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July 8, 2013

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

RE: Jeremy Kashuba v. PECO Energy Company
PUC Docket No.: C-2012-2333019

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents in the matter referenced above.

—	Answer
—	Answer & New Matter
—	Motion Objecting to Continuance Request
—	Motion for Judgment on the Pleadings
—	Motion for Continuance
—	Preliminary Objection
—	Exceptions
<u>X</u>	Reply Exceptions
—	Main Brief
—	Reply Petition

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,

Shawane Lee
Counsel for PECO Energy Company
SL/lo

REPLY EXCEPTIONS

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Jeremy Kashuba (“Complainant”) in the above-referenced matter on June 25, 2013. On October 24, 2012, Complainant filed a formal complaint against PECO Energy. In his formal complaint, Complainant alleged that PECO Energy repaired a fallen tree near his home on Mayberry Road. The Complainant claimed that after the repair, power lines coming to his house were left dangerously low. He claimed that PECO Energy repaired another pole on his road but did not repair the low power lines. Instead, he claimed that PECO Energy advised him he needed to fix the power lines himself. Respondent, PECO Energy filed an Answer on November 19, 2012, denying the Complainant’s allegations and stating that the company did not cause damage to the lines at issue. Further, the lines were on a private property pole in bad condition, and pursuant to Section 6.3 and 4.4.1.1 of PECO Energy’s tariff, the company is not responsible for making repairs to lines on private property poles.¹

A hearing was held before Administrative Law Darlene R. Davis Heep on February 13, 2013. ALJ Heep issued an Initial Decision on May 1, 2013, wherein she held inter alia:

Complainant has not established a prima facie case that PECO is providing other than adequate, efficient, safe, and reasonable service. No immediate danger was established with respect to the distance of the wires from the ground. PECO continues to supply service to Complainant and his neighbor and has not issued any notices to Complainant indicating that the wires are dangerously low and must be moved immediately. (Tr. 66). Also, there is no evidence that PECO

¹ Section 6.3 of PECO Energy’s tariff states: Customer’s Service Extension. The customer shall provide, own and maintain the service extension from the Company’s service-supply lines to the receiving equipment.

Section 4.4.1.1 Overhead Service – All Customers states: Where existing Company supply facilities are overhead, the Company will install a single span of aerial wire or cable to the first suitable support of the Customer, nominally 100 feet inside the property line of the Customer. The Customer’s support shall be so located that the service span will be free of obstruction, and adequately supported as required by the size and weight of the conductors. .

actions caused the wires to sag. PECO trimmed the trees in winter of 2011. Complainant did not note the sagging until the following May. There is no evidence to connect the two events.

See ALJ Heep, Initial Decision, dated 5/1/13, attached hereto as Exhibit “1”.

The Commission should sustain the initial decision of ALJ Heep. Complainant does not allege that the ALJ made an error of law or abused her discretion in any manner. Instead, Complainant excepts to the decision issued by ALJ Heep, because he simply disagrees with the ALJ’s decision and believes he submitted adequate proof to the ALJ to support his position.

First, in his exceptions the Complainant states there are statements of fact that are inaccurate as follows:

My initial request for service was well before May “application for service” and most of the trips peco employees made to my property were before that May application. PECO records should clearly show this but they didn’t produce them for some reason and claimed my initial request was filed in May.

The record, exhibits, and testimony in this case clearly shows the timeline of events for this matter. The Complainant contacted PECO Energy on April 19, 2012 to report sagging wires. This is documented at PECO Energy Exhibit “1” in a Customer Information Management (CIMS) screenshot that says on April 19, 2012 at 11:51 a.m. “TMan Scott Reports 2nd pole is leaning badly causing primary and neutral to sag low. *Marked private property on print.*” See PECO Energy Exhibit “1”. Thereafter, on May 21, 2012, PECO Energy received an Application for Electric Service & Meter from the Complainant, regarding the sagging lines. See PECO Energy, Exhibit “1”. Consequently, despite the Complainant’s assertions, PECO Energy did produce records that showed a technician visited the property before the May 2012 “application for service” who noted on April 19, 2012, that the pole line in question was a private property pole. The record and exhibits demonstrates there are no inaccurate facts surrounding the

timeline of events. Irrespective of when PECO Energy went to the property or when the application for repair was received from the Complainant, the fact remains that the pole at issue is a private property pole that is not owned by PECO Energy. Pursuant to Section 6.3 and 4.4.1.1 of PECO Energy's tariff, the company is not responsible for making repairs to private property poles. ALJ Heep correctly concluded that PECO Energy did not cause the wires to sag and "private poles do not belong to PECO." (Tr. 46, 52-54, 57; PECO Exhibit 1, page 4, PECO Exhibit 2, PECO Exhibits 2B, 2C).

The Complainant alleges that ALJ Heep incorrectly determined in her finding of fact number 10 that the "second private pole on Complainant's property provides support for PECO wiring that leads to the neighbor's home and serves no benefit to Complainant." The Complainant admits in his exceptions that the wires in dispute come from Pole #1. He states that Pole #2 contains a transformer. Pole #2 does not contain the low sagging lines that are in dispute; therefore, it is irrelevant to the outcome of the decision. The same can be said for the Complainant's exception regarding whether the pole is "more than 100 feet from the road as stated in fact #11." The Complainant claims that PECO Energy's witness, engineer Dwight Herbert lied about the distance of the pole. Despite whether Pole #2 serves a benefit to the Complainant or whether Mr. Herbert lied and Pole #1 is not more than 100 feet from the road, the principal fact that does not change is that PECO Energy does not own private property Pole #1 or Pole #2. The Complainant claims there are sagging lines on Pole #1. PECO Energy did not cause the sagging wires and the Complainant did not provide any proof to the contrary. Additionally, the mere fact there are sagging lines on the pole does not make PECO Energy responsible for repairing them. Consistent with Section 6.3 and 4.4.1.1 of PECO Energy's tariff, PECO Energy is not responsible for repairing lines on private property poles. Consequently, the

Complainant's Exception in this regard is not relevant to the decision and serves no basis to overturn ALJ Heep's well-reasoned decision.

In the Complainant's exception number 2, he claims that ALJ Heep "misunderstood" him because Pole #1 and Pole #2 contain lines that provide service to both him and his neighbor. The Complainant states that replacing either pole is forcing him to provide power to someone on another property. Despite the Complainant's assertions, the fact remains that he purchased property that contains two private property poles, which contain electric service, cable and telephone lines. PECO Energy does not own the private poles and is not responsible for repairing the electric, cable or telephone lines on either pole. The company's tariff is very clear to this effect, which is why ALJ Heep correctly concluded that "Complainant is responsible for maintenance of the pole and wire at issue." See Initial Decision, p. 7. The Complainant's exception is no basis to overturn ALJ Heep's decision.

The Complainant excepts to ALJ Heep's decision because he claims that PECO Energy engineer, Dwight Herbert, "lied under oath when questioned about the poles distance from the road". The Complainant raises this issue in Exceptions numbers 3 and 4. The record clearly demonstrates that Mr. Herbert, a PECO employee for over a decade, visited the Complainant's property; investigated the sagging lines and private property poles at issue; took photographs and wrote a detailed report with his findings. Indeed, Mr. Herbert wrote a report dated January 30, 2013, at PECO Energy Exhibit "4", which detailed his findings, the distance of the lines from the ground, and where the poles at issue were located. Mr. Herbert took photographs of the lines and the poles and testified, concerning what was depicted in the photographs. Not only does Mr. Herbert have no reason to lie about the distance of the poles, he clearly documented his observations at the premises to substantiate what he saw. Regardless of the distance of the pole,

it is undisputed that the Complainant owns both private property poles and they are located on his property. Consistent with PECO Energy's tariff provisions, the company is not responsible for repairing the lines on the poles. ALJ Heep correctly determined that PECO Energy did not cause the lines to sag and the Complainant is responsible for making the repairs because he owns the poles.

ALJ Heep correctly concluded, that the Complainant has not met his burden of proof in this matter pursuant to 66 Pa. C.S. § 332(a). Accordingly, ALJ Heep's decision to dismiss the Complainant's case against PECO Energy should be upheld.

For the reasons set forth above, PECO respectfully requests that the Commission deny the Exceptions and issue an Order upholding the Initial Decision in its entirety.

Respectfully submitted,



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JEREMY KASHUBA

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

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Docket Nos. C-2012-2333019

CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a true copy of the foregoing Reply Exceptions upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Jeremy Kashuba
443 Mayberry Road, Box 262
Schwenksville, PA 19473**

Dated at Philadelphia, Pennsylvania, July 8, 2013



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Direct Dial: 215.841.6841;
Fax: 215.568.3389

PECO Energy Exhibit “1”

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeremy Kashuba

v.

PECO Energy Company

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C-2012-2333019

INITIAL DECISION

Before
Darlene R. Davis Heep
Administrative Law Judge

HISTORY OF THE PROCEEDING

On or about October 24, 2012, Jeremy Kashuba ("Complainant") filed a formal complaint ("Complaint") with the Pennsylvania Public Utility Commission ("PUC" or "Commission") against PECO Energy Company ("PECO" or "Company" or "Respondent").

Complainant asserts that there is a reliability, safety and quality problem with his PECO service. In particular, he states that 1) after PECO personnel trimmed trees around wires on the street near his home, PECO wires in his yard began to sag dangerously low, and 2) PECO wires that serve his neighbor are attached to a pole in his yard and he would like them removed because he anticipates that in the future PECO will require him to maintain, repair or replace the pole.

PECO denies all material allegations. In its November 19, 2012 Answer to the Complaint, PECO states that the company does not trim wires on private property and that no action of PECO caused the wires to sag. The Company also states that after Complainant

contacted the Company about his concerns, a PECO troubleman sent to inspect the property found that the sagging was caused by a leaning pole. PECO further avers that the pole is private property and not the responsibility of PECO.

This Initial Decision finds in favor of PECO.

PROCEDURAL HISTORY

A hearing notice dated December 27, 2012 informed all parties that a hearing would be held on February 13, 2012. On January 2, 2012, a Prehearing Order also advised of the hearing date and applicable procedures.

The hearing was held as scheduled on February 13, 2013. Jeremy Kashuba (Complainant or Kashuba) appeared pro se and was accompanied by a witness, Jacqueline Alutis (Alutis). He presented eight (8) Photos, Marked Complainant 1 through 8.

PECO was represented by Shawane Lee, Esq. Attorney Lee presented two witnesses, Clifford Patton (Patton), PECO Business Division Engineer, and Dwight W. Herbert (Herbert), PECO aerial line supervisor. Eighteen (18) exhibits were introduced on behalf of PECO. These exhibits are:

- Respondent Exhibit No. 1 – PECO Application/Job Record
- Respondent Exhibit No. 2A – Map of Poles
- Respondent Exhibit No. 2B – Map of Area -PECO
- Respondent Exhibit No. 2C – Map of Area - PECO
- Respondent Exhibit No. 3A – Pictures of Area Telephone Poles
- Respondent Exhibit No. 3B – Pictures of Area Telephone Poles
- Respondent Exhibit No. 3C – Pictures of Area Telephone Poles
- Respondent Exhibit No. 3D – Pictures of Area Telephone Poles
- Respondent Exhibit No. 4 – Dwight Herbert – Letter to Manager

Respondent Exhibit No. 5A – Pictures of Wires on Property
Respondent Exhibit No. 5B – Pictures of Wires on Property
Respondent Exhibit No. 5C – Pictures of Wires on Property
Respondent Exhibit No. 5D – Pictures of Wires on Property
Respondent Exhibit No. 5E – Pictures of Wires on Property
Respondent Exhibit No. 6 – PECO Training and Reference Material
Respondent Exhibit No. 7 – PECO Tariff Rules & Regulations
Respondent Exhibit No. 8 – Shutoff Notice Sample
Respondent Exhibit No. 9 – BCS Decision Report dated 6/11/2012

Except for Respondent Exhibit 8,¹ all exhibits were admitted. The record closed on February 27, 2013, when the transcript was received.

FINDINGS OF FACT

1. Complainant, Jeremy Kashuba, resides at 443 Mayberry Road, Schwenksville, PA 19473.
2. In the winter of 2012, PECO personnel trimmed tree limbs around its wires on a street near Complainant's home. (Tr. 9-10).
3. Months after the limb cutting, Complainant noticed that the PECO wires near his home were low. (Tr. 10).
4. In May of 2012, PECO received an Application for Service from Complainant requesting that PECO address the sagging wires. (Tr. 44-45, PECO Exhibit 1).
5. After Complainant called PECO to report the low hanging wires, PECO personnel met with Complainant on at least 8 occasions. (Tr. 17).

¹ The exhibit was not of consequence to this action.

6. Wires providing service to Complainant run from the PECO pole on the street to a private pole on Complainant's property. (Tr. 53-56; PECO Exhibit 4).

7. The sagging of the wires on Complainant's property is caused by the position of the first private pole on Complainant's property. (Tr. 67-68; PECO Exhibit 4).

8. The first private pole is leaning and is located on Complainant's property between Complainant's home and the road. (Tr. 15, 19, 21; PECO Exhibit 1, p. 4).

9. PECO wires serving Complainant are attached to the first private pole. (Tr. 53-56; PECO Exhibit 4).

10. The second private pole on Complainant's property provides support for PECO wiring that leads to the neighbor's home and serves no benefit to Complainant. (Tr. 21; PECO Exhibit 1, p. 6, PECO Exhibit 4).

11. Both the first and second private poles are more than 100 feet inside the property line of the customers. (Tr. 65, 126; PECO Exhibit 2A, PECO Exhibit 5).

12. Private poles do not belong to PECO. (Tr. 46, 52-54, 57; PECO Exhibit 1, page 4, PECO Exhibit 2, PECO Exhibits 2B, 2C).

DISCUSSION

APPLICABLE LAW

Any offense alleged by the Complainant must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa. C.S. § 701. The code requires that:

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.

66 Pa.C.S.A. § 1501. The statutory definition of “service” is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995).

“Service, used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . .” 66 Pa. C.S.A. 102.

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking relief from the Commission has the “burden of proof.” “Burden of proof” is a duty to establish a fact by a “preponderance of the evidence.” The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950). In other words, “preponderance” is not dependent on the number of witnesses testifying on either side but rather on the credibility of the testimony in the light of all the evidence in a case. *Burch v. Reading Co.*, 240 F.2d 574 (3d Cir. 1957) cert. denied, 353 U.S. 965 (1957). The Pennsylvania Supreme Court has characterized a preponderance of the evidence as tantamount to a “more likely than not” inquiry. *Commonwealth v. \$6,425 Seized From Esquilin*, 583 Pa. 544, 555, 580 A.2d 523, 529 (2005).

The Complainant’s evidence must be more convincing, by even the smallest amount, than that presented by PECO. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, the decision must be supported by substantial evidence in the record.

More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, to rebut the evidence of the Complainant, shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied her burden of proof. The Complainant now has to provide some additional evidence to rebut that of the Respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982) aff'd 501 Pa. 433, 461 A.2d 1234 (1983). While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

ANALYSIS

Complainant contends that PECO has failed to provide adequate service because 1) after PECO personnel trimmed trees around wires on the street near his home, PECO wires in his yard began to sag dangerously low, and 2) PECO will require him to maintain the second private pole which does not serve him but holds wires providing power to a neighbor.

A *prima facie* case is not established regarding the low wires. Also, although it does not appear that PECO can hold Complainant responsible for maintenance of the second pole, the claim regarding maintenance of that second pole is not at this time ripe for adjudication.

Sagging Wires

Complainant has not established a *prima facie* case that PECO is providing other than adequate, efficient, safe, and reasonable service. No immediate danger was established with respect to the distance of the wires from the ground. PECO continues to supply service to Complainant and his neighbor and has not issued any notices to Complainant indicating that the wires are dangerously low and must be moved immediately. (Tr. 66).

Also, there is no evidence that PECO actions caused the wires to sag. PECO trimmed the trees in winter of 2011. Complainant did not note the sagging until the following May. There is no evidence to connect the two events.

Further, Complainant is responsible for maintenance of the pole and wire at issue. PECO's tariff provides:

4.4.1.1 Overhead Service - All Customers

Where existing Company supply facilities are overhead, the Company will install a single span of aerial wire or cable to the first suitable support of the Customer, nominally 100 feet inside the property line of the Customer. The Customer's support shall be so located that the service span will be free of obstruction, and adequately supported as required by the size and weight of the conductors. The span shall meet all clearance specifications as required by the National Electrical Code, the National Electric Safety Code, and any legal codes having jurisdiction.

The first pole is at least 100 feet inside the property line of Complainant and is therefore also Complainant's responsibility. Rather than note a violation of any sort, PECO was and is seeking to work with Complainant to address his concerns about the sagging wires. PECO personnel have visited the property several times and advised Complainant on what is required in order to raise the wires. Nothing here establishes a *prima facie* case for Complainant.

Second Pole Maintenance

A decision regarding Complainant's disquiet that PECO would require him to make repairs or replace the second pole in the future is not appropriate at this time. As of the time of the hearing, PECO had not requested that Complainant take any action with respect to the second pole. Complainant's concerns are speculative; he anticipates that even though the pole provides no service to him, PECO will someday require that he repair or replace the second pole. Such an anticipatory claim is not ripe for adjudication. Complainant may file a Complaint in the future should PECO require that he take action regarding the second pole.²

² Nothing in the record suggest that PECO can, now or in the future, hold Complainant responsible for a pole and wiring which serve him no purpose and which benefits the neighbor only.

Although I find in this case that evidence was not presented of an imminently dangerous condition, I will direct that a copy of this Initial Decision be provided to the Commission's Bureau of Technical Utility Services for its consideration of the poles and electrical wires at issue in this case, including those poles and electrical wires on Jeremy Kashuba's property that do not serve Complainant.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S.A. § 701.
2. Complainant had the burden of proof and failed to carry that burden. 66 Pa. C.S.A. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Jeremy Kashuba against PECO Energy Company filed at C-2012-2333019 is dismissed;
2. That the claim regarding the sagging wires is dismissed with prejudice;
3. That the claim regarding the second private pole is not ripe for adjudication and is therefore dismissed *without prejudice*;
4. That a copy of this Initial Decision be provided to the Commission's Bureau of Technical Utility Services for its consideration of the condition of the poles and electrical wires at

issue in this case, including those poles and electrical wires on Jeremy Kashuba's property that do not serve Complainant; and

5. That the case at C-2012-2333019 be marked closed.

Date: May 1, 2013

/s/
Darlene D. Heep
Administrative Law Judge