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ROBERT A. CINPINSKI

December 14, 2016

Office of the Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Robert M. Mattu v West Penn Power Company
C- 2016-2547322

Ladies and Gentlemen:

Pursuant to Judge Dunderdale's Briefing Order dated November 29, 2016 and 52 Pa. Code §5.501, §5.502 and §5.11, enclosed please find the original of the Brief in Support of Mr. Mattu's position with regard to this matter. As noted on the Certificate of Service, I am, by copy of this letter, forwarding two (2) copies to Attorney Morris on behalf of West Penn and one (1) copy directly to Judge Dunderdale. I have also this day emailed a copy to Attorney Morris and pursuant to my instructions from Judge Dunderdale's office, I have also faxed a copy directly to Judge Dunderdale.

On behalf of myself, but most of all Mr. Mattu and his family, I would like to thank you for your time, effort and your consideration of this matter. As always, should you have any questions, or should any additional action be required on our part, I trust that you will advise me.

Very truly yours,

Robert A. Cinpinski, Esq.

- c. The Hon. Katrina L. Dunderdale, Judge w/enc.
- Margaret A. Morris, Esq. w/enc.
- Robert M. Mattu w/enc.

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DEC 14 2016

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

ROBERT MATTU
Complainant

vs.

WEST PENN POWER
Respondent

:
:
: Docket No. C-2016-2547322
:
: Hon. Katrina L. Dunderdale, ALJ
:
:

COMPLAINANT'S BRIEF IN SUPPORT
OF POSITION PURSUANT TO 52 Pa.
Code § 5.501

CODE AND CLASSIFICATION:

FILED ON BEHALF OF:
Complainant, Robert Mattu

NAME, ADDRESS AND TELEPHONE
OF:

X Counsel of Record
 Individual, if Pro Se

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PA PUBLIC UTILITY COMMISSION
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PUBLIC UTILITY COMMISSION

ROBERT MATTU :
Complainant :
: Docket No. C-2016-2547322
vs. :
: Hon. Katrina L. Dunderdale, ALJ
WEST PENN POWER :
Respondent :

**COMPLAINANT'S BRIEF IN SUPPORT OF POSITION
PURSUANT TO 52 Pa. Code § 5.501**

AND NOW comes the Complainant, Robert Mattu, by and through his attorney, Robert A. Cinpinski, Esq., and files this Brief in support of Complainant's position pursuant to 52 Pa. Code §5.501, of which the following is a statement:

CONCISE STATEMENT OF THE CASE

Complainant, Robert Mattu, hereinafter "Mattu", is the owner of property over which Respondent, West Penn Power, hereinafter "West Penn", has a right-of-way/easement granted April 1, 1968 by Claimant's predecessor in title (West Penn Exhibit 1, pg. 5-8) on which Respondent maintains a 138,000 kv transmission line. As part of its vegetation management cycle, West Penn had previously hand-cut the incompatible vegetation every 10 to 12 years. As part of its current vegetation management cycle/program (now indicated to be approximately every five-years), West Penn has hand-cut the incompatible vegetation and now seeks to apply a three-part mixture of herbicides (Garlon 4 Ultra, Milestone and Polaris) by the "cut stump" application method to deter regrowth. Mattu's sole water sources for his residence are two (2) water wells, one being a 15-foot hand-dug well from which drinking water is obtained, and a second 68-foot well. Mattu's residence, said two wells, and a pond located on his property containing fish and other wildlife, are located approximately 70 to 80 feet from that area where

West Penn application of said herbicide would commence, with the elevation from the highest point of the right of way to be chemically treated to said residence, wells and pond dropping approximately 90 feet in elevation over an approximate 210 foot distance (from 1160 feet to 1070 feet). Based on his general information regarding the potential negative effects of chemical herbicides as a whole, as well as the information contained in the Material Safety Data Sheets and the Specimen Labels for each of the chemical herbicides proposed to be used, which Mattu would believe bears out his concerns, Mattu objects to the application of said herbicides out of concern for safety.

QUESTIONS INVOLVED

1. Whether given all of the facts and circumstances surrounding this matter, West Penn's action in the proposed application of a three-part blend of Garlon 4 Ultra, Milestone and Polaris by the "cut stump" application method in its effort to prevent regrowth creates an unreasonable safety hazard and is contrary to and in violation of West Penn's obligation to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, with all such repairs, changes, alterations, substitutions, extensions, and/or improvements in or to such service and facilities to be made in that manner necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public pursuant to 66 Pa.C.S.A. § 1501 and whether West Penn's proposed manner of maintenance fails to constitute a just and reasonable standard, classification, regulation and/or practice to be furnished, imposed, observed and followed by West Penn pursuant to 66 Pa.C.S.A. § 1504.

PROPOSED FINDINGS OF FACT

1. Complainant Robert Mattu ("Mattu") is a resident of 310 Schenley Road, Leechburg, Gilpin Township, Armstrong County, Pennsylvania, where he resides in property acquired from

Theodore McKallip (erroneously listed as "McCallum" in the Transcript) in or about 1978 (TR 22).

2. Respondent West Penn Power ("West Penn") is an electric distribution public utility subject to the jurisdiction of the Pennsylvania Public Utility Commission.

3. On or about April 1, 1968, Mattu's predecessor, McKallip, granted West Penn Power Company a 100-foot-wide right-of-way/easement on which West Penn has constructed and maintains the Kiski Valley-Cabot 138,000 kv electric transmission line (TR 19; West Penn Exhibit 1, pg. 5-8, TR 202, 204).

4. Mattu's sole water sources for his residence are two (2) water wells, one a 15-foot-deep hand-dug water well, and a second, 68-foot-deep water well. Mattu does not have immediate access to a public water supply (TR 23). Mattu's residence, as well as both water wells, are located downhill from West Penn's right-of-way/transmission line, said residence and water wells being 1070 feet above sea level, and West Penn's right-of-way, which commences approximately 70 feet away uphill, ranges from 1090 feet to 1160 feet above sea level at an approximate distance of 210 feet, resulting in an overall drop in elevation from the right-of-way/easement to the residence/water wells of approximately 90 feet (West Penn Exhibit 13).

5. Mattu also has a pond/lake located on his property downhill from West Penn's right-of-way in which fish and other wildlife live (TR 24). Said pond/lake is also situate at 1070 feet above sea level and is located less than 100 feet from the beginning of that area of West Penn's right-of-way to which West Penn seeks to apply said three herbicide mix. Again, West Penn's right-of-way is located uphill from said pond/lake with elevations starting at 1090 feet and also increasing to 1160 feet above sea level or approximately 90 feet in elevation over a distance of approximately 260 feet (West Penn Exhibit 13).

6. Following a review by Davey's Tree Service on or about April 28, 2015, in or about June 29, 2015, West Penn prepared and provided Mattus a proposed work plan (West Penn Revised Exhibit 2), notifying Mattus of its intent to manage its vegetation on said right-of-way by cutting the incompatible vegetation and by applying chemical herbicides, to which Mattus registered their objection. (TR 21, 223, 268) Since 1978 and up to the receipt of said proposed work order, the vegetation had been previously managed by hand-cutting/mechanical maintenance every ten to twelve years (TR22), causing said proposed work order to change the method by which West Penn sought to maintain the same.

7. Despite efforts and discussions between the parties, the parties were unable to arrive at a resolution, resulting in Mattu filing the formal complaint that is the subject of this proceeding. (TR 214, 215)

8. In or about December 2015, West Penn completed the hand-cutting portion of the proposed work plan with which Mattu has indicated his approval. (TR 21)

9. Despite Mattu's initial estimate that the area of the right of way on which the herbicide was proposed to be applied was the 100-foot wide right-of-way by approximately 200 yards (2 football fields) (TR 30), based on the blue area designated by West Penn (West Penn Exhibit 13), the same actually appears to be the 100-foot-wide right-of-way by approximately 280 feet, or a total of 28,000 square feet, or approximately 65/100 of an acre.

10. Although not formally educated (TR 42), Mattu registered serious concerns over potential negative effects of herbicides on his on-lot water supply (TR 23, 24), over a recent incident in which PennDOT sprayed herbicides, resulting in his pond/lake turning green, dead fish and turtles (TR 25), over his general reading regarding herbicides requiring protections such as gloves, respirators, glasses, having to wash off, and the same simply generally not being good, as well as health problems that he maintains friends have experienced (TR 26, 41, 43).

11. Shawn Standish, West Penn's Manager of Program Management and Oversight regarding the transmission vegetation program (TR 46, 47), maintains that pursuant to the National Electric Liability Commission, each utility must develop a "Transmission Vegetation Management Program" (TR 54), the goal of which is to maintain safe, reliable electric service, for which it maintains a five-year maintenance cycle to identify incompatible vegetation (TR 59, 258), which he defines as vegetation tall enough to interfere with overhead utilities or impede ability to inspect, and for which he maintains herbicides are regularly used to prevent re-sprout and regrowth by eliminating the root system (TR 60-61).

12. As part of his explanation, Standish acknowledges that the consideration of the environment, geography, surroundings, etc., including site characteristics, safety of the property owner, safety of workers, applicators and economics, as well as any other number of factors must be given in evaluating the options available to control or remove vegetation. (TR 73, 74)

13. Despite repeated attempts by Judge Dunderdale to inquire into specifics regarding ecological concerns, herbicides rolling into water sources, etc., Standish simply directs attention to the specimen label, First Energy's "expectations" that non-employee contracted applicators will follow label directions, laws and rules (TR 96, 97), and also emphasizes that First Energy's use of only "branded" products which he maintains gives First Energy "the best chance" of not doing anything negative to the environment (TR 100). Despite continued avoidance of direct answers to specific questions by Judge Dunderdale such as the use of a herbicide around people that is not to be used around lactating mammals (TR101), Standish ultimately acknowledges that there are a lot of specifics that would be necessary to be considered that would warrant additional information, that he would once again expect applicators to use the product in line with the label (TR 102), however, to which he ultimately acknowledged that the herbicide should not be used around lactating mammals if use is contrary to specimen label (TR 104). Standish also ultimately

acknowledged that herbicides should not be used in the event that they cannot be used without potential hazardous circumstances (TR 109).

14. West Penn Exhibit 13 represents a topographical map of the area based on a Bing aerial with the PA Department of Natural Resources and West Penn transmission line information overlay (TR 157, TR 165 and West Penn Exh. 13), on which green lines reflect Mattu property lines, red lines reflect 10-foot contour changes in elevation, dotted blue lines reflect the West Penn right-of-way, yellow lines reflect the center line to the transmission line, and the blue highlighted area reflects the brush area subject to the Mattu dispute (TR 158, 164).

15. As indicated, the area in dispute is approximately 100 feet wide by 280 feet long, reflects approximately 28,000 square feet or 65/100 of an acre. The same ranges in elevation from 1090 feet above sea level to 1160 feet above sea level, is uphill from Mattu's residence, wells and pond/lake, which are all located at approximately 1070 feet above sea level, resulting in an overall rise of approximately 90 feet over a distance of approximately 210 to the wells/residence and approximately 260 feet to said pond/lake. (West Penn Exhibit 13, TR 157-162, 169, 170).

16. Despite initial evasive responses, Standish ultimately concedes in response to Judge Dunderdale's inquiry that water tends to follow laws of gravity (TR 176-177). Based on the contours set forth on West Penn Exhibit 13, the same would tend to cause water to flow from the area in which the chemical herbicide is to be applied toward Mattu's wells, residence and pond/lake

17. Nicholas Weston, a First Energy Service Company Transmission Forestry Specialist (TR 179), indicates that the selected herbicides are to be applied by a "proposed cut stump application" which is the direct application of the herbicide to the cambium layer (outer edge) of the stump (TR 190).

18. West Penn proposes "cut stump treatment", applying a custom blend of Garlon 4 Ultra, Milestone and Polaris to the cambium layer of the stumps cut in the unmaintained area (TR 231).

19. Despite objection as to Weston's testimony regarding the material safety data sheets (MSDS) and specimen labels, which are asserted to identify the herbicides' composition and safety precautions, West Penn Exhibit 7, MSDS for Garlon 4 Ultra; West Penn Exhibit 8, specimen label for Garlon 4 Ultra; West Penn Exhibit 9, MSDS for Milestone; West Penn Exhibit 10, specimen label for Milestone; West Penn Exhibit 11, MSDS for Polaris; and West Penn Exhibit 12, specimen label for Polaris were admitted not for the truth of their contents, but rather as business records of First Energy based on their legal obligation to maintain the same (TR 232-236), as follows.

20. Despite initial assertions as to growth following the December 2015 manual cutting, Weston acknowledges that there is no typical annual growth as the same depends on rain, temperature and is unpredictable. (TR 244-247)

21. Although Weston did not check and was not sure the last time that West Penn had performed maintenance to the right-of-way prior to 2015, he guessed that the same was probably 2009 or 2010, does not have pictures, does not know the extent of the regrowth prior to the 2015 maintenance, and acknowledged that the current regrowth could be extraordinary. (TR 255, 256, 279)

22. West Penn does annual patrols by air of power lines regarding density, height and to ensure no encroachment closer to the power line than 12 feet (TR 257, 258, 260). Upon inspection prior to the 2015 maintenance, West Penn had no imminent threats or concerns. (TR 259)

23. Despite West Penn Exhibit 3 purporting to be a First Energy business record reflecting the letter to Mattu dated March 16, 2016, concerning the revised work plan, the same references rights-of-way for Melvin and Jessie Baker and Albert Williams and Cheryl Marie Harbison, reflecting that despite its introduction as a "business record", First Energy's business records may not always be accurate. (TR 266)

24. West Penn Exhibit 14 photograph reflects the maintained portion of said right-of-way, growth area along said right-of-way, ceramic item with lid at the base of the hill coming down from the right-of-way and in conjunction with the contour map reflected in West Penn Exhibit 13, illustrates the steepness of the hillside down to Mattu's house and his wells. (TR 273)

25. Weston estimates that the distance from the ground to West Penn's transmission wire on Mattu's property to be approximately 40 to 60 feet (TR 274), and despite initial attempts to extrapolate potential future growth, the same is excluded as not reliable based upon previous indications that growth is not predictable and is dependent on numerous variables (TR 274).

26. Despite initial expressions of concerns by Weston and assertions that the locust tree that is maintained to have grown 11 feet in one season and which it is maintained is reflected in West Penn Exhibit 19 as being located within the middle of the right-of-way underneath the wires, a couple feet up in the unmaintained area, a comparison of West Penn Exhibits 15 and 19, being photos taken on the same day, appears to negate any serious underlying bases for any such concerns (TR 282, 283), especially given the estimate of approximately 30 feet between the top of the locust tree and the low end of the wire. (TR 285, 286)

27. Salvatore Quattrocchi, president and managing partner of EnviroSolutions Group, was called by West Penn (TR 287, 288). Despite objection as to expertise other than the application of herbicides on behalf of Mattu noted, Quattrocchi is recognized as an expert with

regard to herbicide application, modes of action of herbicides, environmental impacts and safety of herbicides (TR 301-303, 308).

28. Herbicide proposed for use on Mattu's property is a combined/premixed ("tank mix") of Garlon 4 Ultra, Milestone and Polaris with an oil carrier, to be applied to the cambium layer with a "cut stump" application (TR 310). The tank mix is 25% combination of the molecules and 75% carrier (oil-based material) which are mixed off the right-of-way (TR 311). Each of the herbicides has a specific target plant species, and primarily focus on the photosynthetic process (absorption of sun and nutrients). The molecules are first absorbed into the plant and impact the root system, then the stem, and finally, the leaf tissue (TR 312). The molecules are applied to the cambium layer (outside edge of the cut stump) and absorbed by the plant downward (TR 313).

29. Quattrocchi acknowledges that all chemicals have restrictions and that although the same may be considered safe when used under best practices, the same should not be used under certain circumstances (TR 327). Quattrocchi acknowledges existence of oil-based carrier and that no oil-based material can be used in water. Although he maintains that the mix is safe to the water's edge, the same should not actually be used in water (TR 330). Quattrocchi acknowledges that environmental factors such as flood patterns, spring water, rain and site considerations are very critical, especially given the carrier being oil, and its incompatibility with water (TR 331).

30. Quattrocchi asserts that "relatively speaking", Garlon 4 Ultra has no soil activity and that leaching/percolation does not happen from a technical perspective (TR 334). Quattrocchi further maintains that Garlon and Polaris have aquatic registrations which permit aquatic applications; that the only reason for not applying in aquatic applications would be due to the "oil carrier"; that Imazapyr, the active ingredient in Polaris, and Triclopyr, the active ingredient in Garlon, are highly safe for aquatic use and the environment, and again, that the only reason they are not applied in water is due to the "oil carrier". Quattrocchi further asserts that despite the

locations of the wellheads, based on their being "encased", even if shallow, it is his opinion that there would be no movement of molecules from an isolated, single-set treatment. (TR 337)

Despite Quattrocchi's assertions and his opinion that with the exception of the "oil carrier" base, the same would be safe for aquatic applications, when confronted as why and how such would be the case when the MSDS continues to note "acute toxicity to fish" and "highly toxic to aquatic organisms" despite the absence of the oil-based carrier based on Quattrocchi's further testimony/representation that said MSDS testing is done based on as close to 100% pure active ingredient (Triclopyr) as is possible without the oil-based carrier, Quattrocchi's only response was that the MSDS information is based on "catastrophic" situations (TR 354).

31. Quattrocchi acknowledges that West Penn Exhibit 7, Garlon MSDS classifies material as "hazardous" (TR 343), however, again attempts to assert that such classification is based on "as close to 100% Triclopyr as possible" (TR 344). Quattrocchi emphasizes that concentration of the herbicide blend is only 25% active ingredients, with only 60% of the active ingredient within the 25% being Triclopyr (TR 343). When pressed, Quattrocchi ultimately acknowledges that Garlon can be unsafe if misused (TR 347). Quattrocchi acknowledges that the MSDS advises that environmental precautions should be taken to prevent Garlon from entering soil, ditches, sewers, waterways and/or groundwater, and that the same references "specific target organ system toxicity", that repeated exposure in animals has affected organs, kidneys and liver (TR 348). Despite Quattrocchi's assertion that the three blended herbicides are perfectly fine with children and that none of the three products are carcinogenic, teratogenic or mutagenic health concerns, reproductive concerns or teratogenicity (TR 339), Quattrocchi acknowledges that MSDS notes carcinogenicity for minor components in long-term animal studies with ethylene glycol butyl ether, with small but statistically significant increases in tumors were observed in mice, but not rats, and effects are not "believed" to be relevant to humans. Quattrocchi further

acknowledges that doses of active ingredients at levels toxic to the mother have also been toxic to fetus animals; and Quattrocchi acknowledges that the MSDS states that Triclopyr has had some effect on reproduction in animal studies (TR 349).

32. Despite Quattrocchi's previous representation that Garlon 4 Ultra was safe for aquatic application and that it was only the oil-based carrier that created the issue (TR 379), when directed to the "ecological information toxicity" referenced within the MSDS, which notes "acute toxicity to fish" and that the "material is highly toxic to aquatic organisms on an acute basis", Quattrocchi again attempted to divert his response, asserting that for similar materials, the material is highly toxic to aquatic organisms on an acute basis (TR 351).

33. Quattrocchi acknowledged that the MSDS indicates a "confirmed animal carcinogen with unknown relevance to humans" and asserts that Mattu should not be concerned because the same indicates that the same has "unknown relevance to humans". Despite his initial assertion that there is no "conclusive" evidence regarding humans based on the best technology available, Quattrocchi ultimately acknowledges that the mere fact that the relevance is unknown to humans is not the same as there not being any potential reason to be concerned (TR 355, 356).

34. Quattrocchi acknowledges that the MSDS notes that the chemical degradation of Garlon 4 Ultra is expected to be "very slow". When asked to explain the reference of biodegradation of 18%, Quattrocchi acknowledged that he did not know and was not able to explain the meaning of the same (TR 356).

35. Despite Quattrocchi's previous representation that migration of Triclopyr/Garlon 4 Ultra should not be a concern (TR 334), Quattrocchi acknowledged that the MSDS indicates that the "potential for mobility" in soil for Triclopyr-2 is "very high", and again attempts to downplay any concern based on his allegation that the MSDS is based on 100% active ingredient (TR 357, 358).

36. Despite Quattrocchi's repeated assertion that the MSDS analysis is based on as close to 100% pure active ingredient (Triclopyr) in Garlon 4 Ultra as is possible, it is unclear whether documentation of such standard for testing is documented in the MSDS itself (TR 360, 361) or based on general knowledge as to the manner in which said tests are conducted. Quattrocchi maintains that to his knowledge, that is the manner in which they are tested (TR 361).

37. Quattrocchi acknowledges that under Superfund Amendments noted within the MSDS reflects Garlon 4 Ultra as listing acute health hazard and chronic health hazard, and explains "acute health hazards" as referencing a massive dose, misapplication, terrorist act or spill that would be immediate as opposed to "chronic", which would be long-term exposure, however, once again seeks to downplay the same indicating that the use in the field as proposed is a diluted formulation of the active ingredient (TR 364).

38. Attempts to document Quattrocchi's assertion that the MSDS and specimen label results are based on as close to 100% of the pure active ingredient/herbicide as is possible and whether documentation of the same is contained within the MSDS/specimen label or is based on Quattrocchi's general knowledge as to the manner in which the tests are conducted, Quattrocchi was unable to confirm whether the federal government rules and/or regulations governing said testing require the same (TR 365). Although Quattrocchi notes that that portion of the Garlon 4 Ultra MSDS describing the "composition/ information, chemical nature, mixture" reflects Triclopyr Butoxyethylester 60.5%, ethylene glycol monobutyl ester 0.5% and remaining proprietary ingredients 39% (TR 366, 367, 368, 369), it is not clear as to whether Triclopyr Butoxyethylester at 60.5% is contrary to Quattrocchi's repeated assertion of his understanding that the same is tested as close to 100% as is possible.

39. West Penn Exhibit 8, the specimen label for Garlon 4 Ultra, reflects "toxicity to fish" (TR 366, 367, 368, 369).

40. West Penn Exhibit 9, the MSDS for Milestone, expresses concerns with regard to “accidental release measures” and recommends prevention from entering into soil, ditches, sewers, waterways or groundwater (TR 372).

41. When asked as to the quantity or concentration of herbicide that is tested in reference to results reflected with regard to “accidental release measures”, Quattrocchi maintained that the quantity or level of concentration was not relevant, but only that the same was as a result of “an uncontrolled release” and not an “application” (TR 372). Quattrocchi asserts that the concerns with regard to accidental releases/spills would be the same regardless whether the same was “one gram or less, micron or 10,000 gallons” (TR 378).

42. Quattrocchi opines that the safe application of the three proposed herbicides would require that the entire hillside once again be brush cut due to the density and sprouts before application of the herbicides (TR 382).

43. Despite Quattrocchi’s repeated attempts to downplay the hazards and/or negative effects of the various herbicides outlined in the MSDSs and the Specimen Labels by his assertion of his belief that the same are based on testing of as close to 100% active ingredient/herbicide as is possible, that the same is as a result of an accidental spill, etc., despite inquiries, Quattrocchi never delineates or clarifies as to at what point, what quantity, what concentrations, etc. said herbicides are safe and at what point they become hazardous or a matter of concern.

SUMMARY

Based on all of the facts and circumstances surrounding this matter, including, but not limited to the close proximity of Complainant Mattu’s residence, his shallow water wells that provide his sole source of water, the presence of his lake/pond containing significant fish and/or other wildlife, the extremely steep topography leading down from West Penn’s right of

way/transmission line, which based on the natural laws of gravity cause surface and ground water to flow from the area of West Penn's Right of Way proposed to be treated with herbicides toward Mattu's residence, water wells and pond/lake, together with the uncertainty as to the effects of the application of said proposed herbicides given the concerns expressed for extended periods of biodegradability, the high propensity for mobility, known and unknown adverse health effects (i.e. carcinogenic, toxicity to fish and other aquatic life, etc), as well as the relatively small area in question (approximately 28,000 square feet or 0.65 acre) that would be subject to West Penn having to hand or mechanically maintain on at most a one (1) time per five (5) year maintenance cycle, West Penn's proposed work plan to maintain the incompatible vegetation within said limited area through the "cut stump" application of the blend of Garlon 4 Ultra, Milestone and Polaris herbicides is contrary to and in violation of West Penn's obligation to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, with all such repairs, changes, alterations, substitutions, extensions, and/or improvements in or to such service and facilities to be made in that manner necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public pursuant to 66 Pa.C.S.A. § 1501 and given all such facts and circumstances, West Penn's proposed maintenance of vegetation by the application of chemical herbicides on said limited portion of said right of way fails to constitute a just and reasonable standard, classification, regulation and/or practice to be furnished, imposed, observed and followed by any or all public utilities as required and/or permitted to be imposed by the Commission pursuant to 66 Pa.C.S.A. § 1504.

ARGUMENT

66 Pa.C.S.A. § 1501, entitled "Character of service and facilities" provides as follows:

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. Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility. The commission shall have sole and exclusive jurisdiction to promulgate rules and regulations for the allocation of natural or artificial gas supply by a public utility.

In addition, inter alia, 66 Pa.C.S.A. § 1504, entitled "Standards of service and facilities", provides as follows:

The commission may, after reasonable notice and hearing, upon its own motion or upon complaint:

(1) Prescribe as to service and facilities, including the crossing of facilities, just and reasonable standards, classifications, regulations and practices to be furnished, imposed, observed and followed by any or all public utilities.

Under the circumstances of this matter, West Penn Power has a right-of-way on which a 138,000 kv electric transmission line is located. In accordance with its duty and responsibility to maintain efficient and reliable electric utility service, West Penn seeks to manage the vegetation on said right-of-way to avoid any potential disruption in service. Said right-of-way was signed by Mattu's predecessor in title. Since Mattu's ownership of said property in 1978, the vegetation has been manually managed by cutting every ten to twelve years. West Penn now seeks to change the method by which it intends to maintain said vegetation to include as a follow-up to the manual cutting of trees and brush, the application of a blend of three herbicides, Garlon 4

Ultra, Milestone and Polaris by virtue of a "cut stump application" to the cambium layer of each tree/brush.

Mattu's residence is located in the valley at the base of the hill on which West Penn's right-of-way and transmission lines are located. Mattu's residence's sole source of water are two wells, one being a 15-foot-deep hand-dug well and the second being a 68-foot-deep well. Public water supply is not available to the Mattu residence as the same would require an extension of at least 700 feet and drilling under a state highway. Mattu also has a pond/lake located within his property, in which fish and other wildlife live. Mattu's residence, his wells and the pond/lake are located at an elevation of 1070 feet above sea level. West Penn's right-of-way, which it seeks to maintain with the three herbicides, commences at an elevation of 1090 feet above sea level at a distance of approximately 70 feet from Mattu's wells, approximately 80 feet from Mattu's residence and approximately 100 feet from Mattu's pond/lake. The elevation of West Penn's right-of-way increases to 1160 feet above sea level at a distance of approximately 210 feet from Mattu's wells and residence and at a distance of approximately 260 feet from the edge of his pond/lake, resulting in a drop of 90 feet over said distances. By virtue of gravity, the same naturally results in surface and groundwater flowing from West Penn Power's right-of-way/transmission line that it seeks to treat with said three-herbicide mix toward Mattu's wells, his sole water source, his pond/lake and his residence.

Although Mattu appreciates the need for West Penn to manage its vegetation to maintain safe and reliable electric service and to avoid power outages, the area subject to vegetation management and the proposed application of said three blended herbicides consists of 100 feet in width and approximately 280 feet in length, approximately 28,000 square feet, or 65/100 of an acre. Although Mattu additionally appreciates that one may assert that the application of chemical herbicides would be the ideal manner in which West Penn may desire to manage the

vegetation on said right-of-way/transmission line, the Material Safety Data Sheets and the Specimen Labels that are part of the record as West Penn Exhibits 7 through 12 clearly raise serious potential concerns with regard to animal and human health, the biodegradability of said substances, the mobility of said substances, etc., for which attempts to obtain clear and concise reassurances and reasonable explanations as to the safety of these proposed herbicides from West Penn's purported experts and why Mattu should not have continued concerns in accordance with those expressed within the Material Safety Data Sheets and Specimen Labels were met only with attempts to evade answering the specific question being asked and repeatedly simply providing an unresponsive answer more beneficial to their employer/client, West Penn. Despite said attempts, there were ultimate acknowledgments from West Penn's witnesses as to the existence of the concerns expressed within the Material Safety Data Sheets and Specimen Labels, despite further attempts to downplay the same without reasonable explanation.

Complainant Mattu would submit that despite Shawn Stanidish's indication of his belief that the use of "branded" chemical herbicides provides West Penn "the best chance" of not doing anything negative to the environment or to a person's health, is not sufficient. Absent facts and circumstances that can fully insure that an absolute safe application of chemical herbicides can be made, Complainant Mattu believes that application of the same should not be permitted. This is especially true given the unique topography, the proximity of Mattu's water wells, the absence of public water supply and the relatively small area involved. Mattu respectfully requests that his request for the continuation of more traditional non-chemical herbicide vegetation management be upheld.

PROPOSED ORDERING PARAGRAPHS/RELIEF SOUGHT

1. Given due consideration to all of the facts and circumstances surrounding this matter as outlined above, West Penn's proposed vegetation management work plan that seeks to apply a blend of Garlon 4 Ultra, Milestone and Polaris chemical herbicides to that area of West Penn's Right of Way in question is contrary to and in violation of West Penn's obligation pursuant to 66 Pa.C.S.A. § 1501 to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, with all such repairs, changes, alterations, substitutions, extensions, and/or improvements in or to such service and facilities to be made in that manner necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.

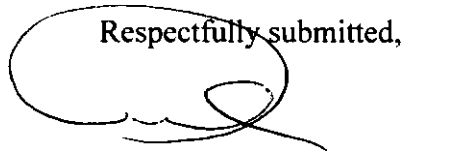
2. That given further consideration to all of the facts and circumstances surrounding this matter, should the Commission agree with the foregoing finding with regard to 66 Pa.C.S.A. § 1501 and pursuant to 66 Pa.C.S.A. § 1504, the Commission should further find, order and direct that a just and reasonable standard, classification, regulation and/or practice to be furnished, imposed, observed and followed by West Penn with regard to the vegetation management of that portion of said Right of Way/Transmission Line area in question is for West Penn to hand or mechanically maintain said area during each five (5) year maintenance cycle and that absent agreement/consent of the Mattus, or their successor property owners, or further Order by the Commission, that chemical herbicides shall not be used in the management of vegetation on that portion of said Right of Way/Transmission Line area in question.

CONCLUSION/REQUESTED RELIEF

Complainant Mattu respectfully prays that given due consideration to all of the relevant facts and circumstances surrounding this matter, the Honorable Katrina L. Dunderdale and the Commission find that West Penn's proposed plan to manage the incompatible vegetation located

on said portion of West Penn's Right of Way by the cut stump application of a blend of Garlon 4 Ultra, Milestone and Polaris chemical herbicides is contrary to and in violation of West Penn's obligation pursuant to 66 Pa.C.S.A. § 1501 to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, with all such repairs, changes, alterations, substitutions, extensions, and/or improvements in or to such service and facilities to be made in that manner necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public, and that pursuant to such a finding and in accordance with 66 Pa.C.S.A. § 1504, the Commission further order and direct that a just and reasonable standard, classification, regulation and/or practice to be furnished, imposed, observed and followed by West Penn with regard to the vegetation management of said portion of said Right of Way/Transmission Line area in question is for West Penn to hand or mechanically maintain said area during each five (5) year maintenance cycle and that absent agreement/consent of the Mattus, or their successor property owners, or further Order by the Commission, that chemical herbicides shall not be used in the management of vegetation on that portion of said Right of Way/Transmission Line area in question.

Respectfully submitted,



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COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

ROBERT MATTU :
Complainant :
 : Docket No. C-2016-2547322
vs. :
 : Hon. Katrina L. Dunderdale, ALJ
WEST PENN POWER :
Respondent :

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that I have served a true and correct hard paper copy of the foregoing Brief in Support of Complainant's Position on the following on Wednesday, December 14, 2016, in the following manner at the following post office/email/fax addresses:

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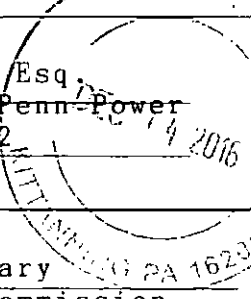
The Hon. Katrina L. Dunderdale, Judge
Office of the Administrative Law Judges
Piatt Place, Suite 220
301 Fifth Avenue
Pittsburgh, PA 15222
Fax 412-565-5692
(Hard Paper Copy-Mail & Fax)

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