

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

Public Meeting held March 27, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Kathryn L. Zerfuss
John F. Coleman, Jr., Joint Statement, Concurring in result only
Ralph V. Yanora, Joint Statement, Concurring in result only

Michael and Sharon Hartman

C-2019-3008272

v.

PPL Electric Utilities Corporation

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition of PPL Electric Utilities Corporation (PPL, the Company, or Respondent) for Stay or Supersedeas Pending Judicial Review (Petition). The Petition was filed March 17, 2025, and is directed to our Opinion and Order entered February 28, 2025, in the matter of *Michael and Sharon Hartman v. PPL Electric Utilities Corporation*, Docket No. C-2019-3008272 (*February 2025 Order*).

For the reasons explained more fully, *infra*, we shall deny the Petition, finding that it does not meet the standards for issuance of a stay and/or supersedeas established in *Pa. PUC v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983).

I. Background

The matter before the Commission is the formal Complaint (Complaint) of Michael and Sharon Hartman (the Hartmans) filed against PPL, as Respondent. Formal complaint proceedings were initiated by the Hartmans against PPL pursuant to, *inter alia*, Sections 701 and 1501 of the Public Utility Code (Code), 66 Pa.C.S. §§ 701; 1501, concerning the adequacy of service provided by PPL in connection with PPL's construction and construction related activity involving the Halifax-Dauphin 69 kV Transmission Line Rebuild Project (Project).¹ A particularized summary of the scope of the Project is found at pages 4-6 of the *February 2025 Order*.

At issue in the Complaint was one of several access roads which PPL constructed for purposes of the Project and which crossed the Hartmans' property, as well as the properties of neighboring landowners. The portion of a new, as compared to a pre-existing access road on the property, was constructed based on PPL's determination that such access road was necessary to accommodate two new utility poles (identified as Poles 75 and 76). PPL needed to haul large amounts of concrete up a steep mountainside to construct and install the poles and pads. PPL estimated that each truck carrying concrete weighed approximately 27 tons (27,000 pounds of concrete and 27,000 pounds of truck weight). Also, the access road and pole pads on the Hartmans' property were

¹ The Hartmans are owners and residents of property subject to a 100-foot-wide transmission line right-of-way that is owned by PPL. Approximately 50 feet of the right-of-way owned by PPL traverses the Complainants' property. As part of the Project, PPL had to rebuild certain structures and appurtenances on its transmission line right-of-way across the Hartmans' property.

constructed using “2-A modified” and “2-B” stone otherwise, referred to as “rip-rap.” PPL determined that this size stone was necessary to provide a strong and secure foundation for the company’s trucks and equipment. *See February 2025 Order* at 5.

On March 1, 2019, the Hartmans filed the Complaint against PPL. The Complaint raised several claims. The essential allegations in the Complaint were that PPL violated an existing right-of-way, *i.e.* an easement, affecting their property; that PPL failed to compensate them for damage and removal of their property; and that PPL trespassed upon and damaged private property outside the right-of-way. *See February 2025 Order* at 6.

As discussed in the *February 2025 Order*, the Hartmans additionally complained of the impact of PPL’s handling and management of the construction activities of the Project as having a detrimental impact upon the aesthetics of their property and adjacent area, and environment. Included in these allegations were the Hartmans’ contentions that PPL, through its employees and agents, did not adequately follow “best practices” as required by the conditions of the permit (Erosion and Sediment/Restoration Plans and Permit (E&S)) for the Project. Such E&S Plan and Permit was issued by the Department of Environmental Protection (DEP) for the Project. *See February 2025 Order* at 33-39.

The Hartmans also sought to establish that the Company engaged in prohibited discrimination under the Code, 66 Pa.C.S. § 1502; *see February 2025 Order* at 36-39. Prohibited discrimination was alleged particularly in the use of herbicides for vegetation management and control. The Hartmans emphasized and objected to the fact that herbicides were used for vegetation management and control on their property, but were not so used for treatment on adjacent property on which PPL held rights-of-way, but was owned by the National Park Service.

According to Commission administrative procedure, the Complaint was assigned to the Office of Administrative Law Judge (OALJ) for such proceedings as necessary and the issuance of an Initial Decision. *See* 66 Pa.C.S. § 335(a).

On October 16, 2019, an Initial Decision of a presiding Administrative Law Judge (ALJ) was issued. In this decision, the ALJ granted a PPL Motion for Summary Judgment and recommended the dismissal of the Hartmans' Complaint in its entirety. Exceptions to the decision were filed by the Hartmans. In an Opinion and Order entered April 16, 2020 (*April 2020 Order*), the Commission granted the Exceptions of the Hartmans, in part, and reversed, in part, the October 16, 2019, Initial Decision. The Complaint was remanded for further proceedings consistent with the *April 2020 Order*. Subsequent to the issuance of the *April 2020 Order*, the matter was reassigned to a different ALJ.

Upon the conclusion of proceedings as directed by the *April 2020 Order's* remand, the Commission issued the ALJ's Initial Decision on Remand on October 3, 2023 (*October 2023 Decision on Remand*). In the *October 2023 Decision on Remand*, the ALJ sustained the Complaint, in part. Pursuant to the ALJ, it was determined that certain remedial actions were required by PPL based on the evidence and testimony.² The ALJ, in pertinent part, recommended the following:

2. That, within forty-five (45) days of a final Commission Order in this proceeding, PPL Electric Utilities Corporation shall re-inspect the pole pads and the access road and shoulders 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

² The Parties submitted and the presiding ALJ received extensive written testimony and exhibits into the record before the Commission. *February 2025 Order* at 11-12.

material and adding additional topsoil and re-seeding areas where the soil and vegetation has washed away.

See October 2023 Decision on Remand at 35.

Exceptions and Replies to Exceptions were filed by the Parties. On consideration of the *October 2023 Decision on Remand* , and the Exceptions and Replies, the *February 2025 Order* was issued. In this order the Commission adopted the ALJ's decision, in substantial part, and granted in part, and denied, in part, the Complaint.

In the *February 2025 Order*, the Commission specifically adopted the ALJ's determination that the Commission find that the Hartmans had met their burden of proof that PPL violated Section 1501 of the Code. We, therefore, directed PPL to take action in the following respects:

7. That, within forty-five (45) days of the entry of this Opinion and Order, PPL Electric Utilities Corporation 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.

8. That the above-captioned Complaint shall remain open, pending the Commission's receipt of the report as directed in this Opinion and Order. The report as directed in this Opinion and Order shall be submitted pursuant to 52 Pa. Code § 5.591 and served upon the Parties, the Commission's Bureau of Technical Utility Services, and the Dauphin County Conservation District. Thereafter, PPL shall

file a Certificate of Satisfaction pursuant to 52 Pa. Code § 5.24.

February 2025 Order at Ordering ¶¶ 7,8.

As noted above, PPL filed the instant Petition on March 17, 2025. No Answer to the Petition has been filed as of the date of issuance of this Opinion and Order.

II. Discussion

A. Legal Standards

The PPL Petition is authorized pursuant to 52 Pa. Code § 5.572. PPL, as Petitioner, is the proponent of a rule or order from the Commission that a stay and/or supersedeas pending appeal is advisable and, therefore, has the burden of proof under the Code. 66 Pa.C.S. § 332(a).

PPL has the burden to establish the requisite elements in support of the issuance of a stay and/or supersedeas. It has been determined that “[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). Also, “[A] litigant must satisfy its burden of proof with evidence that is substantial and legally credible, not with mere ‘suspicion’ or by only a ‘scintilla’ of evidence.” *Id. citing Pennsylvania Labor Relations Board v. Kaufmann Department Stores, Inc.*, 29 A.2d 90, 92 (Pa. 1942).

III. Petition

PPL advises that it will be filing a Petition for Review of the *February 2025 Order* with the Commonwealth Court. Petition at 2; *see also* Pa. R.A.P. 1781.³ PPL states that it has filed the instant Petition seeking to preserve the *status quo*. Petition at 2. It is further alleged that: “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.” *Id.* (emphasis added).

PPL acknowledges that, in reviewing petitions which seek to stay the effect of Commission Orders, the Commission has adopted the standards set forth by the Pennsylvania Supreme Court in *Pa. PUC v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983) (*Process Gas*). *See* Petition at 8-9; also 52 Pa. Code § 5.572(c).⁴

³ *See* Pa.R.A.P. 1781(a):

(a) *Application to government unit.*-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 or petition for specialized review shall ordinarily be made in the first instance to the government unit.

⁴ PPL also cites to *Pa. PUC v. HIKO Energy, LLC*, Docket Nos. P-2015-2519419, *et al.*, at 11 (Opinion and Order entered January 28, 2016) for the proposition that the *Process Gas* criteria require the balancing of all interests, including the public, where applicable; and to *Pa. PUC v. Makovsky Brothers, Inc.*, 53 Pa. PUC 510, 511 (1979) (*Makovsky*) for the holding that in deciding whether to stay one of our orders pending appeal, this Commission should not indulge in a further review of the case; rather, the Commission should concentrate solely on the effect our Order will have, pending appeal. Petition at ¶¶ 42; 43.

Under the holding of *Process Gas*, a grant of a stay is warranted if:

1. The petitioner makes a strong showing that he is likely to prevail on the merits.
2. The petitioner has shown that without the requested relief, he will suffer irreparable injury.
3. The issuance of a stay will not substantially harm other interested parties in the proceedings.
4. The issuance of a stay will not adversely affect the public interest.

See Process Gas, 467 A.2d at 808-09. For a stay pending appellate review, the Court found that the petitioner must make a “strong showing” under these criteria to justify the issuance of a stay. *Id.* at 809.

PPL contends that a stay and/or supersedeas is warranted under the four elements of *Process Gas*, pursuant to the following arguments:

1. Likelihood of Success on the Merits

PPL contends that it has demonstrated a likelihood of success on the merits. Petition at 10-19. PPL raises four arguments on which it bases its Petition:

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

PPL, citing to its Exceptions filed to the October 3, 2023, Initial Decision, supports its position concerning a likelihood of success on the merits, by reiterating its view that the Commission lacks jurisdiction over erosion, sediment control, and

stormwater runoff issues, as such issues lie within the jurisdiction of DEP and the Dauphin County Conservation District (DCCD). Petition at 10.

PPL asserts that because the Project involved “earth disturbance” activities,⁵ as defined by the Environmental Quality Board’s (EQB) regulations, the Company was required to obtain approval of its E&S Plans and Permit for the Project. The E&S Plans set forth, among other things, the best management practices that the Company would use to minimize the potential for accelerated erosion and sedimentation and to utilize other measures or controls that prevent or minimize the generation of increased stormwater runoff. As DEP and the local conservation district, if applicable, are empowered to enforce compliance with the E&S Plan and Permit, PPL contends that issues concerning erosion, sediment control, and stormwater runoff lie within the purview of DEP and DCCD, not the Commission. Petition at 11.

PPL next implies that the Hartmans failed to exhaust administrative remedies available to them with the DEP concerning their dissatisfaction with the Company’s management of the Project. Under this argument, PPL suggests that it satisfies the first prong of *Process Gas* in pointing out that the Hartmans, rather than file a Complaint with the Commission under the Code, should have pursued the administrative remedies available to them via the initiation of a complaint with the DEP concerning PPL’s actions regarding the Project. Petition at 11-12 (citing *Polites v. Pa. PUC*, 928 A.2d 388, 391 (Pa. Cmwlth. 2007); 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.”); *Bernardi v. West Penn Power Co.*, Docket No. C-2014-2453852, at 8-9 (Opinion and Order entered May 5, 2016)).

⁵ See *February 2025 Order* at 26; 68.

b. 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

In its Petition, PPL asserts that it can establish a substantial case on the merits on appeal because the Commission should have deferred to the findings of the DEP and the DCCD concerning environmental issues. In this respect, PPL again relies upon the review and closure of the E&S permit obtained for the Project. As DCCD performed inspections throughout the Project and ultimately closed out the E&S Permit on June 17, 2021, PPL asserts that such closure is suggestive of a conclusive determination of the Complaint of the Hartmans in this matter. Petition at 13-14, (citing *Del-AWARE Unlimited, Inc. v. Pa. PUC*, 513 A.2d 593, 596 (Pa. Cmwlth. 1986) and *Twp. of Marple v. Pa. PUC*, 294 A.3d 965, 973-974 (Pa. Cmwlth. 2023) (*Township of Marple*), *infra*).

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

PPL argues that the relief directed by the Commission in the *February 2025 Order* is, *inter alia*, so open ended and non-specific that PPL will be unable to determine “conclusively” whether the Company has complied with this provision. PPL reaches this conclusion after providing a litany of detailed arguments previously made in its Exceptions to the *October 2023 Decision on Remand*, which the Commission addressed in the *February 2025 Order*. PPL also presents several mathematical computations ostensibly designed to counter the observation of the Hartmans that earth disturbance regulations are not applicable to parcels of less than one acre (*February 2025 Order* at 72; Petition at ¶¶ 93; 94). The Company further suggests that the hypothetical violations of the Clean Streams Law and EQB regulations, all of which hypothetical

violations are contingent upon the classification of any forthcoming acts taken to comply with the *February 2025 Order*, as falling within earth disturbance activity under DEP regulations. Petition at 14-19.

2. Irreparable Harm

PPL, in reliance upon the holding of *Pa. PUC v. Israel*, 52 A.2d 317, 321 (Pa. 1947) (*Israel*), argues that it will be irreparably harmed if the Commission does not grant a stay or supersedeas pending judicial review. *Israel* is cited for the proposition that “forcing” the Company to comply with the *February 2025 Order* is irreparable harm *per se*, as such compliance would, according to the position of PPL, render it in violation of the permitting requirements of DEP – to the extent that such compliance would entail “earth disturbance” actions. Petition at 20-21.

Under the *February 2025 Order*, a directive for the inspection and remedial action associated with the access road and poles, if required, is to be performed within forty-five (45) days of the entry of the *February 2025 Order*, or by April 14, 2025. *February 2025 Order* at Ordering ¶7. PPL responds and restates its position in the Complaint proceedings that it would need to apply for and secure a new E&S permit if the corrective actions require earth disturbance activities. *See* Petition at 20, ¶ 109; (emphasis added).

PPL further repeats its contentions made during the Complaint proceedings that the time and cost of a new application for the E&S permit would be ten (10) months and \$30,000.⁶ Again, PPL states a potential for irreparable harm in the violation of a statute by stating: “As such, the Commission’s *February 2025 Order* could force

⁶ PPL disputes any suggestion in the *February 2025 Order* that it is an exaggeration to argue that compliance with a re-inspection and remedial corrective measures would not necessitate a new application and permit. *See* Petition at 16, ¶ 82.

PPL Electric to violate the Clean Streams Law and related regulations.” See Petition at 21, ¶ 113; (emphasis added).

3. The Issuance of a Stay Will Not Substantially Harm Other Interested Parties in the Proceedings.

PPL states that by maintaining the *status quo*, the Hartmans will not be substantially harmed by a stay or supersedeas pending judicial review. This is so, as: (1) PPL established that it complied with the terms and conditions of its E&S Plan and Permit; (2) the *February 2025 Order* does not declare that there are existing issues that require corrective action by the Company; (3) the *February 2025 Order* at 112-13 directs PPL 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; and, (4) when evaluating the Company’s actions for consideration of a civil penalty, the Commission found that the conduct of the Company was of the less egregious nature. Petition at 21-22.

4. The Issuance of a Stay Will Not Adversely Affect the Public Interest

As to satisfying the fourth element necessary under *Process Gas*, PPL holds that 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*.

Additionally, PPL points out that this proceeding is an “isolated matter” that involves only one landowner, the Hartmans, and that none of the other landowners impacted by the Project filed formal complaints with the Commission. Petition at 22 (citing *February 2025 Order* at 109-10).

IV. Disposition

Before disposing of the Petition, we advise the Parties that any issue or contention that we do not specifically address 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. *Consl. Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also generally, Univ. of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984); *Metropolitan Edison Co. v. Pa. PUC*, 22 A.3d 353 (Pa. Cmwlth. 2011), *appeal denied*, 22 A.3d 353 (Pa. 2012), citing *Wheeling & Lake Erie Railway Company v. Pa. PUC*, 778 A.2d 785, 794 (Pa. Cmwlth. 2001) for the proposition that the Commission is not required to expressly consider all of the arguments set forth by the parties in its Order.

1. **Whether Petitioner Makes A Strong Showing Of The Likelihood Of Success On The Merits**

On consideration of the position of PPL, we conclude that the first prong of the *Process Gas* standards does not support the issuance of a stay or supersedeas in this matter.

Pursuant to the Court's guidance in *Process Gas*, the Commission has previously concluded that the first factor – to make a strong showing to prevail on the merits – is “not applicable” to a request for a stay directed to the Commission where the Commission has already had an opportunity to rule on the substantive facts at issue and such ruling is pending appeal (or reconsideration). *See Pa. PUC v. UGI Corp.*, 57 Pa. P.U.C. 83, 88-89 (1983) (*UGI*), *also, Implementation of Act 40 of 2017, Petition of Cypress Creek Renewables, LLC for a Stay or Supersedeas of the Commission's Final Implementation Order Entered May 3, 2018*, Docket No. M-2017-2631527, 2018 WL 3740734 (Order entered August 2, 2018) (*Cypress Creek*) (finding that “the

first prong of the four-part test of whether a stay, requiring the petitioner to make a strong showing that he is likely to prevail on the merits, is applicable in a matter where the Commission has not had an opportunity to rule on the substantive facts at issue”). Thus, “[i]n deciding whether to stay one of our orders pending appeal, this Commission should not indulge in a further review of the case. Rather, this Commission should concentrate solely on the effect our order will have pending appeal.” *UGI*, 57 Pa. P.U.C. at 89 (citation omitted).

As held in *Makovsky*, we have explained that on consideration of the question of whether to issue a stay, we stated that “[i]n deciding whether to stay one of our orders pending appeal, this Commission should not indulge in a further review of the case.” *Makovsky*, 53 Pa. P.U.C. at 511. That principle is the general rule.⁷

Based on the foregoing, the Commission has distinguished proceedings in which the “strong showing ... of a likelihood of success on the merits” is considered in the context of a request for the issuance of a stay after a full and fair opportunity of the parties to the matter to litigate substantive issues has been given, and the Commission has

⁷ The stay/supersedeas standard has been discussed in *Pa. PUC, et al. v. Pennsylvania Electric Company, et al.*, Docket No. M-2008-2036188, 2010 Pa. PUC LEXIS 248 (Order entered March 25, 2010) (*Pennsylvania Electric*); accord *Pa. PUC v. Nat'l Fuel Gas Dist. Co.*, 65 Pa. P.U.C. 210, 213 (1987); and *Re: General Elec.*, 59 Pa. P.U.C. 61, 63 (1984). Of note, in *Pennsylvania Electric*, certain electric utilities filed tariff revisions seeking to adjust their transmission service charges. After subsequent tariff filings, and challenges to those filings, the issues were litigated before an ALJ, resulting in the issuance of a Recommended Decision. After consideration of Exceptions, the Commission adopted an order that the utilities sought a stay that was ruled upon. See *Pennsylvania Electric* at 1-7. Based on these facts and the procedural history, the Commission, relying on *Makovsky*, declined to engage in a review of the case, as well as any further review of substantive determinations underlying the order. It was found significant that a stay was requested from a Commission order, where the Commission ruled on fully litigated proceedings addressing substantive determinations, facts, and arguments addressed by the parties during the proceeding. Such is the case in the instant matter.

decided such issues, from those proceedings in which the Commission has not decided substantive issues. *See Knox Township: Complaint filed by Knox Township versus Buffalo & Pittsburgh Railroad Inc. . . .*, Docket No. C-2019-3009358 (Opinion and Order October 19, 2023); 2023 WL 8714593 (Pa.P.U.C.);⁸ *see also, Application of Aqua Pennsylvania Wastewater Inc., pursuant to 66 Pa.C.S. §§ 1102 and 1329. . .*, Docket No. A-2021-3027268 (Opinion and Order entered August 25, 2022); 2022 WL 4012062 (Pa.P.U.C.) (*Aqua Stay Order*).

On review of the arguments of PPL set forth in the Petition, we find that such arguments have already been extensively considered and addressed in the *February 2025 Order*. We will not, therefore, engage in further consideration of the substantive determinations of the order, as we find that all Parties were given a full and fair opportunity for litigation in the underlying proceedings. In this matter, such proceedings have spanned over four years. *See February 2025 Order* at 56-57; *see also Alexia and Lawrence McKnight v. PECO Energy Company*, Docket No. C-2017-2621057 (Opinion and Order entered August 8, 2019); 2019 WL 3859536 (Pa. P.U.C.) (citing *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Final Order issued August 25, 2015) (*Moore*)).

On review of the Petition in order to concentrate solely on the effect our *February 2025 Order* will have, pending appeal, we would observe that, to the extent PPL contends that further application and proceedings before the DEP would be necessary in order to comply with the order, the issue lacks ripeness due to the speculative nature of PPL's arguments. As speculative in nature, we find that such arguments fail to satisfy the *Process Gas* standard for establishing a substantial case on the merits.

⁸ *Affirmed*, 316 A.3d 651 (Table); Unreported Opinion.

Additionally, as noted in our *February 2025 Order*, during the course of litigating this Complaint, the Commonwealth Court's holding in *Township of Marple* was issued. This ruling, addressing the Environmental Rights Amendment (ERA), counsels against the position of PPL for a strong showing on the merits of an appeal. *February 2025 Order* at 76-81.

Should remedial actions be necessary by PPL upon compliance with the *February 2025 Order*, additional procedures before the DEP, if so required, do not entail a jurisdictional conflict. Rather, the Commission has accepted the primacy of DEP jurisdiction over the Clean Streams Act and earth disturbance aspects of the Project.

In light of the foregoing, we find the mandates of the ERA and the holding of the *Township of Marple* contrary to the arguments of PPL. The General Assembly has determined each commonwealth agency has an independent obligation to consider environmental considerations in any matter before it. Under the distinctions addressed in *Makovsky* and *UGI*, as between fully litigated proceedings and those which have not been subject to full litigation, we shall deny this argument as failing under a *Process Gas* analysis.

2. Whether Petitioner has Demonstrated that Denial of Relief will Cause Irreparable Injury

On consideration of the position of PPL, we conclude that it has not shown that denial of a stay will result in irreparable harm. PPL raises a jurisdictional argument, namely, an alleged conflict that is asserted as between its compliance with the terms and conditions of the E&S permit that has been closed by DEP; and the Company's compliance with the *February 2025 Order*. Under the doctrine of *Israel*, a case specifically issued pursuant to a request involving injunctive relief, a violation of the

applicable regulations constitutes irreparable harm to the public, *per se*.⁹ We do not agree, however, that this position is applicable and provides sufficient justification for the issuance of a stay/supersedeas for two reasons.

First, the PPL allegations of a conflict and violation of a statute are speculative. Under the terms of the *February 2025 Order*, PPL is directed to: “[r]e-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 ¶ 7.

The Company’s citation to *Israel* is misplaced under the facts of the Hartmans’ Complaint, as the violation of a statute under this holding must rest upon a finding that unlawful acts proscribed by the law have been transgressed:

At the hearing the Commonwealth has made a prima facie showing that the defendants are operating taxicabs in violation of law. The argument that a violation of law can be a benefit to the public is without merit. When the Legislature declares certain conduct to be unlawful it is tantamount in law to calling it injurious to the public. For one to continue such unlawful conduct constitutes irreparable injury.

Israel, 52 A.2d at 321, cited by *Com. v. Coward*, 414 A.2d at 98.

Although PPL cites to *Israel*, the harm alleged is, primarily, economic harm. Financial harm, generally, is not a proper basis to support a finding of irreparable

⁹ See *DER v. Coward*, 414 A.2d 91 (Pa. 1980).

harm. *See, e.g., SBG Management Services, Inc., et al.*, Docket Nos. C-2012-2304183, and C-2012-2304324 (Opinion and Order entered March 28, 2019); 2019 WL 1506820 (Pa. P.U.C.) (citing *Duquesne Interruptible Complainants v. Duquesne Light Co.*, Docket No. C-00913424 (Opinion and Order entered May 14, 1993) at 10 (citing *Samerica Corporation v. Gross*, 295 A.2d 277 (Pa. 1972), *Goadby v. Philadelphia Electric Co.*, 639 F.2d 117 (3d Cir. 1981), and *Virginia Jobbers Ass'n v. FPC*, 259 F.2d 921 (D.C. Cir. 1958))).

3. Whether Petitioner has Demonstrated that the Issuance of a Stay will Not Substantially Harm Other Interested Parties in the Proceedings

On consideration of the third prong of the *Process Gas* decision, we would disagree with the contention of PPL that the issuance of a stay will not substantially harm the other interested Party to this proceeding, the Hartmans. PPL supports this position by arguing, in pertinent part, “[m]oreover, the *February 2025 Order* itself does not declare that there are existing issues that require corrective action by the Company.” Petition at 21, ¶ 118. This statement, however, does not fully acknowledge the fact that the Hartmans successfully met their burden of proof to establish a violation of the Code. The *February 2025 Order* extensively addressed the allegations of the Hartmans of prejudice to their ability to prosecute this Complaint before the Commission due to, *inter alia*, delay occasioned by the remand of the prior, October 16, 2019, Initial Decision. Given that we conclude that PPL has not met the burden for imposing a stay, we will not approve any further delay in this matter.

4. Whether Petitioner has Demonstrated that the Issuance of a Stay will Not Adversely Affect the Public Interest

In determining the public interest, a balancing and evaluation of competing considerations must be performed, *i.e.*, the “benefits and detriments of the proposed

transaction on all affected parties must be considered.” *See Application of CMV Sewage Company, Inc.*, Docket No. A-230056F2002 (Opinion and Order entered December 23, 2008) (citing *Pa. PUC v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. R-00953409 (Order entered September 29, 1995) (*CMV Sewage*)).

In *CMV Sewage*, the Commission noted, with approval, the reasoning of the presiding ALJ who concluded that the “Commission has historically defined the public interest as including ratepayers, shareholders, and the regulated community.”

On consideration of the position of PPL and engaging in a balancing of competing considerations, expressly on consideration of the *Township of Marple*, we conclude that the public interest does not favor the issuance of a stay and/or supersedeas under the circumstances.

V. Conclusion

Based on the foregoing discussion, we shall deny PPL’s Petition;
THEREFORE,

IT IS ORDERED: That the Petition for Stay Pending Judicial Review, filed by PPL Electric Utilities Corporation on March 17, 2025, is, hereby, denied.

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: March 27, 2025

ORDER ENTERED: March 27, 2025