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August 6, 2019

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Stacy Weaver v. PPL Electric Utilities Corporation
Docket No: C-2018-3005382

Dear Ms. Chiavetta:

Enclosed for eFiling in the above-captioned matter are the Exceptions of PPL Electric Utilities Corporation to the Initial Decision.

Please note that this filing was eFiled with the Commission on the date indicated above.

Very truly yours,



KIMBERLY G. KRUPKA

KGK/sam
Enclosure

cc: Administrative Law Judge Dennis J. Buckley (w/enc.); *via email only*
Stacy Weaver (w/enc.); *via First Class Mail*
Michael J. Shafer, Esquire (w/enc.); *via email only*
Kimberly Hanson (w/enc.); *via email only*

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

STACY WEAVER
Complainant,

vs.

PPL ELECTRIC UTILITIES CORPORATION,
Respondent.

COMPLAINT DOCKET

NO. C-2018-3005382

**EXCEPTIONS OF PPL ELECTRIC UTILITIES CORPORATION
TO THE INITIAL DECISION**

AND NOW, comes the Respondent, PPL Electric Utilities Corporation (“Respondent” and/or “PPL Electric”), by and through its counsel, Gross McGinley, LLP, and files the within Exceptions to the Initial Decision, dated July 10, 2019 and issued July 17, 2019, as follows:

Introduction

The Pennsylvania Administrative Code (the “Code”) provides that Exceptions may be filed by a party and served within 20 days after the initial, tentative or recommended decision is issued. 52 Pa. Code § 5.533(a). Exceptions must be “concise.” 52 Pa. Code § 5.533(c). Additionally, the Code provides that each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. 52 Pa. Code § 5.533(b). Further, supporting reasons for the exceptions shall follow each specific exception. *Id.* These Exceptions are offered in conformity therewith.

History of the Proceeding

Complainant, Stacey Weaver., (hereinafter “Complainant” or “Weaver”) filed a Complaint with the Commission on or about October 9, 2018, alleging PPL Electric failed to provide safe and reliable service in that PPL did not replace a low-hanging wire which was struck by a truck on August 18, 2017. Complainant alleged that the wire then was struck again on July 2, 2018 causing the electric meter base, conduit and fasteners to be ripped from her

investment property. PPL Electric filed its Answer on November 5, 2018 denying such allegations of a dangerous condition.

The dispute between the parties concerns the maintenance of lines which cross West Broad Street in New Holland, Pennsylvania. (Complainant's Exhibit D shows the line above the black and yellow truck). Complainant alleges that such wire belongs to PPL Electric and was struck on August 18, 2017 by a truck exiting Pitt Ohio. On the same date, Lancaster 911 reported a low hanging wire problem to PPL Electric. PPL Electric investigated the report the by dispatching a Troubleman within four minutes of receipt of the call, at which time a PPL Electric Troubleman determined the cause was not a PPL Electric Issue. (N.T. pg. 42, ln. 12-15; PPL Electric Hearing Exhibit No. 7). Although no details as to the cause of the problem were documented, it is possible that the line that was hit by the truck (a) did not belong to PPL Electric, (b) that the line was an acceptable height, (c) the truck was an improper height, or (d) other reason unknown to either party as the parties did not contemporaneously witness¹ the event and power to Complainant's property was never interrupted on August 18, 2017. (N.T. pg. 42, ln. 16-21). For the next eleven (11) months, there were no telephone calls to PPL Electric noted on the account and there was no interruptions, even momentary, of service. (See N.T. pg. 39, Ln. 12 – pg. 41 ln. 20; PPL Electric Hearing Exhibit No. 7 and 10). Thereafter on July 2, 2018, a Pitt-Ohio truck struck and took down the distribution wire servicing Complainant's investment property located at 341 West Broad Street, causing damages to the exterior of the home. PPL Electric responded and restored power the same date. PPL Hearing Exhibit No. 9.

The evidence established that the pole on which PPL Electric's distribution wire is located is owned by Frontier Communications. (N.T. pg. 37 at 11-16). As such, PPL Electric

¹ Although Complainant originally stated she witnessed the August 18, 2017 event, she further testified "My neighbor was out in the front yard. He saw it, he took pictures of it, and he reported it to me." (N.T. at pg. 16, ln. 8-9).

is unaware of which other utilities may have lines co-located on the poles, but is certain that PPL Electric's lines are always the highest lines on any pole. (N.T. pg. 38 ln. 3-10).

First Exception

Findings of Fact No. 3, is unsupported by the record

1. PPL Electric excepts to Finding of Fact No. 3 to the extent such finding states that Complainant met her burden of proof in establishing that the line affected on August 18, 2017 belonged to PPL Electric and was at an improper height. The evidence is clear that (a) Complainant did not actually see the truck come in contact with the wire (b) was unable to prove that the wire which was the subject of the Lancaster 911 call actually belonged to PPL Electric, (c) or that the PPL Electric line was lower than industry standards of sixteen feet. (N.T. pg. 43, Ln. 19-22).

Rather, the evidence of record establishes that Complainant did not witness the August 18, 2017 event as it happened, but arrived at the scene and received information about the event from her neighbor. (N.T. pg. 16 ln. 8-14). Complainant assumed that all the lines on the pole were electric lines, but Complainant was unable to differentiate between cable, electric and phone lines. As discussed by PPL Electric witness Kimberly Hanson, there are multiple lines on Frontier Communications' pole that connect to Complainant's property. (N.T. pg. Pg. 37 ln. 18-pg. 38 ln. 2; Complainant's Exhibit B.) Given that the uncontradicted evidence establishes that the electric lines are the highest lines on the Frontier Communications poles, it is an abuse of discretion for the Commission to assume that the line affected by the truck on August 18, 2017 was a PPL Electric line. Moreover, given that PPL Electric responded to the Lancaster 911 call within four (4) minutes by dispatching a Troublemaker to inspect the lines, and documented there was not a PPL Electric problem, it was improper to find that the Complainant met her burden of proof as to any dangerous condition of PPL Electric existing as of August 18, 2017.

Second Exception

Order Paragraph 2 finding PPL Electric violated 66 Pa.C.S. § 1501, is unsupported by the Record wherein PPL Electric did not provide unreasonable service.

2. PPL Electric excepts to Order Paragraph No. 2 which holds PPL violated 66 Pa. C.S. § 1501 by failing to provide safe, adequate and reasonable service. The Statute provides:

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. Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility. The commission shall have sole and exclusive jurisdiction to promulgate rules and regulations for the allocation of natural or artificial gas supply by a public utility.

66 Pa. C.S. § 1501. PPL Electric denies that it maintained its electric distribution lines in a manner which was unsafe. As stated in Exception One, Complainant has failed to meet her burden of proof with regard to showing the line hit by the truck on August 18, 2017 was a PPL Electric line. Rather, the only evidence of record is that (a) PPL Electric's lines are the highest on the poles, (2) there was no interruption of electrical service to Complainant as might be expected if there was a given issue with the distribution line, (3) PPL Electric responded timely to inspect the line and determined it was not a PPL issue, and (4) for approximately 11 months after August 18, 2017, despite Complainant seeking a "line" hit by a truck on at least a dozen occasions, Complainant's property never lost power. The only conclusion is that the line hit

on August 18, 2017 was likely a non-PPL Electric line. Alternatively, if the line had been repeatedly hit by trucks for eleven (11) months, one would have expected interruptions in electrical service. PPL Electric Hearing Exhibits No. 7 through 10 evidence no interruptions of electrical service between August 18, 2017 and July 2, 2017. Given that PPL Electric's lines are co-located on Frontier Communications poles, and given the lack of an interruption in electric service, it is reasonable to conclude that the line hit on August 18, 2017 may not have been a PPL Electric line. In so much as Complainant bears the burden of proof, a finding against PPL Electric was improper.

Third Exception

Order Number 3 Imposing a Civil Penalty on PPL Electric

14. PPL Electric excepts to Order No. 3 which imposes a civil penalty upon PPL Electric in the amount of \$32,000. In the Initial Decision, the ALJ stated “the negligence demonstrated and the potential for serious harm or injury to the public for 320 days warrants a substantial penalty of \$32,000, . . . 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. (See Initial Decision at p. 12.) The Commission has promulgated a Policy Statement that has adopted the ten “*Rosi* factors” which were first articulated in the case of *Joseph A. Rosi v. Bell-Atlantic, et al.*, Docket No. C-009924409, 2000 Pa. PUC LEXIS 5 (March 16, 2000). See 52 Pa. Code § 69.1201.

Accordingly, the Commission may consider these *Rosi* factors in evaluating whether a civil penalty should be imposed for violating a Commission order, regulation, or statute. These factors are: (i) whether the conduct at issue was of a serious nature; (ii) whether the resulting consequences of the conduct at issue were of a serious nature; (iii) whether the conduct at issue was deemed intentional or negligent; (iv) whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent

similar conduct in the future; (v) the number of customers affected and the duration of the violation; (vi) the compliance history of the regulated entity that committed the violation; (vii) whether the regulated entity cooperated with the Commission's investigation; (viii) the amount of the civil penalty or fine necessary to deter future violations; (ix) past Commission decisions in similar situations; and (x) Other relevant factors. 52 Pa. Code § 69.1201(c). Given the fact that Complainant was unable to meet her burden of proof in showing that it was a PPL Electric wire which was low hanging on August 18, 2017, and given no intervening calls or issues for eleven months, no penalty is warranted.

As set forth in Exceptions One (1) and Two (2), Complainant failed to meet her burden in establishing PPL Electric failed to provide safe, adequate and reasonable service. Accordingly, no penalty is warranted. Alternatively, a penalty per day is unwarranted wherein PPL Electric had no knowledge of any ongoing condition between August 8, 2017 and July 2, 2018. Rather, the only evidence is that PPL Electric responded to the Lancaster 911 call promptly, had a service man examine the wire, and conclude that in fact it was a non-PPL Electric problem. (PPL Electric Exhibit 9). Given that on August 18, 2017, the customer experienced no outage, and given that Complainant continued to experience no outages at all for the next 11 months, it can be concluded that the wire affected was most likely a non-PPL Electric wire. (See PPL Electric Exhibit 9 which shows a "0" minute outage and PPL Electric Exhibit 10 which shows no Customer calls between August 18, 2017 and July 2, 2018 raising any concerns about low hanging wires or reported outages). Alternatively, if it was the PPL Electric line that was affected, given that there was no reported problems for the next eleven (11) months, it is unreasonable to assess a "per day fine" when PPL Electric inspected the line on the day in question and in good faith believed no issues to exist. As most, the Troublemaker who inspected the line on August 18, 2017 erred in his measurement and determination that the line was in accord with industry regulations. Absent a call from any ratepayer expressing

any concern about the line after August 18, 2017, there was no reason for PPL Electric to return to the location and re-inspect the distribution line.

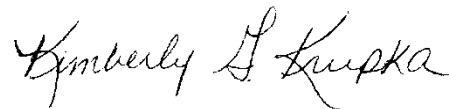
Finally, while the ALJ appears to find that PPL Electric identified the problem as a low point of attachment by the customer, that PPL Electric had an obligation to so notify the customer. However, there is no evidence that the original lower point of attachment caused the distribution line to be maintained at an improper height. Rather, the reason for the damages to Complainant's siding was a result in part to the relocation of the point of attachment to a higher location. There is no evidence that the Customer's chosen point of attachment actually led to a low lying distribution line. Accordingly, such should not be a basis for the fine.

Conclusion

In light of the foregoing, PPL Electric Utilities Corporation respectfully requests that the Public Utility Commission grant these Exceptions and not adopt the ALJ's Initial Decision.

RESPECTFULLY SUBMITTED,

GROSS MCGINLEY, LLP



BY: _____
KIMBERLY G. KRUPKA, ESQUIRE
*Attorney for Respondent, PPL Electric
Utilities Corporation*

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ULTIMATE SPORTS COMPANY, INC.,
Complainant,

vs.

PPL ELECTRIC UTILITIES CORPORATION,
Respondent.

COMPLAINT DOCKET

NO. C-2017-2633651

CERTIFICATE OF SERVICE

This is to certify that EXCEPTIONS OF PPL ELECTRIC UTILITIES CORPORATION TO THE INITIAL DECISION was served via e-mail or mailed via First Class Mail, as indicated below, on this the 6th day of August, 2019.

The Honorable Dennis J. Buckley
Administrative Law Judge
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg PA 17120
Via E-Mail: debuckley@pa.gov

Stacy L. Weaver
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Via First Class Mail

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