

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bruce and Denise Sensenig	:	
	:	
v.	:	C-2016-2569427
	:	
PPL Electric Utilities Corp.	:	

**INITIAL DECISION**

Before  
Andrew M. Calvelli  
Administrative Law Judge

**INTRODUCTION**

This Decision denies a Complaint filed by customers of an electric distribution company who averred that the company was responsible for damaging their air conditioning unit. The customers stated that the company caused a power surge that damaged the air conditioning unit. The complaint is dismissed because the customers failed to demonstrate that the company violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff with regard to the service provided.

**HISTORY OF THE PROCEEDING**

On September 29, 2016, Bruce and Denise Sensenig (Complainants or the Sensenigs) filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against PPL Electric Utilities Corporation (PPL), at Docket Number C-2016-2569427. The Complaint is a timely appeal of a decision of the Commission's Bureau of Consumer Services, case number 3457980. In their Complaint, the Sensenigs asserted that PPL caused a power surge that damaged their air conditioner. The Sensenigs stated that PPL should

be held responsible for causing the power surge, and that PPL should be required to reimburse them the \$675 that they spent for repairs to the air conditioner. The Complaint was served on PPL electronically by the Commission's Secretary on October 3, 2016.

On October 24, 2016, PPL filed an answer to the Sensenigs' Complaint. In its Answer, PPL admitted or denied the various averments made by the Sensenigs. In particular, PPL denied that it was responsible for damage to the Sensenigs' air conditioner. PPL concluded its Answer by requesting that the Complaint be dismissed.

By Telephonic Hearing Notice dated November 7, 2016, an Initial Telephonic Hearing was scheduled for this matter on Monday, January 9, 2017 at 10:00 a.m. and I was assigned as the Presiding Officer. A Prehearing Order was issued on December 27, 2016 setting forth various rules governing the upcoming hearing.

The hearing convened on January 9, 2017 as scheduled. The Sensenigs appeared *pro se*. Kimberly Krupka, Esquire appeared on behalf of PPL. The Sensenigs provided testimony and sponsored five exhibits which were entered into the record. Ms. Krupka presented one witness. No exhibits were sponsored by PPL. A 45-page transcript of the hearing was made. The record in this proceeding closed on January 23, 2017 when the transcript was submitted to the Commission.

The Sensenigs' Complaint is ready for disposition. For the reasons discussed below, the complaint will be denied.

#### FINDINGS OF FACT

1. The Complainants in this case are Bruce and Denise Sensenig.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. The service address is 80 Kline Rd., Denver, PA 17517.

4. The Sensenigs have lived at the service address for 34 years. Tr. 9.
5. On June 17, 2016 at 3:30 AM, the Sensenigs experienced a power outage at the service address. Tr. 10.
6. Technicians from PPL came to the area near the service address to test the line to see why the power was out. Tr. 10.
7. The technicians were testing the line between 6:15 and 6:30 AM. Tr. 10.
8. During the testing, the Sensenigs experienced a very loud noise like a blast type of noise. Tr. 10.
9. The loud noise occurred because the technicians were testing the line to see why the power had gone out. Tr. 10.
10. On June 18, 2016 the Sensenigs realized that their air conditioner was not working because the power had been restored and there was no cooling in the house. Tr. 10, 11.
11. The air conditioner had been serviced on June 1, 2016 and was in working order on that date. Tr. 11.
12. PPL witness Steven Hughes is employed by PPL as the Reliability Engineer for the Lancaster Region. Tr. 24.
13. Mr. Hughes is certified by the State Board as an Electrical Engineer. Tr. 24.
14. Mr. Hughes' job duties include investigating power outages that occur on PPL's system. Tr. 25.

15. Mr. Hughes investigated the power outage that occurred near the service address on June 17, 2106. Tr. 26.

16. The power outage occurred because there was a water tree inside the underground cable near the service address, between grid numbers 4473 South 33599 and 44719 South 33610, which resulted in the upstream fuse operating and blowing open. Tr. 26.

17. When the underground cable failed, it caused a complete loss of power to the service address. Tr. 26.

18. The power outage affected a total of five residences including the service address. Tr. 26.

19. When an underground cable fails, it does not cause any additional electricity to flow to a home. Tr. 27.

20. The technicians followed PPL's procedures when they tested the fuses at the site of the power outage near the service address, by opening the transformer box and throwing new fuses back into each fuse location until one of the fuses blew out which indicated that the underground cable fault was in the specific line sections connected to the fuse that just blew out. Tr. 28, 29.

21. Testing for the underground fault by throwing new fuses back into each fuse location until there is a fuse blow out causes a loud sound once the fuse blow out occurs; the sound is almost identical to a shotgun blast. Tr. 29.

22. Testing for the underground fault by throwing new fuses back into each fuse location until there is a fuse blow out does not cause any additional electricity to come into a home. Tr. 30.

23. The testing conducted at the service address location did not cause any additional electricity to flow into the service address. Tr. 29.

24. The only way that the electricity would have increased to the service address would have been a transformer failure or a transmission failure on the system, neither of which occurred at the service address. Tr. 30, 33.

25. PPL installed a bypass to get service back to the service address and the other affected customers. Tr. 31.

26. Installing the bypass did not cause additional electricity to enter the service address. Tr. 31.

### DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “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, 70 A.2d 854 (Pa. 1950). 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.

Decisions of the Commission must be supported by substantial evidence. 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, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Comp. Bd.

of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth.1984).

Public utilities are required to provide reasonable service to their customers. In that regard, Section 1501 of the Public Utility Code provides, in pertinent part 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 interruption or delay.

66 Pa.C.S. § 1501. Of note, Section 1501 does not require utilities to provide constant service - only reasonably continuous service without unreasonable interruption or delay.

In the case of In Re Metropolitan Edison Company, 80 Pa. PUC 662 (1993), the Commission adopted the Recommended Decision of Administrative Law Judge John H. Corbert, Jr., as its action in a similar case. In his Decision, ALJ Corbett stated: "The Code only requires a public utility to furnish reasonable service. It does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service." Id. at 672 (emphasis in original; citation omitted); *see also*, Thomas Niksa v. West Penn Power Co., Docket Number C-00992819, Initial Decision (dated Feb. 11, 2000) (Niksa) ("If this were a perfect world equipment would never fail and electric service would never be interrupted."); Sophie Richmond Curley v. Pennsylvania Electric Company, Docket Number C-2013-2351468, Initial Decision (dated July 18, 2014).

Turning to the allegations in the Complaint, it is not clear that the power outage caused the Complainants' air conditioning unit to stop operating. The Complainants indicated they only became aware that the air conditioner was not working after the Respondent restored power to the service address. It is therefore not clear whether the air conditioner stopped functioning

because of the power outage or due to some other cause. Moreover, it is not clear that the power surge alleged by the Complainants actually occurred. The Respondent indicated that its actions would not have caused a power surge to the service address. Specifically, the Respondent testified that:

Testing for the underground fault by throwing new fuses back into each fuse location until there is a fuse blow out does not cause any additional electricity to come into a home. Tr. 30.

The testing conducted at the service address location did not cause any additional electricity to flow into the service address. Tr. 29.

The only way that the electricity would have increased to the service address would have been a transformer failure or a transmission failure on the system, neither of which occurred at the service address. Tr. 30, 33.

PPL installed a bypass to get service back to the service address and the other affected customers. Tr. 31.

Installing the bypass did not cause additional electricity to enter the service address. Tr. 31.

In response, the Complainants did not present any first hand testimony to rebut the testimony offered by the Respondent. While the Complainants did introduce various exhibits into the record to support their case, the Respondent's counsel objected to the hearsay statements contained in those exhibits which purported to tie the actions of the Respondent to the failed air conditioning unit. The objections were determined to be properly raised and were upheld; as a result, the hearsay statements in the Complainants' exhibits were excluded from consideration in rendering this decision.

The substance of the Complainants' testimony was that there was a correlation between the testing being performed by the Respondent and the failure of the air conditioner. In that regard, the Complainants stated

There was a definite correlation between them working on the line and doing the test and then it was broken. And it just seems very

simple to me, my equipment is fairly new, we only use it in the summer. We do not use it for heating so it's only for several months a year. It's only three years old. It was just serviced (Tr. 17) . . . It just seems to be a direct correlation whether it's technically not possible or electrically not possible, that I can't answer. But it seems like there's some type of spike and the next day it wasn't working. So this has to be a direct correlation. My equipment was working well and functioning well and it was serviced. So that's basically all that you can say about it. Tr. 18.

Although the Complainants seemed firmly convinced that the actions of the Respondent caused the failure of the air conditioner, those beliefs do not constitute competent evidence to substantiate their claims in that regard. In Richard Kirby v. PPL Electric Utilities Corporation, the Commission ruled that the

Complainant's testimony consisted solely of his opinion that these charges are too high. Regardless of how earnestly Complainant believes the Complaint allegations to be true, personal opinions or perceptions do not constitute substantial evidence sufficient to permit him to sustain his burden of proof.

Richard Kirby v. PPL Electric Utilities Corporation, Docket No. C-20066297 (Final Order entered November 16, 2006) (citing PA Bureau of Corrections v. City of Pittsburgh, 532 A. 2d 12 (1987)). Given these legal parameters, and the lack of competent evidence produced by the Complainants to show that the actions of the Respondent caused the failure of the air conditioner, the portions of the Complaint regarding the failure of the air conditioner must be denied, as the Complainants have failed to carry their burden of proof regarding the damage to the air conditioner.

In addition to the above, I conclude that the Complainants have failed to establish by a preponderance of the evidence that the Respondent provided unreasonable service by failing to reimburse them for the damage to the air conditioner. As previously stated, the Complainants have failed to establish through competent evidence that the Respondent's actions actually caused the failure of the air conditioner. Moreover, even assuming that the actions of the Respondent did cause the failure of the air conditioner, the Complainants would not be entitled to

reimbursement from the Respondent. In that regard, as noted by the Pennsylvania Supreme Court in the case of Elkin v. Bell Telephone:

[S]ince the legislature had withheld from the PUC the power to award damages, this Court concluded that the courts must have jurisdiction over all damage actions.

Elkin v. Bell Telephone Co. of Pa., 420 A.2d 371, 375 (Pa. 1980) (citing Feingold v. Bell of Pennsylvania, 383 A.2d 791 (Pa. 1977)); *see also*, Poorbaugh v. Pa. P.U.C., 666 A.2d 744 (Pa.Cmwlth. 1995).

Since the statutory array of Commission remedial and enforcement powers does not include the power to award money damages, the failure of the Respondent to reimburse the Complainants for damage to the air conditioner would not constitute unreasonable service on the part of the Respondent, even if the Complainants could prove that the actions of the Respondent caused the damage to the air conditioner. Therefore, the portions of the Complaint seeking reimbursement for repairs to the air conditioner are also denied.

As the Complainants have failed to demonstrate, through competent record evidence, that the actions of the Respondent caused damage to their air conditioner, or that the actions of the Respondent otherwise violated the Public Utility Code, a Commission Order or regulation or a Commission-approved company tariff with regard to the provision of service to them, the Complaint in this matter is hereby denied.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). "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).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

4. 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.

5. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

6. Any decision of the Commission must be supported by substantial evidence. 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 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwlth 23, 480 A.2d 382 (1984).

7. The Public Utility Commission does not have the legal authority to award money damages to a complainant, and does not have the legal authority to consider such claims. Elkin v. Bell Telephone Co. of Pa., 420 A.2d 371, 375 (Pa. 1980).

8. The Complainants have failed to satisfy their burden of proof in this proceeding to demonstrate that PPL violated the Public Utility Code, a Commission Order or regulation or a Commission-approved tariff. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Bruce and Denise Sensenig against PPL Electric Utilities Corporation at Docket Number C-2016-2569427 is hereby denied.
2. That the Secretary's Bureau mark Docket Number C-2016-2569427 closed.

Date: March 21, 2017

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/s/  
Andrew M. Calvelli  
Administrative Law Judge