

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held May 23, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Michael C. Salera

C-2023-3037817

v.

West Penn Power Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Michael C. Salera (Complainant or Mr. Salera), filed on September 26, 2023, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Conrad A. Johnson, issued on September 12, 2023, in the above-

captioned proceeding.¹ The Initial Decision dismissed the Formal Complaint (Complaint) filed by the Complainant on January 19, 2023, alleging improper vegetation management.²

On October 12, 2023, West Penn filed its Reply to Exceptions. For the reasons set forth herein, we shall deny the Complainant's Exceptions, adopt the ALJ's Initial Decision, and dismiss the Complaint, consistent with this Opinion and Order.

I. Procedural History

On January 19, 2023, Mr. Salera filed the instant Complaint with the Commission, wherein he asked the Commission to prohibit West Penn from returning to the Complainant's residence (Service Address) too soon after trimming the vegetation on his property as part of the Company's vegetation management program. Specifically, in Paragraph 4 of the Complaint, Mr. Salera stated as follows:

West Penn Power wants to re-cut my trees along their wires. They had already done this cutting on March 25th, 2022, and had obtained approved clearance(s) then. Their own Company representatives have admitted to me that further cutting can only be done at my request.

Complaint at ¶ 4.

¹ The Complainant filed Exceptions to the Initial Decision on September 26, 2023, but failed to serve West Penn Power Company (West Penn or the Company) with a copy of the Exceptions. Therefore, on October 2, 2023, the Commission's Secretary issued a Secretarial Letter serving a copy of the Complainant's Exceptions on West Penn to constitute service in accordance with 52 Pa. Code § 5.533.

² On January 25, 2023, the Complaint was served on West Penn for an answer due within 20 days.

As relief, Mr. Salera requested the Commission order West Penn to desist from additional trimming until the next scheduled trimming, in approximately four years. Specifically, in Paragraph 5 of the Complaint, Mr. Salera stated as follows:

Since this utility has already completed their once-every-four-years tree trimming, which from previous experience has been approved after the work completion (I have been dealing with these trimmings for 40+ years), no further cutting is warranted or needed. In fact, not one branch of mine is touching any of the wires they own, a fact verified by one Travis Horn, a West Penn vegetation manager. I want the PUC to order West Penn Power to stop any more cutting until the proper 4-year period for re-growth is observed & adhered to. West Penn's contractors have already killed one of my spruce trees due to overly zealous overcutting, and have never reimbursed me, nor have any of my other trees recovered from their work. They have already been given their "bite of the apple" for 2022; they do not get to cut every 9-10 months at their sole discretion.

Complaint at ¶ 5.

On February 14, 2023, in response to the Complaint, West Penn filed an Answer (Answer), generally denying the material allegations in the Complaint. In response to Paragraph 4 of the Complaint, West Penn admitted, in part, and denied, in part, the Complainant's allegations. The Company admitted that it performed vegetation management on the Complainant's property in early 2022 but denied it can only perform further vegetation management at the Complainant's request. Answer at ¶ 4.

II. Background

By way of background, West Penn submitted that in November 2022, the Company's Supervisor of Vegetation Management, Ryan Thomas, noticed the vegetation at the Service Address while visiting the area on unrelated business, and thereafter,

ordered the local area forestry representative to follow up at the property because the vegetation he observed at the Service Address might not have adequate clearance away from the Company's facilities. West Penn notified the Complainant first in December 2022 and again in January 2023 that additional trimming would need to be performed at the Service Address. *See*, Answer at 2-3; *see also*, Tr. at 57-58, 65-68.

The Complainant responded to the Company's December 1, 2022 notification via phone and refused the work.³ On December 2, 2022, the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) regarding the additional tree trimming for the Service Address under BCS Case No. 3880055.⁴

On January 10, 2023, West Penn sent a letter, via certified mail, advising the Complainant of its work plans to return to his property on or after February 2, 2023 for the purpose of removing additional vegetation. The letter enclosed the work plans and asked the Complainant to acknowledge receipt of the Company's plans to perform additional vegetation management. *See*, Tr. at 18-20, 68; Complainant Exh. A. According to the Company, the Complainant left the Company's Vegetation Management Specialist a voicemail on January 19, 2023, refusing the work. Answer at 2.

West Penn explained that on January 20, 2023, the Company's Supervisor of Vegetation Management, Mr. Thomas, again left a voicemail with the Complainant,

³ The Company's Supervisor of Vegetation Management, Mr. Thomas, left voicemails with the Complainant on December 6, 2022 and December 8, 2022 to discuss the work plan and propose a meeting on site. According to the Company, the Complainant did not respond to the Supervisor's voicemails. Answer at 2.

⁴ In BCS Case No. 3880055, BCS dismissed the informal complaint on January 9, 2023, noting that BCS has limited jurisdiction over the service complaint and that the Company was willing to speak with the Complainant about the planned work. *See*, Answer at 2; *see also*, West Penn Exh. No. 2. It should be noted that the instant Complaint is not a timely appeal from BCS decision Case No. 3880055.

attempting to discuss and arrange a site meeting. According to the Company, the Complainant did not return this voicemail. Answer at 2-3.

West Penn denied it violated any provision of the Public Utility Code (Code), or the Commission's Regulations and Orders, when it determined in December 2022 that the trimming conducted at the Service Address in the spring of 2022 failed to reduce the height of some vegetation adequately and that further vegetation management was required in order to maintain clearance to the Company's electric facilities. Answer at ¶ 5. West Penn requested the Commission dismiss the Complaint with prejudice. Answer at 4.

By Initial Telephonic Hearing Notice dated March 20, 2023, a Telephonic Hearing was scheduled for April 26, 2023.

On March 21, 2023, ALJ Johnson issued the Prehearing Order which, *inter alia*, outlined procedural and administrative rules to be used by the parties during the pendency of the proceeding.

On April 26, 2023, ALJ Johnson convened the initial call-in telephonic hearing, as scheduled. The Complainant appeared *pro se* and testified on his own behalf. The Complainant offered three exhibits which were marked and admitted into evidence as Complainant Exhibits A, B, and C. West Penn was represented by counsel who presented the testimony of two witnesses and offered four exhibits, which were marked and admitted into evidence as West Penn Exhibit Nos. 1 through 4. The Complainant and West Penn elected to make final statements on the issues at the initial hearing in lieu of submitting briefs.

On June 14, 2023, ALJ Johnson closed the record by issuing an Interim Order. The hearing record consists of a ninety-six (96) page transcript and seven (7) exhibits.

On September 12, 2023, the Commission issued the Initial Decision of ALJ Johnson wherein he found that the Complainant failed to carry his burden of proving that West Penn was in error to propose returning to perform a re-trim. I.D. at 11, 12. Accordingly, ALJ Johnson recommended that the Complaint filed on January 19, 2023 be dismissed. I.D. at 1, 12.

As noted *supra*, the Complainant filed Exceptions on September 26, 2023. West Penn filed Replies to Exceptions on October 12, 2023.

III. Discussion

A. Legal Standards

1. Burden of Proof

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. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa. C.S. § 701.

Section 332(a) of the Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa. C.S. § 332(a). The evidentiary burden of proof for actions before the Commission is the

“preponderance of the evidence” standard. *Suber v. Pennsylvania Com’n on Crime and Delinquency*, 885 A. 2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*); *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992) (*Lansberry*); *see also, North American Coal Corp. v. Air Pollution Commission*, 279 A.2d 356 (Pa. Cmwlth. 1971). To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, by even the smallest amount, the probative value of the evidence presented by the other party. *See, Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 48-49, 70 A.2d 854, 855 (1950).

The burden of proof comprises 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 going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Final Order entered August 25, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party’s claim or affirmative defense. *Id.* It may shift between the parties during a hearing. If a complainant introduces sufficient evidence to establish the legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant’s evidence. *See, Id.* If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant’s burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant. The complainant then must provide some additional evidence favorable to the complainant’s claim. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*); *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 501 Pa. 433, 461 A.2d 1234 (1983) (*Burleson*).

Having produced sufficient evidence to establish the legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See, Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See, Milkie, Burluson; see also, Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n.11 (Pa. Cmwlth. 1993). 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. *See, Moore*. In determining whether a complainant has met the burden of persuasion, the ultimate factfinder⁵ 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. *See, Moore* (citing *Suber*).

Finally, adjudications by the Commission must be supported by substantial evidence in the record. 2 Pa. C.S. § 704. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S. Ct. 206, 217 (1983). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

⁵ In formal complaint proceedings, the Commission, not the ALJ, is the ultimate fact-finder; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n. 7 (citing, *inter alia*, 66 Pa. C.S. § 335(a)).

2. Adequate, Efficient, Safe and Reasonable Service

A public utility has a duty to maintain adequate, efficient, safe and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa. C.S. § 1501. Section 1501 of the Code provides, in pertinent part, as follows:

§ 1501. Character of service and facilities

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. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service.

66 Pa. C.S. § 1501.

Section 1501 of the Code does not require a public utility to provide perfect service, but a public utility is obligated to provide service that is reasonable and adequate. *Analytical Lab Servs., Inc. v. Metro. Edison Co.*, Docket No. C-20066608 (Opinion and Order entered December 21, 2007). The term “service” is defined broadly under Section 102 of the Code to include any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities, used, furnished or supplied by public utilities. See 66 Pa. C.S. §102. The statutory definition of “service” is also to

be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

The Commonwealth Court has stated that Section 102 of the Code clearly indicates that a utility's "service" is not confined to the distribution of electrical energy, but includes "any and all acts" related to that function. *West Penn Power Company v. Pa. PUC*, 578 A.2d 77 (Pa. Cmwlth. 1990) (*West Penn I*).

3. Vegetation Management

The Commonwealth Court has held that vegetation management is a public utility service subject to Section 1501 of the Code and the Commission is within its jurisdiction to determine whether a utility's tree clearing constitutes reasonable and adequate service. *West Penn I*, 578 A.2d at 77 (affirming the Commission's order that concluded that vegetation management is a service and that the utility's clearing of an entire 40-foot right-of-way and removal of trees outside of the right-of-way did not constitute reasonable and adequate service); *see also, PECO Energy Co. v. Township of Upper Dublin*, 922 A.2d 996, 1005-06, 1009 (Pa. Cmwlth. 2007) (*PECO Energy*) ("Vegetation management is an essential part of providing safe, reliable electric service and is squarely within the PUC's regulatory jurisdiction" . . . [t]he Commission is the appropriate forum for complaints filed pursuant to 66 Pa. C.S. § 701 related to an electric utility's tree trimming and cutting practices); *see also, Popowsky v. Pa. PUC*, 653 A.2d 1385 (Pa. Cmwlth. 1985) (vegetation maintenance constitutes a utility service and must be performed in a safe, adequate, reasonable and efficient manner).⁶

⁶ The Commonwealth Court also has held that a utility must act reasonably in notifying a property owner of its intended tree cutting activity. *West Penn I*, 578 A.2d at 78 (affirming the Commission's decision that the utility's failure to use reasonable means to identify and notify the property owner of the tree removal was a violation of Section 1501 of the Code).

Additionally, Section 2802 of the Code, 66 Pa. C.S. § 2802, enacted as part of the Electricity General Customer Choice and Competition Act in 1996, authorizes the Commission to set reliable standards for maintenance of electric service transmission and distribution systems. 66 Pa. C.S. § 2802(20). Our Regulations at 52 Pa. Code § 57.198 governs vegetation clearance and management as part of the inspection and maintenance standards for electric utilities and requires an electric utility to submit a plan to the Commission every two years for the periodic inspection, maintenance, repair and replacement of its facilities. The Regulation at 52 Pa. Code § 57.198(f) requires the plan to include a program for the maintenance of clearances of vegetation from the electric utilities' overhead distribution facilities. Utilities are obligated to manage the vegetation in property owners' rights of way (ROW) in a manner that ensures that electricity is delivered safely and reliably to the customers they serve. The failure to properly manage vegetation can result in loss of service or, on occasion, injury or death. While the Commission "respect[s] the concerns of property owners about how public utilities manage their ROWs, the Commission is obligated to ensure that electric service is safe, reliable, and available to customers." *Charles Evans Hunnell v. West Penn Power Company*, Docket No. C-2020-3020090 (Opinion and Order entered May 19, 2022), slip opinion at 26.

Finally, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

B. ALJ's Initial Decision

In his Initial Decision, ALJ Johnson made twenty-five Findings of Fact (FOF) and reached eight Conclusions of Law (COL). I.D. at 2-6, 10-12. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

ALJ Johnson premised his recommendation by noting that Mr. Salera, as the Complainant, bears the burden of proving West Penn was in error for proposing to return to the Service Address for the purpose of performing additional trimming on the Complainant's trees. I.D. at 9, 10.

Citing *PECO Energy*, 922 A.2d 996, a seminal case affirming the Commission's jurisdiction over vegetation management in utility rights-of-way, the ALJ affirmed the Commission's jurisdiction over utilities' vegetation management plans in order to maintain distribution and transmission corridors in their provision of service under Section 1501 of the Code. I.D. at 7.

The ALJ summarized Mr. Salera's position as objecting to West Penn's proposal that it be permitted to return to perform additional trimming so soon after the Company performed trimming as part of its vegetation management cycle in March 2022. According to the ALJ, Mr. Salera insisted that the Company can safely wait until the next vegetation clearance cycle is scheduled to occur in 2027.⁷ I.D. at 8. Mr. Salera also insisted that the Company was in error when it trimmed the vegetation in March 2022 because, according to the Complainant, West Penn's electric distribution line is situated

⁷ West Penn uses a five-year cycle to trim trees and maintain vegetation around its facilities, including poles and wires, as part of its vegetation management program. I.D. at 3, FOF No. 8 (citing Tr. at 61).

outside the ROW and extends into the Complainant's yard. Accordingly, at the hearing the Complainant requested the Commission order West Penn to move its electric distribution line so the wires no longer extend over his property outside the ROW. I.D. at 8.

Addressing the Company's position, the ALJ explained that West Penn maintained that, subsequent to determining that an additional trim of the vegetation was necessary because West Penn has a reasonable expectation that the current state of the vegetation will be in contact with the electric facilities prior to 2027, it had made numerous attempts to resolve the matter with the Complainant; however, Mr. Salera did not respond. I.D. at 8. West Penn contended that it is charged with maintaining a distribution line that is safe and reliable, which includes the adequate management of vegetation; in this case, that requires there be sufficient clearance away from the distribution line until 2027, when the next vegetation clearance cycle is scheduled to occur. *Id.*

The ALJ commenced his analysis of the case by stating that both Parties agreed that West Penn was obligated to ensure the safety and reliability of the distribution line which runs near and over the Complainant's property; however, the Parties disagree whether West Penn must adhere to its five-year vegetation management schedule and not return any earlier to perform additional trimming on the trees on the Complainant's property. I.D. at 9.

The ALJ distinguished this case from prior Commission decisions involving the vegetation management programs used by the Company and other electric distribution companies (EDCs) to maintain a utility ROW, citing *Mattu v. West Penn Power Co.*, Docket No. C-2016-2547322 (Opinion and Order entered October 25, 2018), *rev'd*, *West Penn Power Co. v. Pa. PUC*, 1548 C.D. 2018 (Pa. Cmwlth. 2019); *Broman v West Penn Power Co.*, Docket No. C-2013-2356237 (Opinion and Order entered

April 23, 2014); and *Spirat v Metro. Edison Co.*, Docket No. C-2013-2367044 (Opinion and Order entered September 11, 2014). The ALJ explained the difference between those cases and this proceeding as follows:

In this proceeding, the landowner does not contest the need for the EDC to trim vegetation which interferes with the safety and/or reliability of the electric service provided through the distribution line which extends over Complainant's property. Complainant's concern herein is whether Respondent is permitted to return to perform additional trimming so soon after Respondent's agent performed trimming as part of its vegetation management cycle.

I.D. at 9.

The ALJ found that the evidence presented by both Parties lacked specificity about the current distance of the subject vegetation from the distribution line and how critical additional trimming is necessary. However, because the Complainant carried the burden of proof, and because the Company is charged with maintaining a distribution line that is safe and reliable, the ALJ recommended that the Commission deny the Complaint. I.D. at 9-10.

Finding that West Penn acted responsibly when it trimmed the vegetation in March 2022, as well as when it returned during the cycle and observed a condition which might create a hazard for its facilities, the ALJ concluded that West Penn should be allowed to return to the Service Address to trim or remove the subject vegetation as it deems necessary to ensure to continue safety and reliability of the distribution line. *Id.*

C. Exceptions and Replies

As a threshold consideration, the Complainant's Exceptions consist of two hand-written pages in which he generally expresses his disagreement with ALJ Johnson's findings and his decision to dismiss the Complaint; however, the format of the Exceptions does not strictly comply with Section 5.533(b) of the Commission's Regulations, 52 Pa. Code § 5.533(b). These Regulations require that Exceptions be numbered, identify the findings of fact and conclusions of law to which exception is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, because the Complainant is appearing *pro se*, we will accept the Exceptions as filed and consider them on their merits pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(a), in order to secure a just, speedy, and inexpensive determination of this matter. We also conclude that no prejudice to West Penn results from our consideration of the Exceptions.

The essential charge by the Complainant of ALJ error lies in his assertion that the ALJ was obligated to order West Penn to comply with certain activities to assist the Complainant in proving his case. Specifically, the Complainant contends that "it is incumbent upon the [ALJ] to order West Penn to verify [his] evidence for 2 reasons:" (1) that the utility poles, service lines, etc., belong solely to West Penn and that the Company is responsible and accountable for their placements; and (2) that the Complainant has no adequate means of gaining completely accurate measurements of same, *i.e.*, a bucket truck, a crane, or other overhead aerial capabilities. Exc. at 1. As such, the Complainant asserts that the ALJ "erred significantly in finding that [he] had not presented convincing evidence at [his] trial of 4/26/2023," stating that "[the Complainant] did not prove [his] case with a preponderance of evidence." *Id.*

The Complainant's Exceptions conclude by noting that "zero power outages or interruptions have occurred on [his] property as a result of vegetation interference for 49 years." Exc. at 2. Therefore, the Complainant reasons that the

March 2022 trimming “has and will continue to prevent any potential service interruptions/outages up until and beyond 2027, which is the date of the next scheduled cutting period.” *Id.*

In reply, West Penn asserts that the ALJ correctly found that Mr. Salera failed to sustain his burden of proof that, by insisting it must be allowed to return to the Service Address to re-trim the vegetation, the Company had committed any violation of the Code, the Commission Regulations, or a Commission Order. R. Exc. at 4. West Penn contends that the Complainant’s evidence consisted solely of his personal opinion regarding the Company’s vegetation management, noting that personal opinion, assertions, and perceptions do not constitute evidence. R. Exc. at 4 (citing *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Groch v. Unemployment Comp. Bd. of Review*, 472 A.2d 286 (Pa. Cmwlth. 1984); *Vann v. Unemployment Comp. Bd. of Review*, 494 A.2d 1081 (Pa. 1985)). Substantial evidence requires more than a scintilla of evidence or suspicion of the existence of a fact to be established. *Id.* (citing *Norfolk and Western Ry. v. PA PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 85 Pa. Cmwlth. 23, 480 A.2d 382 (1984)).

West Penn contends that, not only do the Complainant’s Exceptions fail to present a legally sufficient basis to alter the Findings of Fact and Conclusions of Law set forth in the Initial Decision, but Mr. Salera’s argument appears to place the burden of proving the Complainant’s claims on the ALJ and the Company, which is inconsistent with the law. Rather, Mr. Salera, as the Complainant, had the burden of proving his claims, and he failed to do so. R. Exc. at 3-4 (citing 66 Pa. C.S. § 332(a)).

Lastly, West Penn references the Complainant’s assertion that he never experienced a vegetation-related reliability issue, contending that this is counterintuitive

to the Complainant's position that the Company must refrain from performing vegetation management and speaks to the Company's vegetation management efforts in his area over the years. R. Exc. at 4-5.

D. Disposition

The Commission's review of West Penn's service in this proceeding is governed by Section 1501 of the Code. Section 1501 requires that public utilities furnish adequate, efficient, safe, and reasonable service and facilities. Public utilities are also required to make such repairs, alterations, and changes to service and facilities as may be necessary for the accommodation, convenience and safety of the public. West Penn is therefore obligated to both maintain the electric distribution facilities on the Complainant's property and to manage the vegetation in the ROW in such a manner to ensure that electricity is transmitted safely and reliably to those customers served by these lines. The failure to manage vegetation in electric distribution ROWs can result in the loss of service to large numbers of customers, and on occasion, the injury or death of persons who may come into contact with downed power lines within or near a ROW.

During the evidentiary hearing, the Complainant contended that, not only was West Penn in error for proposing to return to perform additional trimming, maintaining that the trees on his property do not pose a threat to the Company's electric above-ground facilities, but the Company was in error when it initially trimmed the vegetation in March 2022 because, according to the Complainant, West Penn's electric distribution line is situated outside the ROW and extends into the Complainant's yard.

We note that Mr. Salera's straightforward vegetation management claims challenging the reasonableness of West Penn's proposed tree trimming activity are squarely within our primary jurisdiction to hear and adjudicate. However, the Commission does not have jurisdiction to determine the scope and validity of an

easement.^{8,9} Therefore, to the extent the Complainant contends that West Penn misapplied the ROW, he must pursue those claims in another forum.

Regarding our primary jurisdiction over West Penn's tree trimming on the Complainant's property, we agree with the ALJ that the Complainant has not met his burden of proving that West Penn provided unreasonable service, in violation of Section 1501 of the Code, 66 Pa. C.S. § 1501, when it trimmed the vegetation in March 2022, or when it returned during the cycle and observed a condition which might create a hazard for its facilities. Any finding that a violation did occur must be supported by substantial evidence. 2 Pa. C.S. § 704. The Complainant only offered his personal, lay opinion and presented inconclusive evidence that did not show whether the vegetation is located within or outside of the ROW. The evidence he presented in the form of

⁸ In 1948, West Penn entered into an easement agreement which gave the Company the right to enter onto the Complainant's property "to cut and trim or remove trees and shrubbery wherever necessary to maintain the said transmission system and keep it in all parts thereof free from interference." I.D. at 3, FOF No. 3 (citing Tr. at 20, 21; Complainant Exh. A).

⁹ In *Boczar v. PPL Electric Utilities Corp.*, Docket No. C-20016332 (Opinion and Order entered February 10, 2003) (*Boczar*), the complainant alleged that the utility was not authorized to place its poles, transformers and cable lines on his property. The Commission noted that the utility produced right of way agreements for the facilities in question. The Commission concluded that it lacked jurisdiction to determine property rights concerning these easements. However, the Commission also expressly recognized its primary jurisdiction to review the reasonableness of the utility's alleged activity, which involved vegetation management or tree clearing, in that proceeding. Upon examination, the Commission did not find that the utility's acts constituted unreasonable, inadequate or unsafe service in violation of Section 1501 of the Code, 66 Pa. C.S. § 1501.

In *Stavnicky v PPL Electric Utilities Corp.*, Docket No. C-20043368 (Final Order entered July 13, 2005) (*Stavnicky*), the Commission held that its subject matter jurisdiction in right of way disputes extended only to cases where there was no written documentation of an easement. If the utility produced a document purporting to show a grant of authority for an easement concerning a complainant's property, the Commission's inquiry should be at an end. The Commission determined that it lacked jurisdiction because the utility presented written documentation of its easements.

photographs were inconclusive to show how far away from the distribution lines the trees were located. In addition, the Complainant, as the moving Party, has the burden of proving his claim, and did not clearly indicate why the trimming or removal of the volunteer trees¹⁰ within the hedgerow were beyond the ROW or were not likely to create a hazard to the distribution line prior to the next clearance cycle (2027).

Based on the record before us, and the applicable law, we find that the Complainant simply did not establish a *prima facie* case of a violation of the Code, the Commission's Regulations, or a Commission Order. Accordingly, we shall deny the Complainant's Exceptions.

The Pennsylvania General Assembly has declared that electric service is essential to the health and well-being of its residents, to public safety, and orderly economic development. 66 Pa. C.S. § 2802(9). The General Assembly has also declared that the reliability of electric service depends on the conscientious inspection and maintenance of utility systems and charged the Commission with developing and enforcing regulations for the inspection and maintenance of these facilities. 66 Pa. C.S. § 2802(20). The Commission has promulgated these Regulations as required and reviews and approves electric utility vegetation management plans prior to their implementation. 52 Pa. Code § 57.198(n). The Commission's most recent report on electric reliability documented that trees are the number one cause of outages and lost minutes of service.¹¹

¹⁰ The Company's witness, Mr. Thomas, Supervisor of Vegetation Management, testified that trees that were not intentionally planted, also known as "volunteer" trees, are situated under the distribution line within a hedgerow on the Complainant's property and may grow too close to the distribution line before the next clearance cycle. *See*, Tr. at 79, 81-82.

¹¹ *2021 Pennsylvania Electric Reliability Report* (Pennsylvania Public Utility Commission, August 2022).

While we do sympathize with and respect the concerns of property owners about how public utilities manage their ROWs, the Commission is obligated to ensure that electric service is safe, reliable, and available to customers. However, in the circumstances of the present case, we find no violation on the part of the Company. The Commission will continue to review and evaluate all Complaints based on the evidence presented to it, and where a violation has been shown to have occurred, direct public utilities to change their vegetation management practices. We encourage all public utilities to continue their ongoing efforts to educate, communicate, and respond to property owners about vegetation management in public utility ROWs.

IV. Conclusion

Based on our review of the ALJ's Initial Decision, the record and pleadings, and the applicable law, we shall deny the Complainant's Exceptions and adopt the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Michael C. Salera, on September 26, 2023, to the Initial Decision of Administrative Law Judge Conrad A. Johnson, issued on September 12, 2023, at Docket No. C-2023-3037817, are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Conrad A. Johnson, issued on September 12, 2023, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint filed by Michael C. Salera, on January 19, 2023, against West Penn Power Company, at Docket No. C-2023-3037817, is dismissed.

4. That this case be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: May 23, 2024

ORDER ENTERED: May 23, 2024