 6 to 12 inches on compacted soil prior to placement of the topsoil. Areas to be vegetated shall have a minimum of four inches of topsoil in place prior to seeding and mulching. Is that the case on the Hartman property?	No

8/16/2022	240	19	Judge - And I think it has been established previously the company did not bring in any topsoil to put down on the portion of the right of way that runs through the Hartman property. Is that correct?	Yes
8/16/2022	248	20		No, we did not strip and stockpile the topsoil of your access road .
Thomas Eby acknowledged that the access road shoulders that were aggravated by the deplorable April 2020 claw-back activity were unsafe.				
8/16/2022	246	12	Do you agree it's dangerous to have that kind of shoulder if you drive a tractor, a bicycle, a sled, or you slip off the side. Isn't that a safety issue?	If you run off the road? Yes. Yes. Yeah.
Eby acknowledged that PPL violated PA DEP Permit when PPL excavated topsoil to construct an access road that was wider than 15 feet.				
8/17/2022	270	24	Mr. Eby, did the PPL E & S Pan and Permit dictate a 15-foot wide access road?	That is our - our general width that is utilized on all of our projects for planning purposes for the access roads.
8/17/2022	281	15	Judge - But you are unable to point to a specific written passage anywhere in the Permit that gives you that flexibility. Correct.	Correct
8/17/2022	285	17	Mr. Eby, is the fact that any overage in width of the access road resulted in the destruction of vegetation.	Yes, I can't argue that
8/17/2022	285	21	Is the fact that any overage in width of the access road resulted in the compaction of additional soil.	Yes, I can't argue that, again.
8/17/2022	285	25	Is the fact that any overage in width of the access road resulted in the displacement and removal of additional topsoil?	Yes, potentially

8/17/2022	286	4	Is the fact that the topsoil excavated from the Hartman property was not saved or conserved, but rather used as construction of crane pads?	From what I recall there was little or no topsoil on that mountainside.
8/17/2022	290	22	Judge - And then I believe you also said you did not personally witness the topsoil being placed back in top of the crane pads. Correct?	Correct
8/17/2022	294	1	Is it a fact that after PPL constructed the Pole 76 and Pole 75 crane pads that they covered the crane pads with riprap?	Yes. That's correct.
8/17/2022	296	9	Does it appear that the riprap is protruding from the soil, from February 2019 to April of 2020	Yes
Thomas Eby did in fact acknowledge erosion to the access road on the Complainants' property.				
8/17/2022	308	17	Does the road appear to be constructed in a manner that water washing down the mountain will wash the left side of the photograph in the direction of the Hartman residence?	The water will run downslope, yes. If it's directed -. If the downslope - if your house is downslope, yes, water will run in that direction.
8/17/2022	311	20	Judge - Does this photograph show signs of some degree of erosion in the access road?	Yes. You can - yes, some of the finer material or stone may be getting washed away or moved around, yes.
8/17/2022	329	9	Crane Pad 75 - Will it prevent the water from flowing down the mountain in the direction of our house?	No
8/17/2022	332	21	You said you don't see any side (sic) of erosion, but do you see anything in place on the western part of the right-of-way that would stop the flow of water down the mountain?	No, I don't see anything in this photo to stop water.

Thomas Eby admits that PA DEP and DCCD did not report that the PPL construction activity completed on the Complainants' property was reasonable, emphasis added.				
8/17/2022	351	22	Judge - The question is, did anybody from either of those agencies verbally say to you that the activities that PPL took on the property were reasonable?	No, I do not recall.
Support for Complainants' argument that the application of rip-rap on top of the access road constructed on the Complainants' property was unreasonable and discriminatory.				
8/16/2022	193	24	Judge - but the question is, are you aware of any other section of the project where the surface of the access road runs through the property is this bigger rip-rap rock.	A specific location, no, I cannot recall.
8/17/2022	358	19	He testified that, you know, there's some riprap on a steep slope. I'm asking to clarify, is there any section of this project, the 3.5 mile project, other than the Hartman-Wech property, access road 75 and 76 where PPL intentionally applied riprap to the road cover - top of the road?	No
8/17/2022	359	7	And would you agree, Mr. Eby, that there are other slopes within this project that are steeper than the Hartman slopes?	Yes, there are many

PPL Exceptions rely heavily on the DCCD's closure of the Permit as evidence that PPL's actions were reasonable. PPL is asking the PUC to waive its jurisdiction in favor of the PA DEP, an agency that never visited our property, and DCCD, an agency that has limited jurisdiction over Chapter 102 and no jurisdiction over PPL. We are asking the Commission to consider the real evidence in this case presented by witnesses that have owned and cherished the property, its

contour, mountain stone, topsoil, and vegetation, for the past 25 years. We have witnessed the removal and destruction of erosion deterrent vegetation by the original construction activity, and later by the needless, careless, and unsafe July 2021 herbicide application. Which brings us to a very important fact missing from the PPL Exceptions.

The PPL E & S Plan represented that the ROW would be maintained in a meadow-like or brush condition. **The herbicide application was completed 29 days after the permit was closed while your Complainant's property that was subjected to recent aggressive excavation was vulnerable.** The grasses on the construction pads and the grasses, if any, on the clawed back access road shoulders were immature and sparse. The herbicide application, in direct contradiction to the E & S Plan representation that the property would be maintained in a meadow like and brush condition, destroyed all the erosion deterrent vegetation on an approximate one-third acre quadrant above Pole 75. The careless herbicide application likewise destroyed Pole 76 and Pole 75 crane pad grasses, and erosion deterrent brush situated near the Hartman residence below Pole 76. The herbicide application violated PPL's Vegetation Management Guidelines, and written representation that PPL's 2021 Vegetation Management Activity would result in the removal of "Selected Brush", Hartman Exhibit 5. In conclusion, PPL has no basis to assert that the July 2021 herbicide application was known to, approved by, or condoned by the PA DEP and DCCD. Accordingly, it is the responsibility of the Commission, not the PA DEP or DCCD, to evaluate the reasonableness, safety, and impact of the July 2021 Vegetation Management activity.

PPL's lame excuse number one

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.

Answer

The answer is simple! PPL can simply follow their own E and S Plan, Attachment 002, specifically Section 20 and 37B and Sections titled STONE ACCESS ROADS and TOPSOIL APPLICATION. PPL's fine print Attachment 002 was converted to a word document, Hartman

Exhibit 14. PPL can also consult with the E and S Plan author, Joseph C. Scott, P.E. In the absence of Mr. Scott, we respectfully request that the Commission order that an objective third party evaluate our property and determine appropriate restoration activity consistent with the E & S Plan.

Proposed Order which requires no earth disturbance

We respectfully request that the PUC Order PPL to:

- a. Return or replace topsoil removed from our property to construct the Pole 75 and Pole 76 access roads and crane pads.
- b. Remove rip-rap protruding from the Pole 76 and Pole 76 crane pads, add topsoil and re-seed.
- c. Remove rip-rap dumped on top of the Pole 76 and Pole 75 access road during the April 2020 claw-back procedure.
- d. Replace native vegetation (huckleberry, blackberry, ferns, honeysuckle, mountain laurel, a Norway Spruce and white oak) destroyed by excavation activity beyond the prescribed excavation area detailed in the original PPL E & S Plans Attachments 114 and 115, to include vegetation destroyed by excavation activity off the ROW.
- e. Remove stone that has washed off the road as depicted in Hartman Exhibit 52, add topsoil, and re-seed.
- f. Construct a swale or water bar that prevents higher elevation neighboring property stormwater runoff from entering our property off the ROW as depicted in Hartman Testimony Exhibit A Paragraphs 58, 59 and 60, Photographs 19, 20, and 21 and Hartman Exhibit 52.

g. Scarify the existing Pole 76 and Pole 75 access road shoulders and add topsoil to return the shoulders to grade and re-seed.

h. Destroy the mile-a-minute that has overtaken our property above Pole 75 following the July 2021 herbicide application.

i. Replace native vegetation (huckleberry, blackberry, and ferns) above Pole 75 and below Pole 76, and re-seed Pole 75 and Pole 76 grasses that were destroyed by the July 2021 herbicide application.

j. Remove the rip-rap that litters our property off the access road, and prevents vegetation necessary to protect our property from accelerated erosion.

k. All previously disturbed areas must be topsoiled and restored consistent with PPL's own Restoration Standards as detailed in the E & S Plans, below:

AREAS WHICH ARE TO BE TOPSOILED SHALL BE SCARIFIED TO A MINIMUM DEPTH OF 3 TO 5 INCHES – 6 TO 12 INCHES ON COMPACTED SOILS – PRIOR TO PLACEMENT OF TOPSOIL. AREAS TO BE VEGETATED SHALL HAVE A MINIMUM 4 INCHES OF TOPSOIL IN PLACE PRIOR TO SEEDING AND MULCHING. FILL OUTSLOPES SHALL HAVE A MINIMUM OF 2 INCHES OF TOPSOIL

CONCLUSION Based on the foregoing and for the reasons articulated in your Complainant's Main and Reply Briefs, and Exceptions your Complainant's respectfully requests that the Commission grant your Complainant's Exceptions and Reply Exceptions and adopt your Complainant's positions as discussed herein.

Michael Hartman

Sharon Hartman

/s/MICHAEL HARTMAN
/s/SHARON HARTMAN
1650 PRIMROSE LANE
DAUPHIN PA 17018
(717) 315-9473

angelgah@comcast.net

Attachment A to Complainant's Reply Exceptions

CHAPTER 102. EROSION AND SEDIMENT CONTROL

§ 102.5. Permit requirements.

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(a) Other than agricultural plowing or tilling activities, animal heavy use areas, timber harvesting activities or road maintenance activities, a person proposing an earth disturbance activity that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance, or an earth disturbance on any portion, part, or during any stage of, a larger common plan of development or sale that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance, shall obtain an individual NPDES Permit or coverage under a general NPDES permit for Stormwater Discharges Associated With Construction Activities prior to commencing the earth disturbance activity. In addition to other applicable requirements, persons required to obtain an Individual NPDES Permit for Stormwater Discharges Associated With Construction Activities for projects proposed in special protection watersheds shall evaluate and use BMPs in accordance with antidegradation requirements in §§ 102.4(b)(6) and 102.8(h) (relating to erosion and sediment control requirements; and PCSM requirements) regardless of whether the discharge is new, additional or increased.

§ 102.4. Erosion and sediment control requirements.

For earth disturbance activities other than agricultural plowing or tilling or animal heavy use areas, the following erosion and sediment control requirements apply:

(1) The implementation and maintenance of E&S BMPs are required to minimize the potential for accelerated erosion and sedimentation, including those activities which disturb less than 5,000 square feet (464.5 square meters).

(2) A person proposing earth disturbance activities shall develop and implement a written E&S Plan under this chapter if one or more of the following criteria apply:

(i) The earth disturbance activity will result in a total earth disturbance of 5,000 square feet (464.5 square meters) or more.

(ii) The person proposing the earth disturbance activities is required to develop an E&S Plan under this chapter or under other Department regulations.

(iii) The earth disturbance activity, because of its proximity to existing drainage features or patterns, has the potential to discharge to a water classified as a High Quality or Exceptional Value water under Chapter 93 (relating to water quality standards).

Certificate of Service

November 13, 2023

Secretary

PA Public Utility Commission

Commonwealth Keystone Building

2nd Floor, Room – N201

Harrisburg, PA 17120

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

Complainant's Reply Exceptions to PPL Exceptions and Honorable Steven Haas's October 3, 2023 Initial Decision

Dear Secretary,

I hereby certify that on or about November 13, 2023, I served a true copy of the Complainant's Reply Exceptions to PPL Exceptions to the October 3, 2023, Initial Decision, upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party) via email.

Honorable Steven Haas

Administrative Law Judge

PA Public Utility Commission

sthaas@pa.gov

Devin Ryan, Esquire

Nicholas Stobbe, Esquire

Post and Schell

dryan@postschell.com

nstobbe@postschell.com

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