

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Estate of Elliot Vesell c/o Hilary Vesell	:	
	:	
v.	:	C-2018-3006130
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Dennis J. Buckley  
Administrative Law Judge

This Initial Decision sustains the Complaint filed by Hilary Vesell (Attorney Vesell or Complainant) in her capacity as the Executor of the Estate of her father, Elliot Vesell (Dr. Vesell).<sup>1</sup> The Complaint, filed against PPL Electric Utilities Corporation (PPL or Company), alleged that PPL had failed to provide adequate and reasonable service as required by the Pennsylvania Public Utility Code (Code) in that PPL improperly disconnected electric service to the Vesell residence despite Complainant’s compliance with PPL’s requirement of providing certification of her capacity as Executor in order to avert such a disconnection. As will be discussed, below, the imposition of a \$7,000 civil penalty is appropriate in this case.

**HISTORY OF PROCEEDING**

On November 21, 2018, Complainant filed a formal Complaint against PPL alleging that PPL had failed to provide adequate and reasonable service in that PPL disconnected electric service at her late father’s home despite Complainant’s prior arrangement with PPL to

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<sup>1</sup> Attorney Vesell has a Certification of the issuance of Letters Testamentary relative to her father’s estate issued by the Register of Wills of Dauphin County. Complainant Exhibit A. Therefore, Attorney Vesell has the requisite authority to represent the estate in this matter.

keep the power on. Then, PPL failed to restore service until two days after Complainant contacted PPL. Complainant contends because of PPL's actions, the service address was left without power (and hence climate control), and that consequently PPL endangered her late father's collection of paintings by exposing them to an unregulated environment. Complainant asked that the Commission sanction PPL commensurate with the value of the collection, that PPL be prohibited from performing disconnections on a weekend (if power cannot be reconnected until a weekday), and that seven days' notice be afforded before any disconnection.

On December 11, 2018, PPL filed an Answer to the Complaint admitting that power to the Vesell residence was disconnected on September 14, 2018, because a Company representative failed to void a disconnection order dated August 15, 2018. The Company also stated that on September 15, 2018 and again on September 16, 2018, Complainant requested reconnection. Reconnection was accomplished on September 17, 2018. PPL denied all other allegations and requested that the Complaint be denied.

On December 27, 2018, a notice was issued setting a telephonic hearing for January 30, 2019.

On January 11, 2019, Attorney Vesell filed a letter with proposed exhibits, but requested a continuance because she would be attending a previously scheduled Pennsylvania Bar conference on the date of the hearing. PPL had no objection to the continuance.

On January 22, 2019, an Order was issued continuing the hearing and providing the parties with notice of their responsibilities at the hearing. In that Order, it was noted that the Commission does not have the authority to award monetary damages.

On January 22, 2019, a hearing Notice was issued rescheduling the hearing for February 22, 2019.

A telephonic hearing in this case convened at 10:00 a.m. on February 22, 2019, originating from the office of the Commission in Harrisburg, Pennsylvania. Complainant was

present and offered testimony and three exhibits: Exhibit A, the Certification from the Court of Dauphin County authorizing Complainant to represent the estate of Elliot Vesell as well as copies of two faxed messages from Complainant to PPL dated August 15, 2018 and September 15, 2018; Exhibit B, a faxed notice from PPL to a Magisterial District Court dated January 11, 2019; and, Exhibit C, two emails to Complainant from a person at Penn State University relative to her father's collection. PPL was represented by Kimberly G. Krupka, Esquire, who presented the testimony of Michelle Spotts, a Regulatory Compliance Specialist employed by PPL. Two exhibits submitted by PPL were received into evidence: PPL Exhibit No. 2, an Account Contact History, and PPL Exhibit No. 4, a Weather History compiled at Harrisburg International Airport (HIA).

On March 19, 2019, a ninety-one page transcript (and the hearing exhibits) was filed with the Secretary of the Commission. The record in this matter closed on that date.

This matter is now ready for decision.

#### FINDINGS OF FACT

1. Hilary Vesell, Esquire, is the Complainant in this case, representing the estate of her father, Elliot Vesell, M.D.

2. 768 Lexington Avenue, Hershey, Pennsylvania, was the residence of Dr. Vesell and is the service address referenced in the Complaint.

3. The Respondent is PPL Electric Utilities Corporation, a Commission jurisdictional electric distribution supplier that provides electric service to the service address.

4. On July 23, 2018, Dr. Vesell passed away. Tr. at 14.

5. On August 15, 2018, Complainant advised PPL that her father had passed away and asked that electric service to the residence not be disconnected. Tr. at 14, 16.

6. On August 15, 2018, Complainant complied with PPL's requirements so that electric service at the residence would not be disconnected. Tr. at 16, 68-69; Complainant's Exhibit B.

7. On Friday, September 14, 2018, electric service to the residence was disconnected. Tr. at 6, 17.

8. Complainant had no prior notice that the service would be disconnected. Tr. at 17.

9. On Saturday, September 15, 2018 and Sunday, September 16, 2018, Complainant repeatedly contacted PPL, calling and sending two facsimile messages asking that the service be reconnected, explaining that her late father's art collection which was in the house would be jeopardized in hot, humid weather in a house without air conditioning. Tr. at 8, 65-66; Complainant's Exhibit A.

10. On Monday, September 17, 2018, with power still being off at the residence, Complainant again contacted PPL and asked that power be restored. Tr. at 10.

11. Power was restored at the residence on Monday, September 17, 2018. Tr. at 10.

12. Dr. Vesell's art collection consists of paintings by artists of the Hudson River School.

13. It is Complainant's opinion that the lack of climate control at the residence occasioned by the power shut-off, "... hurt the condition of the painting(s)." Tr. at 23.

14. PPL disconnected the electric service because a Company employee failed to void a disconnect order created on August 15, 2018. Tr. at 56, 59 and 69.

15. The PPL representatives who took Complainant's calls requesting reconnection on September 15-16, 2018, did not know how to get the power restored the same day. Tr. at 55.

16. Despite having the certification required by PPL to put Dr. Vesell's account in the name of the estate, a PPL representative reviewed the certificate but did not void the service disconnection order. Tr. at 59, 76.

17. PPL employees have been re-trained with respect to the process to use when dealing with an estate and the protocol for seeking management guidance. Tr. at 62.

18. During the period that power was off at the residence, the temperatures recorded at Harrisburg International Airport were in a range from 63 to 83 degrees in the evenings. Tr. at 43; PPL Exhibit 4.

### DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa.Cmwlth. 1984). This due process requirement is satisfied when the parties are provided with notice and an opportunity to be heard. *Id.*

As a matter of law, to establish a legally sufficient claim, 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 Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa. C.S. § 701.

Section 332(a) of Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa. C.S. § 332(a). The

burden of proof for actions before the Commission is the, "preponderance of the evidence" standard. *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A. 2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992) (*Lansberry*); see also *North American Coal Corp. v. Air Pollution Comm'n*, 279 A.2d 356 (Pa. Cmwlth. 1971). To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, by even the smallest amount, the probative value of the evidence presented by the other party. See *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 48-49, 70 A.2d 854, 855 (1950).

The burden of proof is comprised of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 2000 Pa. Super. 178, 754 A.2d 1283 (2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Initial Decision issued May 11, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party's claim or affirmative defense. It may shift between the parties during a hearing. If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant's evidence. See *Id.* If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant's burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional evidence favorable to the complainant's claim. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd.* 501 Pa. 433, 461 A.2d 1234 (1983).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. See *Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. In determining whether a complainant has

met the burden of persuasion, the ultimate fact-finder may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. See *Moore*, citing *Suber*.

In this case, the Complainant alleged that PPL failed to provide adequate and reasonable service as required by the Code at 66 Pa. C.S. § 1501, which states in pertinent part:

**§ 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. . . .

Pursuant to 66 Pa. C.S. § 1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. *Elkin v. Bell Telephone Co.*, 372 A.2d 1203 (Pa. Super. 1977), *aff'd*, 420 A.2d 371 (Pa. 1977); *Behrend v. Bell Telephone Co.*, 243 A.2d 346 (Pa. 1968). As a general proposition, neither the Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Code at 66 Pa. C.S. § 1501 does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. *Analytical Laboratory Services, Inc. v. Metropolitan Edison Co.*, Docket No. C-2006608 (Order entered December 21, 2007); *Emerald Art Glass v. Duquesne Light Co.*, Docket No. C-00015494 (Order entered June 14, 2002); *Re: Metropolitan Edison Co.*, 80 Pa. PUC 662 (1993).

Elliot Vesell, M.D., the account holder in this case, passed away on July 23, 2018. It is undisputed that on August 15, 2018, Hilary Vesell, Esquire, Dr. Vesell's daughter and the Complainant in this matter representing her father's estate, contacted PPL and requested that Dr. Vesell's account be put in the name of the estate. Complainant was told by PPL that a certification from a court of appropriate jurisdiction would be needed to accomplish this, and Complainant

provided that certification the same day. One of the reasons that Complainant took this step was because she did not want power at the residence disconnected. Complainant did not want the power disconnected because she was concerned about potential damage to her late father's art collection in an uncontrolled environment. PPL admitted both in its Answer to the original Complaint and at hearing that despite Complainant's efforts, the power at the residence was disconnected from September 14-17, 2018, during a time when temperatures at HIA ranged from 63 to 83 degrees. PPL admitted that despite having the certification required by PPL to put Dr. Vesell's account in the name of the estate, a PPL representative reviewed the certificate but did not void a service disconnection order. PPL admitted that the PPL representatives who took Complainant's calls requesting reconnection on September 15-16, 2018, did not have the knowledge to get the power restored the same day. PPL ascribes these failures to human error. PPL has since retrained employees to prevent a recurrence of these problems. Nevertheless, by improperly disconnecting service on September 14, 2018, and by failing to respond in a timely fashion to Complainant's requests for reconnection on September 15-16, 2018, PPL violated Section 1501 of the Code.

Complainant requested that a civil penalty be imposed on PPL commensurate with the value of her father's art collection. Setting aside for the moment the Commission's lack of authority to impose a sanction on that basis, the fact is that despite repeatedly referring to the importance of the collection from an artistic standpoint, Complainant provided no valuation of the collection, nor did Complainant provide a list of the works that comprise the collection.<sup>2</sup> Similarly, despite contending that having the power off for three days could have resulted in damage to the paintings, Complainant provided no evidence of the potential scope of that damage, how the damage might be caused or whether, in fact, any damage actually occurred. These facts, which are relevant to the assessment of a civil penalty, are absent from the record. Complainant's speculation about potential damage is just that—speculation. Mere opinion, without more, is insufficient to meet the burden of demonstrating that damage occurred. *Kirby v. PPL Electric Utilities*

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<sup>2</sup> Complainant contends, and I have no reason to doubt, that her father's collection consists of paintings by artists of The Hudson River School. "The Hudson River School was America's first true artistic fraternity. Its name was coined to identify a group of New York City-based landscape painters that emerged about 1850 under the influence of the English émigré Thomas Cole (1801-1848) and flourished until about the time of the Centennial." Metropolitan Museum of Art website, [https://www.metmuseum.org/toah/hd/hurs/hd\\_hurs.htm](https://www.metmuseum.org/toah/hd/hurs/hd_hurs.htm).

*Corporation*, Docket No. C-20066297 (Final Order entered November 16, 2006) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

While I am not insensitive to Complainant's apprehension and indignation relative to this incident, it is well established that the Commission does not have the authority to order a public utility to pay monetary damages. See *Byer v. Peoples Natural Gas Co.*, 380 A.2d 383 (Pa. Super. 1977) (holding that the Commission does not have the authority to award damages); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977) (holding that the Commission does not have the authority to award damages), *DeFrancesco v. Western Pennsylvania Water Company*, 499 Pa. 374, 453 A.2d 595 (1982); *Elkin v. Bell of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980). While a Commission Administrative Law Judge may impose a civil penalty on a utility if warranted, those funds will go to the state General Fund.

Section 3301 of the Code provides that if any public utility fails to comply with any Commission regulation, it shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000.00 per day of violation. 66 Pa. C.S. § 3301. To implement this section, the Commission has adopted standards that should be applied when imposing a civil penalty for violations of Commission directives and regulations.

Specifically, Section 69.1201 of the Commission's regulations states:

The Commission will consider specific factors and standards in evaluating litigated . . . cases involving violations of 66 Pa.C.S. (relating to the Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate. . .

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(c) The factors and standards that will be considered by the commission include the following:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing, or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52. Pa. Code § 69.1201.

Applying the factors in Section 69.1201, I find the following: the conduct at issue was of a serious nature. The abrupt cutoff of service without prior notice to the Complainant created an emergency when none should have existed and when Complainant had taken affirmative steps—in compliance with PPL's own requirements-- to prevent a disconnection. 52 Pa. Code § 69.1201(a)(1). The consequences of the conduct required Complainant to initiate her

own inquiry as to what had happened and to unnecessarily cause Complainant mental anguish about the safety of her late father's art collection of which she is *de facto* the custodian. 52 Pa. Code § 69.1201(a)(2). The conduct at issue was not intentionally meant to cause inconvenience and emotional upset to Complainant, but the negligence of PPL's employees certainly had those effects. 52 Pa. Code § 69.1201(a)(3). PPL has taken steps to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. 52 Pa. Code § 69.1201(a)(4). Complainant was directly affected by PPL's actions and inaction from September 14-17, 2018. 52 Pa. Code § 69.1201(a)(5). This incident appears to be factually unique. 52 Pa. Code § 69.1201(a)(6). There was no investigation into the incident, so the issue of whether PPL was cooperative with such an investigation is moot. 52 Pa. Code § 69.1201(a)(7). It is not possible to determine the amount of a fine that would deter PPL from such conduct in the future; the purpose of the civil penalty is to formally sanction PPL for its negligent and unlawful act. 52 Pa. Code § 69.1201(a)(8). I see no past Commission action analogous to this case that would provide additional guidance in establishing a civil penalty. 52 Pa. Code § 69.1201(a)(9). There are no other relevant factors that have not already been addressed, above. 52 Pa. Code § 69.1201(a)(10).

In sum, we have a disconnection that never should have happened, which is itself a violation of Section 1501. We have a four-day outage, with each day constituting a violation of Section 1501. Finally, we have PPL's failure to adequately respond to Complainant's repeated attempts to gain reconnection on September 15-16, 2018. Thus, a civil penalty of \$7,000 is warranted in this case: the maximum \$1,000 fine for the disconnection, each day of the four day outage, and both of the attempts to gain reconnection to which PPL did not timely respond.

#### CONCLUSIONS 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 met her burden of proof. 66 Pa. C.S. § 332(a).

4. 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. 66 Pa. C.S. § 1501.

5. The Commission will consider specific factors and standards in evaluating litigated . . . cases involving violations of 66 Pa.C.S. (relating to the Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate. 52. Pa. Code § 69.1201.

6. If any public utility subject to the Pennsylvania Public Utility Code shall violate any of the provision of the Code, the utility shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000 per occurrence. 66 Pa. C.S. § 3301.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of the Estate of Elliot Vesell against PPL Electric Utilities Corporation, at Docket No. C-2018-3006130 is hereby sustained.

