

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Orlando Graziosi	:	
	:	
v.	:	C-2019-3010969
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision denies a formal complaint filed by a customer of an electric distribution company who averred that the company failed to make the necessary repairs or replacement to the anchor that connects his service wire to his home after repairs were made to the wire following a storm. The complainant failed to satisfy his burden of demonstrating that the company violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with regard to the service provided.

HISTORY OF THE PROCEEDING

On June 17, 2019, Orlando Graziosi filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL), docket number C-2019-3010969. In his complaint, Mr. Graziosi averred that in April 2019 sparks were shooting from the electric lines going to his home and he then received a call from PPL that his meter was malfunctioning. Mr. Graziosi added that PPL dispatched a technician to his home but that later he noticed that the line was not connected to his

home properly. Mr. Graziosi averred that PPL then told him that he should file a property damage complaint with PPL, but PPL denied that complaint. Mr. Graziosi would like a PPL technician to return to his home to fix the damage that was caused to his property and repair the line to his house.

On July 10, 2019, PPL filed an answer to Mr. Graziosi's complaint by admitting or denying the various averments Mr. Graziosi made. In particular, PPL denied that the equipment of PPL, or failure to properly service the equipment, caused damage to Mr. Graziosi's property. PPL concluded by requesting that Mr. Graziosi's complaint be denied.

On July 16, 2019, a call-in telephone hearing notice was issued setting an initial call-in telephone hearing for this matter for Wednesday, September 4, 2019 at 10:00 a.m. and assigning me as the presiding officer. A prehearing order was issued July 17, 2019 setting forth various rules that would govern the hearing.

The hearing convened on September 4, 2019, as scheduled. Mr. Graziosi appeared *pro se* and provided oral testimony and sponsored three exhibits that were admitted into the record. Kimberly Krupka, Esquire, appeared on behalf of PPL and presented one witness who sponsored two exhibits that were admitted into the record. A transcript of 32 pages was created.

The record in this case closed on September 25, 2019 when the transcript was submitted to the Commission. For the reasons discussed below, Mr. Graziosi's complaint will be denied.

FINDINGS OF FACT

1. The Complainant in this case is Orlando Graziosi.
2. The Respondent in this case is PPL Electric Utilities Corporation.

3. The service address is 1214 South Street, Avoca, Pennsylvania.
4. On April 19, 2019, the service line to Mr. Graziosi's home shorted during a storm. Tr. 7, 14.
5. When a PPL service technician came to the service address to fix the wire, Mr. Graziosi noticed a screw was coming out of the siding so Mr. Graziosi asked the technician to fix the screw as well. Tr. 7.
6. On April 20, 2019, Mr. Graziosi noticed that the anchor that holds his service line to his home was pulled away from the siding 1/8th of an inch. Tr. 8.
7. When Mr. Graziosi called PPL about the anchor, he was told that the anchor is not PPL's responsibility. Tr. 8.
8. Mr. Graziosi has been in the home at the service address for 45 years. Tr. 11.
9. Graziosi Exhibits 1 and 2 are photographs of the outside of Mr. Graziosi's home at the service address where the service line is connected to the home by the anchor. Graziosi Exh. Nos. 1 and 2; Tr. 11-13.
10. Graziosi Exhibit Number 3 is a photograph of two service lines intersecting with the notation that one service line leads to Mr. Graziosi's home. Graziosi Exh. No. 3; Tr. 13.
11. Michael Toth is a senior reliability engineer for PPL out of the Pocono Service Center covering most of the northeast region. Tr. 18.
12. PPL Exhibit Number 2 is the account activity statement that is maintained by PPL to document all incoming calls and actions taken on Mr. Graziosi's account. PPL Exh. No. 2; Tr. 19.

13. PPL Exhibit Number 3 is part of a brochure PPL gives to customers that shows what facilities on the outside of a house is PPL's responsibility and what is the customer's responsibility. PPL Exh. No. 3; Tr. 20.

14. The customer is responsible for the point of attachment, the entrance cable, the meter base and the fuse panel. PPL Exh. No. 3; Tr. 21, 22.

15. The point of attachment is the triangular piece of metal that the grip is connected to that holds the service wire up from either the transformer or the secondary wire. Tr. 21.

16. What Mr. Graziosi refers to as an anchor is what PPL calls the point of attachment. Tr. 22.

17. The grip is the piece of wire that is attached to the point of attachment and grips the service cable. Tr. 22.

18. The point of attachment is usually placed around the highest point of the house and hooked or bolted into a stud or very solid piece of wood that is multiple inches thick. Tr. 24-25.

19. PPL does not repair points of attachments for customers because of the liability of drilling into a home but will supply the hardware if the customer requests it. Tr. 26.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence,

or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950) (Se-Ling Hosiery). 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 this proceeding, Mr. Graziosi averred that the anchor, or point of attachment, that connects his service line to his home, was pulled away from the siding about 1/8th of an inch after the service line was repaired when it shorted during a storm. Mr. Graziosi requests that PPL repair the point of attachment. Mr. Graziosi, therefore, has the burden of proof in this proceeding.

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, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the 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. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001)(Milkie); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

The decision of the Commission must be supported by substantial evidence. 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. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth. 1984).

In this case, Mr. Graziosi testified in support of his complaint that the service line that connects to his home shorted during a storm and the anchor that connects the service line to his home became dislodged about 1/8th of an inch as a result of the repair made by the PPL technician. Tr. 7-9. Mr. Graziosi presented three pictures as exhibits showing the service line

and the anchor which Mr. Graziosi claimed was pulled away from the home. Graziosi Exh Nos. 1-3. Mr. Graziosi believes that PPL should repair the anchor but PPL refused to do so. Tr. 10.

In response, PPL presented the testimony of its witness, Michael Toth, who is a senior reliability engineer for PPL. Tr. 18. Mr. Toth testified regarding what is the customer's responsibility and what is PPL's responsibility with regard to service wires and points of attachments. Tr. 20. Mr. Toth presented PPL Exhibit Number 3 which is part of a brochure that PPL gives to customers that shows what is PPL's responsibility and what is the customer's responsibility. Tr. 20; PPL Exh. No. 3. Mr. Toth added, among other things, that the anchor, which he referred to as the point of attachment that holds the service wire up from either the transformer or the secondary wire, is the customer's responsibility. Tr. 21-22. Mr. Toth added that the primary reason that PPL will not repair or replace an anchor on a customer's residence is because it is a major liability issue. Tr. 26-27.

As a result, record evidence in this case demonstrates that Mr. Graziosi failed to satisfy his burden to demonstrate that PPL violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with regard to the service provided to him. As such, Mr. Graziosi's complaint must be denied.

Section 57.28 of the Commission's regulations provides that "[a]n electric utility is not responsible for the ownership and maintenance of the customer's facilities beyond the service point." 52 Pa. Code § 57.28(a)(2); *see also*, 52 Pa. Code § 57.1 (defining "service point" as "[t]he location of interconnection designated by the electric utility in its Commission-approved tariff where the utility's service supply lines terminate and the customer's facilities for receiving service begin."). Furthermore, a complaint against a utility company can be viewed under Section 1501 of the Public Utility Code. This section 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.

66 Pa.C.S. § 1501. When analyzing the complaint under Section 57.28 of the Commission's regulations and Section 1501 of the Public Utility Code, it is clear that Mr. Graziosi's complaint must be denied.

PPL demonstrated that it is not responsible to repair the anchor, or point of attachment, that Mr. Graziosi would like repaired. Although PPL did not cite to a Commission regulation or Commission-approved tariff to support its position that Mr. Graziosi, not PPL, is responsible to fix the anchor, PPL presented a portion of a brochure that it provides to customers that delineates which portions of the service line is the customer's responsibility and which is PPL's responsibility. PPL Exh. No. 3. As Mr. Toth testified, the anchor, or point of attachment, is the customer's responsibility. Mr. Toth added that the reason why the anchor is the customer's responsibility is because it is otherwise a major liability issue for the company. As Mr. Toth testified:

Q. And what is one of the primary reasons PPL will not go out and tighten or replace an anchor in a home?

A. It's a major liability issue to us because then the customer can come back and say we've drilled holes in their house, it's causing water to leak into their house, destroying, damaging, you know, the insides of their house. Depending on where it's attached, they could say that we caused the damage to the outside wood or to their siding. So we don't do it.

Q. And do these points of attachment require someone to actually drill into the home?

A. It does.

Tr. 26-27. Mr. Toth further testified that the company will supply the hardware to the customer or a contractor if the customer requests it. Tr. 26. Mr. Toth added that he gets several calls a week from customer's asking PPL to repair the anchor but the company does not do it. Tr. 26.

PPL's approach is reasonable. It is reasonable that PPL's responsibility would be limited to avoid subjecting the company to liability for making the repairs. A customer can hire a contractor to repair or replace the anchor and can then do so in a way that is more consistent with the customer's preferences or any unique issues pertaining to the customer's home. As Mr. Graziosi even testified, he is very particular with his property. Tr. 7-8. Furthermore, it is not clear in the record that the anchor was not in that same condition prior to the storm. Therefore, PPL's approach to this issue is reasonable.

This is particularly true given that, in contrast, the only evidence presented by Mr. Graziosi was pictures of the service wire and the anchor, as well as his own personal testimony that PPL should be held to make the repairs. In fact, Mr. Graziosi's testimony was that the anchor was sticking out about 1/8th of an inch. Tr. 8. Despite this, however, the service line was maintained in place. Furthermore, the pictures presented by Mr. Graziosi showing the anchor did not reveal any unreasonable service or facilities. Graziosi Exh. Nos. 1 and 2. Mr. Graziosi's testimony and his photographs are insufficient to outweigh the evidence presented by PPL in response to the complaint.

As noted above, the burden of going forward with evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie, *supra*. Mr. Graziosi has failed to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by PPL, to rebut the evidence presented by PPL in response to his complaint. Se-Ling Hosiery, *supra*. Mr. Graziosi has failed to demonstrate by a preponderance of the evidence that PPL violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company when failing to repair or replace the anchor that connects his service line to his home. As a result, Mr. Graziosi's complaint will be dismissed.

CONCLUSIONS OF LAW

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

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

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

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

5. 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.

6. 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, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the 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. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "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. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v.

Unemployment Comp. Bd. of Review, 194 Pa.Superior 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).

9. An electric utility is not responsible for the ownership and maintenance of the customer's facilities beyond the service point. 52 Pa. Code § 57.28(a)(2).

10. 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. 66 Pa.C.S. § 1501.

11. Mr. Graziosi has failed to satisfy his burden of demonstrating that PPL has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company when it refused to replace or repair the anchor that connects his service line to his home.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Orlando Graziosi against PPL Electric Utilities Corporation on June 17, 2019 at docket number C-2019-3010969 is hereby denied.

2. That this matter be marked closed.

Date: November 7, 2019

_____/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge