

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gary Peterson	:	
	:	
v.	:	C-2016-2572890
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

The customer filed this complaint against his electric utility alleging that the utility failed to prevent a power outage that damaged various electronic items in his home and failed to reimburse him for the damage. This decision denies the complaint as the Commission has no authority to award damages and the utility's tariff provisions provide for limitations of liability.

HISTORY OF THE PROCEEDING

On October 21, 2016, Gary Peterson (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). This complaint requested that the Commission direct Respondent to reimburse him for damages to personal property in the amount of \$24,579.72 which he sustained as a result of Respondent's transformer. Attached to the complaint was a letter from the Respondent's property insurance carrier denying his claim because his carrier had conclude that the damages he had suffered were the result of consequences or events not covered by his policy.

On November 15, 2016, the Respondent filed an answer to the complaint. Respondent admitted or denied the various averments of the complaint and provided a chronology of the Respondent's interactions with the Complainant as well as a brief history of the claim which had been filed by the Complainant for his damages. In particular, Respondent denied there were any unreasonable service reliability issues at the Complainant's address and cited tariff language relating to the limits of Respondent's liability as a result of service interruptions and variations. Respondent's answer argued that while an outage did occur which affected the Complainant on August 27, 2015, it was the result of factors beyond the Respondent's control and as such the Respondent's governing tariff language capped the Respondent's liability at \$500.¹

By hearing notice dated December 16, 2016, the Commission scheduled an initial in person hearing for this matter on February 3, 2017, at 10:00 a.m. and assigned the case to Administrative Law Judge Cynthia Fordham.² A prehearing order dated January 18, 2017, was issued addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

The hearing was conducted as scheduled on February 3, 2017. The Complainant appeared *pro se*, and presented testimony as well as the testimony of one witness. The Complainant and his witness sponsored a total of eight exhibits which were admitted into the record subject to certain objections lodged by the Respondent. Shawane Lee, Esquire represented the Respondent, which presented two witnesses who sponsored 11 exhibits that were admitted into the record. The initial hearing resulted in a transcript of 80 pages. The record closed on February 28, 2017, the date the transcript was filed with the Secretary's Bureau. For the reasons set forth below, the complaint will be denied.

¹ The specific language of Section 12.1 of Respondent's tariff, as cited by Respondent in its answer, however indicates that the limitation of liability is \$1000.

² ALJ Fordham retired from state service on February 17, 2017. This case was then assigned to the undersigned for disposition. This decision is based on the entire evidentiary record of the proceeding.

FINDINGS OF FACT

1. The Complainant is Gary Peterson. N.T. 6.
2. The Respondent is PECO Energy Company. N.T. 6.
3. The Complainant resides at 2457 North 27th Street, Philadelphia, Pennsylvania. N.T. 6.
4. The Complainant's residence is serviced by Respondent's Westmoreland 134 circuit. N.T. 53.
5. A transformer within this circuit is located just outside the Complainant's residence near the intersection of 27th and Cumberland streets. N.T. 54.
6. The Respondent's circuits, including Westmoreland 134, are inspected on a yearly basis. N.T. 51.
7. These inspections are conducted by a contractor and include visual and thermographic inspections of the various circuit components. N.T. 51.
8. Any circuit defects observed during these inspections are reported to the Respondent. N.T. 51.
9. Westmoreland 134 was inspected on May 28, 2015. N.T. 52.
10. The inspection of this circuit revealed several broken ground wires at certain poles within the circuit, however none of these poles were in proximity to the Complainant's residence. N.T. 55.

11. The lines, pole and transformer outside the Complainant's residence at 27th and Cumberland were also inspected at this time. N.T. 52.

12. The visual and thermographic inspections on May 28, 2015, did not reveal any defects or issues with this pole, the transformer or wires. N.T. 53.

13. On August 27, 2015, a primary wire outside the Complainant's residence came down. N.T. 33.

14. The primary wire came into contact with secondary wires below it and cause high voltage electricity to arc into the lower voltage secondary wires. N.T. 33.

15. This high voltage electricity then flowed into the adjoining transformer at 27th and Cumberland and caused it to explode. N.T. 33.

16. This high voltage then flowed into the Complainant's residence as an electrical surge. N.T. 33.

17. Because of the proximity of the Complainant's residence to this transformer and the amount of high voltage involved, this electrical surge was able to enter the Complainant's home before fuses were able to trip. N.T. 64.

18. This electrical surge either damaged or destroyed various electronic items in the Complainant's home. N.T. 10.

19. The estimated cost to repair or replace these items is approximately \$24,579.72. N.T. 10.

20. The Complainant filed a claim with his property insurance carrier for these damages but that claim was rejected because the August 27, 2015 incident was not one of the perils covered by his policy. N.T. 24.

21. On September 2, 2016 the Complainant filed a claim registration form with the Respondent for his damages. N.T. 30.

22. The Respondent investigated the incident and determined that a primary wire had come down causing arcing into the secondary voltage causing damages to the wire and the transformer and then sent voltage into the Complainant's home. N.T.33.

23. The Respondent's investigations could not determine why the primary wire had failed or fallen. N.T. 66.

24. When a primary wire comes down and causes voltage to go into a customer's home, the Respondent normally pays damage claims made by customers as a result of that event up to the Respondent's tariff limitations. N.T. 33.

25. The Respondent's tariff in effect at the time of this incident provided a limitation of liability of \$500. N.T. 36.

26. The Respondent accepted liability for the incident however that liability was capped at \$500. N.T. 9.

DISCUSSION

The Complainant in this proceeding has the burden of proof to show that the Respondent is responsible or accountable for the problem described in the complaint. Patterson v. Bell Telephone Co. of Pennsylvania, 72 Pa. PUC 196 (1990), Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). The Complainant must establish his case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). To meet his burden of proof, the Complainant must present evidence more convincing, by even the smallest amount, than that presented by the Respondent. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950). In this case, the sole averment found in the Complainant's complaint is that the

Respondent should be responsible for the entire \$24,579.72 in damages he sustained on August 27, 2015, as a result of the electrical surge caused by a falling primary wire near his residence. Implied in this position is the allegation that Respondent provided unreasonable service by failing to prevent the power outage and electrical surge that damaged the Complainant's various electronic items and that Respondent provided unreasonable service by failing to reimburse him for his damaged electronics.

Here, while the parties appear to disagree on certain points and specific characterizations of the events that transpired on August 27, 2015 that caused an electrical surge and damage within the Complainant's home, there are several undisputed facts to which it can be concluded both parties agree. Reciting a list of those undisputed facts will be helpful in narrowing the remaining issue between the parties as to the request for damages.

First, both parties agree that on August 27, 2015 a primary wire fell near the pole and transformer located just outside the Complainant's home. Both parties agree that despite an investigation the reason for this falling wire could not be established. However, the Respondent admits that it could find no evidence of a storm, structural failure, animal, balloon or vehicle accident which caused this incident to occur. The wire simply failed and fell.

It is also essentially undisputed that when this primary wire fell, it came into contact with the lower voltage secondary wires below it and as a result high voltage electricity arced from the primary into the secondary wires. It is also undisputed that this high voltage electricity then passed into the nearby transformer located on the pole adjoining the area of these wires and the Complainant's home. Both parties agree that these circumstances resulted in an electrical surge which then passed into the Complainant's home and damaged various electronic items.

In short, there is essentially no dispute between the parties as to the relevant events which transpired outside the Complainant's home on August 27, 2015 – high voltage electricity from a primary wire was able to make its way into secondary wires which it then

passed through and destroyed a transformer and then passed into the Complainant's home causing damage to electronics.

Only two additional questions remain to be answered: 1) Did the falling primary wire constitute unreasonable or inadequate service? 2) Can the Commission award the Complainant the monetary damages he seeks?

Unreasonable or Inadequate Service

The statute at 66 Pa. C.S. §1501 governs any allegations of unreasonable or inadequate service. Pursuant to 66 Pa. C.S. §1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. Elkin v. Bell Telephone Co., 372 A.2d 1203 (Pa. Super. 1977) aff'd 420 A.2d 371 (Pa. 1977); Behrend v. Bell Telephone Co., 243 A.2d 346 (Pa. 1968). As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa. C.S. §1501 does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. Analytical Laboratory Services, Inc. v. Metropolitan Edison Co., Docket No. C-2006608 (Order entered December 21, 2007); Emerald Art Glass v. Duquesne Light Co., Docket No. C-00015494 (Order entered June 14, 2002); Re: Metropolitan Edison Co., 80 Pa. PUC 662 (1993).

Based on the events of August 27, 2015 and the resulting power surge and damage to the Complainant's property, the allegation of unreasonable or inadequate service relates to the Respondent's care and maintenance of the Westmoreland 134 circuit generally, and the wires and transformer outside the Complainant's home specifically.

The Commission's regulations at 52 Pa. Code §§57.191-57.198 set forth reliability standards for electric utilities, like the Respondent, operating in the Commonwealth. These regulations set forth performance standards, reporting requirements and maintenance and inspection standards that electric utilities, like the Respondent, must meet in order to provide reasonable, reliable service.

The regulation at 52 Pa. Code §57.198 establishes inspection and maintenance standards for electric utilities operating in the Commonwealth in order to provide reasonably reliable electric service. The regulations at 52 Pa. Code §57.198(n)(2) and (3) require an electric utility to periodically inspect its distribution poles at least every twelve years and to replace any poles that show dangerous conditions within thirty days. The regulations at 52 Pa. Code §57.198(n)(4) and (5) require an electric utility to inspect its distribution lines at least every two years and to replace any lines that affect the integrity of the circuits within thirty days. The regulation at 52 Pa. Code §57.198(n)(6) requires an electric utility to inspect its transformers at least every two years. The regulation at 52 Pa. Code §57.198(n)(8) requires an electric utility to inspect its reclosers at least every eight years.

The purpose of these regulations is to require that electric utilities, like the Respondent, take proactive measures to minimize service interruptions such as the August 27, 2015 outage and resulting electrical surge. There is no evidence in the record that the Respondent has failed to undertake the proactive measures set forth in these regulations.

The Respondent's witness testified that the Westmoreland 134 circuit, and therefore the wires and transformer outside the Complainant's home, are inspected on a yearly basis. N.T. 62. Prior to the incident in question, the last inspection had occurred just three months earlier on May 28, 2015. N.T. 52. While this inspection found broken ground wires on several poles, none of these poles were in proximity to the Complainant's residence or would have played a role in the events of August 27, 2015. N.T. 60. In addition, this inspection included both a visual and thermographic inspection of the pole, transformer and wires that were involved in this incident at the Complainant's residence. N.T. 52. The Respondent's records indicate that no issues or defects were found in those components. N.T. 59. The Respondent's witness testified that because no issues or defects were found in the pole, wires or transformer outside the Complainant's home during this inspection, and because there was no evidence that an animal, balloon or weather event etc. had caused the primary line to fall, there was nothing the Respondent could have known or done to prevent the events of August 27, 2015 and the resulting electrical surge and damages the Complainant experienced. N.T. 63.

Based on a totality of the testimony and evidence presented, as well as Respondent's compliance with 52 Pa. Code §57.198 governing the inspection and maintenance standards placed on Respondent in its operation of the Westmoreland 134 circuit, the August 27, 2015 outage and resulting electrical surge was clearly the result of unforeseen circumstances – the sudden and unforeseeable falling of a high voltage primary wire into a lower voltage secondary. The Respondent cannot be held to have provided inadequate or unreasonable service because it failed to anticipate such unforeseen or unusual circumstances or occurrences. The Respondent did not violate 66 Pa. C.S. §1501 or 52 Pa. Code §57.198 by failing to anticipate or prevent the August 27, 2015 power outage.

Award of Monetary Damages

Although it has general jurisdiction over service and billing disputes between public utilities operating in Pennsylvania and their customers, the Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. The Public Utility Code simply does not grant the Commission the authority to award monetary damages in this case. There is no question that the Commission lacks authority to award monetary damages. Terminato v. Pa. National Insurance Co., 645 A.2d 1287 (Pa. 1994); Elkin v. Bell Tel. Co. of Pa., 420 A.2d 371 (Pa. 1980); Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977); Ostrov v. I.F.T., Inc., 586 A.2d 409 (Pa. Super. 1991); Poorbaugh v. Pa. Pub. Util. Comm'n., 666 A.2d 744 (Pa. Cmwlth. 1995).

The Commission has jurisdiction over service disputes between public utilities operating in Pennsylvania and their customers. Facts alleged in a complaint, if proven true, could constitute unreasonable service in violation of the Public Utility Code or Commission regulations. In that event, a civil penalty may be appropriate, pursuant to 66 Pa.C.S. § 3301 – but not an award of monetary damages to a complainant. The Complainant's request that the Commission order the Respondent to compensate him for the repair or replacement of the electronic items damaged or destroyed as a result of the electrical surge on August 27, 2015 is a request for monetary damages and is beyond the authority the General Assembly has granted to the Commission.

The Respondent's Tariff Rule 12.1 states that there are limitations of liability for service interruptions and variations. Specifically, the tariff language in effect at the time of the August 27, 2015 incident and damage to the Complainant's electronics provides for a limitation of \$500. N.T. 37. The Respondent has averred that it has complied with the Public Utility Code and Commission regulations in this case by accepting liability and offering to reimburse the Complainant up to the \$500 limit under the provisions of its tariff. It is agreed.

A tariff is a set of operating rules imposed by the Commission that each public utility must follow in order to provide service to its customers. PPL Electric Utilities Corp. v. Pa. Pub. Util. Comm'n, 912 A.2d 386 (Pa. Cmwlth. 2006). Each public utility must file a copy of its tariff with the Commission setting forth its rates, services, rules, regulations and practices so that the public may inspect its contents. 66 Pa. C.S. §1302; 52 Pa. Code §53.25; Philadelphia Suburban Water Co. v. Pa. Pub. Util. Comm'n, 808 A.2d 1044 (Pa. Cmwlth. 2002). Public utility tariffs must be applied consistent with their language. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. Pennsylvania Electric Co. v. Pa. Pub. Util. Comm'n, 663 A.2d 281 (Pa. Cmwlth. 1995). The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest. Philadelphia Suburban.

Because the Commission approved Tariff Rule 12.1, the tariff provision has the force and effect of law and is binding on the Respondent and the Complainant. Under Tariff Rule 12.1, the Respondent only has an obligation to reimburse the Complainant for the damages he suffered as a result of the electrical surge on August 27, 2015 up to the \$500 limit of liability. Based on the evidence of record, the Respondent has provided reasonable service to the Complainant by agreeing to comply with the applicable tariff provision to reimburse him up to the \$500 limit of the Respondent's liability.³

³ The Commission has issued a policy statement at 52 Pa. Code §69.87, finding that state law permits utilities to limit their liability for interruptions of service. The Commission's policy statement states that a utility should file a proposed tariff with the Commission, setting forth a specific dollar amount for the proposed limitation and documentation to substantiate the dollar amount. Since the Commission has approved the Respondent's Tariff Rule 12.1, one must presume that the Respondent provided sufficient information to support the limitation set forth in the tariff provision.

It is therefore concluded that the Complainant has failed to establish by a preponderance of the evidence that the Respondent violated the Public Utility Code or Commission regulations relative to the sudden and unforeseeable August 27, 2015 power outage and associated electrical surge. The Commission has no authority to award the Complainant the monetary damages he seeks and, to the extent that the Respondent is liable for said damages, the Respondent has complied with the provisions of Tariff Rule 12.1 by offering the Complainant \$500 which is the limit of the Respondent's liability for this incident. The complaint is therefore denied and the following order will be entered.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa. C.S. §701.
2. Pursuant to 66 Pa. C.S. §332(a), the burden of proof in this proceeding is on the Complainant.
3. The Complainant has not met his burden of proving that he is entitled to relief. 66 Pa. C.S. §332(a).
4. The Commission lacks authority to award damages. Terminato v. Pa. National Insurance Co., 645 A.2d 1287 (Pa. 1994).
5. Pursuant to 66 Pa. C.S. §1501, public utilities must provide reasonable and adequate service.
6. The Respondent has provided reasonable and adequate service. 66 Pa. C.S. §1501.
7. The regulations at 52 Pa. Code §§57.191-57.198 set forth reliability standards for electric utilities.

8. The Respondent has met the reliability standards placed upon it as an electric utility. 52 Pa. Code §§57.191-57.198.

9. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. Pennsylvania Electric Co. v. Pa. Pub. Util. Comm'n, 663 A.2d 281 (Pa. Cmwlth. 1995).

10. The Respondent's Tariff Rule 12.1 limits Respondent's liability for damages to \$500.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Gary Peterson against PECO Energy Company at Docket No. C-2016-2572890 is hereby denied.

2. That the docket at Docket No. C-2016-2572890 is marked closed.

Date: April 24, 2017

/s/
Benjamin J. Myers
Administrative Law Judge