

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Frances Stauffer	:	
	:	
v.	:	C-2018-3006121
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the formal Complaint of Frances Stauffer against PECO Energy Company because the Public Utility Commission does not have jurisdiction to grant monetary damages and because she failed to meet her burden of demonstrating that PECO Energy Company violated any Commission statute, regulation or order with regard to a purported power outage at her home.

**HISTORY OF THE PROCEEDING**

On November 13, 2018, Frances Stauffer (Complainant or Ms. Stauffer) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Ms. Stauffer alleged that on February 19, 2018, there was an issue with the transformer that serves her home, which resulted in damages to appliances and an electrical outlet in her kitchen. Ms. Stauffer requested reimbursement from PECO for the alleged damages.

On December 11, 2018, PECO filed an Answer to the Complaint denying all material allegations of fact in the Complaint. PECO averred that its own investigation into the Complainant's claims revealed that there were no power outages involving PECO equipment or transformers to the Complainant's address on February 19, 2018. Further, PECO averred that its records showed the customers who are fed from the same transformer as the Complainant had no power outages or issues on that same date. PECO requested the Complaint be dismissed.

By Hearing Notice dated December 21, 2018, an Initial In-Person Hearing was scheduled in this matter for February 7, 2019 at 10:00 a.m., and the matter was assigned to me.

On January 4, 2019, the Complainant requested the hearing be changed to a telephonic hearing due to lack of transportation and physical difficulties. Counsel for PECO did not oppose the request and I granted it by Order issued on January 14, 2019.

By Corrected Hearing Notice dated January 14, 2019, the Initial Hearing scheduled for February 7, 2019 at 10:00 a.m., was changed from an In-Person Hearing to a Call-In Telephonic Hearing.

A Prehearing Order was issued on January 14, 2019, advising the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

The hearing convened as scheduled on February 7, 2019. The Complainant appeared *pro se* and testified on her own behalf. The Complainant offered the following exhibit, which was entered into the record:

Complainant 1:           Billing Invoice (1 page)

The Respondent appeared and was represented by Shawane Lee, Esquire, who presented the testimony of Dave Darji, a System Engineer at PECO and Robert Nickens, a

Senior Claims Case Manager at PECO. During the hearing, the Respondent offered the following twelve exhibits, all of which were entered into the record:

- PECO 1: Service Reliability Report (1 page)
- PECO 2: Claim Registration Form dated 3/9/18 (1 page)
- PECO 3: Claim Registration Form dated 2/29/18 (1 page)
- PECO 4: March 30, 2018 Letter from PECO to Complainant (1 page)
- PECO 5: PECO notes of conversations with Complainant (1 page)
- PECO 6: Outage investigation report (2 pages)
- PECO 7: Photographs (4 pages)
- PECO 8: Weather Report (6 pages)
- PECO 9: October 8, 2018 Letter from PECO to Complainant (1 page)
- PECO 10: Portion of PECO Tariff effective April 1, 2016 (2 pages)
- PECO 11: BCS Decision Report (BCS Case #: 3653940) (1 page)
- PECO 12: AMI Outage History for Complainant's meter (1 page)

The record closed on February 27, 2019, when I received a copy of the transcript.

#### FINDINGS OF FACT

1. The Complainant is Frances Stauffer.
2. The Respondent is PECO Energy Company.
3. The Complainant resides at 4937 Wismer Road, New Hope, PA 18938 (Service Address). Tr. 6.
4. The Complainant receives electric utility service from PECO. Tr. 7.
5. On February 19, 2018, the Complainant called PECO and reported a power outage at her home. Tr. 7-9; PECO 1.

6. On February 20, 2018, a technician from PECO visited the Service Address and tested the electrical meter. Tr. 25-26; PECO 6.

7. The electrical meter at the Service Address did not show any signs or readings of an abnormal electrical event. Tr. 26-28; PECO 6.

8. The electrical meter at the Service Address automatically sends a message to PECO whenever there is a power outage and its voltage goes to zero. Tr. 31-32.

9. The electrical meter at the Service Address never reported a power outage to PECO on February 19, 2018. Tr. 34; PECO 12.

10. There was no recorded power outage on February 19, 2018 for the Complainant or her neighbors. Tr. 22; PECO 1.

11. There was no failure on February 19, 2018 of the transformer that feeds the Service Address and surrounding neighbors. Tr. 31.

12. There are six other customers being fed by the same transformer as the Complainant. Tr. 53.

13. None of the other six customers reported any issues with electricity on February 19, 2018. Tr. 53.

14. The transformer that feeds the Service Address shows no signs of damage or an adverse electrical event. Tr. 50-53; PECO 7.

15. The Complainant did not have an electrician inspect her home after the alleged incident. Tr. 13.

16. The Complainant did not check the circuit breaker in her home after the alleged incident. Tr. 14.

17. The Complainant never inspected the electrical meter at her home after the alleged incident. Tr. 15.

### DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving that she is entitled to the requested relief. 66 Pa.C.S. § 332(a). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *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). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *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. § 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 (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).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied her burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

### Damages Claim

In this case, Ms. Stauffer alleges that a transformer failure feeding electricity to her home damaged appliances and the outlet in her home. She seeks reimbursement for her replacement costs.

As in every case coming before this forum, the Commission must decide initially whether it has jurisdiction over the parties and the subject matter of the dispute. As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Public Utility Code (Code). 66 Pa.C.S. §§ 101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Allegheny County Port Authority v. Pa. Pub. Util. Comm'n.*, 237 A.2d 602 (Pa. 1967); *Behrend v. Bell of Pa.*, 390 A.2d 233 (Pa. Super. 1978); *Pa. Department of Highways v. Pa. Pub. Util. Comm'n*, 182 A.2d 267 (Pa. Super. 1962); and *City of Erie v. Pa. Electric Co.*, 383 A.2d 575 (Pa. Cmwlth. 1978).

It is well settled law that the Commission is not authorized to grant monetary damages. *Elkin v. Bell*, 420 A.2d 371 (Pa. 1980); *Loma, Inc. v. Pa. Pub. Util. Comm'n*, 682 A.2d 425 (Pa. Cmwlth. 1996). The Superior Court of Pennsylvania explained:

The courts retain jurisdiction of a suit for damages based on negligence or breach of contract wherein a utility's performance of its legally imposed and contractually adopted obligations are examined and applied to a given set of facts.

*DiSanto v. Dauphin Consolidated Water Supply Company*, 436 A.2d 197, 199 (Pa. Super. 1981) (quoting *Behrend v. Bell Telephone*, 363 A.2d 1152, 1158 (Pa. Super. 1976) (citation and footnote omitted), vacated and remanded on other grounds, 374 A.2d 536 (Pa. 1977).

Thus, Ms. Stauffer 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. Accordingly, Ms. Stauffer's request for monetary damages must be dismissed.

### Reasonable Service

Although the Commission lacks jurisdiction over monetary damages, the Code requires that, "[e]very public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make all repairs, changes, alterations, substitutions, extensions, and improvements in or to its service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public." 66 Pa.C.S. § 1501. If the Commission finds that the utility has rendered unreasonable or inadequate service, the Commission shall determine and prescribe, by regulation or order, the reasonable, adequate and sufficient service to be furnished by the utility. 66 Pa. C.S. § 1505. However, it should be noted that a public utility is not obligated to provide perfect service and facilities 100% of the time. *A-Rize-N Management Co. LLC v. Pennsylvania-American Water Co.*, Docket No. C-2009-2119162 (Order entered June 15, 2010).

Here, the Complainant alleges that on February 19, 2018, she "heard one of the transformers blow" and that she "could see the transformer shooting flames." Tr. 7. Further, the Complainant alleges that her power went out for a short period of time and the next time she went to use the appliances in her kitchen, she noticed they were damaged and related it to this incident. Tr. 8. However, the Complainant never checked the circuit breaker in her home, never checked the meter, nor had an electrician inspect her home after this alleged incident occurred. The Complainant submitted a document, marked and entered as Complainant 1, that she purported to be a receipt for electrical work done in her home. Tr. 63-65. However, the receipt is undated, vague, and more importantly, contains no information regarding what went wrong in the Complainant's home. Thus, the Complainant was unable to provide any evidence, besides her own conjecture, in support of her claims. It is axiomatic that "[m]ere bald assertions, personal opinions or perceptions do not constitute evidence." *MidAtlantic Power Supply*

*Association of Pennsylvania v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12, 14 (Pa. 1987)).

Moreover, contrary to the Complainant, PECO was able to present substantial evidence that any adverse electrical event that may have occurred at the Service Address on February 19, 2018, was unrelated to PECO's equipment and/or provision of electrical service. Through testimony and exhibits, PECO demonstrated:

- A technician from PECO visited the Service Address the very next day, on February 20, 2018, and tested the meter. The meter did not show any signs or readings of an abnormal electrical event occurring at the Service Address;
- The electrical meter at the Service Address automatically sends a message to PECO whenever there is a power outage and its voltage goes to zero. The electrical meter never reported a power outage to PECO on February 19, 2018;
- There was no recorded power outage on February 19, 2018 for the Complainant or her neighbors;
- There was no recorded failure on February 19, 2018 of the transformer that feeds the Service Address and surrounding neighbors;
- There are six other customers being fed by the same transformer as the Complainant and none of them reported any issues with electricity on February 19, 2018; and
- The transformer that feeds the Service Address shows no signs of damage or an adverse electrical event.

Based on the foregoing, I find that the Complainant has failed to carry her burden of proving that PECO rendered unreasonable or inadequate service. Moreover, the evidence presented by PECO outweighs the evidence presented by Ms. Stauffer. Accordingly, the Complaint must be dismissed in its entirety.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. The burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *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. § 704.

4. 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. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

5. The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n.*, 43 A.2d 348 (Pa. Super. 1945).

6. Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

7. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

8. The Commission is not authorized to grant monetary damages and has no jurisdiction over the Complainant's claim for recompensation. *Elkin v. Bell*, 420 A.2d 371 (Pa. 1980); *Loma, Inc. v. Pa. Pub. Util. Comm'n*, 682 A.2d 425 (Pa. Cmwlth. 1996).

9. Every public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make all repairs, changes, alterations, substitutions, extensions, and improvements in or to its service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa.C.S. § 1501.

10. If the Commission finds that the utility has rendered unreasonable or inadequate service, the Commission shall determine and prescribe, by regulation or order, the reasonable, adequate and sufficient service to be furnished by the utility. 66 Pa. C.S. § 1505.

11. A public utility is not obligated to provide perfect service and facilities 100% of the time. *A-Rize-N Management Co. LLC v. Pennsylvania American Water Co.*, Docket No. C-2009-2119162 (Order entered June 15, 2010).

12. “Mere bald assertions, personal opinions or perceptions do not constitute evidence.” *MidAtlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12, 14 (Pa. 1987)).

13. The Complainant has failed to prove by a preponderance of the evidence that PECO rendered unreasonable or inadequate service in violation of 66 Pa.C.S. § 1501.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Frances Stauffer against PECO Energy Company at Docket No. C-2018-3006121 is dismissed in its entirety; and

2. That Docket No. C-2018-3006121 be marked closed.

Date: April 9, 2019

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/s/  
F. Joseph Brady  
Administrative Law Judge