

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Diane Marie Seese	:	
	:	
v.	:	C-2015-2500818
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Elizabeth Barnes
Administrative Law Judge

INTRODUCTION

A customer filed a formal complaint against her electric distribution company (EDC) alleging inadequate and unsafe service. The customer requested an underground service line and electric box replacement. For failure to meet her burden of proving inadequate service, the complaint will be denied and dismissed.

HISTORY OF THE PROCEEDING

On August 27, 2015, Diane Marie Seese (Complainant), *pro se* filed a formal Complaint (Complaint) against PPL Electric Utilities Corporation (PPL), (Respondent), with the Pennsylvania Public Utility Commission (Commission) at Docket No. C-2015-2500818.¹

Complainant requests the Commission direct PPL to replace her underground electric service line with a new insulated line and her old electric box with a new one. She avers that her neighbors' underground line (which also run through her property) were replaced

¹ This is an untimely appeal of a BCS decision dated May 21, 2015 at Case No. 3316319.

in 2014 and because the old ones were the same age (30 years old) as her line, PPL has created an unsafe condition on her property. She avers there is an unsafe condition from the point of a utility pole located at the corner of Allen Drive and Young's Church Road, Perry County through and onto her service property located at 5 Allen Drive. Additionally, Complainant avers an unsafe condition was left behind when her neighbors' underground line was replaced for the following additional reasons: 1) because the contractor left a 2-3 foot hole; 2) Complainant has seen sparks in her kitchen and near her Comcast box; 3) Complainant has seen light bulbs flicker; 4) Complainant has witnessed her electric box expand from heat on May 29, 2015; and 5) Complainant noticed exposed underground wires. Complainant avers that all of these conditions are unsafe.

On September 22, 2015, Respondent filed and served its Answer. The Answer admitted and denied various material facts in the Complaint. PPL denied any reliability, safety, or quality problem. PPL claims it filled the 2-3 foot hole its contractor left behind after line replacement work and that PPL performed sufficient landscaping work on the property.

On October 19, 2015, a Notice of Telephonic Hearing was issued scheduling a Telephonic Hearing for November 9, 2015. On October 22, 2015, a Prehearing Order was issued notifying the parties that if they wished to subpoena a witness, they should follow the procedures in 52 Pa. Code § 5.421, and submit a written application to me sufficiently in advance of the hearing date so that the other parties would have 10 days to answer or object, and so the party requesting a subpoena would have enough time to receive it and serve it.

On October 28, 2015, Counsel for PPL requested a continuance until after November 18, 2015 due to scheduling conflicts. Said request was granted and on or about November 3, 2015, a second Notice of Telephonic Hearing was issued scheduling a telephonic hearing for Monday, December 21, 2015. By Corrected Hearing Notice dated November 4, 2015, the hearing was converted from a telephonic hearing to an in-person hearing per Complainant's verbal request for an in-person hearing on November 4, 2015. A Second Prehearing Order was issued on November 20, 2015, again notifying the parties of the procedures at 52 Pa. Code § 5.421 regarding subpoena requests.

On December 8, 2015, Complainant filed with the Commission a document entitled, "Subpoena & Discovery 5.321 Sec 333." There was neither a notice to plead nor certificate of service attached to show it had been served upon either counsel for PPL or any of the three Carroll Township Supervisors, whom Complainant sought to subpoena for the hearing. I treated the pleading as an Application for Subpoena under 52 Pa. Code § 5.421 and provided counsel for PPL with a copy of it through electronic mail on December 8, 2015. I did not serve a copy upon Carroll Township. PPL filed an Objection to the Application for Subpoenas on December 15, 2015.

On or about December 9, 2015, Complainant filed a document entitled, "Re: Service and Reliability Rules of Discovery." PPL filed an Objection to Complainant's Discovery Requests on December 17, 2015. PPL argued the request was untimely and did not afford PPL with the requisite 20 days to respond in accordance with 52 Pa. Code § 5.341. Additionally, PPL objected on the grounds that the interrogatories were not limited to single questions or requests for information in a logical numbering system and that they did not relate to discoverable information.

On December 21, 2015, an in-person evidentiary hearing was held. Appearing for Respondent was Kimberly Krupka, Esquire and two PPL witnesses. Complainant appeared *pro se*. At the beginning of the hearing, Complainant admitted she had not served the Carroll Township Supervisors with a copy of her Application for Subpoena. Complainant agreed they did not have an opportunity to object to it prior to the hearing. For this reason, and because the Application did not specify the relevance or scope of testimony or documentary evidence sought from these proposed witnesses to the claims against PPL averred in the Complaint, the Application was orally denied from the bench at the start of the hearing. Further, the objections of PPL to Complainant's discovery requests were sustained for the following reasons: 1) the requests were untimely filed with no motion for a continuance of the hearing; 2) the requests were not in proper format; and 3) no formal motion to compel had been filed by Complainant. 52 Pa. Code §§ 5.341-5.342.

A transcript consisting of 93 pages was filed on January 5, 2016. The record closed on January 5, 2016. This case is ripe for a decision.

FINDINGS OF FACT

1. Complainant is Diane Marie Seese, an adult individual residing at the service property of 5 Allen Drive, Shermansdale, Perry County, Pennsylvania.
2. Respondent is PPL Electric Utilities Corporation, an electric distribution company.
3. On August 13, 2014, there was an outage at Complainant's service property due to rain, and PPL's crew responded and installed a bypass cable on that date. There was no danger of fire or explosions to the Complainant caused by the service line failure. N.T. 58. Exhibits PPL-3 and PPL-5.
4. On August 13, 2014, the outage to Complainant's service property as well as some of her neighbors was caused by a failed electric service line between a transformer located on Complainant's property and a transformer located at the intersection of Young's Church Road and Allen Drive, Shermansdale, PA. N.T. 38. Exhibits PPL-3 and PPL-5.
5. The cable that failed on August 13, 2014, was from transformer to transformer due to deterioration from being underground. N.T. 62-63.
6. The outage on August 13, 2014, was rectified by PPL's crew who put the temporary bypass out and then closed the fuse. N.T. 40. Exhibit PPL-5.
7. Eventually, the bypass was removed when a new cable replaced the failed cable between transformers. N.T. 40-41.

8. The line that extended from a transformer to Complainant's house was not replaced because there were no identified problems with it. N.T. 41.

9. There is a transformer on Complainant's property that serves Complainant's neighbors as well. N.T. 47.

10. PPL has a right-of-way which gives PPL the right to have a transformer on Complainant's property and the right to construct, reconstruct, operate and maintain underground lines as PPL deems necessary and proper for the operation of electric transmission and distribution systems. N.T. 47. Exhibit PPL-4.

11. Although Complainant initially lost power on August 13, 2014, because there was a break in a line further below her property line, towards Young's Church Road, between transformers (one of which was located on her property), Complainant did not get a new service line cable because the cable from her transformer to her house was not the cable that failed. N.T. 62, 73.

12. Complainant has not had a service outage due to equipment/facilities located on her property to date. N.T. 73.

13. PPL has no plans to replace the cable from the transformer to Complainant's house until it fails. N.T. 64.

14. If Complainant's service line were to fail, she would experience a short-duration outage until PPL could respond and the entire cable might be replaced at that time if the condition warranted it. N.T. 75.

15. There is no evidence to show Complainant has been experiencing the following: bright lights, dim lights, or appliances having difficulty in operating. N.T. 75-76.

16. On June 8, 2015 there was a 60 minute outage reported for the service property caused by wind and trees touching the wires. The wires were fixed by PPL. N.T. 51.

17. Outages on June 18, 2015 and September 11, 2015 were momentary interruptions for protection to operator and Complainant may have experienced a blink in her lights or up to a 5 minute outage. N.T. 52.

18. An outage on September 14, 2015 was caused by a vehicle accident causing low wires, an oil spill, and a utility pole replacement. N.T. 51-52.

19. There have been no transformer outages since 2007 regarding Complainant's property. N.T. 53. Exhibit PPL-5.

20. On February 2, 2015, Complainant called PPL to report sparks in her kitchen and near her Comcast box, and her concern for the age of the wire coming from the pole or transformer. N.T. 54-55.

21. PPL dispatched a service technician on February 2, 2015, who explained to Complainant the top of a transformer is intentionally built slightly bowed at the top so that it doesn't hold water and rust but that it had nothing to do with a malfunction of a transformer. N.T. 54-55.

22. PPL's maintenance technician found no problem on February 2, 2015, and there was no follow-up call. N.T. 67.

23. In August, 2015, Ms. Killeffer visited the property to investigate Complainant's claim of exposed wire from the pad transformer to the home, and found only communications pedestals or property markers, which posed no threat to safety. N.T. 55. Exhibits C-1 and PPL-5.

24. The communication wires depicted in Exhibit C-1 are not dangerous wires. N.T. 55.

25. On October 6, 2015, Complainant called regarding the transformer pad being off its foundation. N.T. 55-56. Exhibit PPL-5.

26. After their investigation, PPL workers reported no issues with the pad or transformer. It had only moved slightly and no harm was done. N.T. 56. Exhibit PPL-5.

27. Complainant has experienced numerous customer blinks or momentary interruptions lasting less than 5 minutes, which could have been caused by trees touching wires, or during protection operations. N.T. 56-57. Exhibit PPL- 6.

28. Ryan Jones, Design Supervisor, is an electrical engineer responsible for design of replacement and upgrade of equipment for PPL. N.T. 70.

29. The gravel ditches depicted on the side of a road in Exhibit C-1 were not created by PPL, but rather appear to be produced by water runoff and erosion control efforts along Complainant's property line and a township road. N.T. 71. Exhibit C-1.

30. The transformer on Complainant's property is a single phase transformer, 7.2 kV outside, and it steps down from 120 volts to 40 volts, eventually, to make its way into Ms. Seese's home. N.T. 73.

DISCUSSION

As the proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

To establish a sufficient case and satisfy the burden of proof, Complainant must show that the respondent public utility is responsible or accountable for the problem described in the

Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 134 Pa.Cmwlth. 218; 221-222, 578 A.2d 600; 602 (1990), app. denied, 602 A.2d 863 (1992). A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 67 Pa.Cmwlth. 597, 447 A.2d 1100 (1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 154 Pa.Cmwlth. 21, 623 A.2d 6 (1993); 2 Pa.C.S. § 704. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Bd. (Skirpan)*, 531 Pa. 287, 612 A.2d 434 (1992). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

The offense 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.

Inadequate Service

PPL is under statutory and regulatory obligations to perform the necessary maintenance, repair and replacements of its facilities to provide service of reasonable reliability and safety to all of its customers pursuant to 66 Pa. C.S. § 1501 and 52 Pa. Code § 57.195.

§ 1501. Character of service and facilities

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. § 1501.

In order for the Commission to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the Commission does not have the authority, when acting on a customer's complaint, to require any action by the utility. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 at 949 (Pa. Cmwlth. 1984). 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" can include many factors.

"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.

Inadequate service may be found where the Commission's regulations have been violated. *Rohrbaugh v. Pa. Pub. Util. Comm'n*, 727 A.2d 1080 (Pa. 1999). In the instant case, Complainant has proven a *prima facie* case that Respondent violated the Public Utility Code, Section 1501 specifically, there is *prima facie* evidence that the service was not safe because I find her testimony credible that PPL employees came to her property and replaced an underground electric service line, leaving a 2-3 foot hole on her property. Further, there is *prima*

facie evidence the service property experienced “sparks in the kitchen and light bulbs blowing out.” N.T. 15, 26-28. I find her testimony credible that she spoke to PPL employee Mr. Douglas Stewart, who appeared at the service property, and he told her that her neighbors did not have power. Mr. Stewart opened Ms. Seese’s terminal box but did not explain to her what they would do and neither gave her an opportunity to be heard nor obtained Commission approval prior to excavating her property and replacing a service line. N.T. 12. Ms. Seese feels overlooked because although her line is also 30-years old, it was not replaced, and she does not appreciate looking at a rusted pole, or a transformer post. N.T. 13, Exhibit C-1. Ms. Seese testified neither Mr. Stewart nor Tom Infante, whom she believed worked for the cable company contractor, returned to her property to inspect her electrical box to make sure she was “getting the proper power” into her home. N.T. 14.

On or about Friday, May 29, 2015, PPL inspected her electric box, transformer because the top of it was heating up and Complainant was “afraid of the pressure building up.” N.T. 16. Complainant testified the PPL employee who inspected the box stated it was okay, and said, “pressure can build up on hot days, especially when you have all new wiring in an old box.” N.T. 16. Complainant claims she asked PPL how much voltage is going through her box because she has her neighbors connected to her box. She claims PPL will not answer her question. N.T. 20. This testimony taken with Complainant’s Exhibits C-1 through C-3 as well as the factual stipulation between the parties regarding a deed, show Complainant is a property owner of 5 Allen Drive and there is enough evidence on the surface that PPL is providing her with unreasonable and unsafe service. Exhibit C-1 shows pictures of her property and her neighbor’s adjacent property, with wires, ditches, a transformer, and a utility pole. C-2 is a door hanger which PPL employees or independent contractors handed to her on or about August 3, 2014, informing her of pending construction work. This evidence shows *prima facie* evidence of unsafe service. 66 Pa.C.S. § 1501.

Once it is determined that the complainant has made out his *prima facie* case, the burden of going forward shifts to the utility, but the ultimate burden of persuasion remains with the complainant. The Commission must measure the weight and credibility of all the evidence, and simply because the ratepayer has presented a *prima facie* case does not obligate the Commission to credit this evidence

or to give it any special weight. If the utility presents evidence found to be of co-equal (or greater) weight with that of the complainant, the complainant will not have met his burden of proof. Finally, where the Commission has dismissed the complaint because the customer has failed to sustain his burden of persuasion (generally a fact question), rather than because the customer failed to present a prima facie case as a matter of law, the Waldron rule is irrelevant on appeal. *Burleson v. Pennsylvania Pub. Util. Comm'n*, 501 Pa. 433,435-36, 461 A.2d 1234, 1235 (1983) at 436, 461 A.2d at 1236; *Milkie v. Pa. Publ. Util. Comm'n*, 768 A.2d 1217; 2001 Pa. Commw. LEXIS 112.

Since the Complainant established her *prima facie* case, the burden of going forward shifts to the Respondent, and if the Respondent offers equal evidence, the burden of going forward will shift once more. *Replogle v. Pennsylvania Electric Company*, 180 Pa. PUC LEXIS 20; 54 Pa. PUC 528 (October 9, 1980). Therefore, the Respondent must provide evidence that is equal to or greater than the evidence of the Complainant in order to prevail.

Service outages

First, I find the actual date the electric line failed on Complainant's property was not in 2013 as Complainant testified, but rather on August 13, 2014. N.T. 38. Exhibits PPL-3 and PPL-5. Although Ms. Kilheffer testified the date was August 15, 2014, further examination of Exhibits PPL-3 and PPL-5 leads me to conclude the actual date was August 13, 2014.

PPL admits a cable failed between the transformer located on Complainant's property and the next one, between 16199 over South 35602 and 16205 over South 355733. N.T. 39. Although Ms. Seese testified she did not have an outage, I find the testimony of PPL's witness Ms. Kilheffer credible that the customer did in fact have an outage on or about August 13, 2015 even though Ms. Seese might not be aware that she did. N.T. 39-40. The outage was rectified by PPL's crew who "put the temporary bypass out and then closed the fuse." N.T. 40. Eventually, the bypass was removed when a new cable replaced the failed cable between transformers. N.T. 40-41. The line that extended from a transformer to Complainant's service property was not replaced because there were no identified problems with it. N.T. 41.

There is a transformer on Complainant's property that serves Complainant's neighbors as well. N.T. 47. PPL has a right-of-way, which gives PPL the right to have a transformer on Complainant's property and the right "to construct, reconstruct, operate and maintain underground lines as [PPL] deems necessary and proper for the operation of electric transmission and distribution systems." N.T. 47. Exhibit PPL-4.

Exhibit PPL-5 shows Complainant's outage history since 2007. N.T. 50. On August 13, 2014, there was an outage due to rain, and PPL's crew responded and installed a bypass cable on that date. There was no danger of fire or explosions to the Complainant caused by the service line failure. She simply lost power. N.T. 58. Complainant lost power on August 13, 2014, because there was a break in a line further below her property line, towards Young's Church Road, between transformers (one of which was located on her property). N.T. 73. Complainant did not get a new service line cable because the cable from her transformer to her house was not the cable that failed. N.T. 62. The cable that failed was between two transformers, not between Complainant's house and a transformer. The cable broke due to deterioration from being underground. N.T. 62-63. Complainant has not had a service outage due to equipment/facilities located on her property to date. N.T. 73. PPL has no plans to replace the cable from the transformer to her house until it fails. N.T. 64. PPL Witness Ryan Jones, Design Supervisor, is an electrical engineer who believes the worst thing that could happen if Mrs. Seese's service line fails would be that Complainant would experience a "short-duration outage until we'd be able to respond." N.T. 75. The entire cable might be replaced at that time if the condition of the cable warrants it. Mr. Jones testified there is no way to anticipate when a service line will fail although sometimes there are indicators including bright lights, dim lights, appliances having difficulty in operating; however, there was no complaint from Complainant regarding any of these indicators occurring. N.T. 75-76. I find Mr. Jones' testimony to be credible and persuasive in refuting Complainant's claims that her 30-year old cable is unsafe. The failure of the underground line would not cause an explosion or fire.

On June 8, 2015 there was a 60 minute outage reported for the service property caused by wind and trees touching the wires. The wires were fixed by PPL. N.T. 51.

Outages on June 18, 2015 and September 11, 2015 were momentary interruptions for protection to operator. N.T. 52. Complainant may have experienced a blink in her lights or up to a 5 minute outage. N.T. 52. An outage on September 14, 2015 was caused by a vehicle accident resulting in low wires and a utility pole replacement. N.T. 51-52. There have been no transformer outages since 2007 regarding Complainant's property. N.T. 53. Exhibit PPL-5.

In February 2, 2015, Complainant called PPL to report sparks in her kitchen and near her Comcast box, and her concern for the age of the wire coming from the pole or transformer. PPL dispatched a service technician who explained to Complainant the top of a transformer is intentionally built slightly bowed at the top so that it doesn't hold water and rust. It has nothing to do with a malfunction of a transformer. N.T. 54-55. PPL's maintenance technician found no problem and there was no follow-up call. N.T. 67.

Complainant has experienced numerous customer blinks or momentary interruptions lasting less than 5 minutes. These interruptions could have been caused by trees touching wires, or during protection operations. N.T. 56-57. Exhibit PPL-6 shows the number of customer contacts with PPL.

Other than a vague reference to one incident involving "sparks" and "lights blowing out" there is no allegation that any electrical appliances were damaged due to power surges. There is no testimony from Complainant that her lights were getting brighter or dimmer, which might indicate fluctuations in voltage, failing neutrals or a failing service line. If the evidence showed such problems, the Commission could reasonably direct the company to inspect and possibly replace failing lines or connections. *Strickhouser v. Metropolitan Edison Company*, C-20077273, (Opinion and Order entered December 20, 2007). Accordingly, I find in favor of Respondent on this issue.

Exposed wires and transformer pad

In August, 2015, Ms. Killeffer visited the property to investigate Complainant's claim of exposed wire from the pad transformer to the home. N.T. 55. The only wires she

ever saw were communications pedestals or the property markers. N.T. 55. One of the photos in Exhibit C-1 shows a couple of wires above ground. Ms. Kilheffer had no concern for safety regarding these wires. N.T. 55. On October 6, 2015, Complainant called regarding the transformer pad being off its foundation. N.T. 55-56. Exhibit PPL-5. After their investigation, PPL workers reported no issues with the pad or transformer. It had moved slightly but “no harm done.” N.T. 56. Exhibit PPL-5.

The fact that Ms. Kilheffer investigated reports of exposed wires and found them to be not the property of PPL, but rather communications wires leads me to find this is not an unsafe condition caused by PPL. The slight movement of the transformer pad is not an unsafe condition rising to a violation of 66 Pa. C.S. §1501.

Gravel ditches/ holes left behind

PPL Witness Ryan Jones, a Design Supervisor and electrical engineer, testified he is responsible for design of replacement and upgrade of equipment and he responds to emergencies. N.T. 70. I find Mr. Jones’ testimony credible that the gravel ditches depicted on the side of a road in Exhibit C-1 were not created by PPL, but rather appear to be produced by water runoff and erosion control efforts, perhaps created by the local municipality as the road is a township road. N.T. 71. Complainant also stated, “That is true, and that’s why I wanted them there.” N.T. 71.

I accept Complainant’s testimony as credible that there was initially a 2-3 foot hole left by PPL’s contractor. However, there is insufficient evidence to show PPL left the hole in this condition without filling it later, prior to its Answer being filed. There was no testimony anyone was injured by falling into the hole. Further, Complainant asserted that the township dug the hole up again after PPL filled the hole and that was why she wanted township supervisors subpoenaed and present at her hearing. The Commission has no authority to direct a township supervisor to re-fill a hole on a Complainant’s property. Such a directive is beyond the scope of jurisdictional authority of this Commission. It appears Complainant admits PPL filled the hole, but then later township personnel dug it out again. The evidence on this subject

is confusing and not convincing that there is potential harm or a safety issue caused by PPL regarding a hole. There were no pictures of an unsafe hole on Complainant's property in Exhibit C-1, only pictures of what appears to be a gravel covered slight ditch between the township road and Complainant's property designed to either prevent road/soil erosion and/or to carry water run off from rain off of the road. I fail to see how this is a hazardous condition.

Miscellaneous safety complaints (rusted pole, wires exposed, paint markings)

While I agree there appears to be a little rust on a pole in one of the pictures depicted in Exhibit C-1, this is not an unsafe condition within the meaning of Section 1501. The painted markings on the roadway of "PA-1" in white spray paint as well as some line markings in red and orange on the grass next to what appears to be a slight ditch filled with large gravel along a roadway leading to an underground drainage pipe under the driveway at 5 Allen Drive does not appear to be unsafe. It appears PA- One Call (PA-1) was called, and utility lines were marked next to the road where excavation was about to take place. The markings were probably there so whoever excavated the ditch would not hit a utility line. Exhibit C-1. I do see a couple of wires above ground depicted in one of the photos, but I am convinced by PPL Witness Kilheffer that these were communications wires, which posed no risk of electrocution to Complainant or the public. The one photo showing the condition of a transformer "electric box" does not depict a box in an unsafe condition. Exhibit C-1.

Complainant's claim she should have had an opportunity to be heard and PPL needed Commission approval prior to the cable replacement in August, 2014.

Mr. Jones testified the transformer on Complainant's property is a single phase transformer, 7.2 kV outside, and it steps down from 120 volts through 40 volts, eventually, to make its way into Ms. Seese's home. N.T. 73.

Complainant argues that she has the right to be informed about a transmission siting process, receive an explanation about the company's plan and have an opportunity to share her view on the proposal. Exhibit C-3. Complainant appears to believe this provision in the law gives her the right to have input before the Commission prior to PPL replacing or repairing a

“transmission” line on her property. She frequently referred to the equipment on her property as being a “transmission” line. Complainant argues PPL did not seek Commission approval prior to making the replacement/repairs to the line in violation of the law. PPL Witness Ryan Jones admitted PPL did not get PUC approval prior to making the repair of the underground cable that “went out” in 2014. N.T. 74. Mr. Jones testified PPL did not need such prior approval. N.T. 75.

While it is true the law provides for public input prior to Commission determinations regarding applications of electric distribution companies for the siting of high voltage electrical utility transmission facilities (66 Pa. C.S. §§ 1501; 2805 and 52 Pa. Code §§ 57.71-57.76), this case does not involve the siting of a high voltage transmission line. The instant case does not involve an eminent domain action to acquire rights-of-way or easements over Complainant’s property. PPL already has a right-of-way pertaining to Complainant’s property. Exhibit PPL-4. Additionally, a single phase 7.2 kV

The testimony of Mr. Jones is persuasive that “she has essentially three types of facilities on her property: 1) a single phase 7.2 kV underground primary cable; 2) transformer; 3) service conductor which goes from the transformer to the interface.” N.T. 74. Mr. Jones’ testimony that Complainant has a 7.2 kV primary transformer, voltage 120, 240 volts entering her house is credible. N.T. 81. I am not convinced by Ms. Seese’s argument that she has a phase three service to her residence as the supporting document for this position is a generic customer specification available online to all customers who would be installing that service. Exhibit C-4, N.T. 80. Exhibit C-4 is not specific to Complainant’s property. Section 57.1 defines as service line as the wires or cables and appurtenances which connect the electric supply line of the utility with the customer’s installation. I find the service line in question to be a distribution line, which carries a much lower voltage than a “transmission line.” Mr. Jones testified, “A transmission is considered anything 69,000 volts or above. The highest on Mrs. Seese’s property is a distribution level facility, 7.2 kV.” N.T. 74. Section 57.1 defines a transmission line as follows: “*Transmission line*—An overhead electric supply line with a design voltage greater than 35,000 volts. *HV transmission line* or *HV line*—An overhead electric supply line with a design voltage greater than 100,000 volts.” 52 Pa. Code § 57.1. A 7.2 kV

service line does not qualify as a transmission line much less a high voltage transmission line; thus, PPL is under no regulatory duty to notify her of a “transmission siting” prior to making repairs to a pre-existing service line within a right of way on her property. 52 Pa. Code §§ 69.3101 *et seq.*

The company need not consult nor obtain approval of the Commission prior to making inspections/repairs or replacements of existing distribution lines. The Commission’s regulations at 52 Pa. Code §§ 57.191-57.198 require EDCs to routinely inspect and maintain such lines, transformers, and other facilities under minimum intervals in order to assure electric reliability and safety. Reports of outages and plans for inspection and maintenance are filed at the Commission on a quarterly and annual basis and are subject to Commission approval. 52 Pa. Code § 57.198.

CONCLUSION

PPL has successfully refuted Complainant’s claims of unsafe and unreliable service by showing its has consistently inspected its equipment and have found no safety issues when contacted by Complainant regarding miscellaneous concerns regarding her transformer pad, electric box, exposed wires, paint markings, holes and ditches on her property, and her service line. The company witnesses’ testimonies were credible that inspections were made by PPL personnel at the service property several times, and as there appears to be no unreasonably unreliable or unsafe condition at the service property. The Company has successfully refuted Complainant’s *prima facie* case that the service is unreliable or unsafe. Also given the fact that Complainant has not complained of appliances not working properly, or lights getting brighter than dimmer, which might indicate a voltage fluctuation problem, I find insufficient evidence to direct further inspection or a total replacement of her service line extending from her house to her transformer and a new electric box. The Company is however, reminded of its duty to inspect and maintain its system, including Complainant’s service line at regular intervals in accordance with 52 Pa. Code § 57.198.

Further, I find PPL has not violated any law requiring it to seek input from Complainant or approval from the Commission prior to repairing/replacing a cable between the two transformers in question. Accordingly, for the aforementioned reasons, I find Complainant has failed to prove by a preponderance of the evidence that Respondent violated a Commission Order, regulation or statute of the Public Utility Code in providing service in an unsafe manner. As I find no violation of 66 Pa. C.S. § 1501, the Complaint will be denied and dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over electric distribution companies and this matter. 66 PA. C.S. §§331 and 501.

2. 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. Complainant seeks relief from the Commission, and, therefore, has the burden of proof in this proceeding.

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

4. The decision of the Commission must be supported by substantial evidence. See, e.g., Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. 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. Pub. Util. Comm'n.*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 85 Pa. Commonwealth Ct. 23, 480 A.2d 382 (1984).

5. The offense 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.

6. 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.

7. In order for the PUC to sustain a complaint brought under Section 1501, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 at 949 (Pa. Cmwlth. 1984).

8. 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).

9. 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.

10. A 7.2 kV service line which puts 40 volts into Complainant's house does not qualify as a transmission line; thus, PPL is under no regulatory duty to notify Complainant of a "transmission siting" prior to making repairs to a service line, part of which may have been located underground on her property in PPL's right of way. 52 Pa. Code § 57.1; *Interim Guidelines for the Filing of Electric Transmission line Siting Applications*; M-2009-2141293, December 11, 2010; 52 Pa. Code §§ 69.3101 *et seq.*

