

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

Public Meeting held July 11, 2024

Commissioners Present:

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

Francene Tearpock-Martini

v.

Frontier Communications of Pennsylvania, LLC

C-2023-3038237

and

UGI Utilities, Inc. – Electric Division

C-2023-3038243

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Francene Tearpock-Martini (Complainant or Ms. Tearpock-Martini), filed on November 9, 2023, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Chad L. Allensworth, issued on October 31, 2023, in the above-captioned proceeding. The Initial Decision dismissed the

Formal Complaints (Complaints) filed by the Complainant on February 10, 2023, alleging trespass and damage to a tree and shrubs on the Complainant's property.

On November 30, 2023, Frontier Communications of Pennsylvania, LLC (Frontier), filed its Reply to Exceptions.¹ 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 February 10, 2023, Ms. Tearpock-Martini filed two Formal Complaints (Complaints) with the Commission, wherein she asserted identical claims and sought identical relief.² Complainant alleged that Frontier and UGI were responsible for damage to a magnolia tree and shrubs located on Complainant's property caused when Frontier trespassed on her property to perform work on wires suspended between UGI's utility poles located near the Complainant's property. Complaints at ¶ 3-5.

As relief, Ms. Tearpock-Martini requested damages for destruction caused to the tree and shrubs and a prohibition of future trespassing by Frontier and UGI on Complainant's property. Complaint at ¶ 5.

On March 6, 2023, UGI filed an Answer and New Matter, admitting and denying various averments of the Complaint. Specifically, UGI admitted that it provides

¹ The deadline for filing Reply Exceptions is 10 days after the Exceptions are due. In this case, Exceptions were due on November 10, 2023, and Reply Exceptions were due November 30, 2023. Accordingly, Frontier's Reply Exceptions were timely filed.

² The Complaint at Docket No. C-2023-3038237 against Frontier, and the Complaint at Docket No. C-2023-3038243 against UGI were consolidated by Opinion and Order issued on May 24, 2023.

service to the Complainant and owns the utility poles in question. UGI denied it violated any provision of the Public Utility Code (Code), or the Commission's Regulations and Orders, and denied trespassing or causing damage to Complainant's property. UGI Answer and New Matter at ¶ 4-5.

UGI filed Preliminary Objections (POs) on March 6, 2023. The POs requested dismissal of the Complaint versus UGI on the grounds that UGI had never conducted work at the Complainant's property on the dates in question, and that Complainant was not entitled to damages under the Code. UGI POs at 10. On March 7, 2023, Complainant filed a reply to UGI's POs asserting that the Complaint should not be dismissed. Complainant's Reply to UGI POs at 2. On April 11, 2023, the ALJ granted UGI's POs, in part, by striking Complainant's request for monetary damages.

On May 12, 2023, Frontier filed its Answer and New Matter admitting and denying various averments in the Complaint.³ Specifically, Frontier admitted that it was deploying fiber optic wires on UGI utility poles on December 1, 2022. Frontier Answer and New Matter ¶ 5. Frontier denied trespassing on or causing any damage to the Complainant's property. Frontier Answer and New Matter ¶ 4. On May 23, 2023, Complainant filed a Reply to Frontier's New Matter.

By Initial Telephonic Hearing Notice dated March 24, 2023, a Telephonic Hearing was scheduled for July 11, 2023.

³ The Formal Complaint was inadvertently served upon Frontier Utilities Northeast LLC, and EGS, rather than Frontier Communications, and that the Formal Complaint was properly served upon Frontier Communications on or about April 5, 2023.

On May 25, 2023, ALJ Allensworth 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 July 7, 2023, UGI filed a Motion in Limine seeking to limit potential evidence introduced by Complainant.

On July 11, 2023, ALJ Allensworth convened the initial call-in telephonic hearing, as scheduled. The Complainant appeared *pro se* and testified on her own behalf. The Complainant offered seven exhibits which were marked and admitted into evidence without objection as Complainant Exhibits 1-7. Complainants Exhibits included: (1) Exhibit 1 – Deed confirmation; (2) Exhibit 2 – Survey map; (3) Exhibit 3 – Photo of magnolia tree; (4) Exhibit 4 – Photo of magnolia tree; (5) Exhibits 5a and 5b – Photos of arborist pruning tree; (6) Exhibit 6 – Photo of utility poles with Complainant’s property in background; and (7) Exhibit 7 – Photo of street corner showing Complainant’s property.

At the initial call-in hearing, UGI and Frontier were represented by counsel. Counsel for UGI presented the testimony of one witness and offered one exhibit, which was marked and admitted into evidence as UGI Exhibit No. 1- General Agreement. Counsel for Frontier presented the testimony of one witness and offered five exhibits, which were marked and admitted into evidence as Frontier Exhibits Nos. 1-5. Frontier’s Exhibits included: (1) Exhibit 1 – Frontier Communication’s Answer and New Matter; (2) Exhibit 2 – Overlay of fiber lines; (3) Exhibit 3 – Photo of tree and fiber optic lines; (4) Exhibit 4 – Photo of utility line through tree; and (5) Exhibit 5 – Photo of utility line through tree. The Complainant and Frontier elected to make final statements on the issues at the initial hearing in lieu of submitting briefs.

On August 2, 2023, the record closed upon the Commission’s receipt of the 116-page hearing transcript.

On October 31, 2023, the Commission issued the Initial Decision of ALJ Allensworth wherein he found that the Complainant failed to carry the burden of proving that either UGI or Frontier has violated any provision of the Code, Commission Regulation or Order or violated a Commission-approved tariff. I.D. at 14. Accordingly, ALJ Allensworth recommended that the Complaints filed against UGI and Frontier be dismissed. I.D. at 15.

As noted *supra*, the Complainant filed Exceptions on November 9, 2023. Frontier filed Replies to Exceptions on November 30, 2023.

II. 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 factfinder⁴ 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).

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

⁴ 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)).

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).⁵

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

⁵ 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).

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. Cmwlt. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlt. 1984).

B. ALJ's Initial Decision

In his Initial Decision, ALJ Allensworth made twenty-eight Findings of Fact (FOF) and reached sixteen Conclusions of Law (COL). I.D. at 4-7, 12-14. 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.

The ALJ's Initial Decision addressed the Complainant's allegations of damage to a magnolia tree and shrubs due to work performed by Frontier on December 1, 2022, attaching wire to utility poles owned by UGI located near the Complainant's property.

ALJ Allensworth premised his recommendation by noting that UGI's Motion in Limine, to limit the scope of the evidence presented by Ms. Tearpock-Martini, was denied because the motion was filed too close in time to the scheduled hearing to permit the Complainant to file a response. However, the ALJ noted that UGI was permitted to raise any objection at hearing. I.D. at 7.

With respect to the Complainant's claim against UGI, the ALJ concluded that no evidence was presented by the Complainant to establish that UGI was present or responsible for any action done or near the Complainant's property on the date alleged, December 1, 2022. The ALJ noted that both the Complainant and UGI's witness testified that no UGI employee was present at the service address on the date in question. I.D. at 10. The ALJ further rejected the Complainant's assertion that UGI was required to be present for any work done by Frontier on utility poles owned by UGI, noting that UGI and Frontier have a "Joint use Agreement" contract which establishes the terms under which Frontier will utilize UGI's utility poles. The ALJ further noted that nothing in the Code, a Commission Order or Regulation, or Commission-approved tariff required UGI to be present for work done by Frontier on December 1, 2022. *Id.*

The ALJ further noted that any claims raised regarding UGI's placement of the poles were barred as previously decided in *Tearpock-Martini v. UGI Utilities, Inc.*, Docket No. F-2008-2022125 (Opinion and Order entered June 19, 2009) and *Tearpock-*

Martini v. UGI Utilities Inc., Docket No. C-2021-3027093 (Opinion and Order entered March 10, 2022). The ALJ found that Ms. Tearpock-Martini cannot re-litigate this issue in the current proceeding. *Id.* (citing 66 Pa. C.S. § 316). Therefore, the ALJ concluded that Ms. Tearpock-Martini failed to establish a right to relief based on placement of utility poles.

The ALJ also found that the Complainant failed to satisfy the burden of proof as to any claim against Frontier for “trespass” or damage to any trees or shrubs on Complainant’s property. In considering the relative weight of the evidence presented, the ALJ concluded that the evidence presented by Frontier’s witness, Mr. Spencer, including photographs, clearly established that the work was performed from “bucket trucks” above a public sidewalk/roadway, and did not constitute trespass on Complainant’s property, outweighed the Complainant’s vague testimony that trespass had occurred. The ALJ further found that Mr. Spencer presented credible testimony and photographic evidence that depicted no damage to the Complainant’s tree. I.D. at 11-12.

The ALJ concluded that Ms. Tearpock-Martini failed to carry the burden of proof to establish that Frontier violated any Commission Order or Regulation or Commission-approved tariff in connection with work completed on December 1, 2022. Therefore, the ALJ found no basis to find that Frontier had provided unreasonable service. I.D. at 12 (citing 66 Pa. C.S. §1501).

C. Exceptions and Replies

As a threshold consideration, the Complainant’s Exceptions consist of two type-written pages which expresses disagreement with certain of ALJ Allensworth’s factual findings and the decision to dismiss the Complaint, and an attachment listing Exception to Findings of Fact Nos. 8, 11,18, 20-23, and 27-28. Exc. 1-2 w/ Attachment. The Complainant generally challenges the Findings of Fact which contradict the

Complainant's assertion that she witnessed trespassing on her property by Frontier employees and provided photographic evidence of damage to her tree. The Complainant again asserts that UGI should have been required to be present for the work performed by Frontier. The Complainant further reiterates that the Complaint is asserting trespass and argues that Frontier has not provided evidence to refute that trespass occurred. *Id.* We note that 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). 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 Frontier or UGI results from our consideration of the Exceptions.

In reply, Frontier asserts that the ALJ correctly found that Ms. Tearpock-Martini failed to sustain the burden of proof of the Complaint that Frontier's actions constituted any violation of the Code, the Commission Regulations, or a Commission Order. R. Exc. at 2. Frontier contends that the Complainant's evidence consisted solely of her personal testimony regarding the work conducted by the Company, noting that the ALJ found the Complainant's testimony to be vague and not persuasive. Specifically, Frontier notes that the ALJ correctly found that the work in question was done by Frontier exclusively from bucket trucks located in the public right of way, so no trespass occurred. *Id.* (citing FOF 18, 19).

Frontier further contends that, as the Initial Decision held, the evidence presented by Frontier outweighed that of the Complainant and established that no trespass occurred on the Complainant's property. Frontier asserts that the Complainant had presented no evidence to satisfy the burden of proving the claims. R. Exc. at 3-6 (citing 66 Pa. C.S. § 1501).

Finally, Frontier notes that, to the extent the Complainant attempts to raise any issue regarding the placement of utility poles near Complainant's property, the ALJ properly found that Frontier does not own the utility poles and therefore, has no authority to relocate the poles. R. Exc. at 7 (citing FOF No. 25). Frontier asserts that the ALJ properly dismissed any claim related to Frontier having a duty to relocate utility poles. *Id.* (citing FOF No. 26) (Frontier had an attachment agreement to use the poles owned by UGI).

Accordingly, Frontier argues that the Commission should deny Complainant's Exceptions and dismiss the Complaint.

D. Disposition

The Commission's review of Frontier and UGI's conduct 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. Therefore, as to any question of vegetation management, UGI is 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. *See*, 52 Pa. Code § 57.198 (Inspection and maintenance standards). However, under the facts of the present case, we do not find that the UGI's vegetation management duties to be in question.

We agree with the ALJ that the Complainant presented no evidence to support a finding that UGI was involved with the work performed by Frontier lashing wires attached to and running between UGI-owned poles on December 1, 2022. Specifically, we agree with the ALJ's conclusion, that under the facts of this case, the

pole attachment agreement between UGI and Frontier governs the responsibility for the work performed by Frontier attaching wires to UGI-owned poles. I.D. at 6.

Further, we agree with the ALJ's conclusion that the work performed by Frontier's contractors on December 1, 2022, was from a bucket truck located on the public road/sidewalk. I.D. at 6; FOF Nos. 18-19. We specifically agree with the ALJ's conclusion that the weight of the evidence supports a finding that no trespass occurred. *Id.*; FOF No. 20 (Frontier Communications' contractors did not go on Ms. Tearpock-Martini's property when performing the work on December 1, 2022 and had no reason to enter her property to perform work.).

We also agree with the ALJ's finding that, based upon the credible testimony of Frontier Witness, Mr. Spencer, although the work done by Frontier could have dislodged a tree branch which was growing through the utility lines that Frontier was performing work on, there was nevertheless no evidence to support the conclusion that Ms. Tearpock-Martini's tree was cut or damaged in anyway. I.D. at 6-7.

Regarding our primary jurisdiction over the utility's tree trimming on the Complainant's property, we agree with the ALJ that the Complainant has not met the burden of proving that either UGI or Frontier provided unreasonable service, in violation of Section 1501 of the Code, 66 Pa. C.S. § 1501, when Frontier performed work on wires attached to UGI-owned utility poles on December 1, 2022. Any finding that a violation did occur must be supported by substantial evidence. 2 Pa. C.S. § 704. The Complainant only offered vague and inconclusive testimony and photographic evidence that did not establish either trespass on Complainant's property or damage to the Complainant's tree. In addition, the Complainant, as the moving Party, has the burden of proving the claim, and failed to do so.

Based on the record before us, and the applicable law, we agree with the ALJ's finding that the Complainant simply did not carry the burden of proof to establish a violation of the Code, the Commission's Regulations, or a Commission Order by either Frontier or UGI. Accordingly, we shall deny the Complainant's Exceptions.

While we do sympathize with and respect the concerns of property owners about how public utilities manage matters related to vegetation management, in the circumstances of the present case, we do not find either that UGI's vegetation management duties are in question, or that Frontier violated any Commission Order or Regulation or Commission-approved tariff in connection with work completed on December 1, 2022. 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 address their vegetation management practices. We encourage all public utilities to continue their ongoing efforts to educate, communicate, and respond to property owners about matters concerning vegetation management.

III. 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 Francene Tearpock-Martini, on February 10, 2023, to the Initial Decision of Administrative Law Judge Chad L. Allensworth, issued on October 31, 2023, at Docket Nos. C-2023-3038237 and C-2023-3038243, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Chad L. Allensworth, issued on October 31, 2023, at Docket Nos. C-2023-3038237 and C-2023-3038243, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint filed by Francene Tearpock-Martini, on February 10, 2023, against Frontier Communications of Pennsylvania, LLC, at Docket No. C-2023-3038237 and the Formal Complaint filed by Francene Tearpock Martini, on February 10, 2023, against UGI Utilities, Inc. – Electric Division, are dismissed.

4. That the proceedings at Docket Nos. C-2023-3038237 and C-2023-3038243 be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: July 11, 2024

ORDER ENTERED: July 11, 2024