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November 13, 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 PPL Electric Utilities Corporation's Replies to Exceptions in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Devin Ryan

DR/dmc
Attachments

cc: Certificate of Service
Honorable Steven K. Haas (*via Email sthaas@pa.gov*)
Office of Special Assistants (*via Email ra-OSA@pa.gov*)

## 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**

Michael and Sharon Hartman
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Date: November 13, 2023

Devin T. Ryan

**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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# REPLIES OF PPL ELECTRIC UTILITIES CORPORATION TO THE EXCEPTIONS OF MICHAEL AND SHARON HARTMAN

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Date: November 13, 2023

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## I. INTRODUCTION

PPL Electric Utilities Corporation ("PPL Electric" or the "Company") hereby file its Replies to the Exceptions of Michael and Sharon Hartman ("Complainants"). On October 19, 2023, the Complainants filed Exceptions to the October 3, 2023 Initial Decision ("ID") issued by Administrative Law Judge Steven K. Haas (the "ALJ"). The ID held 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 through portions of their property.[1]

As a threshold matter, the Complainants' Exceptions do not conform to the Pennsylvania Public Utility Commission's ("Commission") regulations because they are unnumbered, improperly cite to and rely on certain extra-record evidence,[2] and often do not cite to any of the ID's Findings of Fact, Conclusions of Law, or specific pages of the ID.[3] Moreover, the

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

[2] It is well-established that parties cannot introduce evidence for the first time at the briefing or exceptions stage. *See, e.g.*, *Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS 45, at *8-9 (Order entered Feb. 10, 1994) (denying party's attempt to introduce extra-record evidence in its exceptions). "The Commission, as an administrative body, is bound by the due process provisions of constitutional law and by the principles of common fairness." *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (citations omitted). "Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal." *Id.* (citations omitted). Therefore, any extra-record evidence that the Complainants introduce or rely on in their Exceptions should be disregarded.

[3] Section 5.533(b) of the Pennsylvania Public Utility Commission's ("Commission") regulations provides that "[e]ach exception must be numbered and identify the finding of fact or conclusion of law to which exception is

Complainants' Exceptions exceed the Commission's 40-page limit for Exceptions.[4] That being said, to aid in the Commission's review of the Complainants' Exceptions, PPL Electric has grouped and numbered the arguments made in the Complainants' Exceptions and will respond in kind here.

For the reasons set forth in PPL Electric's Briefs, the Company's Exceptions, and the instant Replies to Exceptions, PPL Electric respectfully submits that the Complainants' Exceptions should be denied, PPL Electric's Exceptions should be granted, the ID should be modified consistent with PPL Electric's Exceptions, and the Complainants' Complaint should be dismissed in its entirety.

## II. REPLIES TO EXCEPTIONS

### A. REPLY TO EXCEPTION NO. 1: THE COMPLAINANTS WERE AFFORDED MORE THAN ADEQUATE DUE PROCESS THROUGHOUT THE PROCEEDING, INCLUDING EXTENSIVE DISCOVERY, WRITTEN TESTIMONY, AND THREE DAYS OF HEARINGS, WHICH PROVIDED THEM A FULL AND FAIR OPPORTUNITY TO LITIGATE THEIR COMPLAINT

The Complainants erroneously contend in their Exceptions that they were denied due process by the ALJ, asserting that they were prejudiced by not having an in-person hearing and the "reset" of the discovery process after the case was remanded by the Commission. (Complainants Exceptions, pp. 2-3.) The Complainants also try to fault PPL Electric for presenting the witnesses it believed necessary to rebut their claims, as opposed to certain individuals that the Complainants wanted to cross-examine but failed to subpoena to testify. (Complainants Exceptions, pp. 2-4.) Moreover, the Complainants take issue with the ALJ's decision to strike portions of their testimony and exhibits after reviewing PPL Electric's Motion to Strike and the

taken and cite relevant pages of the decision. Supporting reasons for the exceptions shall follow each specific exception." 52 Pa. Code § 5.533(b).

[4] *See* 52 Pa. Code § 5.533(c).

Complainants' Answer thereto. (Complainants Exceptions, pp. 5-7.) Lastly, the Complainants contend that they were denied the opportunity to present rebuttal or surrebuttal testimony in response to PPL Electric's written rebuttal testimony. (Complainants Exceptions, pp. 7-8.)

None of the Complainants' claims have merit. Throughout this process, the Complainants have been afforded more than adequate due process. The Complainants cross-examined PPL Electric's witnesses across three days of evidentiary hearings. Only two days of hearings were originally scheduled, and when the Complainants were not finished with their cross-examination at the end of the second day, a third day of hearings was scheduled. The transcript of those hearings totals nearly 650 pages. Although the Complainants may have preferred an in-person hearing, telephonic hearings are routinely used in Commission proceedings, especially customer complaint proceedings.

On the discovery front, after the discovery "reset," the Company "responded to over 75 separate discovery requests and produced nearly 700 pages of documents." (PPL St. No. 1, p. 24.) "And, when PPL Electric discovered additional materials responsive to the requests, the Company supplemented its discovery responses." (PPL St. No. 1, p. 24.) If the Complainants had issues with the Company's answers or objections to their discovery requests, they had the opportunity to file a Motion to Compel pursuant to Section 5.342(g) of the Commission's regulations. Yet, the Complainants <u>never</u> filed a Motion to Compel after discovery was "reset" by the ALJ. Therefore, the Complainants cannot argue now that they were denied a fair discovery process.

As for PPL Electric's witnesses, the Company presented the witnesses it deemed necessary to rebut the Complainants' arguments. To the extent that the Complainants wanted other persons to testify at the hearing, they had to file applications for issuance of subpoenas pursuant to Section 5.421 of the Commission's regulations. The Complainants, in fact, tried to file applications for

issuance of subpoenas, but they were facially defective and failed to comply with the Commission's regulations. The Complainants were then provided an opportunity to correct those defects but failed to do so. As the ALJ recounted in the ID:

> 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.

(ID, p. 3.) Therefore, despite the ALJ specifically instructing the Complainants on how to perfect their applications for issuance of subpoenas, the Complainants never followed through to correct those issues and never properly served the applications for issuance of subpoenas. Thus, the Complainants cannot complain now about the individuals who did or did not testify at the evidentiary hearings.

In addition, the ALJ and parties established a fair process by which PPL Electric's objections to the Complainants' testimony and exhibits would be resolved. The Company's counsel offered and was ready to present all of PPL Electric's objections to the Complainants' testimony and exhibits live at the hearing when the Complainants moved for their admission. (Tr. 39-40.) Given the extensive breadth of the Complainants' testimony and exhibits, as well as to conserve the parties' and ALJ's time and resources, the ALJ suggested that PPL Electric could submit a Motion to Strike after the evidentiary hearings, and the Complainants could then file an Answer thereto. (Tr. 40-42.) Mr. Hartman stated that he "d[id] not intend to respond in writing to any of [PPL Electric's] objections," that the Company "can object to their heart's content," and that he would "trust that [the ALJ] will do the right thing." (Tr. 43-44.) Nevertheless, after PPL

Electric timely filed its Motion to Strike on the Complainants did ultimately file an untimely Answer to PPL Electric's Motion to Strike, which, despite being filed past the deadline, the ALJ still considered in ruling on PPL Electric's objections to the Complainants' evidence. (ID, p. 4.) As such, rather than having to respond in real-time to all of PPL Electric's objections to their testimony and exhibits, the Complainants were afforded the ability to review those objections and respond in writing approximately a month and half after PPL Electric's Motion to Strike was filed.

Finally, the Complainants erroneously claim that they were denied the ability to present evidence in response to PPL Electric's rebuttal testimony. The litigation schedule explicitly provided the Complainants with the opportunity to present surrebuttal testimony in response to PPL Electric's rebuttal testimony. However, the Complainants refused to serve surrebuttal testimony. As stated in the ID, "[b]y e-mail dated July 13, 2022, the Hartmans indicated that they did not intend to serve surrebuttal testimony." (ID, p. 3.) Again, the Complainants had the opportunity to present surrebuttal testimony, refused to do so, and, therefore, cannot assert now that they were not afforded that option. Moreover, the Complainants only submitted one piece of written direct testimony from Mr. Hartman (see Complainants St. No. 1) and were still permitted to present additional oral testimony from Ms. Hartman at the evidentiary hearing. (Tr. 73-91.)

Based on the foregoing, the Complainants were afforded more than adequate due process throughout the proceeding and had a full and fair opportunity to litigate their claims. Thus, the Complainants' Exception No. 1 should be denied.

### B. REPLY TO EXCEPTION NO. 2: THE ALJ DID NOT ERR BY STRIKING THE COMPLAINANTS' EVIDENCE AND RELYING ON PPL ELECTRIC'S EVIDENCE

The Complainants incorrectly assert that the ALJ erred by striking certain portions of their evidence and relying on PPL Electric's evidence. Specifically, the Complainants contend that they believed hearsay evidence was admissible "based on [Mr. Hartman's] conversations with PUC and

the Office of Attorney General Consumer Advocate staff" and that, after their hearsay evidence was stricken, should have been given another chance to "present competent evidence to replace" it. (Complainants Exceptions, p. 5.) Further, the Complainants allege that the ALJ should not have relied on PPL Electric's evidence because, according to them, portions of the Company's evidence consisted of or relied on hearsay and had other issues. (Complainants Exceptions, pp. 5-7, 16-18, 32-33.)

The Complainants' arguments should be rejected. As a threshold matter, the Complainants fail to recognize that they, not PPL Electric, had the burden of proof in this proceeding. *See* 66 Pa. C.S. § 332(a). Therefore, the Complainants were required to present substantial, credible, and more persuasive evidence than PPL Electric in order to sustain their Complaint. (*See* PPL MB at 9.) Here, the ID properly found that the Complainants failed to sustain their burden of proof on the construction and vegetation management claims, as explained in the following sections. *See* Sections II.B and II.C, *infra*. As such, the Complainants criticisms about the ALJ's evidentiary rulings and factual findings should be rejected.

In addition, the Complainants were correctly not given another chance to present evidence after portions of their testimony and exhibits were stricken. As explained in Section II.A, *supra*, the Complainants had the opportunity to submit multiple rounds of written testimony, presented additional oral testimony at the hearing, engaged in extensive discovery, and cross-examined PPL Electric's witnesses across three days of evidentiary hearings. Therefore, the Complainants had a full and fair opportunity to present their case. The fact that some of their evidence was properly stricken does not mean that they get yet another bite at the proverbial apple to present even more evidence.

Also, the Complainants waived any objection to PPL Electric's evidence. It is well-established that "[a]n objection not made . . . is an objection waived.[5] In this case, although the Complainants lodge erroneous accusations about the Company's testimony and exhibits, the Complainants never objected to the admission of PPL Electric's testimony and exhibits, despite being provided the explicit opportunity to do so. (*See* Tr. 92, 168, 372, 401.) Thus, the Complainants waived any objection to the Company's evidence.

Furthermore, even assuming *arguendo* that the Company's evidence contained or relied on hearsay evidence, hearsay evidence can form the basis of findings of fact in administrative proceedings so long as the hearsay was not objected to and is corroborated by competent evidence.[6] Here, the Complainants allege that PPL Electric witness Stutzman's testimony about the vegetation management practices on their property, at least in part, consisted or relied on hearsay. (Complainants Exceptions, pp. 5-7.) However, Mr. Stutzman's testimony about the vegetation management, including the herbicide application, was corroborated by his own "post-vegetation management field visit" where he inspected the areas where the herbicides were applied, his review of the Company's files related to that vegetation management work, and his review and analysis (across multiple days of evidentiary hearings) of the Complainants' photographs of the areas where the vegetation management took place. (*See* PPL Electric St. No. 4, p. 10; Tr. 402-656.) Therefore, even assuming *arguendo* that Mr. Stutzman's testimony contained or relied on hearsay, such hearsay evidence was corroborated by competent evidence and can form the bases of findings of fact.

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[5] *See Sanderman v. LP Water & Sewer Co.*, 1997 Pa. PUC LEXIS 112, at *17 (Order entered Oct. 28, 1997).

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

For these reasons, the ALJ properly struck portions of the Complainants' evidence and relied on PPL Electric's evidence. As such, the Complainants' Exception No. 2 should be denied.

### C. REPLY TO EXCEPTION NO. 3: THE ID PROPERLY EVALUATED AND REJECTED THE COMPLAINANTS' CLAIMS REGARDING THE REASONABLENESS OF PPL ELECTRIC'S CONSTRUCTION PRACTICES

The Complainants also erroneously argue that the ALJ erred by rejecting their claims about PPL Electric's construction practices in the transmission line right-of-way. (Complainants Exceptions, pp. 13-16, 20-30, 34-37.) Among other things, the Complainants contend that the Company improperly disturbed the natural slope of their property, improperly installed an access road using rip-rap and switchbacks, improperly removed topsoil and mountain stone from their property, improperly removed a boulder from their property, and haphazardly left rocks and garbage on their property during and after construction. (*See* Complainants Exceptions, pp. 13-18, 20-32, 34-37.)

The ALJ correctly found that the Complainants failed to establish that "PPL's construction activities in building the pole pads and access road were unreasonable," and nothing warrants the Commission disturbing this finding. (ID at 17-22, 30.) As a preliminary matter, Mr. Hartman's testimony on safety and reasonableness of the construction and excavation should be given no weight by the Commission. (PPL MB at 18.) At the hearing, Mr. Hartman admitted that he lacks any formal education or experience related to the safety of constructing electric facilities. (PPL MB at 18.) He also conceded that PPL Electric witness William Salisbury, who testified as to the safety and reasonableness of the construction and excavation activities,[7] has "more training and experience in the field of electric safety than [Mr. Hartman]." (PPL MB at 18.) Mr. Hartman further stated that he "[has] no professional experience in the electronic [sic] field" other than his

[7] (*See* PPL St. No. 2, pp. 2-6.)

observations of PPL Electric and its contractors' performing maintenance and construction activity on his property. (PPL MB at 18.) As a result, the Complainants' allegations – particularly as related to the Company's construction and excavation practices in the right-of-way – are mere speculation and bald assertions. Such "bald assertions, personal opinions or perceptions do not constitute evidence" that can support findings of fact in this proceeding.[8] Therefore, the Complainants failed to establish a *prima facie* case that PPL Electric's construction and excavation activities were unsafe or unreasonable.

Assuming *arguendo* that the Complainants' established a *prima facie* case, the Commission should give considerable weight to the Company's evidence and find that PPL Electric constructed and excavated the crane pads and access road in a safe and reasonable manner. (PPL MB at 19.) In support of its actions, PPL Electric presented the testimony of William Salisbury, who "was responsible for overseeing the construction and excavation of the crane pads and access road." (PPL MB at 19.) PPL Electric witness Salisbury has been a construction supervisor at PPL Electric since 2011. (PPL MB at 19.) During his time with PPL Electric, Mr. Salisbury has managed hundreds of jobsites conducting all matters of work in distribution, transmission, and substations, relays, and fiber optic. (PPL MB at 19.) Additionally, Mr. Salisbury holds professional certifications with Utility Safety & Ops Leadership Network ("USOLN") and is a Certified Utility Safety Professional. ("CUSP"). (PPL MB at 19.) As explained by Mr. Salisbury, PPL Electric performed the construction and excavation in a safe and reasonable manner, consistent with all accepted engineering practices, design drawings, as well as all

[8] *West Penn Power Co. v. Pa. PUC*, 2019 Pa. Commw. Unpub. LEXIS 532, at *21 (Pa. Cmwlth. 2019) ("*West Penn*"); *see Mid-Atlantic Power Supply Ass'n v. Pa. PUC*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000); *Bobchock v. Unemployment Comp. Bd. of Review*, 525 A.2d 463, 465 (Pa. Cmwlth. 1987) ("[S]peculation does not amount to substantial evidence. Substantial evidence requires more than a scintilla of evidence or suspicion of the existence of a fact to be established."); *see also W.J. Menkins Holdings, LLC v. Douglass Twp.*, 208 A.3d 190 (Pa. Cmwlth. 2019). Much like in *West Penn*, here, the Complainants have "offered nothing more than [their] personal opinion in seeking to establish [their] burden…" *West Penn*, at *24.

applicable permits, laws, and regulations. (PPL MB at 19.) Therefore, on these issues, PPL Electric's evidence should be afforded considerably more weight than the Complainants' evidence.

PPL Electric also thoroughly rebutted the Complainants' allegations with credible, reliable, and persuasive evidence. First, PPL Electric witness Salisbury walked through these aspects of the Project and explained that PPL Electric constructed and excavated both the crane pads and access road with safety as its priority. (PPL MB at 19.) To construct the Project, the Company needed to haul large amounts of concrete up a steep mountainside to reconstruct Poles 75 and 76. (PPL MB at 19.) Each truck going up that mountainside with a full load of concrete weighed approximately 27 tons (approximately 27,000 pounds for a load of concrete and 27,000 pounds for the truck). (PPL MB at 20.) As a result, the Company required crane pads and access road that could safely withstand and support that amount of weight. (PPL MB at 20.) Had the Company not constructed the crane pads and access road the way that it did, the weight of the truck could have displaced the stone in the road, causing the truck to get stuck, the approximately 27,000-pound load of concrete to spill and need to be unloaded, and/or the truck and equipment to roll over, thereby placing the Company's employees and contractors in harm's way. (PPL MB at 20.)

Second, Mr. Salisbury responded to the Complainants' claim that the construction of the crane pads for Poles 75 and 76 disturbed the natural slope of the Complainants' property. (PPL MB at 20.) Although such a disturbance of the slope may have occurred, Mr. Salisbury explained that such disturbance occurred "only to the extent necessary for the safe installation and continued maintenance of Poles 76 and 75." (PPL MB at 20.)

Third, even if materials were transferred between the Complainants' property and the neighboring Wech property during construction, PPL Electric noted how its Erosion and Sediment/Restoration ("E&S") Plan states that materials – including mountain stone and topsoil –

can be transferred between multiple properties so long as it remains within the prescribed "LIMIT OF DISTURBANCE."[9] (PPL MB at 20.)

Fourth, Mr. Salisbury rebutted the Complainants' claims that the Company "excavated Hartman property off the [right-of-way] adjacent to [P]ole 75" and, in doing so, harmed certain vegetation both inside and outside of the right-of-way. (PPL MB at 20.) Construction projects come with earth disturbances, "including disturbances to existing vegetation." (PPL MB at 20-21.) Also, PPL Electric was permitted to disturb existing vegetation consistent with its rights under the applicable permits and right-of-way agreements. (PPL MB at 21.) Thus, as established by PPL Electric, all of the earth disturbances under this Project were safe and reasonable.[10]

Fifth, Mr. Salisbury explained that if the crane pad size were reduced as requested by the Complainants, "PPL Electric would have to re-enlarge the crane pad any time the Company would need to access and perform maintenance on the pole." (PPL MB at 21.) Therefore, "any reduction of the crane pad would be a costly and unnecessary step and, in actuality, could lead to future construction and excavation on the Hartman property." (PPL MB at 21.)

Sixth, Mr. Salisbury observed that "the Company does not take an inventory of where every pebble, stone, rock, or boulder is located" during a Project. (PPL MB at 21.) Moreover, Mr. Salisbury was unaware of a boulder being used to construct a crane pad taken from the Complainants' property. (PPL MB at 21.) Nevertheless, "[a]s a courtesy to Mr. Hartman, PPL Electric replaced a boulder that the Company thought Mr. Hartman wanted." (PPL MB at 21.)

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[9] PPL Electric witness Weseloh also observed that the Company has rights of ingress and egress under the right-of-way agreement for the Complainants' property. (PPL St. No. 3, p. 5.)

[10] As noted by PPL Electric witness Eby (PPL St. No. 1), the Company's excavation for the crane pads occurred within the permitted "LIMIT OF DISTURBANCE" under the approved E&S Plans, except for two small areas only approximately 12 feet outside of the right-of-way, which PPL Electric promptly addressed and restored as soon as it was made aware of the situation. While the Commission lacks jurisdiction to interpret and enforce the provisions of the E&S Plans and Permit, Mr. Eby explained that the Dauphin County Conservation District ("DCCD") would not have closed out the E&S Permit if those minor disturbances were not addressed. (*See* PPL St. No. 1, pp. 15-16.)

Seventh, Mr. Salisbury rebutted the Complainants' argument that PPL Electric's contractors left behind "many coffee cups, plastic water bottles, cigarette butts and packs, string, and other garbage" during the construction activities. (PPL MB at 22.) Notwithstanding, to the extent that the Complainants found any additional refuse remaining in the transmission line right-of-way, "PPL Electric would certainly be willing to send a crew to collect that refuse and dispose of it." (PPL MB at 22.)

Eighth, Mr. Salisbury explained that "PPL Electric excavated and constructed the access road in the transmission line right-of-way on [the Complainants'] property consistent with the E&S Plans." (PPL MB at 22.) Mr. Salisbury also noted that:

> The Company used rip-rap, "2-A modified" stone, and "2-B" stone to construct the access road and crane pads on Mr. Hartman's property and the [neighboring] Wech property. PPL Electric also excavated and constructed the access road using "switchbacks," which are winding or zigzag paths, to reduce the amount of grade that it was crossing at any given time. The use of "switchbacks" is critical when, as here, trucks need to haul heavy equipment and concrete up a steep mountainside. Without them, the Company's employees and contractors would have been unable to safely transport their equipment and construct the Project and would be unable to safely access the poles in the future.

(PPL MB at 22.) Indeed, the Company constructed "switchbacks" for safety reasons, which led to the access road winding onto Mr. Hartman's property "within the transmission line right-of-way between Poles 76 and 75." (PPL MB at 22.) PPL Electric witness Eby also testified that "[u]tilizing large stone or riprap as the sole access road material or the top material is common practice on steep slopes and switchback areas on the side of the mountains similar to the Hartman property." (PPL MB at 22.)

Ninth, Mr. Salisbury fully rebutted the Complainants' claims that the roadway was constructed in a way inconsistent with depth or amount-of-stone limitations. Mr. Salisbury made clear that there was no requirement or limitation on the depth of the amount of stone used for the

road. (PPL MB at 23.) Further, Mr. Salisbury explained that the "Company must deploy as much stone as necessary to safely navigate the access road, which is why PPL Electric constructed this access road to the depth that it did." (PPL MB at 23.) With this in mind, in areas of little or no grade, PPL Electric did not use smaller stone for its trucks to gain traction. (PPL MB at 23.) practice is consistent with the Company's construction of other access roads in transmission line rights-of way. (PPL MB at 23.) Relatedly, Mr. Salisbury explained that "[t]he Company used the same stone to construct the access road on Mr. Hartman's property on at least 10 miles of the other access roads constructed as part of the Project" and that "the Company routinely uses this type of stone when constructing access roads located in the Company's transmission line rights-of-way that traverse steep or mountainous properties, such as [the Complainants'] property." (PPL MB at 23.)

In sum, PPL Electric thoroughly rebutted the Complainants' allegations about the construction and excavation of the crane pads and access road and established that those activities were conducted in a safe and reasonable manner and consistent with all accepted engineering practices, design drawings, as well as all applicable permits, laws, and regulations. (PPL MB at 24.) Mr. Hartman's lay testimony regarding the Company's crane pad and access road construction practices was unsubstantiated and largely based on speculation and bald assertions. This, in and of itself, is insufficient for the Complainants to carry their burden of proof showing that the construction and excavation practices were unsafe or unreasonable.

For these reasons, the ALJ correctly held that the Complainants failed to sustain their burden of proof that PPL Electric's construction and excavation activities in the right-of-way were unsafe or unreasonable. Therefore, the Commission should deny the Complainants' Exception No. 3.

## D. REPLY TO EXCEPTION NO. 4: THE ID CORRECTLY EVALUATED AND REJECTED THE COMPLAINANTS' CLAIMS ABOUT THE REASONABLENESS OF PPL ELECTRIC'S VEGETATION MANAGEMENT PRACTICES

The Complainants also dispute the ALJ's rejection of their claims about the safety and reasonableness of PPL Electric's vegetation management practices in the transmission line right-of-way. (Complainants Exceptions, pp. 18-20, 32-34, 38-45.) In support of their claims, the Complainants allege that the herbicides were "applied in a blanketed and indiscriminate (fire hose) manner to kill all vegetation" and that "[n]o incompatible vegetation existed" in the applied areas. (Complainants Exceptions, p. 42.) The Complainants also contend that "mile-a-minute" is present in the areas that were treated by herbicides and has "doom[ed] compatible native vegetation on [their] property for many years to come." (Complainants Exceptions, p. 27.) Moreover, the Complainants allege that the Company failed to provide them with 24-hour notice of the vegetation management. (Complainants Exceptions, p. 32.) The Complainants further argue that PPL Electric's herbicide application was conducted in a "discriminatory" manner. (Complainants Exceptions, pp. 34, 38.)

Like the complainant in the *West Penn* herbicide application case,[11] Mr. Hartman's claims about the safety and reasonableness of the herbicide application do not constitute substantial evidence. Rather, Mr. Hartman's lay testimony about the alleged adverse impact of the vegetation management, the methods used to conduct the vegetation management, and the alleged safety issues with herbicides amounts to speculation and bald assertions. As noted previously, such "bald assertions, personal opinions or perceptions do not constitute evidence" that can support findings

[11] *See generally West Penn*, 2019 Pa. Commw. Unpub. LEXIS 532, at *20-24.

of fact in this proceeding.[12] Consequently, the Complainants failed to establish that PPL Electric's vegetation management activities were unsafe or unreasonable.

PPL Electric also completely rebutted their allegations with credible, reliable, and persuasive evidence. In support of the Company's position, PPL Electric presented the testimony of Matthew Stutzman, the Forester for PPL Electric's Harrisburg Region, who has reviewed and evaluated the vegetation management performed on the Complainants' property.[13] (PPL MB at 33.) Mr. Stutzman operates under the Company's Pennsylvania Pesticide Applicator's license and holds an Applied Science Degree in Forest Technology from the Pennsylvania College of Technology. (PPL MB at 33.)

Mr. Stutzman established that "[a]ll PPL Electric-approved herbicide mixtures and chemical components have label and application rates that are set by the EPA and outlined in detail within the PPL Electric-approved herbicide mixture document," which was admitted into the record as PPL Electric Exhibit MS-7. (PPL MB at 33.) Herbicides are safe to use when applied consistent with their labels and application rates. (PPL MB at 33-34.) Here, the contractor treated the areas with herbicide mixture HV5, which is one of the Company's approved mixtures, and the herbicide mixture applied was well below the allowable gallons/acre. (PPL MB at 34.) Nothing presented by the Complainants demonstrates that PPL Electric's herbicide application was inconsistent with the applicable labels and application rates. (PPL MB at 34.)

In addition, the record demonstrates that incompatible species were present in the areas that were treated, thereby justifying the application of herbicides. (PPL MB at 34.) PPL Electric

[12] *Id.* at *21.

[13] While the vegetation management in question at the Complainants' property was reviewed and approved by the Company's previous Forester for the Harrisburg region, Mr. Stutzman reviewed the files associated with that work, as well as conducted a post-vegetation management field visit and interviewed the contractor who performed the work (*i.e.*, Penn Line). (PPL St. No. 4, p. 10.)

explained to the Complainants on January 5, 2021, that it would proceed with applying herbicides, as originally planned, if incompatible species remained in the right-of-way when the vegetation management crews arrived at the property. (PPL MB at 34.) Those crews arrived several months later on July 16, 2021, providing the Complainants with considerable time to address the incompatible species in the right-of-way. (PPL MB at 34.) When the crews found incompatible species of vegetation in the right-of-way, they applied herbicides to those areas. (PPL MB at 34.) Although the Complainants dispute the presence of such incompatible species in those areas, Mr. Stutzman confirmed this fact by personally visiting the property and investigating the areas that were treated. (PPL MB at 34.) He also reviewed the many pictures presented by the Complainants on cross-examination and pointed out where the incompatible species could be seen in the Complainants' photographs. (PPL MB at 34.)

Furthermore, the Company's application of herbicides was targeted, not "indiscriminate" as alleged by the Complainants. (PPL MB at 34.) An incompatible species of brush that had been cut years prior had sucker regrowth near Pole 75. (PPL MB at 34.) During an herbicide cycle, the Company treats all identified incompatible brush. (PPL MB at 34-35.) Here, the brush near Pole 75 was very dense with surface rock, and the incompatible brush was surrounded by other non-target (i.e., compatible) vegetation. (PPL MB at 34.) Due to the foliage height of the non-compatible vegetation, the surrounding vegetation was impacted by the treatment. (PPL MB at 34.) Therefore, the treatment was not indiscriminate. (PPL MB at 34.)

Additionally, the Company's application of herbicides has not "doom[ed]" the treated areas. (PPL MB at 35.) Mr. Stutzman explained that the Company prefers to have its transmission corridors generally covered in grasses, wild-flowers, low growing compatible shrubs, and other non-invasive species of ground cover, as it helps to suppress the growth of less desirable, non-

compatible species, and promotes pollinator habitat. (PPL MB at 35.) For that reason, PPL Electric has preferred, and in this case used, High-Volume Foliar herbicide treatments such as HV5 because the HV5 mixture is not designed to kill the root systems of native grasses. (PPL MB at 35.) The HV5 herbicide mixture is meant to target woody stemmed vegetation. (PPL MB at 35.) However, that does not mean that a patch of brush that contains bushes and grasses intermingled within will not be impacted by herbicide applications. (PPL MB at 35.) If the stem density of the surrounding brush/stems is dense and there is a larger canopy area to cover the surrounding area, it is possible that non-targeted vegetation will be impacted. (PPL MB at 35.) This impact appears as "browning," in which the vegetation takes on a brown color in response to the herbicide, much like the foliage on the target brush. (PPL MB at 35.)

Nevertheless, the impacted bushes and grasses will sprout new growth over subsequent years. (PPL MB at 35.) Also, because the herbicide treatment is applied directly to incompatible vegetation's leaves, the seed base can germinate and regrow in the area. (PPL MB at 35.) As established by Mr. Stutzman's testimony, the Company's right-of-way on the Complainants' property is regrown and green, and the non-targeted vegetation in the treated areas are showing signs of regrowth. (PPL MB at 35-36.) Thus, PPL Electric's application of herbicides has not doomed the areas that were treated. (PPL MB at 36.)

Moreover, PPL Electric used the "pick-up method" of herbicide application; the Company did not indiscriminately use a "fire hose" as alleged by the Complainants. (PPL MB at 36.) As Mr. Stutzman testified, this method of High-Volume Foliar application is a larger scale version of a backpack sprayer. (PPL MB at 36.) The spray wand functions the same and applies the herbicide mixture similarly. (PPL MB at 36.) The pick-up method is more efficient, as a larger quantity of the mixture can be transported and applied to a larger area without the need to refill, like one would

have to with backpack sprayers. (PPL MB at 36.) This method is also safer for the applicators, as they are often on unstable or steep terrain that can cause a backpack sprayer to lose balance, in turn, causing injury. (PPL MB at 36.) This is especially the case on steep mountainsides like the transmission line right-of-way traversing the Complainants' property. (PPL MB at 36.) Using the pick-up method, the applicator(s) drag a long hose into the target area, creating a much safer environment to make a High-Volume Foliar application in certain areas. (PPL MB at 36.) Therefore, the pick-up method still targets areas designated for treatment; it is not a broadcast application where the applicator is broadcasting the herbicide mixture across the entire corridor. (PPL MB at 36.)

The Commission should also reject the Complainants' allegations about mile-a-minute. The Complainants' claims are based on hearsay documents, namely a Pennsylvania Department of Transportation ("PennDOT") "publication entitled Invasive Species Best Management Practices" and a "paper written by J. Mehrhoff of the University of Connecticut." (*See* Complainants Exceptions, p. 20.) Although the ALJ admitted these documents into the record,[14] uncorroborated hearsay cannot form the basis of any findings of fact in this proceeding.[15] Therefore, any arguments based upon that hearsay should be disregarded. Also, the Complainants omit that the Company did not introduce any mile-a-minute to the transmission line right-of-way. (PPL RB at 17.) PPL Electric's "herbicides are post-emergent herbicides." (PPL RB at 17.) As such, "the seed-base for the mile-a-minute was already there and establishing itself prior to [the Company's] herbicide treatment." (PPL RB at 17.) Furthermore, the Complainants failed to prove that PPL Electric's application of herbicides destroyed vegetation that would have prevented the

[14] (*See* Tr. 68-73); *see also Hartman v. PPL Elec. Utils. Corp.*, Docket No. C-2019-3008272, p. 14 (Order granting in part and denying in part Motion to Strike entered Feb. 2, 2023).

[15] *See* note 5, *supra*.

mile-a-minute from growing. (PPL RB at 17.) Mr. Stutzman testified that he has seen "pristine agricultural areas that [the Company] ha[s] not treated" with herbicides, "where mile-a-minute literally consumed every piece of vegetation in that area." (PPL RB at 17.) He also concluded that the transmission line right-of-way on the Complainants' property "has just as good of chance to bounce back now as it would in two years, when mile-a-minute would've consumed everything anyways." (PPL RB at 17.)

As to the Complainants' claim that PPL Electric failed to provide them with 24-hour notice of the vegetation management, the Complainants had several months to remove the incompatible species from the right-of-way before the Company's vegetation management crews visited the property in July 2021. (PPL MB at 36.) That being said, PPL Electric has updated its processes as a courtesy to the Complainants and now will provide 72 hours' notice to the Complainants before vegetation management activities on their property, which should provide ample time for them to address the incompatible vegetation. (PPL MB at 36-37.) PPL Electric also will knock on the Complainants' door the day of the planned vegetation management, so that they receive even more notice before vegetation management is conducted in the right-of-way. (PPL MB at 36.)

Finally, the Company's vegetation management practices were not conducted in an unreasonably discriminatory manner. (ID at 31-32.) To the extent that the Complainants are arguing that the Company violated Section 1502 of the Public Utility Code by employing different vegetation management methods on their property versus the neighboring U.S. National Parks Service's ("NPS") property, such argument should be rejected. Under Section 1502 of the Public Utility Code, there must be discrimination of persons, corporations, or municipal corporations, such discrimination must involve persons, corporations, or municipal corporations within the same

reasonable classification of service, and the discrimination must be unreasonable. *See* 66 Pa. C.S. § 1502. Here, the Complainants' Section 1502 claim fails because the federal government (*i.e.*, the U.S. NPS) is not a "person," "corporation," or "municipal corporation" as defined by Section 102 of the Public Utility Code. *See id.* § 102. Therefore, PPL Electric has full authority to treat the U.S. NPS's property differently from others, including the Complainants' property.

To the extent there was any preference given to the U.S. NPS's property in how the construction and vegetation management were performed, such preference was reasonable. (PPL MB at 40.) PPL Electric witness Stutzman testified that PPL Electric did not apply herbicides to the U.S. NPS's property because that was a condition of the federal permit PPL Electric has to secure for that property. (PPL MB at 40.) No such permit was required for Mr. Hartman's property or any other landowner's property impacted by the Project. (PPL MB at 40.) Moreover, herbicides are safer, more effective, and more efficient than mechanical means of vegetation management, especially on a sloped mountainside like the Complainants' property, where it can be dangerous to haul and use chainsaws, pruning hand saws, brush axes, and machetes. (PPL MB at 40.) Therefore, PPL Electric would have preferred to apply herbicides on the U.S. NPS's property as well had the Company been permitted to do so. (PPL MB at 40-41.) In fact, Mr. Stutzman testified that the Company would be "addressing the National Park Service land" and that he was "working through the permitting process to treat all the incompatible vegetation on their property." (PPL MB at 41.) For such treatment, Mr. Stutzman stated herbicide application may be involved because "the National Park Service has said the herbicide is favorable in certain situations." (PPL MB at 41.)

For these reasons, the ALJ correctly held that the Complainants failed to sustain their burden of proof that PPL Electric's vegetation management practices were unsafe, unreasonable,

or unreasonably discriminatory. Therefore, the Commission should deny the Complainants' Exception No. 4.

### E. REPLY TO EXCEPTION NO. 5: THE COMPLAINANTS ERRONEOUSLY CONTEND THAT THE COMMONWEALTH COURT'S RULING IN *TOWNSHIP OF MARPLE V. PA. PUC* APPLIES TO THIS PROCEEDING

The Complainants also challenge the Commission's original dismissal of their "environmental claims," citing the Commonwealth Court's decision in *Township of Marple v. Pa. PUC,* 294 A.3d 965 (Pa. Cmwlth. 2023) ("*Marple*"). (Complainants Exceptions, p. 8.) Without further elaboration, the Complainants request that the Commission "re-consider the dismissal of [their] environmental claims" in light of the *Marple* decision.

The Commission should reject the Complainants' argument that the *Marple* decision somehow affects the prior dismissal of their environmental claims. The *Marple* decision is readily distinguishable from the instant proceeding. In *Marple*, the Commonwealth Court held "in proceedings of this nature" arising under Section 619 of the Public Utility Code, the Commission must "consider 'the environmental impacts of placing [a building] at [a] proposed location,' while also deferring to environmental determinations made by other agencies with primary regulatory jurisdiction over such matters." *Marple*, 294 A.3d at 973-74 (quoting *Del-AWARE Unlimited, Inc. v. Pa. PUC*, 513 A.2d 593, 596 (Pa. Cmwlth. 1986)). Thus, "a Section 619 proceeding is constitutionally inadequate unless the Commission completes an appropriately thorough environmental review of a building siting proposal and, in addition, factors the results into its ultimate determination regarding the reasonable necessity of the proposed siting." *Id.* Moreover, the Court observed that the Commission "failed to identify any such outside agency determinations that pertained to explosion impact radius, noise, or heater emissions" and, therefore, could not "sidestep[]" its "obligation" to make those determinations. *Id.* at 974-74.

Here, the Commonwealth Court's ruling does not apply because this case is a Section 701 formal complaint proceeding, not a Section 619 proceeding. *Compare* 66 Pa. C.S. § 701, *with* 53 P.S. § 619. Also, as explained in PPL Electric's Exceptions, the Pennsylvania Department of Environmental Protection ("DEP") and the DCCD regulate these environmental issues and found no issues with PPL Electric's work in the transmission line right-of-way. (*See* PPL Exceptions, pp. 4-9.) Therefore, the case at bar is readily distinguishable, and the Commonwealth Court's ruling in *Marple* does not apply here.

Based on the foregoing, the Complainants' reliance on the *Marple* decision is misplaced, and the Commission should deny the Complainants' Exception No. 5 accordingly.

## III. CONCLUSION

WHEREFORE, for the foregoing reasons, and those set forth in the Initial Decision and PPL Electric's Main and Reply Briefs, the Exceptions of Michael and Sharon Hartman should be denied.

Respectfully submitted,


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Date: November 13, 2023

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