

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Chris Paluti	:	
	:	
v.	:	C-2018-3004845
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This initial decision denies the formal complaint (complaint) filed by Chris Paluti (Complainant or Mr. Paluti) against West Penn Power Company (West Penn or Respondent), because Mr. Paluti did not meet his burden of proving West Penn violated the Public Utility Code, a Commission regulation or a Commission order.

HISTORY OF THE PROCEEDING

On September 4, 2018, Mr. Paluti filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn. Mr. Paluti averred there was a reliability, safety or quality problem with his electric service.¹ Mr. Paluti specified eighteen (18)

¹ It should be noted this proceeding was initially consolidated with a similar complaint filed by Mr. Paluti's neighbor, Doug Walls, at Docket No. C-2018-3005059. Mr. Walls averred there was a reliability, safety or quality problem with his electric service and specified sixteen (16) times between May 17, 2017 to August 16, 2018 when the service address experienced outages, flickers and/or service interruptions. After attending the prehearing conference on April 11, 2019, Mr. Walls failed to appear at the initial hearing. His formal complaint was dismissed by Final Order of the Commission on September 19, 2019.

times from May 17, 2017 to August 16, 2018 when his service address experienced outages, flickers and/or service interruptions.

On October 11, 2018, West Penn filed an Answer and New Matter. West Penn admitted it provides service to Mr. Paluti and admitted that there were some outages at the service address in the previous two years caused by off-corridor trees hitting the electric lines. West Penn contended the “power flickers” referenced in the formal complaint were normal reclosure events and/or occurred either during a “minor storm” or within hours of a minor storm. West Penn denied there was a reliability, safety or quality problem with the electric service. West Penn averred that at all times relevant its actions had been reasonable and performed in accordance with the Commission’s regulations and Orders, the Public Utility Code and West Penn’s tariff.

By Call-In Telephone Pre-Hearing Conference Notice dated March 21, 2019, the Office of Administrative Law Judge (OALJ) notified the parties a prehearing conference was scheduled for Thursday, April 11, 2019, at 10:00 a.m.

On April 11, 2019, the presiding officer conducted a prehearing conference as scheduled, at which the following individuals were present: Mr. Paluti; Mr. Walls; Margaret A. Morris, Esq., for West Penn; and Dominic Capitoni, engineer, for West Penn. Complainants agreed the outages which gave rise to the formal complaint occurred from 2017 to the present. The presiding officer ended the prehearing conference at 10:23 a.m. and provided the parties with an opportunity to discuss the issues and a possible settlement with the presiding officer absent from the telephone line.

On April 12, 2019, the OALJ issued a Call-In Telephone Hearing Notice and notified the parties an initial telephonic hearing was scheduled for Monday, June 3, 2019, at 10:00 a.m.

On April 15, 2019, the presiding officer issued a Prehearing Order which, *inter alia*, advised the parties concerning various procedural matters, including how to request a

continuance, and that Mr. Paluti, as a complainant, was responsible to prove the facts he alleged in his formal complaint.

On June 3, 2019, the presiding officer convened the parties for the initial hearing. Complainant Chris Paluti was present and represented himself. West Penn was represented by Margaret A. Morris, Esq., who was present with two proposed witnesses. Mr. Paluti testified and asked the presiding officer to take judicial notice of the dates and descriptions of the outage events listed in the formal complaint. West Penn requested a continuance in order to investigate Mr. Paluti's more recent claims.

Thereafter, by Call-In Telephone Hearing Notice dated June 3, 2019, the Office of Administrative Law Judge notified the parties a further telephonic hearing was scheduled for Friday, July 19, 2019, at 10:00 a.m.

On July 19, 2019, the presiding officer conducted the further telephonic hearing as scheduled. Mr. Paluti appeared *pro se* and testified on his own behalf. He did not offer any exhibits. West Penn was represented at the hearing by Margaret A. Morris, Esquire. West Penn presented two witnesses: Laurie Parker and Dominic Capitoni. West Penn presented twelve exhibits which were marked and admitted as West Penn Exhibits 1 through 10, 20 and 21.

On August 26, 2019, the presiding officer closed the hearing record by issuance of the Interim Order Closing the Record. The record consists of a list of dates and description of outage events, twelve exhibits from West Penn and a 258-page hearing transcript.

FINDINGS OF FACT

1. Mr. Paluti, Complainant, resides in a single-family home located on 80 acres at 205 Foly Road, Waynesburg, Pennsylvania (service address) and has been a residential customer of West Penn since November 28, 1995. (Tr. 30, 62, 107).

2. West Penn, Respondent, provides electric distribution services to approximately 710,000 customers in a territory covering approximately 10,400 square miles, including providing electric service to Mr. Paluti at the service address. (Tr. 30, 140-142).

3. Complainant noticed in May 2018 an increase in power outages or reclosure events at the service address. (Tr. 32).

4. From May 2018 to June 2, 2019, 19 outages or reclosure events of varying length occurred on the following dates: July 16, 31; August 4, 13; September 6, 7, 22, 27; November 6, 13; December 11; January 23, 2019; February 7, 24; April 15; May 11; twice on May 25; and June 2. (Tr. 32, 49-55, 167-170; West Penn Exhibits 2 and 9).

5. Most outages or reclosure events involved flickering lights and/or brown outs that occurred when there was no storm or bad weather at the service address. (Tr. 32, 93).

6. During one outage episode in July 2018, the service address sustained damage which totaled \$1,500 and included damage to two televisions, a Google box, a couple of GFI ground fault devices, some remote-control lighting and a BOSE sound system. (Tr. 39-42).

7. Complainant did not make a claim for damages prior to filing the formal complaint. (Tr. 150).

8. Complainant is an electrical engineer currently employed as an engineering consultant for a construction business. (Tr. 60).

9. Starting in May 2018, Complainant would write down the date and duration of each outage or reclosure event and would write down if he knew there was inclement weather at the time. (Tr. 44-46).

10. Complainant relies on electricity to power the heater, hot water tank, air conditioner, refrigerator and freezers at the service address. (Tr. 59).

11. Complainant has a backup generator which automatically provides electric service when the generator senses an interruption in the electric service. (Tr. 57-59).

12. The service address is located in a rural portion of Greene County, Pennsylvania consisting of cleared farmland and wooded areas. (Tr. 61, 62, 142; West Penn Exhibit 1).

13. The electric line in the immediate vicinity of the service address extends over primarily open farmland. (Tr. 42, 61, 62; West Penn Exhibit 1).

14. Prior to the initial telephonic hearing on June 3, 2019, the last outage, lasting more than 5 minutes, had occurred on November 13, 2018 from 5:30 p.m. to 9:00 p.m. (Tr. 91, 92).

15. After the initial telephonic hearing on June 3, 2019 and before the further telephonic hearing on July 19, 2019, Complainant noted 10 additional times when electric service to the service address was interrupted: June 5; June 26; July 2; twice on July 11; three times on July 17; and twice on July 18. (Tr. 88-90).

16. In the last two years, Complainant contacted West Penn to complain about his electric service on 8 occasions: September 25, 2017; May 17, 2018; July 16, 2018; July 17, 2018; July 31, 2018; August 13, 2018; September 7, 2018; and November 13, 2018. (Tr. 107-111; West Penn Exhibits 5, 6 and 21).

17. In the last two years, Complainant's wife contacted West Penn to complain about the electric service on 2 occasions: July 23, 2018; and August 4, 2018. (Tr. 111-113).

18. Complainant did not call West Penn to complain about safety issues, power surges or to report damage before filing the formal complaint. (Tr. 113-114; West Penn Exhibit 6).

19. The service address is served from Phase A on Pole 454887-WP52 from the Franklin Substation, which is 11.6 circuit miles away, and is on the South Waynesburg Circuit. (Tr. 144, 146).

20. The South Waynesburg Circuit is 109 circuit miles long and serves 2,078 customers. (Tr. 145, 146).

21. There are two sets of line reclosers, one substation recloser and 2 fuses between the service address and the Franklin Substation. (Tr. 146).

22. An outage is a service interruption that exceeds 5 minutes, a forced outage is an interruption due to an emergency without time to notify customers, and a planned outage is an interruption with time to first notify customers. (Tr. 147).

23. A recloser is an automatic protective device that interrupts faults that occur on the line and causes only a temporary loss of power if the fault is cleared. (tr. 148).

24. Between September 25, 2017 to November 13, 2018, West Penn was aware of 8 outages on 8 different dates that affected the service address, totaling 1,815 minutes in lost service. (Tr. 152-160; West Penn Exhibit 2).

25. West Penn has a program to inspect its distribution facilities every 6 years and, if necessary, to repair or replace equipment. (Tr. 170-172).

26. West Penn last inspected the circuit that serves the service address in 2018. (Tr. 173).

DISCUSSION

Complainant alleges Respondent violated the provisions of 66 Pa.C.S.A. § 1501 when there was an excessive number of outages and Respondent failed to stop or control outside

forces which caused an excessive number of outages. As the party seeking affirmative relief from the Commission, Mr. Paluti bears the burden of proof and must show Respondent is responsible or accountable for the problem.² Complainant must prove this fact by a preponderance of the evidence³ by presenting evidence more convincing, by even the smallest amount, than that evidence presented by the other party.⁴ Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence⁵ by more than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁶

Reliability Complaint

Complainant alleged the existence of reliability and quality problems with the electric service. He contended the type and number of occurring outages was excessive. In the formal complaint and at the administrative hearing, Mr. Paluti testified there was a problem with outages on his distribution line, and he requested the Commission investigate the cause or causes of the power disruptions to the service address.

West Penn argued Complainant failed to carry his burden of proof and contended it successfully rebutted Mr. Paluti's personal opinion testimony⁷ by substantial evidence. West Penn contended the service address is in a heavily wooded area.⁸ Respondent acknowledged

² See 66 Pa.C.S.A. § 332(a). Also see Patterson v. Bell Telephone Company of Pennsylvania, 72 Pa. PUC 196 (February 8, 1990); Feinstein v. Philadelphia Suburban Water Company, 50 Pa. PUC 300 (October 6, 1976).

³ See Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 134 Pa.Cmwth. 218, 578 A.2d 600 (1990).

⁴ See Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950).

⁵ See Mill v. Pa. Pub. Util. Comm'n, 67 Pa.Cmwth. 597, 447 A.2d 1100 (1982).

⁶ See Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980).

⁷ While not testifying as an expert, it is noted Mr. Paluti's testimony as an electrical engineer employed as an electrical consultant was accepted as personal opinion from an individual with greater than average knowledge about electricity and electrical systems.

⁸ In West Penn's Exhibit 1, the aerial "google" map submitted into evidence reflects an area with cleared farmland and wooded sections where the portion of the line near the service address appears to cross over cleared farmland.

there were outages from July 2018 to September 2018 but argued all of the outages were caused by trees which were located off the right-of-way. In addition, Respondent averred it took corrective action by removing trees in September 2018. West Penn contended that, since September 2018, no further issues for the service address were created by trees located off the right-of-way. Respondent acknowledged some reclosure events occurred at the service address but argued the reclosers operated as designed to improve safety and to prevent any outages (i.e., an interruption lasting more than 5 minutes). Lastly, West Penn argued it provided reasonably continuous service without unreasonable interruption or delay, and the Commission should deny the formal complaint.

Judicial Notice

During the hearing, the presiding officer took judicial notice of the list of dates included in the formal complaint which showed the dates when Complainant alleged the outages occurred. Pursuant to 52 Pa.Code § 5.406, the formal complaint, as a document on file with the Commission, “need not be produced or marked for identification, but may be offered in evidence as a public document by specifying the document or part thereof and where it may be found.”

The presiding officer indicated the purpose of taking judicial notice was to facilitate the discussions between the parties at the initial hearing. Counsel for Respondent objected to taking judicial notice on the grounds Respondent contested some of the information provided in the formal complaint was incorrect. The presiding officer overruled the objection because the “facts” noticed were only the list of alleged dates. However, Respondent was allowed an opportunity, pursuant to 52 Pa.Code § 5.408, to have a timely opportunity to present conflicting evidence and to show that some facts (i.e., the dates) should not be noticed. The purpose of taking judicial notice was to allow the parties to move through the allegations in a sequential manner with the allegations of Complainant.

It should be noted there was not complete agreement between the parties about the dates when interruptions occurred, although the dates and occasions alleged by both parties were similar. To the extent there was a discrepancy, the presiding officer found the evidence

provided by Complainant about the dates, types of interruptions and weather present at the service address to be more credible and carrying more weight than the testimony provided by Respondent's witnesses. Complainant began documenting information when he or his wife noticed an interruption occurred. In comparison, the weight attached to Complainant's detailed information was greater than the weight which attached to Respondent's records.

Applicable Legal Provisions

Section 1501 of the Public Utility Code (Code), 66 Pa.C.S.A. § 1501, requires all public utilities to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and to make all repairs, changes, improvements, etc., to its service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees, and the public.

What the Commission requires is adequate, efficient, safe, and reasonable service and facilities, not "perfect service."⁹ Likewise, service must be reasonably continuous and without unreasonable interruptions or delay. The Code does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.¹⁰

"Service" is defined, in pertinent part, as: "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...in the performance of their duties under this part to their patrons, employees, other public utilities, and the public..."¹¹

⁹ See Manuel A. Biason v. Metropolitan Edison Company, PUC Docket No. C-00004450 (Opinion and Order entered December 19, 2001).

¹⁰ See Re Metropolitan Edison Company, 80 Pa. PUC 662 (November 19, 1993).

¹¹ See 66 Pa.C.S.A. § 102.

Electric distribution companies are required to provide service which is reasonably continuous and without unreasonable interruptions or delay. In Elkin v. Bell Telephone Company, 372 A.2d 1203 (Pa.Super. 1977), the Pennsylvania Superior Court defined “reasonable and adequate” service and explained:

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 . . . 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^[12]

In Colonial Products Company v. Pa. Pub. Util. Comm’n, 146 A.2d 657 (Pa.Super. 1958), the Pennsylvania Superior Court explained:

By its very nature, *the statutory standard is not capable of definition with mathematical precision*. The duty is upon the commission . . . to determine on the basis of the facts and circumstances indicated by the substantial evidence whether the service provided is reasonable and adequate for the public.^[13]

In Elkin, the Court emphasized “the statutory standard is not capable of definition with mathematical precision.” Thus, there is no mathematically precise standard or an absolute or exact rule for measuring whether a utility’s response to an outage of service is reasonable and adequate. Indeed, as the Court further explained in Elkin, the duty is upon the Commission to determine, on the basis of all substantiated facts and circumstances, whether the service provided was reasonable and adequate. Therefore, a case-by-case analysis must be made with regard to the cause of the outages and the length of time required by the Company to restore service.

¹² Elkin, 372 A.2d at 1205-06.

¹³ Colonial Products Company, 146 A.2d at 662 (emphasis added).

The evidence in this matter indicates West Penn responded to the outages by investigating in a timely manner. West Penn made repairs to its facilities in a timely manner under the circumstances for each interruption of which it had notice. The Commission's regulation at 52 Pa.Code § 57.194(d), governing an electric utility's distribution system reliability, requires the electric utility to restore service within the shortest reasonable time when a service interruption occurs. Each outage cited by Complainant was of relatively short duration except for the outages which occurred for reasons beyond Respondent's control.

Excessive Outages Complaint

In this proceeding, Complainant credibly testified there were 29 times, from May 2018 until the date of the further hearing on July 19, 2019, when some interruption occurred at the service address. Most of those interruptions were related to reclosure events, when the reclosure on the electric line operated as designed to temporarily create an interruption until the fault on the line (i.e., whatever event caused there to be a break in the flow of electricity) was cleared from the electric line. In this proceeding, Complainant asks the Commission to consider if the number of outages at the service address are so numerous as to qualify as "excessive" and evidence Respondent has failed to provide adequate and/or reasonable service, pursuant to 66 Pa.C.S.A. § 1501, *et seq.*¹⁴

West Penn presented testimony regarding its facilities that provide electric service to the service address, including outage reports and its responses to Mr. Paluti's complaints. Respondent provided evidence the service address is served by its South Waynesburg circuit which runs from the Franklin Substation, which is a long circuit with 109 circuit miles over a rural section of its territory. West Penn's witnesses testified credibly about the efforts Respondent made to locate the causes for the interruptions and to correct the damage. West Penn's witnesses also detailed the maintenance programs it uses to ensure all of its distribution

¹⁴ See Barbara Pezzuto v. Metropolitan Edison Company, Docket No. C-2010-2172219 (Final Order entered November 29, 2012), where the Commission found the number of non-preventable outages and the duration of the outages did not constitute inadequate or unreasonable service based upon the evidence presented.

equipment is inspected routinely, over a 6-year period, and all necessary repairs and replacements are made when the need to do so is identified.

In light of the credible evidence provided by West Penn about the actions it takes in its maintenance program and in response to the complaint calls from Complainant, the contrary evidence presented by Mr. Paluti was not sufficient to support a determination that West Penn provided inadequate, inefficient, unsafe, or unreasonable electric service and facilities. Thus, Mr. Paluti did not meet his burden of proof. Upon a review of the evidence in the instant case, Complainant did not establish by a preponderance of the evidence that Respondent provided inadequate or unreasonable service. However, Complainant did establish that the number of electric interruptions experienced at the service address, with approximately 29 interruptions in a 15-month period, does create a cause for concern. Although Respondent's actions to date have been reasonable, West Penn is encouraged to work with Mr. Paluti on addressing outage and reclosure complaints, especially if the number of interruptions continues unabated. Mr. Paluti is encouraged to contact West Penn each time he notes an interruption so West Penn has an opportunity to address his concern and, hopefully, to reduce the interruptions experienced on this circuit.

Conclusion

Mr. Paluti did not establish Respondent failed to provide adequate, safe, efficient and reasonable utility service in violation of 66 Pa.C.S. § 1501. Mr. Paluti did not establish a sufficient case against West Penn and, accordingly, he did not meet his burden of proof. The formal complaint is denied in the Ordering Paragraphs below.

CONCLUSIONS OF LAW

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

2. An electric utility must restore service within the shortest reasonable time when a service interruption occurs. 52 Pa.Code § 57.194(d).

3. Respondent furnished and maintained adequate, efficient, safe, and reasonable service and facilities, and made all repairs, changes, improvements, etc., to its service and facilities as was necessary or proper for the accommodation, convenience and safety of its patrons, employees, and the public. 66 Pa.C.S.A. § 1501.

4. Complainant failed to meet the burden of proving that Respondent violated the Public Utility Code, a Commission regulation or a Commission order. 66 Pa.C.S.A. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Chris Paluti v. West Penn Power Company at Docket No. C-2018-3004845 is denied for failure to meet the burden of proof.

2. That the Secretary mark this docket as closed.

Date: November 15, 2019

/s/
Katrina L. Dunderdale
Administrative Law Judge