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File #: 140074

March 17, 2025

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing is PPL Electric Utilities Corporation's Petition for Stay or Supersedeas Pending Judicial Review in the above-referenced proceeding.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DR/dmc  
Enclosures

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

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this filing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

### **VIA EMAIL AND FIRST-CLASS MAIL**

Michael and Sharon Hartman  
1650 Primrose Lane  
Dauphin, PA 17018  
Email: [angelgah@comcast.net](mailto:angelgah@comcast.net)

Date: March 17, 2025



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Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**PETITION OF PPL ELECTRIC UTILITIES CORPORATION FOR STAY OR  
SUPERSEDEAS PENDING JUDICIAL REVIEW**

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**I.     INTRODUCTION**

Pursuant to Rule 1781(a) of the Pennsylvania Rules of Appellate Procedure, Pa.R.A.P. 1781(a), and Section 5.572 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.572, PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby files this Petition requesting that the Commission grant a stay or supersedeas pending the ultimate disposition of PPL Electric’s appeal of the Commission’s Opinion and Order entered February 28, 2025 (“*February 2025 Order*”), in the above-captioned proceeding.

In the *February 2025 Order*, the Commission granted in part and denied in part the Exceptions of Michael and Sharon Hartman (“Complainants”) and denied the Exceptions of PPL Electric. *February 2025 Order* at 2, 111-12. The Commission further directed “[t]hat, within forty-five (45) days of the entry of this Opinion and Order,” the Company “shall re-inspect the pole pads numbers 75 and 76, and the access road and shoulders associated therewith to determine if any areas of erosion or excessive runoff are still occurring and take any necessary corrective measures to prevent or minimize future erosion, including but not limited to surface re-grading,

adding additional stone material and adding additional topsoil and re-seeding areas where the soil and vegetation has washed away.” *Id.* at 112-13. Moreover, the Commission imposed a civil penalty of \$1,000 on PPL Electric. *Id.* at 113.

PPL Electric will be filing a Petition for Review challenging the *February 2025 Order* on or before the deadline of March 31, 2025. The instant Petition seeks to preserve the *status quo* by staying any compliance with or enforcement of the Commission’s *February 2025 Order* pending review and disposition of the Company’s appeal. By granting the stay or supersedeas, the Company will not be forced to expend the time, effort, and expense necessary to comply with the Commission’s *February 2025 Order* prior to a final determination on the merits of PPL Electric’s appeal.

For these reasons and as explained in more detail herein, PPL Electric respectfully requests that the Commission grant a stay or supersedeas of its *February 2025 Order* pending judicial review consistent with this Petition.

## **II. BACKGROUND**

1. On March 1, 2019, the Complainants filed a Formal Complaint (“Complaint”) against PPL Electric related to the Company’s Halifax-Dauphin 69 kilovolt (“kV”) Transmission Rebuild Project (“Project”) alleging that the Company: (1) violated an existing right of way agreement on the Complainants’ property; (2) failed to compensate the Complainants for damage and removal of their property; and (3) trespassed and damaged private property outside of the right-of-way. The relief requested by the Complainants included that PPL Electric be ordered to: (1) purchase a new right-of-way agreement; and (2) restore the Complainants’ property to its “original” condition, including (a) restoration of topsoil and landscaping stones and boulders removed allegedly from the property, (b) removal of stone road and foreign materials PPL Electric

placed on the Complainants' property, (c) installation of water runoff protection and soil erosion control measures, (d) replacement of vegetation to include native shrubs that were indiscriminately destroyed during construction, (e) restoration of pre-existing access logging roads that were destroyed, and (f) restoration of the property to its original topography. The Complaint was served on PPL Electric on March 5, 2019.

2. On March 25, 2019, PPL Electric filed its Answer to the Complaint. In the Answer, PPL Electric stated that it has a 100-foot right-of-way to construct, maintain, reconstruct, and repair, among other things, transmission lines with ingress and egress rights as signed by the prior landowner of the Complainants' property on February 22, 1950. Further, PPL Electric stated that after it completed an inspection, it had not located any areas where the easement agreement was violated. As such, PPL Electric requested that the Commission deny the Complaint.

3. The then-presiding Administrative Law Judge ("ALJ") Andrew M. Calvelli ("ALJ Calvelli") issued an Initial Call-in Telephonic Hearing Notice on April 3, 2019, scheduling an evidentiary hearing for May 16, 2019.

4. ALJ Calvelli later rescheduled the evidentiary hearing to June 26, 2019, by Hearing Notice dated May 10, 2019.

5. On May 10, 2019, ALJ Calvelli received two letters from the Complainants, the first dated May 2, 2019, and the second dated May 9, 2019. In the May 2, 2019 letter addressed to the Commission's Secretary and the Commission's Office of Administrative Law Judge ("OALJ"), the Complainants requested that the telephonic hearing be changed to an in-person hearing. In their May 9, 2019, letter, the Complainants requested that an in-person hearing take place on-site at their residence.

6. On June 10, 2019, the Complainants sent a Motion to Compel Production of Documents from PPL Electric to the Commission's Secretary and OALJ, based upon prior discovery requests made by the Complainants to PPL Electric.

7. Due to the pendency of the discovery motions, on June 13, 2019, ALJ Calvelli converted the Initial Telephonic Hearing scheduled to be held on June 26, 2019, into a Telephonic Pre-Hearing Conference. Thereafter, on June 27, 2019, PPL Electric filed a Motion for Summary Judgment where it argued that the Commission lacks jurisdiction to determine the scope and validity of an easement or to order damages associated with claims of breach and, therefore, was entitled to summary judgment.

8. On October 3, 2019, the Complainants filed their untimely response to PPL Electric's Motion for Summary Judgment.

9. By Initial Decision served on October 16, 2019, ALJ Calvelli granted PPL Electric's Motion for Summary Judgment and dismissed the Complaint for lack of Commission jurisdiction. The Complainants filed Exceptions on October 31, 2019, and PPL Electric filed Replies to Exceptions on November 14, 2019.

10. In ruling upon the Complainants' Exceptions to the Initial Decision, the Commission: (1) held that the Complainants' Exceptions based on alleged lack-of-notice of construction activities were outside the scope of the Commission's and, therefore, dismissed<sup>1</sup>; (2) found that the Commission had jurisdiction over the Complainants' vegetation management claims and, therefore, remanded to the Office of Administrative Law Judge to develop a full record on the Complainants' vegetation management claims<sup>2</sup>; (3) concluded that the Commission had

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<sup>1</sup> See *Hartman v. PPL Elec. Utils. Corp.*, Docket No. C-2019-3008272, at 13 (Order entered Apr. 16, 2020) (“April 2020 Order”).

<sup>2</sup> *April 2020 Order* at 18.

jurisdiction over the Complainants' general utility service claims related to the Company's construction practices and, therefore, remanded to the Office of Administrative Law Judge to develop a full record of those claims<sup>3</sup>; (4) rejected and dismissed the Complainants' discriminatory service claim as it related to the Company's restoration efforts on the Complainants' property and an adjacent parcel owned by the U.S. National Park Service ("U.S. NPS")<sup>4</sup>; (5) affirmed ALJ Calvelli's finding that the Commission lacks subject matter jurisdiction over the scope and validity of an easement agreement<sup>5</sup>; (6) determined that the Complainants' claims for damages were outside of the Commission's limited jurisdiction<sup>6</sup>; and (7) held that the Complainants' environmental claims against PPL Electric were beyond the Commission's limited jurisdiction and were more appropriately raised within the Pennsylvania Department of Environmental Protection and/or an appropriate jurisdiction civil court to address.<sup>7</sup>

11. On February 17, 2021, attorney Robert Young filed a Notice of Entry of Appearance on behalf of the Complainants.

12. On November 30, 2021, PPL Electric filed a Praecipe for Withdrawal of attorney Kimberly Krupka.

13. On December 1, 2021, PPL Electric filed a Notice of Entry of Appearance for Michael J. Shafer, Devin T. Ryan, and Nicholas A. Stobbe.

14. On March 1, 2022, attorney Robert Young filed a Notice of Withdrawal of Appearance on behalf of the Complainants and, since that point, the Complainants have proceeded throughout the remainder of this proceeding on a *pro se* basis.

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<sup>3</sup> *Id.* at 19.

<sup>4</sup> *Id.* at 20.

<sup>5</sup> *Id.* at 20-21.

<sup>6</sup> *Id.* at 22.

<sup>7</sup> *Id.* at 22.

15. Throughout and after the time period during which the above-described events occurred, the parties engaged in discovery and settlement discussions. Several site visits occurred at the Complainants' property during which the parties viewed the property and discussed the Complaint. Both parties propounded Interrogatories, and the Complainants submitted requests for the issuance of subpoenas for various individuals. Various procedural issues arose throughout the course of this proceeding related to discovery requests propounded by the parties.

16. During an informal, off the record call between the parties and ALJ Steven K. Haas ("ALJ Haas") in early 2022, PPL Electric, the Complainants, and ALJ Haas agreed to "re-set" discovery in the case and re-issue their various requests in order to overcome and rectify any prior procedural issues or defects.

17. On April 25, 2022, PPL Electric relayed to ALJ Haas that it understood the Complainants would not be filing a Motion to Compel.

18. Following the discovery "re-set," the Complainants again submitted requests for subpoenas for a number of individuals. These requests were sent to PPL Electric and ALJ Haas but were not served on the individual subjects of the requests as required by the Commission's regulations.

19. At the direction of ALJ Haas on May 17, 2022, the Complainants were advised of the defective subpoena applications. Proper subpoena applications were not subsequently submitted for the subject individuals.

20. Pursuant to a procedural schedule established by the parties, evidentiary hearings were scheduled for August 16-17, 2022.

21. The Complainants served their written direct testimony and exhibits on May 17, 2022.

22. On July 8, 2022, PPL Electric served its written rebuttal testimony of four witnesses and their exhibits.

23. By e-mail dated July 13, 2022, the Complainants indicated that they did not intend to serve surrebuttal testimony.

24. The evidentiary hearings were held as scheduled on August 16-17, 2022.

25. A third and final day of evidentiary hearings was held on September 21, 2022.

26. During the August 16, 2022, evidentiary hearing, PPL Electric's counsel informed ALJ Haas and the Complainants that PPL Electric had a substantial number of objections to portions of the Complainants' testimony and exhibits. ALJ Haas directed PPL Electric to submit its objections in writing on or before October 20, 2022. The Complainants' response, if any, was due by November 9, 2022.

27. On October 20, 2022, PPL Electric filed its Motion to Strike a significant portion of the Complainants' testimony and exhibits.

28. On February 2, 2023, ALJ Haas issued an Order granting, in part, and denying, in part, PPL Electric's Motion to Strike.

29. On February 9, 2023, ALJ Haas and the parties held an informal status call to discuss the status of the case and a proposed briefing schedule. As a result of that call, ALJ Haas directed the parties to file Main Briefs by March 9, 2023, and Reply Briefs by March 30, 2023.

30. A further status call was held on February 22, 2023.

31. On March 3, 2023, ALJ Haas issued a Briefing Order, memorializing the deadlines for the Main Briefs and Reply Briefs and setting page limits on the argument sections in those briefs, specifically 40 pages double-spaced for the Main Briefs and 25 pages double-spaced for the Reply Briefs.

32. On March 9, 2023, PPL Electric and the Complainants filed their Main Briefs.
33. On March 30, 2023, PPL Electric and the Complainants filed their Reply Briefs.
34. On October 3, 2023, ALJ Haas’s Initial Decision (“ID”) sustaining in part and denying in part the Complaint was issued.
35. The Complainants filed Exceptions to the ID on October 19, 2023, and PPL Electric filed Exceptions to the ID on October 23, 2023.
36. On November 13, 2023, PPL Electric and the Complainants filed Replies to Exceptions.
37. On February 28, 2025, the Commission entered its Opinion and Order granting in part and denying in part the Complainants’ Exceptions and denying the Exceptions of PPL Electric.

### **III. LEGAL STANDARDS**

38. The Commission has authority to entertain this Petition pursuant to Pa.R.A.P. 1781(a), which states, “Application for a stay or supersedeas of an order or other determination of any government unit pending review in an appellate court on petition for review shall ordinarily be made in the first instance to the government unit.” *See also* Pa.R.A.P. 1701(b)(1).

39. Further, Section 5.572 of the Commission’s regulations authorizes a party to file “[p]etitions for reconsideration, rehearing, reargument, clarification, supersedeas or others . . . within 15 days after the Commission order involved is entered or otherwise becomes final.” 52 Pa. Code § 5.572(c).

40. A stay or supersedeas pending judicial review is appropriate and necessary when: (a) the moving party is likely to prevail on the merits; (b) the moving party will suffer irreparable injury without the requested relief; (c) the issuance of a stay will not substantially harm interested parties in the proceedings; and (d) the issuance of the stay will not adversely affect the public

interest. *See Pa. PUC v. Process Gas Consumers Grp.*, 467 A.2d 805, 808-09 (Pa. 1983) (citations omitted).

41. The first element can be met when the moving party has made a “substantial case on the merits.” *Id.* at 809 (citations omitted).

42. In addition, the Commission has stated that the *Process Gas* criteria “require the balancing of all interests, including the public, where applicable.” *Pa. PUC v. HIKO Energy, LLC*, Docket Nos. P-2015-2519419, *et al.*, at 11 (Order entered Jan. 28, 2016).

43. The Commission also has proclaimed that “in deciding whether to stay one of our orders pending appeal, this Commission should not indulge in a further review of the case”; “[r]ather, this Commission should concentrate solely on the effect our Order will have pending appeal.” *Pa. PUC v. Makovsky Brothers, Inc.*, 53 Pa. PUC 510, 511 (1979).

#### **IV. REQUEST FOR STAY OR SUPERSEDEAS PENDING JUDICIAL REVIEW**

44. PPL Electric respectfully requests that the Commission grant a stay or supersedeas of its *February 2025 Order* pending judicial review pursuant to Pa.R.A.P. 1781(a) and 52 Pa. Code § 5.572.

45. Such a stay or supersedeas is necessary and appropriate because it will maintain the *status quo* while PPL Electric pursues its appeal of the Commission’s ruling.

46. It is reasonable and practicable and is in the public interest to wait until the Commonwealth Court of Pennsylvania and, if necessary, the Supreme Court of Pennsylvania render final rulings on PPL Electric’s forthcoming appeal.

47. Without a stay or supersedeas, PPL Electric will be forced to expend significant time and expense to comply with the Commission’s *February 2025 Order*.

48. More importantly, absent a stay or supersedeas, PPL Electric will be forced to choose between complying with the Commission’s *February 2025 Order* and potentially violating The Clean Streams Law, 35 P.S. §§ 691.5, 691.402, and the Pennsylvania Department of Environmental Protection’s (“DEP”) regulations promulgated under The Clean Streams Law.

49. Accordingly, and as explained in the following sections, PPL Electric’s request meets the standard for a stay or supersedeas pending judicial review and should be granted.

**A. PPL ELECTRIC IS LIKELY TO SUCCEED ON THE MERITS OF ITS APPEAL**

50. PPL Electric has made a strong showing that it is likely to succeed on the merits of its appeal and, at the very least, that the Company has made a substantial case on the merits that warrant a stay or supersedeas pending judicial review.

51. The Commission erred as a matter of law, abused its discretion, and made findings unsupported by substantial evidence when determine that the Complainants met their burden of proof with respect to their erosion, sediment control, and stormwater runoff.<sup>8</sup>

**1. The Commission Lacks Jurisdiction over Erosion, Sediment Control, and Stormwater Runoff Issues**

52. The Commission lacks jurisdiction over erosion, sediment control, and stormwater runoff issues because such issues lie within the jurisdiction of DEP and the Dauphin County Conservation District (“DCCD”). (PPL Exceptions at 4-7.)

53. The Environmental Quality Board (“EQB”) adopted regulations that govern earth disturbance activities and their impact on erosion, sedimentation, and stormwater runoff, pursuant to its authority under The Clean Streams Law, 35 P.S. §§ 691.5, 691.402.

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<sup>8</sup> The Commonwealth Court’s standard of review in an appeal from a state agency’s adjudication is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact were supported by substantial competent evidence. 2 Pa.C.S. § 704; *see Leung v. Pa. PUC*, 582 A.2d 719, 721 (Pa. Cmwlt. 1990); *Teltron, Inc. v. Pa. PUC*, 477 A.2d 599, 600 (Pa. Cmwlt. 1984) (citation omitted).

54. Under those regulations, DEP and local conservation districts, such as DCCD, are tasked with permitting earth disturbance activities and conducting investigations and enforcement actions to ensure that there are no issues with erosion, sedimentation, or stormwater runoff resulting from those activities.<sup>9</sup>

55. Here, because PPL Electric's Project involved earth disturbance activities, as defined by EQB's regulations,<sup>10</sup> the Company was required to obtain approval of its Erosion and Sediment/Restoration ("E&S") Plans and Permit for the Project.

56. As required by EQB's regulations, PPL Electric's E&S Plans set forth, among other things, the best management practices ("BMPs") that the Company would use "to minimize the potential for accelerated erosion and sedimentation" and to "[u]tilize other measures or controls that prevent or minimize the generation of increased stormwater runoff."<sup>11</sup>

57. DEP and the local conservation district, if applicable, are empowered to enforce compliance with the E&S Plan and Permit.<sup>12</sup>

58. Therefore, issues concerning erosion, sediment control, and stormwater runoff lie with the purview of DEP and DCCD, not the Commission.

59. In fact, the Complainants had clear and available administrative remedies to pursue with DEP and DCCD. The Complainants could have filed a complaint with DEP regarding PPL Electric's actions in the transmission line right-of-way.<sup>13</sup>

60. Also, they could have requested an informal hearing with DEP within 30 days following notice that DCCD closed out the E&S Permit, which would have enabled DEP to make

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<sup>9</sup> See 25 Pa. Code Ch. 102 (governing "Erosion and Sediment Control").

<sup>10</sup> See *id.* § 102.1 (defining "earth disturbance activity").

<sup>11</sup> *Id.* § 102.4(b)(1), (b)(4)(iv) (emphasis added); (see PPL Electric St. No. 1, pp. 10-14; PPL Electric Exh. TE-1, p. 3; Tr. 269.)

<sup>12</sup> 25 Pa. Code § 102.32 (compliance and enforcement provisions).

<sup>13</sup> See *id.* § 102.32(a)(2) (emphasis added) (stating that "[c]ompliance and enforcement actions under this chapter which may be pursued include . . . [r]esponse to complaints").

a final determination within 30 days of that request.<sup>14</sup> After that informal hearing, the DEP's final determination would have been appealable to the EHB.<sup>15</sup>

61. The Complainants failed to exhaust these administrative remedies<sup>16</sup> and, in essence, have used their Complaint filed with the Commission to pursue claims about erosion, sediment control, and stormwater runoff that lie entirely outside of the Commission's jurisdiction.

62. Moreover, Pennsylvania courts have consistently held that the Commission lacks jurisdiction to regulate matters within the jurisdiction of other administrative agencies, including DEP. *See, e.g., Polites v. Pa. PUC*, 928 A.2d 388, 391 (Pa. Cmwlth. 2007); *see also* 66 Pa. C.S. § 318(c) ("Nothing in this part shall be constructed to deprive the Department of Health or the Department of Environmental Resources of any jurisdiction, powers or duties now vested in them.").

63. In fact, the Commission itself has acknowledged that it "does not have jurisdiction to enforce the Regulations of DEP or another state agency." *Bernardi v. West Penn Power Co.*, Docket No. C-2014-2453852, at 8-9 (Order entered May 5, 2016).

64. Even in this proceeding, the Commission previously found that stormwater runoff issues are outside of its jurisdiction and, instead, within the purview of DEP. Specifically, in the *April 2020 Order*, the Commission explained:

We decline to examine the general or specific issues raised in the Complaint because the Complainants' assertions regarding any environmental impact of PPL's construction practices, **the reasonableness of PPL's environmental protection controls, or lack thereof, or any unpermitted or increased storm water discharges are outside of this Commission's jurisdiction. These matters are squarely within the purview of the Pennsylvania Department of Environmental Protection and/or an**

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<sup>14</sup> 25 Pa. Code § 102.32(c).

<sup>15</sup> *Id.*

<sup>16</sup> PPL Electric notes that the Complainants were, at one time, represented by counsel in this proceeding. As such, the Complainants' failure to pursue these administrative remedies cannot be solely attributed to their lack of knowledge about the legal processes available to them.

**appropriate civil court of jurisdiction to address.** Thus, we will sustain, in part, PPL’s Motion for Summary Judgment, and dismiss the claims in the Complaint raising general or specific environmental challenges.<sup>17</sup>

65. Yet, in its *February 2025 Order*, the Commission sustains the Complaint in part and orders relief “to address the alleged erosion and stormwater runoff issues.” *February 2025 Order* at 107.

66. As for erosion and sediment control issues, the Commission in its *April 2020 Order* directed that a record be developed on, among other things, “erosion to the soil and sedimentation on the Complainants’ property.”<sup>18</sup>

67. However, for the same reasons that stormwater runoff issues are outside the Commission’s jurisdiction, erosion issues are likewise outside of the Commission’s purview.

**2. Even if the Commission Has Jurisdiction, the Commission Was Required to Defer to the Findings of the Department of Environmental Protection (DEP) and Dauphin County Conservation District (DCCD) on the Erosion, Sediment Control, and Stormwater Runoff Issues**

68. Assuming *arguendo* that the Commission has jurisdiction over erosion, sediment control, and stormwater runoff, the Commission was required to defer to the findings of DCCD on those environmental issues. *See, e.g., Del-AWARE Unlimited, Inc. v. Pa. PUC*, 513 A.2d 593, 596 (Pa. Cmwlth. 1986) (“*Del-AWARE*”).

69. In *Del-AWARE*, the Commonwealth Court held that “the PUC was obliged to defer to [the Department of Environmental Resources’ (‘DER’)] evaluation of environmental impacts within its jurisdiction.” *Id.*

70. The Commonwealth Court reaffirmed this principle in *Township of Marple v. Pa. PUC* but noted that there must be an “*outside agency determination*” to which the Commission

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<sup>17</sup> *April 2020 Order* at 22 (emphasis added).

<sup>18</sup> *April 2020 Order* at 22.

can defer. *Twp. of Marple v. Pa. PUC*, 294 A.3d 965, 975-75 (Pa. Cmwlth. 2023) (emphasis in original) (“*Marple II*”).

71. In this case, DEP and DCCD concluded that the Company complied with The Clean Streams Law, related regulations, and PPL Electric’s E&S Plans and Permit governing erosion, sediment control, and stormwater runoff issues.

72. Specifically, DEP approved the E&S Plans and issued the E&S Permit to PPL Electric on July 9, 2018, at which DCCD became responsible for enforcing compliance with those E&S Plans and Permit. (PPL Electric St. No. 1 at 11-12.)

73. Those E&S Plans and Permit are designed to address concerns with erosion, sediment control, and stormwater runoff. (PPL Exceptions at 8.)

74. DCCD performed inspections throughout the Project and ultimately closed out the E&S Permit on June 17, 2021.<sup>19</sup> (PPL Exceptions at 7-8.)

75. Therefore, consistent with *Del-AWARE* and *Marple II*, the Commission was required to defer to the findings of DEP and DCCD on these environmental issues and not second-guess their determinations.<sup>20</sup>

**3. The Commission’s Order Relief to Address the Alleged Erosion, Sediment Control, and Stormwater Runoff Issues Is Unsupported, Infeasible, and Vague**

76. The Commission also granted relief to the Complainants that is unsupported, infeasible, and vague.

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<sup>19</sup> The closure of an E&S Permit by a conservation district is subject to a final inspection and an express approval or denial of the permit’s closure. *See* 25 Pa. Code § 102.7(c) (stating that when a permittee submits a notice of termination for the E&S Permit, the “Department or conservation district will conduct a final inspection and approve or deny the notice of termination within 30 days”).

<sup>20</sup> Although *Del-AWARE* and *Marple* involve proceedings originating under Section 619 of the Municipal Planning Code (“MPC”), they nonetheless involve, like the case at bar, challenges to utility projects based on alleged environmental issues.

77. As noted previously, the Commission ordered, among other things, [t]hat, within forty-five (45) days of the entry of this Opinion and Order,” the Company “shall re-inspect the pole pads numbers 75 and 76, and the access road and shoulders associated therewith to determine if any areas of erosion or excessive runoff are still occurring and take any necessary corrective measures to prevent or minimize future erosion, including but not limited to surface re-grading, adding additional stone material and adding additional topsoil and re-seeding areas where the soil and vegetation has washed away.” *February 2025 Order* at 112-13.

78. PPL Electric established in its Exceptions that the ordered relief ignores the requirements for commencing any remedial earth disturbance activities. (PPL Exceptions at 10.) If the Company were to determine that corrective actions are necessary that involve earth disturbance, PPL Electric must prepare and receive approval of a new E&S Plan and Permit or else it would be unlawfully engaging in earth disturbance activities.<sup>21</sup> As noted by PPL Electric witness Eby, “[t]he approximate cost for developing a new E&S Plan and Permit would be around \$30,000,” and it would “take approximately 10 months to develop and receive approval from the DEP.”<sup>22</sup>

79. Despite this uncontroverted evidence, the Commission ordered PPL Electric to re-inspect the access roads and pole pads to determine if any areas of excessive erosion or runoff are occurring and, if so, to remediate any identified issues within 45 days of the *February 2025 Order*.<sup>23</sup>

80. Beyond encroaching on the regulatory authority of the bodies reviewing and approving the E&S Plans, issuing the E&S Permits, and closing out the E&S Permits (*i.e.*, DEP

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<sup>21</sup> PPL RB at 21-22.

<sup>22</sup> *Id.* at 22.

<sup>23</sup> *February 2025 Order* at 112-13.

and DCCD), nothing in the record establishes that the Company could absolutely comply with this requirement. (PPL Exceptions at 10-11.)

81. Effectively, PPL Electric could be deemed out of compliance for issues beyond its control—the time it takes for the E&S Plan and Permit to be approved—if the Company must engage in earth disturbance activities to implement the “necessary corrective measures” required by the Commission. (PPL Exceptions at 11); *February 2025 Order* at 112-13.

82. The Commission attempts to dispense with the Company’s arguments by declaring it is “an exaggeration by PPL to represent at this juncture that compliance with the directive . . . would, in any manner, occasion or necessitate a re-application and re-permitting procedure before the DCCD as is suggested in the Exceptions.” *February 2025 Order* at 101.

83. Nothing in the record or in the regulations governing E&S Plans and Permits supports the Commission’s finding.

84. PPL Electric presented uncontroverted evidence in its direct testimony that if the Commission were to sustain the Complaint and, as a part of its Final Order, direct PPL Electric to take actions addressing the Complainants’ concerns in the transmission line right-of-way that would create earth disturbance, then the Company would have to design and develop a new E&S Plan, submit an E&S Permit application, and receive approval of that E&S Permit application before it could take any such actions.” (PPL Electric St. No. 1 at 22.)

85. The Company also established that “[t]he approximate cost for developing a new E&S Plan and Permit would be around \$30,000 and take approximately 10 months to develop and receive approval from the DEP.” (PPL Electric St. No. 1 at 22.)

86. Now, without citing any record evidence, the Commission has found that it would be an “exaggeration” to find that the “corrective measures” ordered by the Commission would require a new E&S Plan and Permit. *February 2025 Order* at 101, 112-13.

87. The Commission appears to base this conclusion on a misperception that the Company’s E&S Permit remains active.

88. On page 97 of its *February 2025 Order*, the Commission declares, “We find, and so conclude, that PPL overstates the necessity for any further involvement before the DCCD under the existing E&S Permit in order to comply with the recommendations of the presiding ALJ, which recommendations we shall adopt.” *Id.* at 97 (emphasis added).

89. Elsewhere, however, the Commission rightly recognizes that DCCD “closed the permit.” *Id.* at 101.

90. Further, to the extent that the Commission was relying upon the Complainants’ assertion in their Replies to Exceptions that an E&S Plan and Permit would not be required because the disturbance would affect less than one acre,<sup>24</sup> the actual evidentiary record does not support this claim.

91. In their Replies to Exceptions, the Complainants failed to cite any page of testimony or the hearing transcript in support of that argument. (*See* Complainants Replies to Exceptions at 1-2.)

92. Moreover, PPL Electric established that the portion of the access road traversing the Complainants’ property is approximately 1,078 feet long, and both the Complainants and PPL Electric have established that the right-of-way at issue is 50 feet wide on the Complainants’

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<sup>24</sup> *See February 2025 Order* at 72 (citing Complainants Replies to Exceptions at 1-2.)

property and 100 feet wide total. (PPL Electric St. No. 1 at 6; PPL Electric St. No. 3 at 3; Complainants St. No. 1 at 1.)

93. The length of that portion of the access road alone times the width of the right-of-way on the Complainants' property exceeds 1 acre (i.e., 50 feet x 1,078 feet = 53,900 square feet or 10,340 square feet more than one acre, which is equivalent to 43,560 square feet).

94. Meanwhile, the length of that portion of the access road times the width of the full 100-foot right-of-way well exceeds one acre (i.e., 50 feet x 1,078 feet = 107,800 square feet or 64,240 square feet more than one acre).

95. Therefore, the Commission's conclusion that the Company would not need to obtain approval of a new E&S Plan and Permit is unsupported by the evidentiary record.

96. Also, the Commission did not condition the "necessary corrective measures" to include only those measures that do not involve earth disturbance activities, as defined by DEP's regulations.

97. Thus, PPL Electric is placed in the inappropriate and untenable position of trying to comply with the Commission's *February 2025 Order* within 45 days while not violating The Clean Streams Law and regulations governing E&S Plans and Permits.

98. In addition, the ordered relief sets forth a completely vague standard for re-inspecting the areas and determining whether remedial actions are necessary.

99. The *February 2025 Order* directs PPL Electric to "re-inspect the pole pads numbers 75 and 76, and the access road and shoulders associated therewith to determine if any areas of erosion or excessive runoff are still occurring and take any necessary corrective measures to prevent or minimize future erosion, including but not limited to surface re-grading, adding

additional stone material and adding additional topsoil and re-seeding areas where the soil and vegetation has washed away.”<sup>25</sup>

100. It is unclear what the Commission means by “areas or erosion or excessive runoff” that “are still occurring,” given that the agencies tasked with regulating erosion and stormwater runoff here (*i.e.*, DEP and DCCD) did not find any issues with erosion and stormwater runoff.

101. Furthermore, the Commission’s order relief would hold PPL Electric to a higher standard for minimizing the potential for erosion and stormwater runoff than DEP or DCCD would apply.

102. The Clean Streams Law and EQB’s regulations utilize the standard “minimize the potential for accelerated erosion and sedimentation.”<sup>26</sup>

103. However, the Commission’s ordered relief directs PPL Electric to “take any necessary corrective measures to prevent or minimize future erosion.”<sup>27</sup>

104. This direction is broad-sweeping and makes no mention of “minimiz[ing] the potential for accelerated erosion.” Indeed, “prevent[ing] or minimiz[ing]” conceivably any “future erosion”<sup>28</sup> is a much stricter and higher standard than “minimiz[ing] the potential for accelerated erosion and sedimentation.”<sup>29</sup>

105. Lastly, the ordered relief is so open-ended and non-specific that PPL Electric will be unable to determine conclusively whether it has complied with this provision, especially if and when the Company finds that there are no areas of erosion or excessive stormwater runoff.

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<sup>25</sup> *February 2025 Order* at 112-13 (emphasis added).

<sup>26</sup> 35 P.S. § 691.402(c)(1)(ii); 25 Pa. Code § 102.4(b)(1).

<sup>27</sup> *February 2025 Order* at 112-13 (emphasis added).

<sup>28</sup> *Id.*

<sup>29</sup> 35 P.S. § 691.402(c)(1)(ii); 25 Pa. Code § 102.4(b)(1).

**B. PPL ELECTRIC WILL SUFFER IRREPARABLE INJURY WITHOUT A STAY OR SUPERSEDEAS**

106. PPL Electric will be irreparably harmed if the Commission does not grant a stay or supersedeas pending judicial review.

107. As an initial matter, forcing the Company to comply with the *February 2025 Order* is irreparable harm *per se*. See, e.g., *Pa. PUC v. Israel*, 52 A.2d 317, 321 (Pa. 1947).

108. In its *February 2025 Order*, the Commission directed, among other things, [t]hat, within forty-five (45) days of the entry of this Opinion and Order,” the Company “shall re-inspect the pole pads numbers 75 and 76, and the access road and shoulders associated therewith to determine if any areas of erosion or excessive runoff are still occurring and take any necessary corrective measures to prevent or minimize future erosion, including but not limited to surface re-grading, adding additional stone material and adding additional topsoil and re-seeding areas where the soil and vegetation has washed away.” *February 2025 Order* at 112-13.

109. As explained previously, PPL Electric will need to apply for and secure a new E&S Plan and E&S Permit to comply with the Commission’s order relief if the necessary corrective measures require earth disturbance activities. See Section IV.A.3, *supra*.

110. “The approximate cost for developing a new E&S Plan and Permit would be around \$30,000 and take approximately 10 months to develop and receive approval from the DEP.” (PPL Electric St. No. 1 at 22.)

111. Nothing in the evidentiary record supports otherwise.

112. Therefore, given that the E&S Plan and Permit process takes approximately 10 months, the Company would be unable to comply with the Commission’s ordered relief within the prescribed 45 days. See *February 2025 Order* at 112-13.

113. As such, the Commission’s *February 2025 Order* could force PPL Electric to violate The Clean Streams Law and related regulations.

114. Such “unlawful conduct constitutes irreparable injury.” *Israel*, 52 A.2d at 321.

115. Furthermore, the Company would suffer irreparable harm absent a stay or supersedeas pending judicial pending by being forced to: (a) spend the time and resources to re-inspect the pole pads, access road, and shoulders; and (b) commit the time and resources to take any necessary corrective measures, including, but not limited to, the time and resources needed to apply for and obtain a new E&S Plan and Permit if the necessary corrective measures involve earth disturbance activities.

**C. OTHER PARTIES WILL NOT BE SUBSTANTIALLY HARMED BY A STAY OR SUPERSEDEAS**

116. The issuance of a stay or supersedeas pending appeal will not substantially harm the Complainants.

117. As noted above, the Company established that it complied with the terms and conditions of its E&S Plan and Permit.

118. Moreover, the *February 2025 Order* itself does not declare that there are existing issues that require corrective action by the Company.

119. In its ordered relief, the Commission directed the Company to “re-inspect the pole pads numbers 75 and 76, and the access road and shoulders associated therewith to determine if any areas of erosion or excessive runoff are still occurring and take any necessary corrective measures . . . .” *February 2025 Order* at 112-13 (emphasis added).

120. Further, when evaluating the Company’s actions, the Commission found that the “conduct of PPL is of the less egregious nature.” *Id.* at 108.

121. Therefore, by maintaining the *status quo*, the Complainants will not be substantially harmed by a stay or supersedeas pending judicial review.

**D. A STAY OR SUPERSEDEAS WILL NOT ADVERSELY AFFECT THE PUBLIC INTEREST**

122. The Commission's issuance of a stay or supersedeas pending judicial review will not adversely affect the public interest.

123. To the contrary, the grant of a stay or supersedeas is consistent with the public interest, as it will ensure that the Company is not forced to violate The Clean Streams Law and related regulations in order to comply with the *February 2025 Order*.

124. Additionally, this proceeding is an "isolated matter" that involves only one landowner, the Complainants. *See February 2025 Order* at 109-10.

125. No other landowners affected by the Project have filed a formal complaint with the Commission. *See id.* at 109.

V. **CONCLUSION**

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission grant a stay or supersedeas pending judicial review of its Opinion and Order entered on February 28, 2025, at Docket No. C-2019-3008272.

Respectfully submitted,



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