

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jerome Sindaco	:	
	:	
v.	:	C-2017-2639465
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

Jerome Sindaco filed a formal complaint against PPL Electric Utilities Corporation, alleging Respondent improperly disconnected electrical service to his property. This decision sustains the formal complaint and imposes a civil penalty upon Respondent.

HISTORY OF THE PROCEEDING

Jerome Sindaco (Complainant or Mr. Sindaco) filed a formal complaint (complaint) against PPL Electric Utilities Corporation (PPL, PPL Electric or Respondent) dated December 21, 2017, alleging Respondent improperly disconnected electrical service to six metered accounts, constituting the entire premises, at his property at 14 South Main Street, Pittston, Pennsylvania (Service Location or Premises) without notice to Complainant. The complaint alleges that Respondent “disconnected electrical service to six different accounts that were connected by not less than three separate and distinct service drop cablesets.”¹ As relief, Complainant requested an accounting from Respondent as to why each account was

¹ Formal Complaint at Section 4, p. 2.

disconnected, photographic evidence of the disconnection and the authority relied upon to support Respondent's actions for the disconnection.

On January 11, 2018, Respondent filed its answer to the complaint. Respondent admitted that it terminated electric service to the Service Location on December 22, 2016. Respondent averred that it terminated service at the Service Location at the request of the Zoning Code Officer based upon safety concerns regarding unsafe conditions at the weatherhead.² Respondent further averred that an inspection of the premises was required prior to reconnection of service. All other averments were denied.

On February 5, 2018 a hearing notice was issued which scheduled the initial telephonic hearing for March 23, 2018 at 10:00 a.m. On February 8, 2018, the undersigned Presiding Officer issued a prehearing order, which set forth the procedural requirements for a formal hearing before the Commission.

On March 23, 2018, the undersigned Presiding Officer convened the initial telephonic hearing as scheduled. Complainant appeared *pro se*. Respondent was represented by Kimberly G. Krupka, Esquire. The Parties engaged in settlement negotiations. Upon conclusion of the negotiations, the Parties agreed to a continuance of the hearing as a necessary witness was unavailable and to continue their settlement discussions.

On April 5, 2018 a Reschedule Hearing Notice was issued rescheduling the hearing for May 30, 2018 at 10:00 a.m.

On May 14, 2018 a Cancellation/Reschedule Hearing Notice was issued rescheduling the hearing for June 18, 2018 at 10:00 a.m. On June 18, 2018, the undersigned Presiding Officer convened the initial telephonic hearing as rescheduled. Complainant appeared *pro se*. Respondent was represented by Graig M. Schultz, Esquire. The Parties engaged in settlement negotiations. Upon conclusion of the negotiations, the Parties agreed to a continuance of the hearing in order to continue their investigation and to continue settlement discussions.

² Respondent did not define or explain the term "weatherhead" as presented in its testimony.

On October 31, 2018, Complainant filed a Motion For Order To Cease And Desist. Complainant requested that Respondent be ordered to cease and desist from having electrical materials removed from the premises prior to completion of this proceeding. No response was filed by Respondent.

On December 10, 2018, an Interim Order was entered requiring the Parties to confer and determine whether or not further settlement discussions or an additional prehearing or settlement conference might be beneficial in this proceeding and provide the undersigned Presiding Officer with several dates acceptable to the parties for a conference in January 2019 in the event that a conference was agreed upon. In the event that the Parties were unable to resolve this matter or to agree upon scheduling an additional prehearing or settlement conference, on or before December 17, 2018, the Parties were directed to provide the undersigned Presiding Officer with several dates acceptable to the Parties in January 2019 in order to conduct an evidentiary hearing.

On December 21, 2018, Respondent provided a letter to the undersigned Presiding Officer, which was copied to Complainant, stating that Respondent was unable to contact Complainant by telephone and requested that Complainant contact Respondent.

On January 16, 2019, Complainant filed a Request To Schedule Motion Hearing. Complainant stated that he was unable to contact Respondent and requested that an evidentiary hearing be scheduled.

On March 15, 2019 a hearing notice was issued which rescheduled the telephonic hearing for March 25, 2019 at 10:00 a.m. On March 15, 2019, the undersigned Presiding Officer issued a further telephonic prehearing order, which set forth the procedural requirements for a formal hearing before the Commission.

On March 15, 2019, the undersigned Presiding Officer convened the initial telephonic hearing. Complainant appeared *pro se* and testified on his own behalf and presented testimony of two witnesses. He offered two exhibits, Complainant Exhibits A and B, which

were admitted into evidence. Respondent was represented by Kimberly G. Krupka, Esquire, who presented testimony from one witness and offered 13 exhibits which were marked as PPL Exhibits 2, 7, 10-20, and admitted into evidence. In addition, the Parties agreed to incorporate into the hearing record the official transcripts from the March 23, 2018 and June 18, 2018 proceedings. A transcript of the hearing was generated, consisting of 236 pages.³

On March 29, 2019, an Interim Order was entered permitting the Parties to file briefs in this matter on or before June 10, 2019. On June 10, 2019, Respondent filed its brief in this matter. Complainant did not file a brief. On June 28, 2019, an Interim Order was entered closing the evidentiary record in this proceeding.

FINDINGS OF FACT

1. Complainant is Jerome Sindaco who resides at 933 Wyoming Avenue, West Pittston, Pennsylvania.
2. Respondent is PPL Electric Utilities Corporation.
3. Complainant filed a formal complaint dated December 21, 2017, alleging Respondent improperly disconnected all electrical service to the six metered accounts at his property at 14 South Main Street, Pittston, Pennsylvania. (N.T. 20, 32).
4. The Service Location consists of seven units, includes six accounts and utilizes two external meter bases and four meter bases inside the property. (N.T. 79-80, 84, 92).
5. Respondent admitted that it terminated electric service to the Service Location on December 22, 2016, and averred that it terminated service at the request of the Zoning Code Officer based upon safety concerns regarding unsafe conditions at the weatherhead. (N.T. 37-38, 80, 92).

³ All references to the transcript in this Initial Decision (N.T.) are references to the transcript of the evidentiary hearing held on March 25, 2019.

6. Harry Smith (Mr. Smith) is the Zoning or Code Enforcement Officer for the City of Pittston, where the premises is located. (N.T. 93).

7. Mr. Smith performed an inspection of the premises on December 22, 2016 at 10:22 a.m. (N.T. 93-94, 101-102).

8. Complainant was not present when a PPL representative went to the property to terminate service. (N.T. 101).

9. A Notice of Violation dated December 22, 2016 related to the inspection on that date was generated. The Notice of Violation indicates that the inspection occurred at 10:22 a.m. (N.T. 94-95; Complainant Exhibit B).

10. The Notice of Violation provided, in part, that there were numerous electrical violations, stated "PPL disconnecting service due to violations and unsafe conditions at their discretion" and states that the property was posted as unfit for human habitation due to violations and lack of electricity. (N.T. 96-99; Complainant Exhibit B).

11. The Notice of Violation purports to have been signed by Harry Smith on December 22, 2016 at 12:43 p.m. (N.T. 99-100).

12. Harry Smith placed stickers on the building stating the premises were unfit for human habitation. (N.T. 100).

13. Respondent could not establish the time that electric service was terminated. (N.T. 138-141).

14. Respondent did not contact Complainant prior to terminating service. (N.T. 87-88).

15. Complainant offered the testimony of Terrance Best, a licensed master electrician since 1975, a home inspector, a real estate inspector, and a Certified Building Code Official with the Department of Labor and Industry for the Municipality of Pittston Township (not Pittston City). (N.T. 13.)

16. Terrance Best examined the exterior of the property owned by Complainant located at 14 South Main Street, Pittston, Pennsylvania on March 12, 2018. (N.T. 20, 23.)

17. Based on his inspection of the exterior of the Complainant's property, Terrance Best generated an Inspection Report. (Complainant Exhibit A).

18. Mr. Best testified the International Property Maintenance Code would be applicable to this situation with regard to this property. Mr. Best opined that Section 107.2-4 of the International Property Maintenance Code requires that a Code Official have a reasonable time to make repairs and do what is required to bring the dwelling unit into compliance. (N.T. 33-34).

19. In this situation, the individual that does the property maintenance inspections for Pittston City would have been using the same Property Maintenance Code. (N.T. 33-34).

20. PPL Electric offered the testimony of Michael Perrin, the senior engineer within PPL Electric's metering department. (N.T. 126-27).

21. Mr. Perrin confirmed that PPL Electric learned of a concern regarding the property when Mr. Smith of the City of Pittston called PPL Electric at 12:40 p.m. and stated that service needed to be cut. (N.T. 135).

22. The reason documented for termination by Respondent was "Code inspector wants service cut for five meters due to unsafe conditions." (N.T. 134-137).

23. Following the receipt of the call from Mr. Smith, PPL Electric proceeded with termination of the electricity at the Property. (N.T. 137-138).

24. PPL Electric's practice is to follow the requests of Code enforcement officers and terminate electricity if notified of unsafe conditions and a request for disconnect is made. (N.T. 141).

25. Following the termination of electricity, Complainant called PPL Electric and spoke with a Company representative on December 22, 2016. Respondent informed him that a total of five meters were turned off at the property due to unsafe conditions at the weatherhead. (N.T. 142-143).

26. Termination of service was physically performed by a PPL Electric troubleman. (N.T. 196).

27. The PPL Electric troubleman terminates service upon the request of a code enforcement official. Even if the troubleman does not see any problem and does not confer with the code official, he "just blindly follows the order." (N.T. 196-197, 216).

28. Respondent does not perform any follow-up inspection upon or after termination of service, as in this instance. (N.T. 198).

29. Respondent does not provide notification to any occupants prior to termination of power by the Company or after termination of power in situations such as presented in this proceeding. (N.T. 198-200, 202).

30. In the instant proceeding, at the time of termination of service by Respondent, two occupants of the property were disabled and one of the disabled occupants used oxygen after undergoing heart surgery. (N.T. 199).

31. Respondent does not provide notification to the property owner prior to termination of power by the Company, but does provide a letter to the owner after termination of power in situations such as presented in this proceeding. (N.T. 198-200, 202).

32. No notice is provided prior to termination when there is an immediate safety concern, such as loss of life or property, and in such instances, Respondent acts immediately. (N.T. 203-204).

33. If Respondent receives notice from a code official of an immediate safety concern regarding the potential loss of life or property, the Company will terminate service based upon the directive or the order of the code official. (N.T. 211).

34. Mr. Perrin testified that Respondent takes immediate action if there is an immediate safety concern for potential loss of life; however, based on what he was able to view from the outside of the premises, there was nothing egregious enough to cut the service immediately. (N.T. 173, 175).

35. The Company relies upon the expertise of any person of any type of authority within the city or township just based on their position. (N.T. 212).

36. There is no tariff provision or Commission-approved regulation or rule that the Company relies upon in enforcing this policy. (N.T. 212).

37. Respondent had no knowledge of any expertise of Mr. Smith, the code enforcement official, other than his title. (N.T. 212).

38. Respondent had no knowledge as to whether Mr. Smith, the code enforcement official, is licensed with regard to electrical inspections or anything related to electrical service. (N.T. 213).

39. A call center representative for the Company, who answered the telephone, spoke with Mr. Smith prior to Respondent terminating service. (N.T. 213).

40. Respondent did not take any follow-up action or conduct any independent investigation in response to that call to the customer service representative, prior to terminating service. (N.T. 214).

41. The call center representative issued the work order at the same time she documented the call. (N.T. 215).

42. The sole witness for the Company, Mr. Perrin, testified that to his knowledge, the only information the Company had, prior to terminating service, was a call from the code enforcement officer requesting that Respondent cut service due to unsafe conditions. (N.T. 221).

43. The Company had no other information regarding what the unsafe conditions were. (N.T. 222).

44. The Company records of the notice from Mr. Smith do not state that there was an immediate safety issue, nor is there any indication that there was a potential loss of life or property. (N.T. 223).

45. Mr. Perrin testified that the ultimate discretion to determine whether or not to terminate service was made by the call center representative, who answered the telephone and issued the work order. (N.T. 224, 226-227).

46. Neither the Notice of Violation issued by the City of Pittston nor any content in the Notice was provided to Respondent prior to termination of service. (N.T. 225).

47. The Company records indicate that Harry Smith is the Zoning Code Officer. (N.T. 222).

DISCUSSION

Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the party seeking relief from the Commission has the burden of proof. Complainant seeks relief from the Commission, and, therefore, has the burden of proof in this proceeding. "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 Hosier v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, a complainant will prevail. If the utility rebuts complainant's evidence, the burden of going forward with the evidence shifts back to a complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Replogle v. Pennsylvania Electric Company*, 54 Pa. PUC 528 (1980), and *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980).

If Respondent submits evidence of "co-equal" weight to refute Complainant's evidence, Complainant has not satisfied the burden of proof unless it presents additional evidence opposing Respondent's evidence. *Morrissey v. Pa. Dept. of Highways*, 424 Pa. 87, 225 A.2d 895 (1967), and *Burleson v. Pa. Pub. Util. Comm'n*, 66 Pa.Cmwlth. 282, 443 A.2d 1373 (1982), *aff'd*. 501 Pa. 443, 461 A.2d 1234 (1983).

The decision of the Commission must be supported by substantial evidence. *See*, Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. P.U.C.*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96

(1961); and *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

In his Complaint, Mr. Sindaco averred that Respondent improperly terminated the service to six different accounts that were connected by not less than three separate and distinct drop cable sets. Complainant questioned why service was terminated to the premises in the manner utilized by Respondent and why Respondent terminated service to each and every metered account served by no less than three separate drop cable sets. He further requested evidence concerning the accusations leveled against him as well as a copy of the tariff provision, laws and regulations that authorized Respondent's actions. Complainant further requested a separate and distinct report for each of the six metered accounts.

Complainant testified at the hearing that two elderly disabled men resided at the premises at the time service was terminated by Respondent.⁴ Complainant continued that service was terminated without providing him with an opportunity to comply with the relevant rules and without even a phone call before service was terminated. N.T. 87-88. He also testified that Mr. Smith posted a notice that the premises was unfit for habitation due to "violations and lack of electricity."⁵ Complainant testified that he went to the office of the magistrate when Mr. Smith was conducting his investigation and when Complainant returned, the power was off.⁶ Complainant testified there was no basis for terminating service in the manner used by Respondent and without advance notice to Complainant or the occupants of the premises.

⁴ N. T. 84.

⁵ N. T. 98-99.

⁶ N. T. 102.

Termination of Service

Commission regulations set forth the procedures to be followed by a utility prior to termination of electric service. 52 Pa.Code § 56.91 provides in pertinent part, as follows:

§ 56.91. General notice provisions and contents of termination notice.

(a) Prior to terminating service for grounds authorized by § 56.81 (relating to authorized termination of service), a public utility shall provide written notice of the termination to the customer at least 10 days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days. In the event of a user without contract as defined in § 56.2 (relating to definitions), the public utility shall comply with §§ 56.93--56.97, but need not provide notice 10 days prior to termination.

(b) A notice of termination must include, in conspicuous print, clearly and fully the following information when applicable:

(1) The reason for the proposed termination.

....

(6) A statement that the customer should immediately contact the public utility to attempt to resolve the matter. The statement must include the address and telephone number where questions may be asked, how payment agreements may be negotiated and entered into with the public utility, and where applications can be found and submitted for enrollment into the public utility's universal service programs, if these programs are offered by the public utility.

(7) The following statement: "If you have questions or need more information, contact us as soon as possible at (public utility phone number). After you talk to us, if you are not satisfied, you may file a complaint with the Public Utility Commission. The Public Utility Commission may delay the shut off if you file the complaint before the shut off date. To contact them, call (800) 692-7380 or write to the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, Pennsylvania 17105-3265."

....

(12) Information indicating that special protections are available for tenants if the landlord is responsible for paying the public utility bill and

how to contact the public utility to obtain more information on these protections.

....

(18) Contact information for customers with disabilities that need assistance.

52 Pa.Code § 56.91.

Commission regulations require notice to the customer or responsible adult occupant prior to termination of service, in pertinent part, as follows:

§ 56.93. Personal contact.

(a) Except when authorized under § 56.71, § 56.72 or § 56.98 (relating to interruption of service; discontinuance of service; and immediate termination for unauthorized use, fraud, tampering or tariff violations), a public utility may not interrupt, discontinue or terminate service without attempting to contact the customer or responsible adult occupant, either in person, by telephone or electronically with the customer's consent, to provide notice of the proposed termination at least 3 days prior to the scheduled termination using one of the methods in this section. If personal contact by one method is not possible, the public utility is obligated to attempt another method.

(1) Phone contact shall be deemed complete upon attempted calls on 2 separate days to the residence between the hours of 8 a.m. and 9 p.m. if the calls were made at various times each day, with the various times of the day being daytime before 5 p.m. and evening after 5 p.m. and at least 2 hours apart. Calls made to contact telephone numbers provided by the customer shall be deemed to be calls to the residence.

(2) If contact is attempted in person by a home visit, only one attempt is required. The public utility shall conspicuously post a written termination notice at the residence if it is unsuccessful in attempting to personally contact a responsible adult occupant during the home visit.

(3) Contact by e-mail, text message or other electronic messaging format consistent with the Commission's privacy guidelines and approved by Commission order. The electronic notification option is voluntary and shall only be used if the customer has given prior consent approving the use of a specific electronic message format for the purpose of notification of a pending termination. Electronic contact shall be deemed complete if,

after attempted transmittal, no message is received indicating that the transmittal was undeliverable or otherwise not received. If the utility receives notification that the transmittal was undeliverable or otherwise not received, the utility shall attempt to contact the customer either in person or by telephone, consistent with the requirements of this section.

52 Pa.Code § 56.93(a).

The record evidence fails to establish that any notice of termination was provided to Complainant or any adult occupant prior to or at the time of termination of service by Respondent. Respondent asserts that it was not obligated to comply with the requirements of 52 Pa.Code § 56.91 or § 56.93 because of the alleged safety issues that existed at the premises at the time service was terminated. In its brief, Respondent argues that its actions were in full compliance with 52 Pa.Code § 56.338, and that its actions were therefore proper and in compliance with Commission regulations. Respondent is an electric distribution utility and therefore 53 Pa.Code § 56.338 is not applicable to this proceeding. *See* 52 Pa.Code § 56.1(b)

52 Pa.Code § 56.71 permits a public utility to interrupt service due to an emergency. 52 Pa.Code § 56.71 provides as follows:

§ 56.71. Interruption of service.

A public utility may temporarily interrupt service when necessary to effect repairs or maintenance; to eliminate an imminent threat to life, health, safety or substantial property damage; or for reasons of local, State or National emergency.

(1) *Interruption with prior notice.* When the public utility knows in advance of the circumstances requiring the service interruption, prior notice of the cause and expected duration of the interruption shall be given to customers and occupants who may be affected.

Respondent argues that, as the termination was based on an occurrence which PPL Electric reasonably believed endangered the safety of people, PPL Electric acted properly in immediately terminating service and then speaking with Complainant later that day. Respondent provided testimony of one witness, Michael Perrin, the senior engineer with the metering department at PPL Electric, who commenced his investigation on January 6, 2017 and visited the

premises on January 19, 2017. Mr. Perrin testified he was responsible for supervising meter technicians throughout his region and for handling the day-to-day affairs and consumer complaints for Respondent. Mr. Perrin testified that Respondent takes immediate action if there is an immediate safety concern for potential loss of life; however, based on what he was able to view from the outside of the premises, there was nothing egregious enough to cut the service immediately.

Mr. Perrin testified that Respondent became aware of the problem at the premises upon receiving a telephone call from Mr. Smith on December 22, 2016 at 12:40 p.m., who stated that service needed to be cut. Company records indicate that Mr. Smith wanted service cut for five meters due to unsafe conditions at the weatherhead. The call was received by the call center representative who answered the telephone and who then issued a work order to terminate service.

Mr. Perrin testified that Respondent does not “second-guess” the findings nor reinvestigate the findings of the Code inspector for the township.” (N.T. 140-142). Instead, Respondent regularly relies upon township enforcement officers for notification of unsafe or “uninhabitable” conditions.⁷

Mr. Perrin testified that Complainant was notified of the service termination by Respondent on December 22, 2016, when Complainant called Respondent and was told that five meters were turned off at the premises due to unsafe conditions at the weatherhead. Complainant was advised that if he was looking for documentation “to contact zoning.”⁸

Mr. Perrin testified that if the code enforcement officer was not involved, Respondent would have issued a letter to Complainant allowing a 30-day response to make the repairs. However, upon the Code enforcement officer deeming the premises to be unfit for

⁷ N. T. 141-142.

⁸ N. T. 142-143.

habitation, that alone forces Respondent to go out and terminate service for potential loss of life or property.⁹

Contrary to the testimony of Mr. Perrin, Respondent authorized termination of service and cut off the service without receiving any notification that the premises was unfit for habitation or that the premises presented a potential loss of life or property.

The Company presented evidence that when it receives notice from a Code official of an immediate safety concern regarding the potential loss of life or property, the Company will terminate service based upon the directive or the order of the code official.¹⁰ Here, the evidence establishes that Respondent immediately took action to terminate service to the entire premises, based upon a telephone call to its call center from a person Respondent believed to be a Zoning or Code Officer who stated that service needed to be cut for five meters due to “unsafe conditions” at the weatherhead.¹¹ Respondent did not take any follow-up action or conduct any independent investigation in response to that call to the customer service representative, prior to terminating service and immediately went to the property and terminated service after a work order was generated.¹²

Furthermore, the troubleman who responded to terminate service took no action and made no investigation, other than terminating the service.

Mr. Perrin testified that, upon the Code enforcement officer deeming the premises to be unfit for habitation, that alone forces Respondent to go out and terminate service for potential loss of life or property.¹³ However, Respondent had no knowledge of the Notice of Violation or other “violations” when it authorized the termination of service. Further, the Notice

⁹ N. T. 173-174.

¹⁰ N. T. 211.

¹¹ N. T. 134-139, Answer Section 4, p. 1.

¹² N. T. 214-215.

¹³ N. T. 173-174.

of Violation indicated that the premises was unfit for habitation due to “violations” and “lack of electricity.”¹⁴

Here, Respondent failed to establish that reasonable grounds existed to support the termination of service. The Company records of the notice from Mr. Smith do not state that there was an immediate safety issue, nor was there any indication or inquiry regarding a imminent loss of life or substantial damage to property or other emergency. The Company simply relied upon the title of the official, even though Respondent wasn’t even certain as to Mr. Smith’s actual title.¹⁵ There is no tariff provision or Commission-approved regulation or rule that the Company relies upon in enforcing this policy.¹⁶

Mr. Perrin testified that to his knowledge, the only information the Company had, prior to terminating service, was a call from the Code enforcement officer requesting that Respondent cut service due to unsafe conditions at the weatherhead and the Company had no other information regarding what the unsafe conditions were. Furthermore, the Company records of the notice from Mr. Smith do not state that there was an immediate safety issue, nor is there any indication that there is a potential loss of life or property.

Complainant has met his burden of proof in establishing that Respondent did not have a reasonable belief that interruption of service was necessary to eliminate an imminent threat to life, health, safety or substantial property or for reasons of local, state or national emergency .

Notice at Time of Service Termination

52 Pa.Code § 56.72(2) provides that when service is interrupted due to unforeseen circumstances, notice of the cause and expected duration of the interruption shall be given as

¹⁴ N. T. 96-99; Complainant Exhibit B.

¹⁵ N. T. 220-223.

¹⁶ N. T. 212.

soon as possible to customers and occupants who may be affected. Acceptable methods of notice include personal and phone contact.

There is no record evidence of any attempt by Respondent to provide notice to Complainant or any occupant of the premises prior to or after service was terminated nor an explanation by Respondent for its failure to make any such attempt. Respondent asserts that it was not obligated to provide notice or to comply with the requirements of 52 Pa.Code § 56.331 or § 56.333 because of the alleged safety issues that existed at the premises at the time service was terminated. Sections 56.331 and 56.333 do not apply to this proceeding and are not applicable to electric distribution utilities unless a protection from abuse order was granted. See 52 Pa.Code § 56.1.

Respondent argues that, as the termination was based on an occurrence which PPL Electric reasonably believed endangered the safety of people, PPL Electric acted properly in immediately terminating service and then speaking with Complainant later that day. In fact, Mr. Perrin testified Respondent does not provide notification to any occupants prior to termination of power by the Company or after termination of power in situations such as presented in this proceeding.¹⁷ Here, at the time of termination of service by Respondent, two occupants of the property were disabled and one of the disabled occupants used oxygen after undergoing heart surgery.¹⁸ Mr. Perrin further testified that Respondent does not provide notification to the property owner prior to termination of power by the Company but does provide a letter to the owner after termination of power in situations such as presented in this proceeding.¹⁹ No notice to the occupants was provided or attempted by Respondent.

In addition, after Complainant called Respondent, Complainant was advised that if he was looking for documentation “to contact zoning.”²⁰

¹⁷ N. T. 198-200, 202.

¹⁸ N. T. 199.

¹⁹ N. T. 198-200, 202.

²⁰ N. T. 142-143.

Mr. Perrin testified that if the code enforcement officer was not involved, Respondent would have issued a letter to Complainant allowing a 30-day response to make the repairs. However, Mr. Perrin explained: "Because there were other circumstances that were identified by the City of Pittston Code enforcement officer, it trumps all of the other forms of communication."²¹ No authority was provided by Respondent to support this position.

Respondent's actions violate 52 Pa.Code § 56.71 by terminating service without notice under the circumstances by failing to even make an attempt to notify Complainant or any adult occupant at the premises at the time of termination or subsequent to termination.

In addition, the standard in evaluating this Complaint might also be met by a determination as to whether the service extended to Complainant was adequate and reasonable within the meaning of the Public Utility Code. Section 1501 of the Public Utility Code provides:

§ 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.

66 Pa.C.S.A. § 1501.

In order for the Commission to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility. *West Penn Power Co. v. PA Public Utility Comm'n*, 478 A.2d 947 at 949 (Pa.Cmwlth. 1984). The statutory definition of "service" is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm'n*, 654 A.2d 72 (Pa.Cmwlth. 1995).

²¹ N. T. 173-174.

“Service” can include various factors involving billing, as the Public Utility Code notes:

"Service." Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . .

66 Pa.C.S.A. § 102.

Inadequate service may be found where the Commission’s regulations have been violated as occurred here, as set forth at length above.

Conclusion

Based upon the evidence presented, Complainant has sustained his burden of proving two separate violations. Respondent terminated service based upon a telephone call to the Company call center from Mr. Smith alleging unsafe conditions at the weatherhead and nothing more. Further, Respondent presented no evidence of any attempt to provide notification to Complainant or any adult occupant prior to or after service was terminated.

Rosi Standards

Section 3301 of the Public Utility Code authorizes the Commission to assess a civil penalty for violations of the Code, regulations or orders of the Commission in an amount up to \$1,000 per day per violation.²² The Commission’s policy statement in Section 69.1201(c)²³ of the regulations provides the guidance factors to be weighed in determining whether a civil penalty is appropriate:

²² 66 Pa.C.S. § 3301.

²³ 52 Pa.Code § 69.1201(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.

Termination of Service

This case raises a significant issue of customer service.²⁴ The failure to provide Complainant with notice prior to terminating service under the circumstances in this case does not constitute reasonable service.²⁵ Although Respondent may interrupt service to eliminate an imminent threat to life, safety or substantial property damage, no such circumstances existed in this situation.

No evidence was presented regarding whether the Commission has assessed several civil penalties against Respondent for failing to provide adequate customer service.

The conduct at issue was of a serious nature amounting to negligent or willful conduct by Respondent, as opposed to an administrative filing or technical error. The consequence of the conduct of Respondent was also serious. Complainant's service, affecting Mr. Sindaco and two elderly disabled occupants of the premises, resulted in cutting off service to the property without any opportunity for Complainant to address the situation. The conduct by Respondent, as explained by Company witness Perrin, was a long-standing policy and provided discretion to the call center representative answering the telephone, to determine whether to terminate service without prior notice to the owner or occupants of the premises.

In the instant case, Respondent has not had an opportunity to modify its internal practices or procedures,²⁶ as Mr. Sindaco's Complaint may be unique. Similarly, there is no evidence that a large number of customers are affected by the actions of Respondent. However,

²⁴ 52 Pa.Code § 69.1201(c)(1).

²⁵ 52 Pa.Code § 69.1201(c)(3).

²⁶ 52 Pa.Code § 69.1201(c)(4).

the consequences of the violation lasted a substantial period of time and continued through the date of the hearing.

No evidence was presented to indicate this violation was more than an isolated incident and no bad faith by Respondent was established. Furthermore, I found no evidence regarding past Commission decisions in similar situations.

Viewing these factors with regard to this issue, a civil penalty of \$1,000 is appropriate. This amount is sufficient to provide a deterrent effect against similar violations of Section 1501 and Section 56.71 and reflects the magnitude and intent of the violation presented here.

Failure to Provide Notice or Attempt to Provide Notice to Customer or Occupants

The failure to provide or attempt to provide notice to the Complainant and adult occupants of the premises at the time of termination or after also raises significant issues of customer service.²⁷ There was absolutely no legitimate reason advanced by Respondent as to why notice was not attempted to the occupants of the premises upon or after termination of service

When a utility takes action to terminate service without prior notice, the utility must complete such basic service in an efficient and prompt manner and communicate or attempt to communicate with the customer or an adult occupant at the premises in order to avoid a myriad of issues that can occur without such notice as well as the general inconvenience to the customer and the occupants.

The inability or unwillingness of Respondent to complete or even attempt such a basic function and to advise Complainant when Complainant called Respondent later on the

²⁷ 52 Pa.Code § 69.1201(c)(1).

same day service was terminated is not sufficient.²⁸ Furthermore, no evidence was presented that the Commission has assessed several civil penalties against Respondent for failing to provide adequate customer service of a similar nature in the past.

The conduct at issue by Respondent in this regard was of a serious nature, amounting to negligence, and constituted more than an administrative filing or technical error. The evidence presented by Respondent established that Respondent was following a policy that clearly violates Commission regulations.

Furthermore, the resulting consequences of the conduct were of a serious nature. The elderly disabled occupants were present at the time service was terminated, but no effort was made to notify them of the action by Respondent.

With regard to this issue, Respondent has not had an opportunity to modify its internal practices or procedures,²⁹ and there is no evidence that a large number of customers are affected by Respondent's actions in this matter.

No evidence was presented to indicate this violation was more than an isolated incident and no bad faith by Respondent was established.

In addition, I found no evidence regarding past Commission decisions in similar situations and no other relevant factors were established to justify a different penalty than that imposed in this initial decision.

Viewing these factors, a civil penalty in the sum of \$1,000 is appropriate. This amount is sufficient to provide a deterrent effect against similar violations of Section 1501 and Section 56.338 and reflects the magnitude of the violation presented with regard to this issue.

²⁸ 52 Pa.Code § 69.1201(c)(3).

²⁹ 52 Pa.Code § 69.1201(c)(4).

Accordingly, a civil penalty will be assessed against Respondent with regard to this issue in the sum of \$2,000.

CONCLUSIONS OF LAW

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

2. Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

3. Complainant sustained his burden of establishing that PPL Electric Utilities Corporation failed to render reasonable service in violation of Section 1501 of the Public Utility Code by terminating electric service in violation of 66 Pa.C.S. § 1501.

4. It is just, reasonable and in the public interest that PPL Electric Utilities Corporation should be assessed a civil penalty in the amount of \$1,000 for the violation of Section 1501 of the Public Utility Code by terminating electric service to the Service Location under the circumstances. 66 Pa.C.S. § 3301.

5. Complainant sustained his burden of establishing that PPL Electric Utilities Corporation violated 52 Pa.Code § 56.71 by failing to provide or attempt to provide notice to Complainant and any adult occupant of the premises of the termination of electric service at the time or after electric service was being terminated by Respondent. 52 Pa.Code § 56.71.

6. It is just, reasonable and in the public interest that PPL Electric Utilities Corporation should be assessed a civil penalty in the additional amount of \$1,000 for the violation of 52 Pa.Code § 56.71. 66 Pa.C.S. § 3301.

7. 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. 66 Pa.C.S.A. § 1501.

8. The statutory definition of "service" is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa.Cmwlth. 1995).

9. Service, used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them.
66 Pa.C.S.A. § 102.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Jerome Sindaco against PPL Electric Utilities Corporation at Docket No. C-2017-2639465, is sustained.

2. That within thirty (30) days from entry of the Final Commission Order in this case, PPL Electric Utilities Corporation shall pay a total of \$2,000 by sending a money order or certified check payable to the Commonwealth of Pennsylvania to:

