

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Matt Johnston	:	
	:	
v.	:	C-2017-2611261
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Elizabeth Barnes
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against his electric distribution company seeking compensatory damages for loss of a garage door opener and blender due to an alleged electric power surge and transformer replacement on or about March 15, 2017. This decision denies and dismisses the complaint as the customer failed to meet his burden of proving the electric distribution company failed to provide reasonable service.

HISTORY OF THE PROCEEDING

On June 15, 2017, Matt Johnston (Complainant), *pro se* filed a formal Complaint (Complaint) against West Penn Power Company (West Penn) (Respondent) with the Pennsylvania Public Utility Commission (Commission) at Docket No. C-2017-2611261.

Complainant seeks damages resulting from Respondent replacing its transformer at 10:30 p.m. on March 15, 2017, causing a power surge to Complainant's service property

damaging Complainant's power garage door opener and blender. Specifically, Complainant is seeking reimbursement for his loss of property and wants West Penn to "accept responsibility."

On July 13, 2017, Respondent timely filed and served an Answer and New Matter (Answer) and Preliminary Objections. The Answer admitted and denied various material facts averred in the Complaint. Respondent denies responsibility for damages to Complainant's personal property at the service location and claims a high windstorm caused interruptions of Complainant's electric service as well as abnormal voltage conditions.

On September 15, 2017, an Order was entered denying Preliminary Objections to the Complaint; however, the request for relief in the form of monetary damages was stricken. A hearing was held on November 14, 2017. Margaret Morris, Esquire appeared with two witnesses, Tammy Taylor and Nicholas Garcia. Complainant appeared *pro se*. A transcript was filed, and the record was closed on November 5, 2017.

FINDINGS OF FACT

1. Complainant is Matt Johnston, who resides at 116 Lake Street, Elizabeth, PA. N.T. 5-6.
2. Respondent is West Penn Power Company, an electric distribution company.
3. On June 15, 2017, Complainant filed a formal Complaint against West Penn, averring that a spike in power occurred at his residence on or about March 15, 2017, caused his blender and home garage door opener to be destroyed. N.T. 6-7.
4. On March 15, 2017, Complainant's wife contacted West Penn and filed a claim for damages from an alleged power surge that had occurred on March 14, 2017. N.T. 14-16, 24.

5. Tammy Taylor is a senior customer service representative at FirstEnergy Services Company. N.T. 20.

6. Nicholas Garcia is a planning and inspection engineer for FirstEnergy Company. N.T. 27.

7. On March 15, 2017, although the weather was calm at the service territory, there were winds up to a maximum speed of 23 mph with gusts up to 35 mph causing 19 outages in West Penn's service territory that affected 1,684 customers. N.T. 11, 35-37. Exhibit 2.

8. On March 15, 2017, there were no other outages on the circuits that provided power to Complainant's service property; however, the property may have experienced momentary interruptions due to re-closure operations. N.T. 37-38.

9. On March 15, 2017, West Penn received a trouble call regarding a voltage issue for 201 Lake Drive, Elizabeth. N.T. 42.

10. At approximately 9:30 p.m. on March 15, 2017, a troubleshooter determined a 15KVA transformer had failed and needed to be replaced. N.T. 42.

11. At 12:38 a.m. on March 16, 2017, a line crew arrived and changed a transformer until 3:11 a.m. N.T. 43.

12. Complainant's service property was not affected when the transformer was replaced on March 16, 2017. N.T. 44. West Penn Exhibits 2 and 3.

DISCUSSION

The Complainant carries the burden of showing that the named utility is responsible or accountable for the problem described in the Complaint to prevail. *Patterson v.*

Bell Telephone Company of Pennsylvania, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (1990), alloc. den., 602 A.2d 863 (1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Marquies*, 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. Comm'w., Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (1993), 2 Pa.C.S. §704. 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*, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (1984).

In addition, 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.

Complainant is responsible for proving that the utility has acted improperly, for providing the evidence, in the form of documents, testimony or photographs necessary to support that finding, and for proving that the Commission has the jurisdiction to provide the remedy.

West Penn is under statutory and regulatory obligations to perform the necessary maintenance, repair and replacements of its facilities to provide safe and reasonably reliable service 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.

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. Cmwlt. 1984). The statutory definition of "service" is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlt. 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. The complaint avers that actions of West Penn employees replacing its transformer on March 15, 2017, caused a power surge, which damaged Complainant’s personal property at the service location. This is sufficient to raise an issue as to whether the service was reasonable and reliable. Thus, the complaint is legally sufficient.

If Complainant’s allegations are proven by a preponderance of evidence at a hearing, they may well constitute a violation of the provisions of Section 1501 of the Public Utility Code, 66 Pa. C.S. § 101 *et seq.*, for rendering less than adequate service. *Honey Brook Water Co. v. Pa. Pub. Util. Comm’n*, 167 Pa.Cmwlt. 140, 647 A.2d 653 (1994), app. denied,

540 Pa. 587, 655 A.2d 518 (1995). Respondent may ultimately face a civil penalty if Complainant bears its burden of proving inadequate service. However, Complainant cannot recover compensatory damages at this administrative agency. Requests for compensatory damage should be made before a Court of Common Pleas or a district magistrate.

Section 57.14(b) and (c) of the Commission's regulations provide:

(b) *Allowable voltage variation (primarily lighting)*. For service rendered primarily for lighting purposes, the allowable variation in voltage measured at the service terminals of the customer may not exceed, for a longer period than 1 minute in each instance, 5% above or below the standard nominal service voltage and a total variation from minimum to maximum of 8% during normal system operation.

(c) *Allowable voltage variation (primarily power)*. For service rendered primarily for power purposes, the allowable variation in voltage measured at the service terminals of the customer may not exceed, for a longer period than 1 minute in each instance, 10% above or below the standard nominal service voltage during normal system operation.

52 Pa. Code § 57.14(b) & (c).

Although Complainant asserts that a power surge caused his garage door opener to not work at 116 Lake Drive on March 14, 2017, there is no corroborating evidence to support the testimony. There is evidence to support Complainant's claim that there was a power outage at a neighbor's residence near his service property at 201 Lake Drive on March 15, 2017, and that a transformer was replaced overnight. However, Complainant's assertion that his appliances were damaged by a spike in power alone is insufficient to meet the burden of proving service was unreasonable in this case violating 66 Pa. C.S. § 1501 or that the voltage variation violated the standards at 52 Pa.Code § 57.14. The testimony of Mr. Garcia that there was no reported incident regarding the service property refutes Complainant's testimony that he called West Penn to complain about a power surge in March, 2017. I am persuaded to find that the event of replacing a transformer did not cause a power surge to 116 Lake Drive on March 15, 2017. N.T. 26-49. On March 15, 2017, there were winds up to a maximum speed of 23 mph with gusts up to 35 mph causing 19 outages in West Penn's service territory that affected 1684 customers. N.T. 11, 35-37. Exhibit 2. On March 15, 2017, there were no other outages on the circuits that

provided power to Complainant's service property; however, the property may have experienced momentary interruptions due to re-closure operations. N.T. 37-38. Momentary interruptions are not sufficient to constitute unreasonable service within the meaning of 66 Pa. C.S. § 1501 in this case.

On March 15, 2017 West Penn received a trouble call regarding a voltage issue for 201 Lake Drive, Elizabeth, and at approximately 9:30 p.m. a troubleshooter determined a 15KVA transformer had failed and needed to be replaced. N.T. 42. At 12:38 a.m. on March 16, 2017, a line crew arrived and changed a transformer until 3:11 a.m. N.T. 43. Further, Mr. Garcia's testimony is persuasive that any power interruption to the service property could have been caused by re-closure operations and wind gusts that are not factors the company can control. The company acted reasonably to restore service to Complainant's neighbor on March 16, 2017. Thus, repairs were timely made to a transformer, and there is insufficient evidence to show the repairs were made incorrectly or that any violation of the Public Utility Code occurred on or about March 14 – 16, 2017.

CONCLUSION 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 he is entitled to relief. 66 Pa.C.S. § 332(a).
4. The Commission has no authority to order Respondent to pay compensatory damages. 52 Pa.Code §5.101(a)(1).

5. There is insufficient evidence to show any act or thing done or omitted to be done by West Penn violated 66 Pa.C.S. § 1501 (relating to character of service and facilities).

6. There is insufficient evidence to show any act or thing done or omitted to be done by West Penn violated 52 Pa. Code § 57.14.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Matt Johnson against West Penn Power Company at Docket Number C-2017-2611261 is denied and dismissed.

2. That Docket No. C-2017-2611261 be marked closed.

Date: December 7, 2017

/s/
Elizabeth Barnes
Administrative Law Judge