

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Travis West and Daisy Wills-West	:	
	:	
v.	:	C-2022-3032707
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Gail M. Chiodo  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses the Formal Complaint filed by property owners who allege that the Company’s transmission line crossing their property within the Company’s right-of-way poses a risk to their health and safety. The property owners failed to satisfy their burden of proof by demonstrating that the Company violated the Public Utility Code, a Commission order or regulation or its Commission-approved tariff.

**HISTORY OF THE PROCEEDING**

On May 19, 2022, the Complainants, Travis West and Daisy Wills-West, filed a Formal Complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against PPL Electric Utilities Corporation (“PPL” or “Company”) and checked the box “other” as the reason for their Complaint. The Complainants further allege that the powerlines running through their property are dangerous to their health and safety because they, other people, and the Complainants’ horses experience a shocking sensation when walking under

the line, which prevents them from enjoying their property and boarding horses. (Complaint ¶ 5). As relief, the Complainants request that PPL be directed to fix this situation.

On June 21, 2022, PPL timely filed an Answer.<sup>1</sup> In its Answer, PPL admitted that it owns a certain electric transmission line that crosses the Complainant's property within the Company's right-of-way but denied that it poses a danger or risk to one's health or safety or has produced the shocking sensation alleged by the Complainants. As relief, PPL requested that the Complaint be denied in its entirety.

On June 23, 2022, an Interim Order was issued referring this matter to the mediation unit of the Office of Administrative Law Judge ("OALJ") for possible resolution. The parties were unable to resolve this matter.

On November 1, 2022, the OALJ issued a Hearing Notice scheduling a telephonic evidentiary hearing for January 5, 2023, and I was assigned as the presiding officer. On this same day, the OALJ issued my Prehearing Order reminding the parties of the date and time of the hearing and setting forth various rules that would govern the hearing.

On December 9, 2022, PPL filed a letter requesting that the evidentiary hearing be converted into a prehearing conference given the complex issues raised in the Complaint—namely, that the instant litigation involves the presence and alleged harmful effect(s) of electromagnetic fields ("EMFs") emanating from a certain PPL transmission line and the parties may need to present detailed, technical, and sometimes expert testimony about the safety and reasonableness of the EMFs at issue. PPL indicated that based on its discussions with the Complainants, that it believed that the Complainants agreed with this request since, *inter alia*, it would afford the Complainants an opportunity to review any proposed PPL expert testimony in advance of the hearing. I granted this request.

On December 12, 2022, a Hearing Type Change Notice was issued which converted the January 5, 2023, evidentiary hearing into a prehearing hearing conference. On

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<sup>1</sup> The Complaint was served on PPL on June 1, 2022.

January 4, 2023, in anticipation of the conference, PPL filed a Prehearing Conference Memorandum. This Memorandum indicated that the parties agreed to a proposed litigation schedule, as well as submitting written testimony.

Prehearing Conference January 2023

The prehearing conference convened as scheduled on January 5, 2023, at 10:00 a.m. The Complainants did not appear. The Company was represented Nicholas A. Stobbe, Esquire and Devin T. Ryan, Esquire. After allowing time for the Complainants to appear, Mrs. Wills-West appeared on behalf of the Complainants approximately twenty-five minutes after the start of the hearing. Mrs. Wills-West explained that she misunderstood the time the conference was scheduled to start. (*See Tr.* at 6-8).

Thereafter, a discussion was held regarding various procedural matters, including but not limited to, the service of documents, discovery, submitting written testimony, and a proposed litigation schedule. The parties agreed on all procedural matters. Of note, both parties agreed to submit written testimony and to all the dates in the proposed litigation schedule. Further, Mrs. Wills-West stated she understood the process and purpose of submitting written testimony, which process was explained and discussed at the conference. (*See Tr.* at 16-19).

On January 23, 2023, a Scheduling Order (“*Scheduling Order*”) was issued which memorialized the results of the discussion at the above prehearing conference. The *Scheduling Order* directed the Complainants to submit their written direct testimony no later than on April 5, 2023, followed by the Company’s written rebuttal testimony to be submitted no later than on June 5, 2023, as well as other dates for the parties to submit surrebuttal and rejoinder testimony, if necessary. The *Scheduling Order* also provided detailed instructions on how to submit direct testimony.<sup>2</sup> This schedule culminated in an evidentiary hearing to be held on June 28, 2023.

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<sup>2</sup> See *Scheduling Order* at paragraphs numbers 2 through 6. These instructions included a citation to the applicable Commission regulation regarding written prepared testimony, the requirements for a cover sheet for each proposed witness, sequential numbering, and a signed verification. (*Scheduling Order* ¶ 2).

Further, as to the signed verification, the instructions provided that “no written testimony will be admitted into evidence unless accompanied by a signed verification or affidavit of the named individual which evidences the

On April 5, 2023, the Complainants did not submit any written direct testimony in accordance with the *Scheduling Order*. On April 23, 2023, I received an email from counsel for the Company, copying the Complainants, suggesting another prehearing conference to determine the status of this case in light of the Complainants' failure to timely submit direct testimony, as well as their failure to respond to certain discovery requests.

Thereafter, as a result of an email exchange with the parties, I scheduled another Prehearing Conference for May 3, 2023.

### Prehearing Conference May 2023

On May 3, 2023, a second prehearing conference was held. Mrs. Wills-West appeared on behalf of the Complainants, and the Company was represented by Mr. Stobbe, Esquire. At this conference, Mrs. Wills-West acknowledged that she did not submit any direct testimony in accordance with the *Scheduling Order*. (Tr. at 27). Mrs. Wills-West explained that there was some confusion on the part of the Complainants, who are representing themselves, as to the agreed-upon litigation process. Specifically, Mrs. Wills-West explained that she thought her answers to certain PPL's interrogatories was her "direct testimony" and she did not need to submit anything else. (Tr. at 27).

After some on- and off-the-record discussion to clarify the litigation process, the requirements of submitting direct testimony as detailed in the *Scheduling Order*, Complainants' burden of proof and other procedural matters, Mrs. Wills-West requested an extension to file Complainants' direct testimony. We also resolved some outstanding discovery matters. The Company did not oppose the Complainants' extension request, which I granted. (Tr. at 28-29).

Next, after some discussion with the parties to modify the entire litigation schedule, the date for the Complainants to submit their written direct testimony was extended to

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named individual's acknowledgment of the need to provide truthful information." Next, the instructions provided verbatim the specific language that may be included as a signed verification. (See *Scheduling Order*, ordering paragraph No. 3).

no later than on June 5, 2023. Further discussion resulted in concluding that the Company's rebuttal testimony would be due to be submitted no later than on August 7, 2023, followed by the Complainants' surrebuttal testimony, if any, to be submitted no later than on August 28, 2023, and the Company's rejoinder testimony, if any, to be submitted no later than on September 5, 2023. Next, the parties agreed to consult with each other and propose mutually agreeable dates for the evidentiary hearing to be held. The results of these discussions were memorialized in a Second Scheduling Order dated May 3, 2023 ("*Second Scheduling Order*").

On June 5, 2023, the date due for the Complainants' submission of direct testimony, I received two emails from the Complainants,<sup>3</sup> copying counsel for the Company. Within the body of the first email, the Complainants numbered six potential witnesses. I note that two of the numbered "six" witnesses actually included two named individuals. Each "numbered" witness was asked one or two questions, followed by a short answer. Within the body of the second email, the Complainants appeared to include selected excerpts of the Complainants' answers from interrogatories propounded on the Complainants by PPL, although some of them did not include the question for which there appeared to be a response.

On August 7, 2023, in accordance with the *Second Scheduling Order*, the Company submitted Rebuttal testimony of two witnesses, with accompanying exhibits.

No surrebuttal or rejoinder testimony was submitted by the parties.

Thereafter, the parties mutually agreed to an evidentiary hearing on December 5, 2023. A Telephonic Hearing Notice was issued scheduling a telephone hearing for this date.

### *Evidentiary hearing*

On December 5, 2023, the hearing convened as scheduled. The Complainants appeared and represented themselves. Attorney Stobbe appeared on behalf of the Company.

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<sup>3</sup> The emails are dated Sunday, June 4, 2023.

Three witnesses also appeared on behalf of the Complainants, and two witnesses appeared on behalf of the Company.

At the start of the hearing, the Complainants requested that their first email regarding the written “testimony” or “statements” of their “six” potential witnesses be admitted into the record. (Tr. at 40). The Company objected to the admissibility of this written “testimony” for several reasons. First, the Company objected because these “statements” failed to comply with the Commission’s regulation regarding written testimony, 52 Pa. Code § 5.412(e), including the failure to include any verification for any of the witnesses, as specifically instructed in the *Scheduling Order*. Second, the Company objected because some of the proposed witnesses were not available to authenticate their “testimony” or available for cross-examination; there was no other indicia of reliability of this “testimony;” and where there were two witnesses listed together under one number, it was unclear which individual was responding. (Tr. at 40-41).

I sustained in part, and overruled in part, the Company’s objection to the admissibility of the six proposed written “statements.” I allowed the three witnesses who were available at the hearing, to be called as witnesses to authenticate their purported “statements” in the first email. These three witnesses were: Shawn Wills, Judy Wills, and Jennifer McClain, all of whom testified. Because their “statements” consisted of one question and answer, their statements were read into the record, and no separate written testimony was admitted. (*See* Tr. at 44-51).

Next, the Complainants requested that their second email be admitted. As noted above, this email appeared to be selected excerpts of the Complainants’ answers from interrogatories propounded on the Complainants by PPL. The Company objected for several reasons. First, similar to above, the Company objected because these “statements” failed to comply with the Commission’s regulation regarding written testimony, 52 Pa. Code § 5.412(e), including the failure to include any verification for any of the witnesses, as specifically instructed in the *Scheduling Order*. Second, the Company argued that the process for submitting written testimony was discussed at length in two prehearing conferences, was detailed in the

*Scheduling Order* and the parties mutually agreed to comply with such given the technical issues raised in this case. Third, the Company objected because the format of the proposed written “statement” made it difficult to read, and it was unclear who authored any purported answers. (Tr. at 44, 56-57).

I sustained in part, and overruled in part, the Company’s objection to the admissibility of the second email. I allowed Mrs. Wills-West to authenticate the three questions and answers contained in the written “statement” that she could personally authenticate, which written testimony was read into the record, without admitting the email. (Tr. at 57-60). Mr. West did not testify. The Complainants proffered no other exhibits for the record.

After the Complainants concluded the presentation of their case, the Company moved for a compulsory nonsuit, arguing that the Complainants have “wholly failed to show” or establish a *prima facie* case that would entitle them to relief. (Tr. at 63). I advised that I was not going to make a ruling at that time, but would take this motion under advisement. In light of this ruling, the Company proceeded to present its case. (*Id.*)

At the hearing, over no objection, I admitted the following Company’s written testimony and exhibits:

- PPL Elec. St. No. 1 (direct of Richard White) and PPL Exhibits Nos. RW-1, RW-2, RW-3, RW-4, and RW-5; and
- PPL Elec. St. No. 2 (direct of Chad Huber), and PPL Exhibit No. CH-1

Following the Company’s case, the parties opted to make closing arguments rather than submit briefs. (Tr. at 89).

On January 2, 2024, the record closed when I received a copy of the 98-page hearing transcript.

## FINDINGS OF FACT

1. The Complainants are Travis West and Daisy Wills-West, husband and wife.
2. The Respondent is PPL Electric Utilities Corporation, a Commission jurisdictional public utility.
3. Since September 2021, the Complainants have owned the property located at 1008 Piketown Road, Harrisburg, Pennsylvania 17112 (“Property” or “Service Address”). (Tr. at 58-59).
4. Situated on the Property is a house where the Complainants reside with their four children, and a horse boarding stable which is used by the Complainants to board horses for their clients between the hours of 8:00 a.m. and 8:00 p.m. (Tr. at 58).
5. PPL owns Line #696 Juniata-Alburtis 500 kV (“Transmission Line” or “Line”). (PPL St. No. 2 at 3).
6. PPL’s Transmission Line was placed into service in 1968 and has been operating since then. (PPL St. No. 2, at 5).
7. PPL’s Transmission Line crosses the Complainant’s Property within the Company’s right-of-way (“ROW”). (PPL St. No. 2, at 2-3; PPL Exhibit No. CH-1).
8. PPL Exhibit No. CH-1 is a copy of PPL’s ROW Agreement over the Property. (PPL St. No. 2, at 3-4; PPL Exhibit No. CH-1).
9. The ROW agreement has been in effect since January 17, 1964, the date of its execution; the ROW was recorded in the Office of Recorder of Deeds in and for

Dauphin County, Pennsylvania, in Miscellaneous Book R Volume 11, page 334 on April 2, 1965. (PPL St. No. 2 at 4; PPL Exhibit No. CH-1).

10. The ROW is 200 feet in width and runs through the approximate middle of the Complainants' property. (PPL St. No. 2, at 3; PPL Exhibit No. CH-1).

11. The Complainants' house is approximately 210 feet from the north/northeast edge of the ROW corridor; however other structures have been constructed in closer proximity to the ROW corridor, with some being immediately adjacent to and/or potentially encroaching upon the corridor. (PPL St. No. 2, at 5).

12. Mr. Shawn Wills, the father of the Complainant, Mrs. Wills-West, testified that he has been shocked multiple times while underneath the Line. (Tr. at 43-44).

13. Mrs. Judy Wills, the mother of the Complainant, Mrs. Wills-West, testified that she has been shocked multiple times while underneath the Line, and if the grass is high enough, it hits her ankle or lower part of her leg. (Tr. at 47).

14. Ms. Jennifer McClain, the sister of the Complainant, Mrs. Wills-West, testified, that she and her daughter have been shocked while underneath the Line, and her daughter has cried from being shocked. (Tr. at 50-52).

15. Mrs. Wills-West testified that when she walks under the Line, she gets shocked, and worries what effects this could have on herself, her family, and others. (Tr. at 59).

16. Mrs. Wills-West testified that "our horses get shocked, which spooks them and could cause misfortune." (Tr. at 59).

17. Mrs. Wills-West has no formal training or experience related to the presence of electromagnetic fields, the effects of EMFs on the human body, or the testing of EMFs near public utility ROWs. (Tr. at 60-62).

18. The Complainants did not hire or have somebody conduct formal testing with an EMF measurement device at the property. (Tr. at 62).

19. Mr. Richard White is a Transmission Line Supervising Engineer for PPL, and holds a Bachelor of Science (“B.S.”) degree in Physics and a B.S. degree in Energy Engineering from the Pennsylvania State University. (Tr. at 67; PPL St. No. 1, at 1).

20. Mr. White’s primary responsibility is to design from conception to completion transmission lines and supporting structures to meet the requisite electrical clearances to the ground and objects on the ground. (PPL St. No. 1, at 1).

21. Mr. White is also responsible for conducting EMF testing and measurement within and beyond PPL’s various transmission line ROW to ensure EMF levels are within applicable standards and guidelines. (PPL St. No. 1, at 1).

22. Mr. White explained that “EMF” is short for “electromagnetic field,” which are created from moving charged particles. A transmission line will create and emit EMF from the flow of electrons. (PPL St. No. 1, at 3).

23. The EMF emitted from transmission lines falls under a specific category of EMF called Extremely Low Frequency or “ELF.” (PPL St. No. 1, at 3).

24. There are two types of fields generated from transmission lines: electric fields and magnetic fields, which make up the EMF. (PPL St. No. 1, at 3).

25. EMF can – depending on its level and a particular person’s sensitivity – result in a staticky feeling or shocking sensation when near the EMF source. (PPL St. No. 1, at 3).

26. All operational electric transmission and distribution lines emit EMF; this is not specific to PPL but applies generally to all electric utilities with transmission and distribution lines. (PPL St. No. 1, at 3).

27. EMF levels drop off quickly as one gets further away from the line, and electric fields are easily shielded by intervening objects or structures such as trees or buildings. (PPL St. No. 1, at 4).

28. The level and effects of EMF can vary depending on a variety of factors including voltage, current, weather, and a person's proximity to the EMF source. (PPL St. No. 1, at 4).

29. EMF affects people differently. EMF that can be felt and/or detected by one person may not be felt and/or detected by another. As EMF levels get lower, a lower percentage of the population can perceive the EMF. (PPL St. No. 1, at 4, 5).

30. EMF is not in and of itself harmful and Mr. White is unaware of any peer-reviewed study that has scientifically proven that ELF or EMF are detrimental to a person's health. (PPL St. No. 1, at 4).

31. The Company follows the Institute of Electrical and Electronics Engineers ("IEEE") standard C95.6 – Maximum Permissible Exposure ("MPE") limits. (PPL St. No. 1, at 5; PPL Exhibit No. RW-3).

32. PPL Exhibit No. RW-3 is an internal PPL document incorporating the IEEE MPE limits. (PPL St. No. 1, at 5; PPL Exhibit No. RW-3).

33. On September 30, 2021, Mr. White visited the Property to discuss the Complainants' concerns surrounding the EMF emitted by the Line and to survey the Property generally; during this visit, the Complainants pointed out to Mr. White their particular areas of concern. (PPL St. No. 1, at 4, 13).

34. On January 19, 2022 and August 22, 2022, Mr. White visited the Property to conduct EMF testing under different weather conditions. (PPL St. No. 1, at 6).

35. On January 19, 2022 (“winter test”), it was approximately 40 degrees Fahrenheit and sunny; and on August 22, 2022 (“summer test”), it was approximately 90 degrees Fahrenheit and sunny. (PPL St. No. 1, at 6; PPL Exhibits Nos. RW-1, RW-2).

36. During both the winter and summer testing, Mr. White used a Wave Control SMP2 meter with a wp400 probe to measure the EMF at the Property, which is the standard EMF reader that PPL uses to measure EMF emissions, and allows the user to detect both electric and magnetic fields at a higher value than what is described in the IEEE’s standards. (PPL St. No. 1, at 7).

37. During both the winter and summer testing, Mr. White took readings at different places on the Property to gain a clear understanding of the varying levels of EMF throughout the Property. These different places included: directly under or near the middle phase of the Line to get a base level of EMF in the Company’s ROW; the outer phases of the Line which can be expected to emit the highest levels of EMF due to the phase shift in the electricity; the high spots under the Line; the various points near the edge of the ROW and outside the ROW; and the spots where the Complainants expressed areas of concern. (PPL St. No. 1, at 12-13; PPL Exhibits Nos. RW-1, RW-2).

38. During the winter test, Mr. White tested the EMF levels at six discrete locations at varying distances away from the Line and the Company’s ROW.<sup>4</sup> (PPL St. No. 1, at 7-8; PPL Exhibit No. RW-1).

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<sup>4</sup> These six locations include: the middle conductor, outside conductor (towards home), edge of ROW, by horse gate, by shed gate, and midway between outside conductor and shed. (See PPL Exhibit No. RW-1, which also includes an aerial photograph of the Property with the testing locations marked).

39. PPL Exhibit No. RW-1 includes the results of Mr. White's EMF winter testing, which shows that the levels of EMF at each of the six testing locations were well below the maximum allowable levels dictated by IEEE standards. (PPL St. No. 1, at 8-9; PPL Exhibit No. RW-1).

40. During the summer test, Mr. White tested the EMF levels at ten discrete locations at varying distances away from the Line and the Company's ROW.<sup>5</sup>

41. PPL Exhibit No. RW-2 includes the results of Mr. White's EMF summer testing, which shows that the levels of EMF at each of the ten testing locations were well below the MPE limits dictated by IEEE standards. (PPL St. No. 1, at 10-11; PPL Exhibit No. RW-2).

42. Since the EMF emitted by the Line during a warm, summer day like August 2, 2022, will generally be reflective of the higher end of EMF emissions from the Line, Mr. White opines that the summer testing, when it was 90 degrees Fahrenheit, reflect the highest EMF values that could realistically be expected at the Property; thus the summer readings show EMF levels well below the applicable MPE limits. (PPL St. No. 1, at 12).

43. During all three visits to the Property, Mr. White wore steel toed boots, as required by Company policy as a safety protocol for any site visit; however, wearing boots would not affect the measurements that were rendered by the EMP device he used to conduct testing. (Tr. at 79).

44. The Company evaluated two alternatives to try to remediate the EMF effects the Complainants alleged at the Property. Both options involved a reconfiguration to

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<sup>5</sup> These ten locations include: under middle phase, under outer phase closest to house, 100' approximately from middle phase closet to house, close to barn door, at corner of barn near line, near metal gate perpendicular to Line, outer phase away from house, high mound in field away from house, 100' approximately from the Line away from house, fence opposite from house phase away from house. (See PPL Exhibit No. RW-2, which also includes an aerial photograph of the Property with the testing locations marked).

raise the Line—thereby increasing ground clearance for the lines traversing the Property, to put additional distance between the EMF source and the people below. (PPL St. No. 1, at 13).

45. The first option considers, *inter alia*, replacing the two existing approximately 115 ft. tall poles on either side of the Company's ROW with 150 ft. tall poles, thereby raising the height of the conductors, and ultimately, the Line. (PPL St. No. 1, at 14).

46. The second option considers switching the existing poles to a delta frame configuration from its current horizontal configuration to make it a more compact structure, which would require, *inter alia*, three different heights of conductors, replacing the two approximately 115 ft. poles with 200 ft. high poles, replacing the two poles beyond the structures on the Property with 150 ft. high poles to accommodate the increased height of the other structures, and replacing the existing conductors and shield wires below the lines. (PPL St. No. 1, at 16).

47. The first option was estimated to cost \$5,672,295.81 and the second option was estimated to cost \$5,832,469.25. (PPL St. No. 1, at 15, 17; PPL Exhibits Nos. RW-4, RW-5).

48. Neither option would guarantee to address or remediate the EMF effects the Complainants allege they are experiencing because, while the Company would expect that the maximum electric fields would decrease somewhat, for some people this decreased level could still be detectable and the Complainants still may feel a static or shocking sensation under or near the Line. (PPL St. No. 1, at 15, 17).

49. In order to relocate the Company's structures off the ROW, PPL would have to obtain a new ROW agreement from different landowners depending on where the relocation would occur, and would require significant and costly construction activities on the Property, as well as whatever property or properties the Line would possibly be relocated to. (PPL St. No. 1, at 6).

50. In Mr. White’s opinion, pursuing either option would be unreasonable and in poor utility practice because the Company has a validly held ROW which houses the Line and is compliant with the ROW agreement; the Line has been present and operational since 1968; the EMF emitted by the Line is well within the government EMF MPE limits; and each option costs well over five and one-half million dollars without the guarantee of improving the subjective EMF impact to the Complainants. (PPL St. No. 1, at 18).

## DISCUSSION

### Legal Standards

As a matter of law, to establish a legally sufficient claim, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Public Utility Code (“Code”), a Commission regulation or order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

As the proponent of a rule or order, a complainant bears the burden of proof by a preponderance of the evidence – i.e., by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The “burden of proof” is composed of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of producing evidence or the burden of coming forward with evidence, determines which party must come forward with evidence to support a particular proposition.

Once the party with the initial burden of production introduces sufficient evidence to make out a *prima facie* case, the burden of going forward with the evidence to rebut the evidence of the complainant shifts to the respondent utility. If the evidence presented by the respondent is of co-equal weight, the complainant has not satisfied his or her burden of proof.

The complainant would be required to provide additional evidence to rebut the evidence of the respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 461 A.2d 1234 (Pa. 1983) (“*Burleson*”).

This shifting of burdens as between parties is referred to as the burden of persuasion. While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the parties seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (“*Milkie*”).

It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *Moore v. Nat'l Fuel Gas Distr.*, Docket No. C-2014-2457555 (Final Order entered Aug. 25, 2015). In determining whether a complainant has met the ultimate burden of persuasion, the factfinder may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *Id.*, citing *Suber v. Pa. Comm'n on Crime & Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005).

Section 1501 of the Code imposes a duty on every public utility company to furnish adequate, efficient and reasonable service to its customers and the public. This Section provides, in relevant part:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay....

66 Pa.C.S. § 1501.

Additionally, the Commission’s decision must be supported by substantial evidence. 2 Pa.C.S. § 704; *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982).

Substantial evidence has been defined to mean such relevant evidence that a reasonable mind may accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Id.*, *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

### Parties' Positions

The Complainants argue that they have presented testimony, including testimony from one of the Complainants, Mrs. Wills-West, that they have experienced, and continue to experience, a shocking sensation when they walk under the Line.<sup>6</sup> Further, Mrs. Wills-West also testified that “our horses get shocked, which spooks them and could cause misfortune.” (Tr. at 59). The Complainants argue that they have no reason to make this up. (Tr. at 59). Finally, the Complainants argue that it is unfair that they are getting shocked, and the Company should be required to fix this situation. (Tr. at 97).

The Company argues that the Complainants have failed to show that the Company has violated the Code, a Commission regulation or order, or its Commission approved tariff, and thus their Complaint should be dismissed. The Company further argues that the record evidence shows that the Company’s facilities are legally located on the Complainants’ Property pursuant to a valid ROW agreement that has been located there for decades. Thus, the Company contends, the Company has a clear right to house its Transmission Line facilities within this ROW. (Tr. at 90-91).

Next, the Company argues that EMF testing was completed at the Property and shows that the EMF levels are well within industry standards as dictated by IEEE Standard C95.6. Further, the Company contends it evaluated a couple of remedial measures to try to resolve this matter. However, these options, the Company contends, would be extremely costly

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<sup>6</sup> The Complainants’ closing argument can be found on pp. 93-97 of the hearing transcript. However, in response to objections by the Company, Complainants were instructed several times to base their argument on the evidence presented at the hearing.

to pursue and does not guarantee to solve the Complainants' alleged issues, and are legally unnecessary. (Tr. at 91-92).

Finally, the Company argues that granting the Complainants' requested relief could create a ripple effect of chaos across Pennsylvania electric transmission utilities. In this regard, counsel for PPL argued:

[i]ndeed, if a landowner can successfully challenge the existence of a valid transmission line legally on property and operating well within industry standards for EMF emissions[,] this could create wholesale chaos with landowners seeking to back out of their ROW contractual obligations of housing transmission facilities pursuant to validly held right of way agreements because of subjective conditions that are objectively within relevant industry standards.

Tr. at 92.

#### Disposition

After an exhaustive review of the record, for the reasons discussed below, I find that the record evidence compels the conclusion that the Complainants have not met their burden of proof that the Company violated the Code, a Commission regulation or order, or its Commission-approved tariff. Consequently, the Complaint must be dismissed.

This does not mean that I necessarily find that the testimony of the Complainants' witnesses, who all testified that they have experienced some kind of shocking sensation at the Property under the Line, is not credible. Rather, even if this testimony is deemed credible and sufficient enough to meet the Complainants' initial *prima facie* burden of proof, thereby requiring PPL to produce rebuttal evidence of at least co-equal weight, I find that the evidence presented from the Company clearly rebuts the Complainants' evidence. *Burleson*. Hence, dismissal of the Complaint is required, since the burden of proof always remains on the parties seeking affirmative relief from the Commission, which are the Complainants in the instant case. *Milkie*.

First, I agree with PPL that it has a valid ROW over the Property which houses the Line and its facilities and the Line is compliant with the ROW agreement. Indeed, the Line has been present and operational across the Property since 1968. This Line was clearly visible and operational when the Complainants moved onto the Property in September 2021.

Second, I find the expert testimony and exhibits presented by PPL to be persuasive to support its conclusion that the EMF levels are well within applicable industry standards and there is no evidence to conclude that its Line is emitting unsafe levels of EMF. Initially, Mr. White, who holds degrees in physics and energy engineering, explained that all operational electric transmission and distribution lines emit EMF; that this is not specific to PPL but applies generally to all electric utilities with transmission and distribution lines. Mr. White then explained that PPL incorporates the IEEE standard C95.6 – MPE limits, into its standards. (PPL St. No. 1, at 1, 3, 5; PPL Exhibit RW-3).

Next, Mr. White explained that, in order to gain a clear understanding of the varying levels of EMF throughout the property, EMF readings were taken from various locations on the Property and during both winter and summer conditions, since the distance from the Line and the weather can affect the EMF levels. For example, the varying locations included where the Line could be expected to emit the highest levels of EMF, the Property's high spots under the Line, and where the Complainants' expressed areas of concern. (PPL St. No. 1, at 12-13). Further, EMF readings were taken during a 90-degree sunny day. Mr. White explained that higher temperatures are expected to produce higher EMF readings. All of these readings showed EMF levels well below the applicable MPE limits. (PPL St. No. 1, at 12).

Third, I find that the Company's actions are reasonable pursuant to Section 1501 when it evaluated, but ultimately rejected, two alternatives in an effort to remediate the EMF effects to which the Complainants complain. Both options involved a reconfiguration to raise the Line. (PPL St. No. 1, at 13). However, I also find it reasonable that the Company is not pursuing either option. Not only has the Company demonstrated that each option would cost over \$5.5 million dollars, which cost would ultimately be borne by all other PPL ratepayers, but more significantly, neither option would guarantee to remediate the EMF effects the

Complainants testify they are experiencing. This fact, together with the findings that the EMF emitted by the Line is within industry standards, that the Line is within a valid ROW, that the Line has been operational since 1968, I find Mr. White's conclusion that pursuing these options would constitute poor utility practice is supported by the evidence. (PPL St. No. 1, at 18).

Fourth, I also find that the Company's point is well taken in that granting the Complainants' requested relief on this record could create an undesirable ripple effect across the Commonwealth. I find it persuasive that, if the Complainants' relief is granted on this record, then property owners can challenge the existence of a valid transmission line that is legally on any electric utility company's property and operating within industry standards for EMF emissions. I also note that the Commission has procedures and regulations in place to vet EMF concerns over new transmission projects. Those regulations can be found, at least in part, at 52 Pa. Code § 57.75.

I also find illustrative the case of *Brunda v. PPL Electric Utilities Corp.*, Docket No. C-2012-2286040 (Opinion and Order entered July 16, 2013) ("*Brunda*"). In that case, Mr. Brunda, who is a licensed professional engineer, averred that the EMF from PPL's distribution lines near his property were emitting levels of EMF that presented a health and safety risk to him. The Commission rejected Mr. Brunda's assertion based on the record evidence. That evidence included testimony from a PPL witness that measurements made by PPL of the EMF levels at Mr. Brunda's property were well within the limits widely accepted by experts in the scientific community. (*Id.* at 14). "Consequently," the Commission concluded, "there is nothing in the record to indicate that PPL's power lines are unsafe." (*Id.*)

The Commission also recognized in *Brunda* that it has found on several occasions that there is no conclusive or scientific evidence that EMFs have negative effects on humans or other forms of life.<sup>7</sup> In the instant case, PPL's expert witness, Mr. White, testified that EMF is

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<sup>7</sup> See *Brunda* at 8, n.4 (citing *Application of PPL Elec Utils. Corp.*, Docket No. A-2009-2082652 (Opinion and Order entered Feb. 12, 2010); *Letter Notification of Phila. Elec. Co.*, Docket No. A-110550F0155 (Final Order entered Nov. 12, 1993); and *Certification Application of Pa. Power and Light Co.*, Docket No. A-110500F0162 (Final Order entered Mar. 17, 1994)). See also, *Brunda* at 13, citing these with approval.

not in and of itself harmful and Mr. White is unaware of any peer-reviewed study that has scientifically proven that ELF or EMF are detrimental to a person's health. (PPL St. No. 1, at 4).

Finally, this decision does not discount or minimize the sensations described by the Complainants' witnesses. In fact, PPL presented expert testimony that EMF affects people differently. PPL's witness explained that EMF that can be felt and/or detected by one person, often described as a staticky feeling or shocking sensation, may not be felt and/or detected by another person. (PPL St. No. 1, at 3-5). However, there is no credible evidence presented that this in and of itself means that the Transmission Line at issue is unsafe. I am compelled to agree with PPL that the objective EMF readings by the Company support the conclusion that the levels of EMF at the Complainants' Property are well within the limits widely accepted by experts in the scientific community. Therefore, similar to the evidence presented in *Brunda*, there is nothing in the record to indicate that PPL's Transmission Line is unsafe.

Consequently, consistent with the lack of evidence from the Complainants and the rebuttal from the Company, this record compels the conclusion that the Complainants have not met their burden of proof. Accordingly, their Complaint must be dismissed.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §§ 701, 1501.

2. As a matter of law, to establish a legally sufficient claim, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Public Utility Code, a Commission regulation or order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

3. The party seeking relief from the Commission bears the burden of proof by preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

4. The “burden of proof” is composed of two distinct burdens: the burden of production and the burden of persuasion. The burden of production, also called the burden of producing evidence or the burden of coming forward with evidence, determines which party must come forward with evidence to support a particular proposition. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000).

5. Once the party with the initial burden of production introduces sufficient evidence to make out a *prima facie* case, the burden of going forward with the evidence to rebut the evidence of the complainant shifts to the respondent utility. If the evidence presented by the respondent is of co-equal weight, the complainant has not satisfied his or her burden of proof. The complainant would be required to provide additional evidence to rebut the evidence of the respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 461 A.2d 1234 (Pa. 1983).

6. This shifting of burdens as between parties is referred to as the burden of persuasion. While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the parties seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2005).

7. Every public utility company has the obligation to furnish adequate, efficient and reasonable service to its customers and the public. 66 Pa.C.S. § 1501.

8. The Complainants have not met their burden of proof that the Company violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff.

