

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG PENNSYLVANIA 17120-3265**

**Robert M. Mattu
v.
West Penn Power Company**

**Public Meeting held September 20, 2018
2547322-OSA
C-2016-2547322**

**JOINT MOTION OF COMMISSIONER DAVID W. SWEET
AND VICE CHAIRMAN ANDREW G. PLACE**

Before the Commission is the Petition for Reconsideration filed by West Penn Power Company (WPP) in the formal complaint case filed by Robert M. Mattu alleging that the vegetation management planned by WPP for the transmission right-of-way (ROW) that crosses Mr. Mattu's property is unreasonable. The ROW is approximately 25 yards from Mr. Mattu's home, gardens, fish pond and two shallow wells that serve his house, and Mr. Mattu objects to the use of herbicides on the ROW.

By Order entered August 14, 2017, the Commission found that WPP's actions were consistent with its Vegetation Management Plan (VMP) and did not violate any provision of the Commission's statute, regulations or orders of the Commission, but that the finding that the proposed actions were consistent with the WPP Vegetation Management Plan was not sufficient to provide an equitable result in this case. We stated that the VMP, as part of a larger Biennial Inspection, Maintenance, Repair and Replacement Plan required for all electric distribution companies (EDCs) is far too general to address each factual situation that will arise when keeping transmission line rights-of-way clear. We stated that we strongly support timely vegetation maintenance that is vital to providing reliable and safe service to the citizens of the Commonwealth, but we recognize that there will be exceptions to the utility's preferred methods of keeping the right-of-way clear.

With the VMP terms general, an EDC's actions will always be "consistent" with it. However, there is a point where the use of herbicides is not consistent with the landowner's ability to use the property, such as here, where the household source of water is from shallow wells close to the right-of-way. Property owners should be able to seek relief from an EDC's proposed method of vegetation management. The Commission recognized that this is more akin to a petition for relief than a complaint and chose to treat the complaint as a petition for relief. There is no prejudice to either party and no change in the burden of proof.

WPP responded by filing a Petition for Reconsideration, supported by letters by the Energy Association of Pennsylvania and PPL Electric Utilities Corporation. WPP makes five arguments in its Petition:

1. The Commission's Order barring the use of herbicides is beyond its jurisdiction.
2. The July 2017 Order will have severe, adverse, state-wide consequences for all utilities by expanding the category of relief available to complainants who are dissatisfied with application of existing rates, or terms and conditions of service.
3. The July 2017 Order essentially revises a private easement agreement to eliminate or prohibit West Penn's existing right to apply herbicides within the right-of-way, which is beyond the authority of the Commission.
4. The July 2017 Order exceeds the jurisdictional authority of the Commission and intrudes upon the exclusive authority of the Department of Agriculture to regulate the use and application of pesticides, which includes herbicides.
5. The Order violates the due process rights of West Penn when it, *sua sponte*, converted the formal complaint to a petition for relief, applied a new, "equitable/fairness" standard, and granted relief that resulted in a revision of the private easement as between West Penn and Complainant after the record had closed.

Of course, vegetation management falls within the jurisdiction of the Commission. There is considerable appellate case law to support this, and here, the manner in which vegetation is cleared falls within the definition of service in the Public Utility Code.¹ The wording of the Commission's Order is specific and limiting.²

We would have preferred that the utility see this as an opportunity to open a dialogue with a customer and create good will rather than acrimony, as this would be consistent with the Commission's traditional view of "service." We do not supersede the rules and regulations governing service complaints, which are well-established and designed to address most interactions between a utility and its customers. Rates, terms, and conditions of service remain subject to tariffs and existing law.

We do not revise a private easement agreement. We simply find that Mr. Mattu carried his burden of proving that the risk of herbicides ending up in his drinking water if WPP used those herbicides on the right-of-way crossing Mr. Mattu's land was too great to permit. We note that there are no citations to the EDCs' claims that only the Department of Agriculture can decide whether an EDC can use herbicides as part of vegetation management of a transmission line right-of-way.

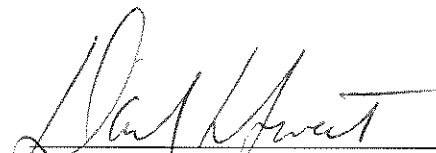
There is no mention of evaluating the unique, individual needs of customers. Rather, West Penn., with the support of the other EDCs, as indicated by the letters in support of the petition for reconsideration filed by the Energy Association and PPL Electric, make clear that the traditional complaint route is preferred.

Accordingly, the Petition for Reconsideration is granted. We note that on page 11 of the July 17 Order, we stated, "Given this unique fact pattern, the use of herbicides would be unreasonable." As a finding that the plan for clearing Mr. Mattu's land is unreasonable, constitutes a violation of Section 1501,³ we move that the Commission find that WPP's plan to clear the ROW crossing Mr. Mattu's land is a violation of Section 1501.

THEREFORE,

WE MOVE:

1. That the Petition for Reconsideration filed by West Penn Power Company is granted.
2. That the Commission's Order of July 17, 2017, entered August 14, 2017, is revised to find that the Complaint filed by Robert M. Mattu is sustained.
3. That West Penn Power Company is prohibited from using herbicides on the right-of-way that crosses the real property of Robert M. Mattu.
4. That the Office of Special Assistants prepare an appropriate order consistent with this Motion.



DAVID W. SWEET
COMMISSIONER



ANDREW G. PLACE
VICE CHAIRMAN

DATE: September 20, 2018

¹ 66 Pa. C.S.A. §102 (definitions).

² "We note that our decision to grant this Petition for Relief is fact-specific and not intended to create a bright line test by which future cases should be evaluated. . . . Our decision in this case does not bar West Penn Power from utilizing other vegetation management methods including grinding tree stumps or assessing the vegetation growth within this right-of-way on a shorter time frame. We note that this is consistent with the methods used to maintain this portion of the right-of-way in past vegetation management cycles." July 2017 Order at 11.

³ 66 Pa. C.S.A. § 1501.