

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**Bernard Wanninger v. Duquesne
Light Company**

Public Meeting – July 29, 2010
2057952-OSA
Docket No. C-2008-2057952

STATEMENT OF VICE CHAIRMAN TYRONE J. CHRISTY

Before the Commission is the Initial Decision of Administrative Law Judge (ALJ) Katrina L. Dunderdale issued on March 30, 2010, as well as the Exceptions of Bernard Wanninger (Complainant) and the Reply Exceptions of Duquesne Light Company (Duquesne). Mr. Wanninger's Complaint, filed on August 6, 2008, states (with the addition of some punctuation) as follows:

This is the 3rd time this neighborhood has been affected by surges. Bernard Wanninger (et al) v. Duq Light Docket No. C-20043312 incident 3-12-04. Over 100 Res went to Ross township com meeting from this particular surge. It happened again only 10 to 12 people affected over ½ million \$ lost by customers. Incident occurred 6:05 AM March 26, 2004. Fires started. I was burned. Most appliances were damaged. Told to turn into private ins. co. No Way! Rates increase. Again 1-28-08 same thing. I was not! the only one affected. 5 others. Baby in bed, parents in kitchen smelled smoke. Baby's electric blanket on fire. Documented by Perrysville Fire Company who respond. My carpets caught on fire again from surge. Smoke everywhere. Also others. Does someone have to die or [be] burned for life! . . . Brodspire Ins. always blame trees falling & won't cover anything. It ALWAYS happens when they turn the power on. I had a \$200 surge protector blown out, installed by an electrician. The money is gone, but I swear that if someone dies or is burnt badly enough, all hell will break loose, and someone will be held accountable. You must look into this company's actions.

Mr. Wanninger, who has lived at his residence for 70 years, experienced several power outages and at least two powerful voltage surges at his residence between 2004-2009, which have caused two fires and damaged or destroyed various items, including surge protectors, computers, microwaves, televisions, a motion chair and carpet. Tr. 26-30. An Interruption Record Detail submitted by Duquesne for the period 1/01/05 through 9/04/08 states that Mr. Wanninger's service was interrupted 14 times for more than two minutes during this 44-month period, including four outages caused by falling trees and one outage caused by a tree coming into contact with a power line. Exh. R-1. Mr. Wanninger testified that the power surges and resulting fires are a safety issue, noting that his son, who lives with him for one week each month, is handicapped and is "not going to get out." Tr. 26, 39. It also is a monetary issue because he must replace everything after a power surge. Tr. 26.

The power surge that is the subject of the instant Complaint occurred on January 9, 2008, around 5:00 am, after a tree fell onto a 23 kv line, which then contacted the 4 kv line that serves

the Complainant's residence. Tr. 49. The tree, which was not in Duquesne's right-of-way, was located at the top of a hill along Three Degree Road. Duquesne's pole line is located at the bottom of the hill along the four-lane highway. Tr. 48.

The power surge caused a fire at Mr. Wanninger's residence that burned a motion chair and carpet, and required the replacement of severely damaged electrical outlets, electrical wiring, and a whole-house surge protector that was completely melted. Tr. 31-33, 37-38. The fire placed the Complainant's partially paralyzed 42-year old son, who uses a wheelchair, at risk. He is unable to get out of his downstairs, handicapped-accessible room without assistance, and could suffer from smoke inhalation before his father upstairs would know there was a fire. Tr. 38.

After the initial hearing on January 21, 2009, the parties agreed to a continuance to provide sufficient time to determine the cause of the power surges and to correct the problem. On January 26, 2009, Duquesne changed the position of the energized wire on the line that serves Mr. Wanninger from the position closest to the sidewalk to middle of the three wires, which is a more protected position on the pole. The expectation is that, if another tree were to come down, it would be less likely to contact the line serving the Complainant and his neighbors. Tr. 52-53, 59.

The ALJ recommended dismissing Mr. Wanninger's Complaint on the basis that he failed to prove that the January 9, 2008, power surge was caused by Duquesne's failure to provide adequate and reasonable service. The ALJ found that Duquesne presented sufficient evidence to show that the outage was beyond its control, and that it acted in a reasonable manner in response to Mr. Wanninger's Complaint.

Mr. Wanninger does not argue in his Exceptions that the power outage was the result of Duquesne's negligence; rather, he argues that the manner in which Duquesne restored service was negligent. Duquesne's Reply Exceptions argue that the Complainant did not demonstrate that the power surge resulted from Duquesne's failure to provide reasonable service, and that, although it is common for lay people to assume that damage occurs when service is restored rather than when it is interrupted, it is difficult to identify damage when service is off.

Today the Commission is denying Mr. Wanninger's Exceptions and dismissing his Complaint on the basis that he did not meet his burden of proving that Duquesne failed to provide adequate, efficient, safe and reasonable service. The Commission concludes that the power surge of January 9, 2008, was the result of occurrences that were outside the control of Duquesne, and that Duquesne acted properly by taking the necessary steps to prevent future power surges by moving the Complainant's circuit to the middle phase in January 2009.

I agree with the decision to dismiss the Complaint on the basis that Mr. Wanninger did not meet his burden of proof in this proceeding. However, I disagree with the conclusion that the record affirmatively demonstrates that the power surges were outside of Duquesne's control, and that Duquesne acted properly to prevent future surges by moving the Complainant's circuit to the middle phase of the pole lines in January 2009. I believe that the record does not exonerate Duquesne from a potential finding of having provided unreasonable service.

At the conclusion of the evidentiary hearing in this proceeding, the attorney for Duquesne stated that there was no cause for concern on Duquesne's part until Mr. Wanninger brought the issue of the power surges in his neighborhood to its attention through the filing of this Complaint. Tr. 59-60. However, this wasn't the first event of this nature that caused a fire at Mr. Wanninger's residence. A nearly identical incident occurred on March 26, 2004, at around 6:05 a.m., again caused by a large pine tree on the hill falling onto the power lines on Three Degree Road, bringing the higher voltage lines in contact with the lower voltage line and causing a power surge.¹ On July 2, 2004, Mr. Wanninger and 16 or 17 other customers filed a Complaint with the Commission. As relief, the customers asked the Commission to investigate the way in which Duquesne restored service after the power outage, and to order Duquesne to reimburse customers for their losses.

The ALJ's Initial Decision in the 2004 case found that Duquesne is required by the National Electric Safety Code (NESC) to situate the highest voltage circuit at the top of a pole and to put the next highest circuit below that, and so on. The pole set in question had a 23 kv sub-transmission circuit at the top, followed by another 23 kv distribution circuit, with the 4 kv distribution line on the bottom. *Bernard Wanninger et al. v. Duquesne Light Company*, Docket No. C-20043312 (June 23, 2005). The ALJ's finding was based on the testimony of a Duquesne witness that "all utilities are required to follow National Electric Safety Codes, and those are set up so that you put the highest voltage at the top of the pole and work your way down." Tr. 30-31.² In other words, Duquesne testified that the order of the circuits was mandated by the NESC. The implication from this testimony was that a deviation from the NESC mandates was not possible.³

In response to the instant Complaint, Duquesne investigated the causes of the power surges, and as a result changed the position of the circuit that serves Mr. Wanninger. Duquesne relocated the circuit that serves Mr. Wanninger from the position closest to the sidewalk to middle of the three wires, which is a more protected position on the poles. As stated above, Duquesne's expectation is that, if another tree were to come down, it would be less likely to contact the line serving the Complainant and his neighbors. Tr. 52-53, 59. There is no explanation on the record as to why this wasn't done after the power surge in 2004. It is an unanswered question as to whether the power surge and fire at Mr. Wanninger's residence in 2008 would have been prevented had the position of the circuits been changed in 2004 after the first voltage surge and fire. For this reason, I do not agree with the conclusion that the record in this case supports an affirmative conclusion that Duquesne provided reasonable service to Mr. Wanninger. If Duquesne acted properly by taking the necessary steps to prevent future power surges by moving the Complainant's circuit to the middle phase in 2009, why didn't Duquesne do this in 2004?

¹ In a third instance, on January 3, 2004, a tree fell onto the power lines on Three Degree Road, although apparently this incident did not cause a power surge.

² Documents on file with the Commission may be incorporated by reference into subsequent pleadings or other documents. 52 Pa. Code § 1.33. A portion of the record of another proceeding that is relevant and material may be submitted into evidence. 52 Pa. Code § 5.407. The Commission may take official notice of facts not appearing in the record subject to certain limitations. 52 Pa. Code § 5.408.

³ The ALJ concluded that Duquesne's actions before and after the power outage were reasonable, and dismissed the Complaint for the failure of the Complainants to meet their burden of proof. The ALJ's Initial Decision became final by operation of law without further review by the Commission.

Although the Commission does not have the ability to award damages to the Complainant, under the circumstances I believe that Duquesne should consider reimbursing Mr. Wanninger voluntarily for the damages he incurred as a result of the power surge and fire at his residence on January 9, 2008. The record demonstrates that Mr. Wanninger did everything within his power to avoid a recurrence of the voltage surge of 2004, including installing a whole-house surge protector in his cellar, to no avail.

1-29-10
DATE

Tyrone J. Christy
TYRONE J. CHRISTY, VICE CHAIRMAN