

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robert Sterbal	:	
	:	
v.	:	C-2017-2625170
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This decision denies Complainant’s complaint that Respondent created an unreliable and unsafe condition when removing fallen tree limbs from around Complainant’s service line in December 2016.

HISTORY OF THE PROCEEDING

On September 13, 2017, Robert Sterbal (Mr. Sterbal or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Respondent or West Penn) alleging there had been a reliability, safety or quality problem when Complainant experienced damaged equipment at the service address after the power company removed tree limbs near the service line on December 17, 2016 without first turning off electric service. Complainant requested the Commission find West Penn failed to maintain a reliable and safe condition when it removed the fallen tree limbs without first deactivating his service line. Complainant asked the Commission to order West Penn to review its procedures for tree removal.

On October 27, 2017, Respondent filed an Answer and New Matter, in which Respondent generally denied there was a reliability or quality problem, and asserted West Penn's actions in clearing the service line were not negligent. In New Matter, West Penn requested mediation.

On January 2, 2018, the Office of Administrative Law Judge issued a Telephone Hearing Notice, which scheduled a call-in telephone initial hearing to be conducted on Wednesday, February 21, 2018. On January 10, 2018, the presiding officer issued a Prehearing Order.

The presiding officer convened the initial hearing as scheduled on February 21, 2018. Complainant appeared *pro se* and testified on his own behalf. Complainant offered no exhibits. Respondent was represented by Margaret A. Morris, Esquire. Attorney Morris presented the testimony of three witnesses and offered seven (7) exhibits, which were marked West Penn Exhibits 1, 2, 3, 4, 5, 7 and 8, and were admitted into evidence. Complainant and Respondent issued final statements on the hearing record in lieu of filing briefs.

On March 27, 2018, the presiding officer closed the hearing record with the issuance of the Interim Order Closing the Hearing Record, after the transcript containing 149 pages was received.

FINDINGS OF FACT

1. Complainant, Robert Sterbal, resides in a single-family home located at 523 Florence Drive, Bethel Park, Pennsylvania (service address), where he has resided for four years. (Tr. 8).

2. Respondent, West Penn Power Company, provides electric service to Complainant at the service address. (Tr. 8).

3. Complainant receives electric service through an overhead service line that connects West Penn's facilities to Complainant's service drop. (Tr. 68).

4. The service address is served by a triplex service drop, consisting of three wires twisted together, of which two wires are insulated and one wire is bare. (Tr. 69).

5. On December 16, 2016 and December 17, 2016, West Penn's territory experienced storm conditions with light snow and cold temperatures. (Tr. 11, 12, 24, 34).

6. On the morning of December 17, 2016, a large limb fell from a tree belonging to Complainant's neighbor, hit the service line at the service address and fell off the service line, landing on the ground by Complainant's house. (Tr. 9-12, 122, 123).

7. On December 17, 2016 at 1:31 p.m., Complainant called Respondent to notify West Penn that his neighbor's 60-foot tree had ripped Complainant's service line from its attachment on the side of his house. (Tr. 40-43, 70; West Penn Exhibits 1 & 2).

8. During the telephone call, Mr. Sterbal asked West Penn to send a tree crew to his house the next day instead of doing the work in the dark because he had electric service. (West Penn Exhibit 2).

9. On December 17, 2016 at 1:32 p.m., an outage occurred at the Bethel Park substation, Coverdale circuit which services the service address. (Tr. 67-71).

10. In its required filing to the Commission, West Penn reported over 20,000 customers lost electric service for more than six hours on December 17, 2016 in the same area where the service address is located. (Tr. 88-90; West Penn Exhibit 7).

11. At 3:10 p.m., Respondent contacted Mr. Sterbal and advised him that West Penn was in storm mode. (West Penn Exhibit 1).

12. At 4:41 p.m. on December 17, 2016, when West Penn's hazard responder¹ visited the service address to investigate the system-wide outage, the hazard responder observed the service address had electric service and the weatherhead, house knob and service entrance cables were detached from the residence. (Tr. 72-80, 105, 106, 120-124).

13. The hazard responder observed the broken tree limb was not touching the service line, the service line was intact, there was no visible damage to the insulated coating or exposure of the triplex lines, and the suspended service line posed no imminent safety or hazard concerns. (Tr. 105, 106, 123).

14. On December 17, 2016, West Penn notified Mr. Sterbal he had to repair the damage caused by the tree limb and then have a certified inspector file a form with West Penn certifying all necessary repairs were made. (Tr. 75-85).

15. West Penn did not tell Mr. Sterbal what item(s) required repair. (Tr. 75-85, 98).

16. Respondent makes any necessary repairs to the service drop but expects Complainant to make any necessary repairs to the house knob², weatherhead³ and service entrance cable.⁴ (Tr. 69).

17. On December 17, 2016 at approximately 11:00 p.m., the tree crew assessed the situation, found no tree limbs were touching the service line and decided it could remove safely the tree limbs without first deenergizing the service line. (Tr. 120-123, 135).

¹ A hazard responder is a non-lineman or West Penn technician responsible to visit a service address, scout the property and determine the extent and type of damage. (Tr. 73).

² The house knob is the point of attachment where the service line attaches to the house. (Tr. 69).

³ The weatherhead is the point where the service line connects to the customer service entrance cable. (Tr. 69, 70).

⁴ The service entrance cable is the wire that extends from the weatherhead to the meter socket and from the meter socket to the panel box or fuse box. (Tr. 70).

18. After West Penn's tree crew arrived at the service address, they cut down the portions of the tree which overhung the service line and left the cut wood in Complainant's yard. (Tr. 13, 24, 25, 135, 137, 140).

19. Prior to starting its work, Complainant asked the tree crew to deactivate the service line first in order to minimize damage from overvoltage situations, or power surges. (Tr. 13-14, 36, 92).

20. The tree crew was not authorized to deenergize the service line without a West Penn lineman available and, despite a request from Complainant, refused to wait or return later after a West Penn lineman would be available to deenergize the service line first. (Tr. 13-14, 28, 36, 122).

21. The service address had electric service when the tree crew arrived but lost electric service multiple times during the time when the tree crew cut down the tree limbs. (Tr. 15).

22. After the tree crew finished its work and left the service address, Complainant noticed the following equipment was damaged: the furnace, the FIOS internet connection and power supply, a clock, and various light ballasts and bulbs. (Tr. 9, 10, 12, 15-21, 34).

23. Both before and after the tree crew cut down the overhanging tree limbs, the service line hung loosely approximately 1 foot off the ground over Complainant's front yard and off to the side of the house on December 17, 2016. (Tr. 26, 111; West Penn Exhibit 2).

24. There were no imminent safety or hazard concerns when the service line remained detached from the connectors on the side of Complainant's house and hung loosely above the ground over Complainant's yard. (Tr. 105, 106).

25. When Complainant called Respondent at 3:50 p.m. on December 18, 2016, West Penn told him Respondent was still in storm mode and would not provide him with a time frame when its lineman would disconnect service in order that Mr. Sterbal's electrician could make repairs to the service line. (Tr. 14, 21, 25, 57, 99; West Penn Exhibit 3).

26. Respondent returned to the service address at 6:18 p.m. on December 18, 2016 to reconnect the service line to the top of Complainant's residence. (Tr. 25, 26; West Penn Exhibit 5).

27. The service line was intact, energized, and functioning properly when Respondent's hazard responder and contractors visited the service address on December 17, 2016 and found the service line suspended above the ground. (Tr. 111).

28. On December 27, 2016, West Penn received a "cut-in-card" (CIC) from an electrical inspector which indicated something at the service address had been repaired but did not inform West Penn what items were repaired or when repairs were made. (Tr. 75-85, 98; West Penn Exhibit 2).

DISCUSSION

Complainant alleges there was a reliability, safety or quality problem with his electric service in December 2016 when West Penn's tree crew removed fallen tree limbs from his property without first de-energizing the service line. Complainant asserts some electrical equipment in the service address was damaged as a result of Respondent's actions and its refusal to de-energize the service line before removing the fallen tree limbs. Complainant's request is for the Commission to order an investigation into West Penn's tree removal procedures in order to ensure this damage does not happen again.

Respondent contends it provided reasonable and adequate service in how it removed the fallen tree limbs. West Penn argues there was a storm event at the time which prevented it from dispatching a lineman to turn off electric service to the service address before

the tree crew removed the fallen tree limbs. In addition, Respondent contends the tree crew was able to safely remove the tree limbs without interfering with electric service. West Penn insists it provided reasonable customer service to Complainant.

Burden of Proof

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proving by substantial evidence he is entitled to the requested relief. 66 Pa.C.S.A. § 332(a). To satisfy this burden, Complainant must show Respondent utility is responsible or accountable for the problem described.⁵ Complainant must show this fact to be true by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that evidence presented by the other party.⁶ Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.⁷ Furthermore, more evidence is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁸

Responsibility of Public Utility Companies

“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

⁵ Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976).

⁶ Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

⁷ Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa.Cmwlth. 1982); Edan Transportation Corp. v. Pa. Pub. Util. Comm'n, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S.A. § 704.

⁸ Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Compensation Bd. of Review, 166 A.2d 96 (Pa.Super. 1960); Murphy v. Dep't. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth. 1984).

interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the Commission. Subject to the provisions of this part and the regulations or orders of the Commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service....” 66 Pa.C.S.A. § 1501.

The Commission has the authority and responsibility to define reasonable service. 66 Pa.C.S.A. § 1501 and § 1502. The Commission approves the cost of providing a utility system that is designed to provide reasonable service at reasonable rates – not perfect service without regard to cost. Since reasonable service may result in occasional loss of service or property damage, the Commission is permitted to limit liability.⁹

Analysis

Respondent argues the power to the service address was cut and the service line was on the ground when the tree crew arrived late at night on December 17, 2016. However, Complainant testified credibly that the power to his house was never lost except when the tree crew was cutting down the overhanging tree limbs. Complainant told West Penn that he did not care how long he had to wait before the service line was reattached because he had electric service and the service line was not a danger. West Penn’s business records reveal Complainant called before the tree crew arrived to advise he would prefer the work get done later rather than sooner.

West Penn’s service territory was experiencing a winter storm event when a branch from a tree belonging to Mr. Sterbal’s neighbor fell and pulled the service line from its attachment on Complainant’s home. The fallen tree limbs did not cause the service address to lose electric service. Mr. Sterbal called West Penn to remove the tree limbs and repair the electric line which almost touched the ground as a result of the fallen tree limbs. Late that night, the tree crew arrived to remove the tree limbs, which included some overhanging tree limbs. Mr. Sterbal asked the tree crew to wait until the service was disconnected but the tree crew refused.

⁹ See DeFranscesco v. West Penn Power Company, 329 Pa. Super. 508, 478 A.2d 1295 (1984).

While the tree crew removed the tree limbs, the service address experienced multiple power outages.

After the tree crew left, Mr. Sterbal noticed some electrical equipment at the service address no longer worked. Mr. Sterbal secured the services of an electrician to repair some items and repair the damage to his service entrance cable, and then Mr. Sterbal replaced the rest of the items. Most notable among the equipment damaged was the furnace which serviced the residence, which Mr. Sterbal was able to get repaired the next day.

I agree with Mr. Sterbal that there was no imminent risk if West Penn delayed reattaching the wires until after the tree crew had gone away and returned when a West Penn lineman had disconnected service first. I also agree with him that the suspended service line was not an imminent safety hazard. It was a reasonable request for Mr. Sterbal to ask West Penn to wait until his electric service was disconnected because the tree limb was not risking a catastrophe.

However, it was not unreasonable for West Penn to make the decision to remove the overhanging limbs first. West Penn was experiencing a winter storm event, and its linemen were needed elsewhere. West Penn had other customers who were without electric service as a result of the winter storm who had to receive priority for West Penn's limited field service. West Penn cannot be faulted for having made a priority decision that its linemen were needed elsewhere to assist other customers.

Therefore, the question remains whether West Penn provided reasonable and adequate customer service when its tree crew refused Complainant's request to leave the tree limbs until a lineman was available to disconnect service. Upon a review of the entire evidence taken as a whole, I find Complainant did not meet his burden of proving West Penn failed to provide him with reasonable and adequate customer service. If the tree crew had left the service address without cutting down the overhanging tree limbs, this tree crew or some other tree crew would have had to come back at a later date to do the work anyway, because the suspended line could not be reattached until after the overhanging tree limbs were removed.

If the tree crew and West Penn had complied with Complainant's request, then West Penn and the tree crew would have had to coordinate their efforts in order to ensure the lineman and the tree crew were at the service address at the same time. If that coordination had happened, the lineman would have disconnected electric service and then waited while the tree crew cut down the tree limbs before the lineman could reattach the service line to the house.

If this situation had occurred while West Penn was not in storm mode, the decision here might be different. Hindsight may provide a clear view of what the public utility should have done but in the moment, with a storm event in progress, West Penn's actions as well as the actions of its contractor, the tree crew, were not unreasonable. Accordingly, Complainant failed to prove West Penn violated the Commission's requirement to provide reasonable and adequate customer service.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S.A § 701.
2. Complainant carries the burden of proving Respondent did not provide reasonable and adequate service. 66 Pa.C.S.A. § 332(a).
3. Respondent provided reasonable and adequate customer when it removed the tree limbs from above the service line without disconnecting electric service in December 2016. 66 Pa.C.S.A. § 1501.
4. Complainant failed to meet the burden of proving Respondent did not provide reasonable and adequate service.

