

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Denise Bailey	:	
	:	
v.	:	C-2018-3002853
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This decision denies the complaint alleging a reliability, safety or quality problem when Complainant lost electric service during Winter Storm Riley in March 2018 and denies Complainant’s request for \$700 in damages when food spoiled during the outage.

HISTORY OF THE PROCEEDING

On June 8, 2018, Denise Bailey (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (Respondent or PPL) alleging a reliability, safety or quality problem with her electric service. Complainant alleged a long-term outage in March 2018 during a major snow storm led to her losing \$700 worth of food, which had to be thrown away due to spoilage during the power outage. Complainant requested the Commission determine PPL took an unreasonable amount of time to restore electric service and then order PPL to reimburse Complainant for the value of the lost food because PPL failed to provide reasonable and adequate customer service.

On July 6, 2018, Respondent filed an Answer in which Respondent generally denied the averments and asserted it had provided reasonable and adequate service in how it responded to the storm in March 2018 and how it managed the wind and snow emergency causing the outage.

On July 25, 2018, the Office of Administrative Law Judge issued a Call-In Telephone Hearing Notice, which scheduled a telephonic initial hearing to be conducted on September 7, 2018. On August 2, 2018, the presiding officer issued a Prehearing Order.

The presiding officer convened the telephonic hearing as scheduled on September 7, 2018. Complainant appeared *pro se* and testified on her own behalf. Complainant did not offer any exhibits. Respondent was represented by Kimberly G. Krupka, Esquire. Attorney Krupka presented the testimony of two (2) witnesses and offered two (2) exhibits, which were marked and admitted as PPL Exhibit 2 and Exhibit 5. The transcript of the hearing, containing 74 pages, was received in the Commission's offices on October 1, 2018 and was received in the presiding officer's office on October 5, 2018. Complainant and Respondent issued final statements on the hearing record in lieu of filing briefs.

On October 10, 2018, the presiding officer closed the record by Interim Order Closing the Hearing Record.

FINDINGS OF FACT

1. Complainant, Denise Bailey, resides at 274 HTY Road, Kresgeville, Monroe County, Pennsylvania (service address), in a single-family residence she owns and has resided in for 18 years. Complainant currently resides by herself. (Tr. 9-12, 17).

2. Respondent, PPL Electric Utilities Corporation, provides electric service to Complainant at the service address. (Tr. 12, 28).

3. On March 2, 2018, PPL's territory experienced a wind storm named Winter Storm Riley followed by a snow storm named Winter Storm Quinn that began on March 7, 2018. (Tr. 39-41).

4. During Winter Storms Riley and Quinn from March 2, 2018 to March 10, 2018, storm damage heavily affected the eastern portion of PPL's territory with 261,341 customers affected in a service territory which included a total of 1.4 million PPL customers in 29 counties. (Tr. 39, 40, 54-56, 67).

5. Complainant's electric service was affected by Winter Storm Riley which brought high wind gusts up to 60 miles per hour and left 48,962 PPL customers without service. (Tr. 40, 56).

6. The high wind gusts and hazardous weather conditions created safety concerns for crews on March 2, 2018, causing PPL to delay the dispatch of its crews to make repairs until after it could assess the damages. (Tr. 41-47).

7. Due to the high outage rate, PPL recalled its crews sent earlier to Puerto Rico to assist with repairing hurricane damage. (Tr. 42).

8. PPL had 1,129 employees and contractors on March 2, 2018, 1,525 employees and contractors on March 3, 2018, and 1,685 employees and contractors on March 4, 2018 actively working to restore power in its territory. (Tr. 42).

9. Between March 2, 2018 and March 4, 2018, the circuit breaker serving Complainant's residence functioned properly when it cut service automatically due to the downed poles. (Tr. 43-49; PPL Exhibit 5).

10. From approximately 11:10 a.m. on March 2, 2018 to 8:09 p.m. on March 4, 2018, Complainant experienced a power outage at the service address due to the winter hurricane storm which produced high winds and a large snow fall (storm event). The

intermittent outage lasted more than three days and affected 1,634 customers on the circuit breaker. (Tr. 14, 16-18, 31, 43, 44, 46; PPL Exhibit 5).

11. Approximately five foreign utility poles,¹ which fell down during Winter Storm Riley and had to be replaced, were the cause of the outage that impacted the service address on March 2, 2018. (Tr. 44, 45, 48).

12. Between March 2, 2018 and March 4, 2018, Complainant contacted PPL multiple times to report a fallen pole nearby and the outage. (Tr. 19-21, 61, 65).

13. When Complainant called PPL between March 2 and March 4, 2018, she would hear a message indicating PPL knew there was an outage and PPL would fix the problem affecting the service address as soon as it could. (Tr. 22, 34).

14. PPL has no record of Complainant calling until March 5, 2018 at which time Ms. Bailey purportedly made a payment and expressed her concern about the outage. (Tr. 60; PPL Exhibit 2).

15. Ms. Bailey had to use her cellular telephone when she called PPL from March 2, 2018 to March 4, 2018 because the landline telephone associated with her service address account could not work during the outage. (Tr. 19-34, 62, 65; PPL Exhibit 2).

DISCUSSION

Complainant alleges a reliability, safety or quality problem with her electric service provided by PPL because of a long-term power outage that began on March 2, 2018. Complainant asserts she lost \$700 worth of food because it took PPL too long to restore power to

¹ Foreign utility poles are poles which are owned by another utility and the utility poles which fell on March 2, 2018 were not owned by PPL. See Tr. 44.

the service address. Complainant requested PPL pay her for the cost of lost food and requested the Commission address PPL's failure to provide reasonable and adequate customer service.

In response, PPL contends it provided reasonable and adequate service in how it maintained its facilities. Respondent argues its equipment was not defective and it was not negligent in how it responded to the emergency situation which developed on March 2, 2018 and continued through two winter storm events until March 10, 2018. PPL insists it does not replace a customer's food which spoiled as a result of an act of nature. PPL argues this case challenges the reasonableness of how PPL restored service to its customers, including Ms. Bailey. PPL contends it is not required or obligated to make payment for lost food and PPL also contends it took reasonable efforts to restore service to its customers. PPL requests the Commission find PPL provided reasonable and adequate service when it responded to the outages caused by Winter Storms Riley and Quinn.

Burden of Proof

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proving by substantial evidence she is entitled to the requested relief. 66 Pa.C.S.A. § 332(a). To satisfy this burden, Complainant must show PPL is responsible or accountable for the problem described.² 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.³ Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.⁴ Furthermore, more

² Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976).

³ 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).

⁴ 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.

evidence is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁵

Pursuant to 66 Pa.C.S.A. § 1501:

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. 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....

The Commission has the authority and responsibility to define reasonable service.⁶ The Commission requires a utility 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.⁷ In addition, a request for damages must be denied as outside the Commission’s jurisdiction.⁸

Analysis

The testimony presented by both parties sufficiently proved Complainant experienced a long-term power outage that resulted in the loss of electric service for more than

⁵ 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).

⁶ See 66 Pa.C.S.A. § 1501 and § 1502.

⁷ See DeFrancesco v. West Penn Power Company, 329 Pa. Super. 508, 478 A.2d 1295 (1984).

⁸ See Poorbaugh v. Pa. Pub. Util. Comm’n, 666 A.2d 744 (Pa.Cmwlth. 1995).

two days. The power outage, caused by a winter storm, caused the spoilage of Ms. Bailey's food in her refrigerator and freezer. The testimony also sufficiently proved the power outage was caused by forces beyond the control of the electric utility company. Respondent's witnesses testified credibly that the first storm (Winter Storm Riley) was a winter hurricane that produced high winds and caused extensive damages to Respondent's facilities in the area around the service address. Accordingly, Complainant did not meet the burden of proving the power outage was the direct result of any failure by Respondent to provide reasonable and adequate service.

The existence of damaged personal property is not sufficient proof that Respondent's equipment was faulty or that Respondent's service was unreasonable or inadequate. Respondent sent field technicians out during a severe winter storm to the area near the service address on multiple occasions. PPL did respond to Complainant's calls and did the best it could at the time of the outages to return service to Complainant. PPL recalled employees sent earlier to Puerto Rico to help with hurricane restoration efforts. PPL brought in over 1,100 employees and contractors starting on March 2, 2018 to help with power restoration efforts. PPL increased the number of employees and contractors each day and by March 4, 2018 had over 1,600 employees and contractors working to restore electric service. Complainant did not meet her burden of proving Respondent violated the Commission's regulations by failing to provide reasonable and adequate customer service when the power outage occurred.

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. Complainant failed to meet the burden of proving Respondent did not provide reasonable and adequate service. 66 Pa.C.S.A. § 1501.

