

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Moyer's Grove Campground	:	
c/o Todd Edward Lightner	:	
	:	
v.	:	C-2017-2583962
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Andrew M. Calvelli
Administrative Law Judge

INTRODUCTION

This Decision dismisses a Complaint filed by a customer of an electric distribution company who averred that the company was responsible for damaging his electrical breakers. The customer stated that the company caused a power surge that damaged the breakers, causing the customer to spend his own money to repair the breakers. The complaint is dismissed because the customer 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 January 9, 2017, Todd Edward Lightner, owner (sole proprietor) of Moyer's Grove Campground (Mr. Lightner or Complainant) filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against PPL Electric Utilities Corporation (PPL), at Docket Number C-2017-2583962. In the Complaint, Mr. Lightner asserted that PPL caused a

power surge that damaged his campground's electric breakers. Mr. Lightner stated that PPL should be held responsible for causing the power surge, and that PPL should be required to reimburse him approximately \$900 that he spent for repairing and replacing the breakers. The Complaint was served on PPL electronically by the Commission's Secretary on January 12, 2017.¹

On February 1, 2017, PPL filed an Answer to the Complaint. In its Answer, PPL admitted or denied the various averments made by Mr. Lightner. In particular, PPL denied that it was responsible for damage to Mr. Lightner's breakers. PPL concluded its Answer by requesting that the Complaint be dismissed.

Also on February 1, 2107, PPL filed Preliminary Objections to the Complaint. In the Preliminary Objections, PPL contended that the Commission does not have the legal authority to award money damages, and requested that the Complaint be dismissed on that basis. Mr. Lightner did not respond to the Preliminary Objections.

By Telephonic Hearing Notice dated March 22, 2017, the parties were advised that an Initial Telephonic Hearing was scheduled for this matter on Monday, April 24, 2017 and that I was assigned as the Presiding Officer. A Prehearing Order was issued on March 28, 2017 setting forth various rules governing the upcoming hearing.

The Preliminary Objections were assigned to me as the Presiding Officer on March 22, 2017, the day that the Hearing Notice was issued. Given that the 30-day procedural timeframe for ruling on the Preliminary Objections was just a few days short of the scheduled hearing, in the interest of judicial economy I elected to postpone my ruling pending the hearing.

The hearing convened on April 24, 2017 as scheduled. Mr. Lightner appeared *pro se*. Graig Schultz, Esquire appeared on behalf of PPL. Mr. Lightner provided testimony but did

¹ PPL has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702, and has agreed to electronic service instead under the Commission's Waiver of 702 program.

not sponsor any exhibits for the record. Mr. Schultz presented one witness on behalf of PPL, and no exhibits were sponsored for the record by PPL. At the beginning of the hearing, I advised the parties that I had not yet ruled on PPL's Preliminary Objections since they were assigned to me close in time to the scheduled hearing. I further advised the parties that I would hear testimony and then serve my Initial Decision ruling on all the issues raised by the parties, including the Preliminary Objections. Neither party objected to proceeding in this manner.

A 34-page transcript of the hearing was made. The record in this proceeding closed on May 16, 2017 when the transcript was submitted to the Commission.

Mr. Lightner's Complaint is ready for disposition. For the reasons discussed below, the complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant in this case is Todd Edward Lightner, owner (sole proprietor) of Moyer's Grove Campground.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. The service address is 309 Moyer's Grove Road, Wapwallopen, PA 18660.
4. On May 28, 2016, Moyer's Grove Campground was experiencing a low voltage issue and contacted PPL to investigate the issue. Tr. 8.
5. PPL sent employees to Moyer's Grove on May 28, 2016 and the employees discovered a transformer on the property was leaking. Tr. 8.
6. The PPL employees told Mr. Lightner that the transformer would need to be replaced and Mr. Lightner agreed to have the PPL employees replace the transformer. Tr. 8.

7. When the PPL employees replaced the transformer, and turned the power back on, Moyer's Grove experienced a power outage on part of the premises. Tr. 8, 9.

8. Mr. Lightner investigated the power outage and found that some electrical breakers had burned out and needed to be replaced. Tr. 9, 10, 11.

9. Mr. Lightner advised PPL that its actions in replacing the transformer caused the breakers to burn out and he requested that PPL reimburse him for the cost of replacing the breakers. Tr. 8 - 16.

10. PPL advised Mr. Lightner that the breaker damage was not PPL's responsibility. Tr. 10, 11, 16, 17.

11. PPL witness Andrew Elliston has been employed by PPL for nine years as an engineer. Tr. 22.

12. Mr. Elliston's job duties include investigating power outages, handling customer issues with power quality, and engineering for failed equipment. Tr. 22.

13. On June 17, 2016, Mr. Elliston met with Mr. Lightner at Moyer's Grove Campground to discuss the electrical breaker issue. Tr. 26, 27.

14. Mr. Elliston determined that PPL was not responsible for any damage, because the electrical breakers are the customer's property and are not the property of PPL. Tr. 27.

15. Mr. Elliston also determined that PPL was not responsible for any damage, because the transformer feeding into the failed breakers was not the transformer that was replaced by PPL and therefore it was not possible for the replaced transformer to affect the failed breakers. Tr. 27, 28.

16. Mr. Elliston performed load checks on the replaced transformer and the transformer that fed into the failed breakers, and determined that both transformers were properly sized and were not overloaded at the time of the breaker failure. Tr. 28.

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, Mr. Lightner indicated that the breakers failed after PPL turned the power back on following the replacement of the leaking transformer. In response, PPL's witness testified that the replaced transformer did not feed into the failed breakers and that it was not possible for the replaced transformer to have caused the breaker failure. Mr. Lightner did not produce any evidence to rebut the testimony of PPL's witness.

The substance of Mr. Lightner's testimony was that there was a correlation between the power being turned back on for the replaced transformer and the failure of the electrical breakers. In that regard, Mr. Lightner stated

[PPL] replaced the transformer. And when they charged the power back up, that's what sent that back through and burned the breaker out. Tr. 11.

I don't think that it's fair that, you know, we didn't have a problem until they did that. Tr. 18.

Although the Complainant seemed firmly convinced that the actions of the Respondent caused the failure of the breakers, those beliefs do not constitute competent evidence to substantiate his 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 Complainant to show that the actions of the Respondent caused the failure of the breakers, the portion of the Complaint regarding the failure of the breakers must be dismissed, as the Complainant has failed to carry his burden of proof regarding the damage to the breakers.

In addition to the above, I conclude that the Complainant has failed to demonstrate that the Respondent provided unreasonable service by failing to reimburse him for the damage to the breakers. As previously stated, the Complainant has failed to establish through competent evidence that the Respondent's actions actually caused the failure of the breakers. Moreover, even assuming that the actions of the Respondent did cause the failure of the breakers, the Complainant 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. Cmwlt. 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 Complainant for damage to the breakers would not constitute unreasonable service on the part of the Respondent, even if the Complainant could prove that the actions of the Respondent caused the damage to the breakers. Therefore, the portion of the Complaint seeking reimbursement for repairs to the breakers is also dismissed.

As the Complainant has failed to demonstrate, through competent record evidence, that the actions of the Respondent caused damage to the breakers, 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 service provided, the Complaint in this matter is hereby dismissed. Since the Complaint is being dismissed, the Preliminary Objections filed by the Respondent are rendered moot.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of 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. Super. 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 Complainant has failed to satisfy his 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 Moyer's Grove Campground c/o Todd Edward Lightner against PPL Electric Utilities Corporation at Docket Number C-2017-2583962 is hereby dismissed.

2. That the Preliminary Objections filed by PPL Electric Utilities Corporation at Docket Number C-2017-2583962 are rendered moot by virtue of Ordering Paragraph 1 above.

3. That the Secretary's Bureau shall mark Docket Number C-2017-2583962 as closed.

Date: July 27, 2017

/s/
Andrew M. Calvelli
Administrative Law Judge