

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stacy Weaver	:	
	:	
v.	:	C-2018-3005382
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Dennis J. Buckley  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision sustains in part and dismisses in part a formal Complaint brought by Stacy Weaver (Complainant) against PPL Electric Utilities Corporation (Respondent or PPL). Complainant’s request that PPL reimburse a third party (Pitt Ohio Trucking) for damages paid by that third party to Complainant is beyond the authority of the Commission to consider as is Complainant’s request that PPL pay additional damages to her. However, Complainant’s allegation that PPL failed to provide safe, adequate and reasonable service by failing to address a known and potentially dangerous condition is sustained.

**HISTORY OF THE PROCEEDING**

On October 9, 2018, Complainant filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL at Docket No. C-2018-3005382. Complainant averred that PPL failed to provide safe and reliable service in that PPL did not replace a low-hanging wire which was hit by a truck on August 18, 2017. The wire was struck again on July 2, 2018, causing the electric meter base, conduit and fasteners to be ripped from

Complainant's property. Complainant asserts that due to PPL's lack of action in correcting the dangerous condition, Complainant's property was extensively damaged. Although Complainant was compensated for her loss by Pitt Ohio Trucking, Complainant demanded: (1) that PPL reimburse the trucking company \$5,254; and (2) that PPL pay to replace the siding on Complainant's entire house and a stand-alone shed to a matching color and texture.

On November 5, 2018, PPL filed an Answer to the Complaint. In its Answer, PPL denied the allegations in the Complaint and argued that the Commission lacks the statutory authority to grant Complainant the relief she requested.

On November 29, 2018, the Commission sent the parties a telephonic hearing notice by which it scheduled an initial telephonic hearing for January 10, 2019.

The hearing convened, as scheduled, at 10:00 a.m. on January 10, 2019. Complainant appeared, and Kimberly Krupka, Esquire, appeared on behalf of PPL. Because Complainant's proposed hearing exhibits had not been received by the presiding officer, the hearing was continued.

On February 19, 2019, a telephonic hearing notice was sent to the parties setting March 27, 2019 as a new hearing date.

The hearing convened, as scheduled, on March 27, 2019. Complainant appeared, and Kimberly Krupka, Esquire, appeared on behalf of PPL. Complainant testified and offered four photographs that were received into evidence: Complainant's Exhibit A, a picture of the siding of her house; Complainant's Exhibit B, a picture of a PPL truck making repairs; Complainant's Exhibit C, a picture of completed repair work showing wiring reconnection at the top of a pole; and Complainant's Exhibit D, a wire being attached to the peak of Complainant's home. PPL presented the testimony of Kimberly Hanson, a Senior Claims Coordinator for PPL Services. PPL offered four exhibits that were received into evidence: PPL Exhibit 7, an outage list documenting an outage on August 18, 2017; PPL Exhibit 8, an extract from an outage list

documenting the August 18, 2017 outage as a “wire down” event; PPL Exhibit 9, an extract from a record documenting repair; and PPL Exhibit 10, an account contact history.

The hearing concluded, and a transcript of fifty-nine pages was filed on April 19, 2019. The record closed on that date. The transcript of the hearing and the exhibits received into evidence constitute the record in this case.

This matter is ready for decision.

### FINDINGS OF FACT

1. The Complainant in this proceeding is Stacy Weaver.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation.
3. On August 18, 2017, a truck struck an electric distribution wire connected to the service address at 341 West Broad Street, New Holland, Pennsylvania, and raised sparks. Tr. at 16, 21, 27.
4. The residence/service address at 341 West Broad Street, New Holland, Pennsylvania, is owned by Complainant but is occupied by Complainant’s mother. Tr. at 21, 23, 26, 28.
5. On July 2, 2018 at approximately 12:00 p.m., a Pitt-Ohio truck struck and took down the distribution wire, and the residence at 341 West Broad Street was damaged in that conduit was torn from the siding of the house. Tr. at 25.
6. PPL restored service to the residence by 8:00 p.m. on July 2, 2018. Tr. at 26, 33.

7. Complainant saw trucks touch the wire about a half dozen times over the course of the eleven months between August, 2017 and July, 2018. Tr. at 29.

8. The pole to which the electric wire is attached is owned by Frontier Communications. Tr. at 37.

9. PPL has a pole attachment agreement with Frontier Communications. Tr. at 37.

10. PPL's line is on the top of the pole. Tr. at 38.

11. An electric distribution wire is connected to a point of attachment on a residence. Tr. at 38.

12. It is the homeowner's responsibility to install the point of attachment. Tr. at 38, 45.

13. On August 18, 2017, PPL was contacted by Lancaster 911 dispatch with the report of a low wire. Tr. at 41; PPL Exhibit 10.

14. Because the call to PPL originated from Lancaster 911, PPL had no individual customer to respond to. Tr. 53-54

15. A PPL employee was dispatched to the service address on August 18, 2017, to ascertain the scope of the problem and reported to PPL that the low wire was not a PPL problem. Tr. at 42, 49.

16. When the line was brought down by the Pitt-Ohio truck on July 2, 2018, Complainant hired a third-party contractor who was able to repair and relocate the point of attachment, and reconnect the line. Tr. at 32-33, 49-50; Complainant's Exhibits A and D.

## DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950). As the party seeking relief from the Commission, Ms. Weaver bears the burden of proof.

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof. *See Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9, 1980); *see also Dist. of Columbia's Appeal*, 21 A.2d 883 (Pa. 1941); *Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence County, Pa.*, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).

Section 701 of the Public Utility Code provides that, "any person . . . having an interest in the subject matter . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." 66 Pa. C.S. § 701. Therefore, a complainant must generally demonstrate that the public utility violated the Public Utility Code or a Commission regulation or order.

The Commission has exclusive jurisdiction to adjudicate, "issues involving the reasonableness, adequacy, and sufficiency" of a public utility's facilities and services. *See Elkin*

*v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (citations omitted). Section 1501 of the Public Utility Code states, in pertinent part, that:

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. . .

66 Pa. C.S. § 1501.

A Complaint brought under Section 1501 is often referred to as a, “quality of service complaint,” which may lead to sanctions against a utility if it is proved by a preponderance of the evidence that the utility failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and to make repairs to such service and facilities as are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. The central issue of whether PPL violated the provisions of Section 1501 will be addressed, below. First, however, we must address the Complainant’s ongoing requests for the payment of damages.

### Requests for Damages

The essence of Complainant’s action as set forth in her Complaint and at hearing is that she wants PPL to pay damages for property loss resulting from the downed wire incident on July 2, 2018.<sup>1</sup> This is a two-fold request in that Complainant has asked that the Commission order PPL to compensate the trucking firm of Pitt-Ohio for damages that Pitt-Ohio paid to

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<sup>1</sup> Complainant was advised at the hearing on January 10, 2019 that the Commission does not have the authority to award damages; however, despite acknowledging this, the Complainant persisted in her request for damages through her closing argument at the hearing on March 27, 2019.

Complainant when the Pitt-Ohio truck brought down a PPL service line which led to damage to Complainant's property. Complainant also wants PPL to pay damages to her to restore all of the siding of Complainant's property and that of a stand-alone shed that was not damaged but which Complainant wants to have "match" the main property in color and texture. Complaint at 4.

First, 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, not to Complainant. Therefore, Complainant's request for the assignment of damages is denied as beyond the authority of the Commission.

#### Lack of Standing

Second, though not raised at hearing, Complainant does not have the standing to initiate or to prosecute what would practically amount to a subrogation claim on behalf of Pitt-Ohio Trucking to recover damages against PPL. Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. *Pa. National Gas Association v. T.W. Phillips Gas and Oil Co.*, 75 Pa. PUC 598, 603 (1991). Generally, in order to have standing, a party must have an interest which is substantial, direct, and immediate:

A "substantial" interest is an interest in the outcome of the litigation which surpasses the common interest in procuring obedience to the law. A "direct" interest requires a showing that the matter complained of caused harm to the party's interest. An "immediate interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interest sought to be protected by the statutes or the constitutional guarantee in question.

*George v. Pa. Publ. Util. Comm'n*, 735 A.2d 1282, 1286 (Pa. Cmwlth. 1999)  
(quoting *South Whitehall Township Police Service v. South Whitehall Township*,  
521 Pa. 82, 86-87, 555 A.2d 793, 795 (1989)).

Complainant has no substantial, direct, or immediate interest in a potential claim by a third party against PPL, and to allow her to pursue such a claim would be a clear error of law.

### Quality of Service Complaint

Unquestionably, Complainant does have the standing under the Code to bring a Complaint against PPL on the issue of quality of service.<sup>2</sup> See 66 Pa. C.S. §§ 701, 1501.<sup>3</sup> Complainant asserted that she first became aware of a potential issue with a low hanging electric distribution wire attached to the service address on August 18, 2017, when she was informed of a truck making contact with the wire and producing sparks. Complainant testified that she called PPL that day and several times in the following eleven months to complain about this condition based on her personal observation of trucks grazing the wire but that PPL did nothing to address the problem until the wire was actually brought down on July 2, 2018.

For its part, PPL denied having received any calls from the Complainant between August 18, 2017 and July 2, 2018 and produced customer call records to prove this. PPL was, however, aware of the problem because Lancaster 911 contacted PPL on August 18, 2017, reporting the low wire. PPL sent an employee to check the problem. That employee reported back that the low wire was not a PPL problem because the point of attachment, which is the responsibility of the property owner, was the cause of the problem. On that basis, no corrective action was taken by PPL until July 2, 2018, when the wire was brought down by the Pitt-Ohio

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<sup>2</sup> The account for electric service at 341 West Broad Street, New Holland, Pennsylvania, is in Complainant's name. Tr. at 38-39.

<sup>3</sup> *Also see*, 52 Pa. Code § 57.28 (a)(1) which provides that “[a]n electric utility shall use reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers, the public and others may be subjected to by reason of its provision of electric of electric utility service and its associated equipment and facilities.”

truck. That PPL accepted its employee's assessment that responsibility for the problem rested solely with the Complainant raises a serious question about how these assessments are made. The implication that PPL was thereby absolved from further action with respect to the reasonably foreseeable event of the live wire coming down is unacceptable.

Whether Complainant called PPL to report the problem once or multiple times is not relevant to a determination of whether PPL violated Section 1501. The fact is that PPL was told of the situation by Lancaster 911 on August 18, 2017 and by PPL's own employee. That electric distribution line is a PPL facility. If the wire was hanging in such a way that a truck impacted it and created sparks, then PPL was on notice that one of its facilities was creating a dangerous condition. Even if the causation was a faulty point of attachment and thus the property owner's ultimate responsibility, PPL failed to take any action to correct a potentially dangerous condition. PPL cannot transfer this responsibility for its facility to the property owner. From the record it does not appear that PPL made any attempt to contact Complainant to discuss Complainant's responsibility for correction of the problem that PPL was aware of. It is not reasonable to expect that the Complainant, absent such information from PPL, could have known why the problem was not being addressed let alone her responsibility to help correct it.

#### Assessment of a Civil Penalty

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 for each and every day's continuance in the 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:

(a) 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. On August 18, 2017, a truck impacted a low hanging PPL distribution line raising sparks. The potential danger to the public at large over the next 320 days, let alone to Complainant's property, speaks for itself. 52 Pa. Code § 69.1201(c)(1). The consequences of the conduct ultimately resulted in property damage, but it is easily foreseeable that the harm to the public could have been much worse. 52 Pa. Code § 69.1201(c)(2). The conduct at issue was not intentionally meant to cause harm, but the negligence of PPL's employees in failing to address the problem certainly had that effect. 52 Pa. Code § 69.1201(c)(3). PPL has corrected the specific problem, but it is not clear that 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(c)(4). Complainant was directly affected by PPL's actions and inaction from August 18, 2017 to July 2, 2018. 52 Pa. Code § 69.1201(c)(5). This incident appears to be factually unique. 52 Pa. Code § 69.1201(c)(6). There was no Commission investigation into the incident, so the issue of whether PPL was cooperative with such an investigation is moot. 52 Pa. Code § 69.1201(c)(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 negligence. 52 Pa. Code § 69.1201(c)(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(c)(9). There are no other relevant factors that have not already been addressed, above. 52 Pa. Code § 69.1201(c)(10).

PPL's own Exhibit 8 is an extract from an outage list documenting the August 18, 2017 outage as a "wire down-low wire" event. A total of 320 days elapsed between the time when this "wire down-low wire" problem with the distribution line was first reported to PPL and

the day when PPL finally corrected the problem--i.e. July 2, 2018, the day that the line came down. I consider each day that PPL was on notice with respect to the low wire but failed to act an occurrence of a repairable condition within the meaning of Section 1501. Thus, it would be possible under the law to impose a civil penalty of \$320,000 on PPL, and it is well that the damage in this case did not extend to injury to the public. That being said, the negligence demonstrated and the potential for serious harm or injury to the public for 320 days warrants a substantial penalty of \$32,000, payable to the Commonwealth of Pennsylvania, within thirty (30) days from the entry of the Final Commission Order in this matter. This comprises a \$100 civil penalty for each of the 320 days that PPL was aware that the wire was in this condition but did not fix it.

#### CONCLUSIONS OF LAW

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

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

4. 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).

5. 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.

6. 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.

7. 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 formal Complaint of Stacy Weaver filed against PPL Electric Utilities Corporation at Docket No. C-2018-3005382 is sustained in part and dismissed in part, consistent with the terms of this Decision.

2. That Complainant's request that PPL Electric Utilities Corporation pay damages, both to herself and a third party, is denied, and Complainant's allegation that PPL Electric Utilities Corporation failed to provide safe, adequate and reasonable service is sustained.

