

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christine Sharbaugh	:	
	:	
v.	:	C-2018-3005720
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

This Initial Decision grants Christine Sharbaugh’s Complaint against PECO Energy Company upon finding that Complainant carried successfully her burden of proving that the utility failed to provide her with safe, adequate and reasonable service. This Decision also orders that PECO Energy Company pay a civil penalty in the amount of \$2,000.00.

HISTORY OF THE PROCEEDING

On October 16, 2018, Christine Sharbaugh (Ms. Sharbaugh or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO, Respondent, or the Company) alleging that she was having a reliability, safety or quality problem with her electricity service. In particular, Ms. Sharbaugh avers that she experienced two prolonged outages which caused considerable losses to her business. As relief, Ms. Sharbaugh requests that the Commission review her claims and assist in the adjudication and resolution of her Complaint.

On November 19, 2018, PECO filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated December 4, 2018, notified the parties that an initial hearing was scheduled for Wednesday, January 16, 2019, at 10:00 a.m.

A Prehearing Order was issued on December 17, 2018, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The Complainant requested a continuance of the hearing because she had travel plans to Atlanta. PECO had no objection to Ms. Sharbaugh's continuance request. Complainant's request was granted, and a Hearing Cancellation/Reschedule Notice dated January 17, 2019, notified the parties that the initial hearing was rescheduled for Wednesday, February 20, 2019, at 10:00 a.m.

The hearing convened as scheduled on February 20, 2019 but had to be recessed due to inclement weather.

A Further Hearing Notice, dated February 25, 2019, notified the parties that an initial hearing was scheduled for Thursday, March 26, 2019, at 10:00 a.m.

On March 20, 2019, the Respondent requested a continuance of the further hearing because a crucial witness for the Company was unavailable on the scheduled date. Ms. Sharbaugh had no objection to PECO's continuance request. The Respondent's request was granted, and a Hearing Notice dated May 1, 2019, notified the parties that the initial hearing was rescheduled for Thursday, May 16, 2019, at 10:00 a.m.

A second Prehearing Order was issued on May 2, 2019, advising the parties of the date and time of the rescheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The hearing convened as scheduled on May 16, 2019. Ms. Sharbaugh appeared *pro se* and testified on behalf of the Complainant. She also presented the testimony of Ahmed

Chraga who is Ms. Sharbaugh's fiancé and business partner. The Complainant sponsored two exhibits which were admitted into the record in this matter. Shawane L. Lee, Esq., represented the Respondent, and presented the testimony of Timothy Grow— who is a Senior Claims Case Manager for the Claims Division at PECO; and Madeline Devlin – who is a Reliability Engineer for PECO, covering its Delaware and Chester region. The Respondent sponsored 11 exhibits, all of which were admitted into the record.

The record in this matter closed upon receipt of the hearing transcript on June 24, 2019.

FINDINGS OF FACT

1. The Complainant is Christine Sharbaugh, who resides 128 Glen Mills Road, Glen Mills, Pennsylvania, 19342 (Service Address). Tr. 30.

2. The Respondent is PECO Energy Company.

3. Ms. Sharbaugh owns the Service Address where her fiancée, Ahmed Chraga, operates a restaurant Thursday through Sunday from 4:00 p.m. to around 10:00 p.m. Tr. 53.

4. On Sunday, November 26, 2017, around 4:15 p.m., the Complainant experienced dim or flickering lights at the Service Address. Tr. 30-31.

5. Ms. Sharbaugh contacted PECO to report the flickering lights. Tr. 31, 98-99, PECO Exhibits 4 and 11.

6. Because the flickering lights reported by Ms. Sharbaugh on November 26, 2017 did not involve an outage or a safety concern, PECO deemed them to be a low priority event. Tr. 152, 166-67.

7. On November 26, 2017, at 10:43 p.m., the lights went out at the restaurant. Tr. 169-71.
8. The Complainant contacted PECO to report seeing sparks at the equipment on the Pole # B-82. Tr. 31, 37.
9. PECO assigned the highest priority level to the outage. Tr. 175, PECO Exhibit 7.
10. On November 26, 2017, at 11:01 p.m., PECO dispatched a crew to the location of Pole # B-82. Tr. 170-71, PECO Exhibit 7.
11. The crew arrived at the location of Pole # B-82 at 12:17 a.m. on November 27, 2017. Tr. 172, PECO Exhibit 7.
12. The first PECO crew dispatched to the location of Pole # B-82 determined that flaggers and a bucket truck were needed to complete the repairs on the affected pole. Tr. 173-74, PECO Exhibit 7.
13. Complainant's power was restored at 6:15 a.m. on November 27, 2017, after the crew replaced a broken cutout. Tr. 31, 174-76, PECO Exhibit 7.
14. The crew was unable to determine the reason for the cutout failure that caused the power outage on November 26, 2017. Tr. 97-96, 131.
15. The flickering lights and power outage on November 26, 2017 damaged the compressor of the restaurant's commercial freezer causing the food to spoil. Tr. 31, 62-63.
16. On Sunday, December 3, 2017, Ms. Sharbaugh and Mr. Chruga experienced another power outage, which forced them to close the restaurant for the night, cancelling party reservations and sending their employees home. Tr. 32.

17. On December 3, 2017, at 4:25 p.m., Ms. Sharbaugh contacted PECO to report the power outage at the Service Address. Tr. 185-86, PECO Exhibit 4.
18. On December 3, 2017, at 5:15 p.m., PECO dispatched a crew to address Ms. Sharbaugh's outage. Tr. 186.
19. The PECO technicians arrived on the premises at 6:01 p.m. on December 3, 2017. Tr. 186, PECO Exhibit 8.
20. The first PECO crew dispatched on location determined that flaggers were needed to complete the repairs on the affected pole, Pole # B-78. Tr. 186, PECO Exhibit 8.
21. The Complainant's power was restored at 1:16 a.m. on December 4, 2017, after the crew replaced a broken cutout. Tr. 186-87, PECO Exhibit 8.
22. The crew was unable to determine the reason for the cutout failure that caused the power outage on December 3, 2017. Tr. 131-32.
23. The November and December 2017 outages affected the Complainant and one other PECO customer. Tr. 211, PECO Exhibit 9.
24. Pole B-78 and Pole B-82 are located on the same street but are a few poles apart from each other. Tr. 188.
25. Cutouts are "self-sacrificing" devices equipped with a fuse that will open or blow in the presence of fault currents. Tr. 177.
26. A fault current can result from different causes such as a tree limb, a squirrel, or a balloon touching the wires, public damage to a pole, or some other equipment failure. Tr. 176, 180.

27. PECO has tens of thousands of cutouts installed throughout its territory. Tr. 177.

28. Due to the volume of cutouts installed, cutout failures are some of the most common and frequent service equipment failures reported in PECO's service territory. Tr. 88, 134, 178, 192.

29. The Service Address is fed from PECO's Concord 347 circuit. Tr. 193.

30. The last thermography patrol on the Concord 347 circuit prior to the November and December 2017 outages was conducted on June 29, 2017. Tr. 193.

31. PECO's thermography patrol of the Concord 347 circuit on June 29, 2017 revealed no issues with the Company's equipment. Tr. 194.

32. The Concord 347 circuit is 16.32 aerial miles long and feeds 1,958 customers in Delaware County, PA. *Id.*

33. Between March 10, 2017 and April 26, 2019, Ms. Sharbaugh experienced 24 momentary and sustained power outages at the Service Address. Tr. 35-54, PECO Exhibit 5.

34. Momentary outages are less than five minutes in duration, whereas sustained outages are more than five minutes in duration. Tr. 206-207, PECO Exhibit 5.

35. Nine of the 24 outages were sustained, lasting from 15 minutes to over 39 hours. Tr. 196, PECO Exhibit 5.

36. Eight of the sustained outages occurred during the period March 2017 to March 2018. PECO Exhibit 5.

37. Four of the sustained outages resulted from the Riley/Quinn storm that affected customers in PECO's service territory in March of 2018. Tr. 202, 208, PECO Exhibits 5 and 10.

38. For nine of the 24 outages, vegetation was identified as the cause of the outage. PECO Exhibit 5.

39. The last sustained outage occurred on April 26, 2019, right before the hearing date, and lasted one hour and nine minutes. PECO Exhibit 5.

40. Vegetation is a concern in the Concord 347 circuit. Tr. 195-96, PECO Exhibit 5.

41. PECO is responsible for tree-trimming and vegetation maintenance around its circuit. Tr. 226.

42. PECO has moved its vegetation maintenance program from a five-year cycle into a four-year one. Tr. 219, 226.

43. As part of PECO's long-term infrastructure improvement plan, the Company will install approximately 6,500 feet of tree resistant wire in the area near or around the Service Address. Tr. 195, PECO Exhibit 5.

44. The installation of the tree-resistant wire will prevent any tree contact causing a cutout to fail. Tr. 195, PECO Exhibit 5.

45. The Concord 347 circuit is separated by re-closing devices into three sections: RM1, RM2, and RM3. Tr. 213-17, PECO Exhibit 9.

46. The Service Address is served by the RM2 section of the Concord 347 circuit. Tr. 213, PECO Exhibit 9.

47. The reliability indexes for the Concord 347 circuit as a whole in the years 2017, 2018 and 2019 were as follows:

RM2 Section						
Year	Total SAIFI ¹	Total CAIDI ²	Non-Storm SAIFI	Non-Storm CAIDI	Storm SAIFI	Storm CAIDI
2017	2.93	80	1.93	54	1	130
2018	5	217	1.71	198	3.28	227
2019	1.03	187	0	0	1.03	187

Tr. 213-14, PECO Exhibit 9.

48. The reliability indexes for the RM2 section of the Concord 347 circuit in the years 2017, 2018 and 2019 were as follows:

Total Concord -347						
Year	Total SAIFI	Total CAIDI	Non-Storm SAIFI	Non-Storm CAIDI	Storm SAIFI	Storm CAIDI
2017	1.44	90	1.2	82	0.24	130
2018	4.34	145	2.02	87	2.32	196
2019	0.68	121	0.27	60	0.41	162

Tr. 214-15, PECO Exhibit 9.

49. SAIFI and CAIDI only measure sustained outages. Tr. 215.

¹ System Average Interruption Frequency Index (SAIFI). Tr. 213

² Customer Average Interruption Duration Index (CAIDI). Tr. 213.

DISCUSSION

In her formal Complaint against PECO, the Complainant alleges that she was having a reliability, safety or quality problem with her electricity service. In particular, Ms. Sharbaugh avers that she experienced two prolonged outages which caused considerable losses to her business. As relief, Ms. Sharbaugh requests that the Commission review her claims and assist in the adjudication and resolution of her Complaint.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied her burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

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

The undisputed facts of this case are as follows: The Service Address is fed from PECO's Concord 347 circuit. Tr. 193. The Concord 347 circuit is 16.32 aerial miles long and feeds 1,958 customers in Delaware County, PA. *Id.* During the period from March 10, 2017 to April 26, 2019, the Complainant experienced 24 outages. PECO Exhibit 5. This number includes both momentary outages of less than five minutes in duration, and sustained outages which are more than five minutes in duration. Tr. 206-207, PECO Exhibit 5. Nine of the 24 outages were sustained, lasting from 15 minutes to over 39 hours. Tr. 196, PECO Exhibit 5. Eight of the sustained outages occurred during the period March 2017 to March 2018. PECO Exhibit 5. Four of them resulted from the Riley/Quinn storm that affected customers in PECO's service territory in March of 2018. Tr. 202, 208, PECO Exhibits 5 and 10. The last sustained outage occurred on April 26, 2019, right before the hearing date, and lasted one hour and nine minutes. PECO Exhibit 5.

Ms. Sharbaugh and Mr. Chraga operate a restaurant at the Service Address. Tr. 53. Around 4:15 p.m. on November 26, 2017, the Complainant experienced dim or flickering lights at the Service Address. Tr. 30-31. She contacted PECO to report the event. Tr. 31, 98-99, PECO Exhibits 4 and 11. Per its practice, PECO assessed the event as a low priority. Tr. 152, 166-67. At 10:43 p.m., the lights went out at the restaurant. The Complainant contacted PECO to report seeing sparks at the equipment on the Pole # B-82. Tr. 31, 37. PECO assigned the highest priority level to the outage. Tr. 175, PECO Exhibit 7. At 11:01 p.m. PECO dispatched a crew. Tr. 170-71, PECO Exhibit 7. The crew arrived on location at 12:17 a.m. on November 27, 2017. Tr. 172, PECO Exhibit 7. The first PECO crew dispatched to the area determined that flaggers and a bucket truck were needed to complete the repairs on the affected pole, Pole # B-82. Tr. 173-74, PECO Exhibit 7. The Complainant's power was restored at 6:15 a.m. on November 27, 2017, after the crew replaced a broken cutout. Tr. 31, 174-76, PECO Exhibit 7. The crew was unable to determine the reason for the cutout failure. Tr. 97-96, 131.

The second cutout failure that affected Ms. Sharbaugh's service occurred on December 3, 2017. Tr. 183, PECO Exhibit 8. Ms. Sharbaugh contacted PECO to report the outage at 4:25 p.m. on December 3, 2017. Tr. 185-86, PECO Exhibit 4. PECO dispatched a crew to address Ms. Sharbaugh's outage at 5:15 p.m. Tr. 186. The PECO technicians arrived on the premises at 6:01 p.m. Tr. 186, PECO Exhibit 8. The first PECO crew dispatched on location determined that flaggers were needed to complete the repairs on the affected pole, Pole # B-78. Tr. 186, PECO Exhibit 8. The Complainant's power was restored at 1:16 a.m. on December 4, 2017, after the crew replaced a broken cutout. Tr. 186-87, PECO Exhibit 8. The crew was unable to determine the reason for the cutout failure. Tr. 131-32. Pole B-78 and Pole B-82 are located on the same street but are a few poles apart from each other. Tr. 188.

Despite experiencing 24 momentary and sustained power outages at the Service Address in a period of 25 months (March 2017 – April 2019), Ms. Sharbaugh's Complaint focuses on the two power outages that occurred on November 26, 2017 and December 3, 2017, not only because of their similarities and proximity in time but also because of the property and monetary damages that the outages caused to the restaurant business. In particular, Ms. Sharbaugh and Mr. Chraga testified that the flickering lights and power outage on November 26, 2017 damaged the compressor of the restaurant's commercial freezer causing the food to spoil. In addition, the December 3, 2017 outage forced Ms. Sharbaugh and Mr. Chraga to close the restaurant for the night, cancelling party reservations and sending their employees home. According to Ms. Sharbaugh and Mr. Chraga, the similarities between the two incidents as well as their proximity in time and location indicate that PECO failed to properly maintain and repair their equipment either before or after the November 26, 2017 power outage.

In response to Ms. Sharbaugh's and Mr. Chraga's testimonies, PECO's reliability engineer, Madeline Devlin, testified that cutouts are "self-sacrificing" devices installed throughout PECO's system. Tr. 177. Ms. Devlin explained that:

[W]hen it senses a fault current, the fuse within the cutout will open up and stop delivering power to that section, so that way the fault current will no longer be seen on the rest of the circuit. So, it won't damage any other equipment

on the circuit. So, it is a protective device to, you know, keep the integrity of the entire system.

Tr. 176. In turn, the fault current can result from many causes: whether it be a tree limb, a squirrel, a balloon, public damage to a pole, or some other equipment failure. Tr. 176, 180.

Both Mr. Grow and Ms. Devlin testified that PECO's response was reasonable after each of the reports and outages at the root of this case. The flickering lights first reported by Ms. Sharbaugh in the afternoon of November 26, 2017 were assigned a low priority because they represented neither a full or a partial outage nor a safety concern. Tr. 152, 166-67.

Ms. Devlin explained that, following the fault current that caused the fuse within the cutout box on Pole # B-82 to blow, the cutout did not "fully clear" or fully open, causing some arcing to be seen on the pole. Tr. 183. The arcing, however, did not originate with, nor did it affect, the transformer. Tr. 183.

After the November 26, 2017 outage, the visual inspection of the area did not reveal the origin of the fault current that caused the cutout on Pole # B-82 to fail. Tr. 221-22. In addition, Ms. Devlin testified that it would have been impossible for PECO's crew on location to visually determine that the cutout on Pole # B-79 was going to fail in a matter of days. Tr. 188-89. Ms. Devlin explained that the only way to detect a distressed cutout equipment is through the thermography inspection of the circuit. Tr. 221-22. She added that once a year, PECO patrols all the circuits both visually, looking for broken cross arms, braces, leaning poles, etc., and through thermography, using equipment that detects overheating and potential failures. Tr. 191. The last thermography patrol on the Concord 347 circuit prior to the November and December outages was conducted on June 29, 2017. Tr. 193. No issues were detected at the time. Tr. 194.

Ms. Devlin testified that almost all PECO poles that carry transformers are equipped with a cutout. Tr. 177. PECO has approximately tens of thousands of cutouts installed throughout its territory. Tr. 177. Both PECO witnesses agreed that, due to the volume of cutouts installed, cutout failures are some of the most common and frequent service equipment failures reported in PECO's service territory. Tr. 88, 134, 178, 192. They maintained that a cutout

failure is outside the company's control, because they are hard to predict except through the thermography inspection of the circuit. Tr. 119, 221-22.

In her testimony, Ms. Devlin listed the reliability index values SAIFI and CAIDI, for the Concord 347 circuit, as a whole, as well as the RM2 section of that circuit for the years 2017, 2018, and 2019. According to Ms. Devlin's review and analysis, the SAIFI and CAIDI values for the circuit and the RM2 section that serves the Service Address are "relatively normal" and present no cause for concern to the company. Tr. 216. PECO Exhibit 9.

Ms. Devlin admitted that vegetation is a concern in the Concord 347 circuit and that the two outages in question could have been caused by tree branches. Tr. 195-96, PECO Exhibit 5. She added that, as part of PECO's long-term infrastructure improvement plan, the company will install approximately 6,500 feet of tree resistant wire in the area near or around the Service Address. Tr. 195, PECO Exhibit 5. The installation of the tree-resistant wire will prevent any tree contact causing a cutout to fail. *Id.*

Public utilities are required to provide reasonable service to their customers. In that regard, Section 1501 of the Public Utility Code provides, 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 interruption or delay.

66 Pa.C.S. § 1501. Section 1501 does not require utilities to provide constant service - only reasonably continuous service without unreasonable interruption or delay.

In addition, the Commission's regulations at 52 Pa. Code § 57.194 provide that electric distribution companies shall:

furnish and maintain adequate, efficient safe and reasonable service and facilities, and shall make repairs, changes, alterations substitutions, extensions and improvements in or to the service and facilities necessary or proper for the accommodation, convenience and safety of its patrons, and the public. The service shall be reasonably continuous and without unreasonable interruptions or delay.

52 Pa. Code § 57.194(a). The regulations further provide that electric distribution companies shall strive to prevent interruptions of electric service and, when interruptions occur, restore service within the shortest reasonable time. 52 Pa. Code § 57.194(d).

PECO's argument that the technical similarities between the November 26, 2017 and December 3, 2017 outages (cutout fuse failure) and their proximity in time and location (7 days and a few poles apart) were mere coincidences is unconvincing. Despite PECO's refusal to accept liability for the outages, the fact remains that fault currents in PECO's system caused PECO's cutouts to fail in November and December of 2017. PECO was unable to determine the cause of the fault currents in these two instances, which means that it could not identify or detect weather conditions, fallen trees, acts of God, public vandalism, or customer actions as the root of the problem.

From Ms. Devlin's testimony on the history of Concord 347 circuit, it is more likely than not that the two cutout failures in question were caused by vegetation. As mentioned above, the Complainant experienced 24 outages during the period from March 10, 2017 to April 26, 2019. Tr. 206-207, PECO Exhibit 5. In nine of the 24 outages, vegetation was identified as the cause of the outage. PECO Exhibit 5. Vegetation was also one of the potential causes in eight other outages identified as "SCADA – momentary" in PECO's Reliability Report, in which re-closure devices were able to restore service to customers in less than five minutes. Tr. 196-97, 199-201, PECO Exhibit 5. Importantly, PECO is responsible for tree-trimming and vegetation maintenance around its circuit, and although the cutouts were able to isolate the outage to the Service Address and not impact other customers on the Concord 347 circuit, they were insufficient protection to the Complainant from unreasonable service interruptions.

The Company's position that it provided Ms. Sharbaugh with safe adequate and reasonable service is further undermined by the SAIFI and Non-Storm SAIFI values for the year 2017 for the RM2 section of the Concord 347 circuit. At the 2.93 and 1.93, their respective values exceed the 1.23 SAIFI benchmark that the Commission set for PECO's overall system reliability in its May 2004 Order in *Amended Reliability Benchmarks and Standards for the Electric Distribution Companies*, Docket No. M-00991220 (Order entered May 11, 2004). PECO Exhibit 9.

The November and December 2017 outages were only two of the 10 outages that Complainants experienced in 2017, or two of the 24 they experienced in the 25-month period from March 2017-April 2019. PECO Exhibit 5. These numbers weaken PECO's position that it provided the Complainant with reasonable service. In *Sheila and Stewart Berger v. PECO Energy Company*, Docket No. C-00992680 (Final Order entered May 9, 2000) (*Berger*), the Commission found that PECO had violated Section 1501 of the Code and rendered inadequate and unreasonable service to the Bergers. Similar to the present case, in the *Berger* case, the complainants had experienced 23 outages during a two-year period (1998 and 1999). In the present case, the Complainant experienced nine sustained outages in a two-year period, while the Bergers experienced 18 sustained service interruptions. While considering the difference in the number of sustained outages, however, one should consider that the *Berger* case is approximately 20 years old and that advances in technology have increased expectations of what constitutes reasonable service.

In *Rounce v. PECO Energy Company*, Docket No. C-2015-2506941 (Opinion and Order entered December 9, 2016) (*Rounce*), the Complainant experienced 18 sustained outages and numerous momentary outages in a period of five years (2011-2016). The Commission reversed the Initial Decision of Administrative Law Judge Eranda Vero, which had found that PECO had provided Mr. Rounce with reasonable service. In *Rounce*, the Commission concluded that:

Although the Company identified the cause of Mr. Rounce's power outages, and has implemented a series of improvement procedures intended to ensure future reliable service, the fact remains that the

Complainant did not receive reasonably continuous service as required by the Code.

Id. at 7-8 (emphasis added) (footnote omitted). A similar conclusion is appropriate in the present case.

Under Public Utility Code Sections 3301(a) and (b), "the Commission may levy a fine of up to \$ 1,000 per day for continuing violations of the Public Utility Code." 66 Pa.C.S.A. § 3301. The Commission has set forth, in a statement of policy, the factors and standards for evaluating proceedings involving violations of the Public Utility Code for purposes of determining appropriate civil penalty amounts. See, 52 Pa. Code § 69.1201(c). These factors and standards are as follows:

- (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(c). These factors, relative to this proceeding, are examined below.

First, the evidentiary record collected in this matter does not contain sufficient evidence to conclude that PECO's failure to provide Ms. Sharbaugh with adequate, safe and reasonably continuous service was willfully fraudulent or a misrepresentation. Second, there is no evidence that PECO's failure to comply with 66 Pa.C.S.A. § 1501 had any consequences of a serious nature. Third, the record in this case supports a finding that the violation of section 1501 of the Public Utility Code, 66 Pa.C.S.A. § 1501, resulted from the Respondent's negligence in conducting necessary vegetation management activities or in failing to put in place protective measures that can ensure reasonably uninterrupted service to the Complainant. PECO's position that there is little that the Company can do to prevent cutout failures from happening frequently and randomly to the Complainant is troubling. Tr. 102-103. The only remedial measures that were mentioned by PECO witnesses were in the form of vegetation maintenance and installation of tree-resistant wires, but no reasons were offered as to why such measures were not put in place before the Complainant suffered the two outages in question. Even more concerning is the Company's position that if the livelihood of the Complainant's business depends on the electric service she receives from PECO, she should procure an alternate source of electricity. Tr. 225.

Fourth, the Respondent entered evidence on the record indicating that it has modified its internal practices and procedures to address the offensive conduct at issue to deter and prevent similar conduct in the future. In particular, Ms. Devlin testified that PECO has moved its vegetation maintenance program from a five-year cycle into a four-year one. Due to this change, the Concord 347 circuit will undergo vegetation maintenance sometime in 2020 instead of 2021. Tr. 219, 226. In addition, the Company will install approximately 6,500 feet of tree resistant wire near or around the location of the Service Address as part of its long-term infrastructure improvement plan. Tr. 195, PECO Exhibit 5. Fifth, the record indicates that the November and December 2017 outages only affected the Complainant and her business, and that the Concord 347 circuit as a whole has a reasonable reliability record. Tr. 213-20, see also PECO Exhibits 5 and 9. Sixth, the record does not include a history of PECO's past offenses; and seventh, the Commission did not conduct an investigation in this proceeding.

The eighth, ninth and tenth factors listed in 52 Pa. Code § 69.1201(c) are inter-related in this case and they are, respectively: the amount of a civil penalty required to deter future violations; prior Commission decisions in similar cases; and the catch-all "other relevant factors."

After reviewing the evidence collected in this matter, I conclude that a civil penalty in the amount of \$2,000.00 (\$1,000.00 for each of the two outages in question) is appropriate to deter future violations of this nature and to draw the Company's attention to the need for improved service reliability in rural and wooded areas. See *Sheila and Stewart Berger v. PECO Energy Company*, Docket No. C-00992680 (Final Order entered May 9, 2000); *John J. Rounce v. PECO Energy Company*, Docket No. C-2015-2506941 (Opinion and Order entered December 9, 2016).

Within 30 days of the Commission's Final Order in this case, PECO shall pay a civil penalty in the amount of \$2,000.00 by sending a certified check or money order payable to the Commonwealth of Pennsylvania. In addition, PECO shall cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. § 101 *et seq.*, and the regulations of the Pennsylvania Public Utility Commission, 52 Pa.Code § 1.1 *et seq.*

CONCLUSIONS OF LAW

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

2. The Complainant had the burden of proof and successfully carried that burden. 66 Pa.C.S. § 332(a).

3. It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" to its customers. 66 Pa.C.S.A. § 1501.

4. Service shall be reasonably continuous, without unreasonable interruptions or delay, and in conformity with the regulations and orders of the Commission. 66 Pa.C.S.A. § 1501.

5. An electric distribution company shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make repairs, changes, alterations, substitutions, extensions and improvements in or to the service and facilities necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public. The service shall be reasonably continuous and without unreasonable interruptions or delay. 52 Pa. Code § 57.194(a).

6. An electric distribution company shall strive to prevent interruptions of electric service and, when interruptions occur, restore service within the shortest reasonable time. 52 Pa. Code § 57.194(d).

7. Under Public Utility Code Sections 3301(a) and (b), the Commission may levy a fine of up to \$1,000 per day for continuing violations of the Public Utility Code. 66 Pa.C.S. § 3301.

8. The Commission has set forth, in a statement of policy, the factors and standards for evaluating proceedings involving violations of the Public Utility Code for purposes of determining appropriate civil penalty amounts. 52 Pa. Code § 69.1201(c).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Christine Sharbaugh against PECO Energy Company at Docket No. C-2018-3005720 is granted.

2. That PECO Energy Company shall pay a civil penalty in the amount of Two Thousand Dollars (\$2,000.00) by sending a certified check or money order payable to the Commonwealth of Pennsylvania, within thirty (30) days from the entry of the Final Commission Order to:

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
Harrisburg, PA 17120

3. That PECO Energy Company shall cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. § 101 *et seq.*, and the regulations of the Pennsylvania Public Utility Commission, 52 Pa.Code § 1.1 *et seq.*

4. That the Secretary mark this docket closed.

Date: October 2, 2019

/s/
Eranda Vero
Administrative Law Judge