

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                         |   |                |
|-------------------------|---|----------------|
| Robert Williams         | : |                |
|                         | : |                |
| v.                      | : | C-2019-3007655 |
|                         | : |                |
| West Penn Power Company | : |                |

**INITIAL DECISION**

Before  
Andrew M. Calvelli  
Administrative Law Judge

**INTRODUCTION**

This Decision dismisses a Complaint filed by a customer of an electric distribution company who averred that the company was not providing reasonable service because it had damaged his refrigerator when it restored partial power to his home during a power outage. The Complaint is dismissed because the customer failed to demonstrate that the company failed to provide reasonable service, or that the company violated the Public Utility Code, a Commission Order or Regulation or a Commission-approved Tariff with regard to the service provided.

**HISTORY OF THE PROCEEDING**

On January 30, 2019, Robert Williams (Mr. Williams or Complainant) filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against West Penn Power Company (West Penn) at Docket Number C-2019-3007655. In the Complaint, Mr. Williams asserted that West Penn damaged his refrigerator when it restored partial power to his home during a power outage. Mr. Williams requested payment for a new refrigerator from West

Penn as a result. The Complaint was served on West Penn electronically by the Commission's Secretary on February 5, 2019.

On February 25, 2019, West Penn filed an Answer with New Matter to the Complaint. In its Answer, West Penn denied that it had failed to provide reasonable service to Mr. Williams, and further asserted that the Commission lacks jurisdiction to award money damages to Mr. Williams. West Penn concluded its Answer with New Matter by requesting that the Complaint be dismissed. Mr. Williams did not file a response to the New Matter.

Also, on February 25, 2019, West Penn filed Preliminary Objections to the Complaint. In the Preliminary Objections, West Penn again denied that it had failed to provide reasonable service to Mr. Williams, and further asserted that the Commission lacks jurisdiction to award money damages to Mr. Williams. West Penn concluded its Preliminary Objections by requesting that the Complaint be dismissed, or that the claims for money damages be stricken from the Complaint. Mr. Williams did not file a response to the Preliminary Objections.

By Motion Judge Assignment Notice dated April 1, 2019, the Parties were advised that the Preliminary Objections had been assigned to me for disposition and that I had been assigned as the Presiding Officer in this case. By Order dated April 30, 2019, I granted the Preliminary Objections in part by striking the claims for money damages. However, I held over for a hearing the issue of whether West Penn had provided reasonable service under Section 1501 of the Public Utility Code and denied the Preliminary Objections in that regard.

The case was forwarded to the Mediation Unit of the Office of Administrative Law Judge following my Order regarding the Preliminary Objections. Mediation was not successful, and the case was returned to me for disposition. By Hearing Notice dated June 26, 2019, the Parties were advised that there would be an Initial Call-In Telephonic Hearing on August 14, 2019 at 10:00 a.m.

The hearing convened on August 14, 2019 as scheduled. Mr. Williams appeared *pro se*. Aron Beatty, Esquire, appeared on behalf of West Penn. Mr. Williams provided

testimony and sponsored two exhibits, which were entered into the record subject to the hearsay objections of West Penn. Mr. Williams' Exhibits consisted of invoices from electrical contractors indicating their belief that the partial power restoration had caused the damage to Mr. Williams' refrigerator. Mr. Beatty presented three witnesses who sponsored six exhibits which were entered into the record, including: 1) Major Event Report; 2) Outage History; 3) Tariff Provisions re: damage limits; 4) November 29, 2018 Denial Letter; 5) BCS Report; and 6) Customer Contacts. A transcript of the hearing totaling 50 pages was made. The record in this proceeding closed on August 23, 2019 when the transcript was filed with the Commission.

The Complaint is ready for disposition. For the reasons discussed below, the Complaint will be denied.

#### FINDINGS OF FACT

1. The Complainant in this case is Robert Williams.
2. The Respondent in this case is West Penn Power Company.
3. The service address is 1352 Skyline Drive, Farmington, PA 15437.
4. Mr. Williams experienced an extended service outage on November 16, 2018 at the service address when he lost complete power for several hours. Tr. 8.
5. After several hours of complete outage on November 16, 2018, partial power was restored to the service address. Tr. 8.
6. On November 17, 2018, Mr. Williams noticed that his refrigerator was not functioning. Tr. 8.
7. Mr. Williams had two separate electrical contractors examine his malfunctioning refrigerator. Tr. 8; Complainant Exhibits 1 and 2.

8. Both electrical contractors that examined Complainant's malfunctioning refrigerator wrote in their invoices that the refrigerator damage was caused by the partial power issue. Tr. 8; Complainant Exhibits 1 and 2.

9. Both electrical contractors that examined Complainant's malfunctioning refrigerator did not attend the hearing in this case to offer testimony as to the invoices they submitted to Mr. Williams, or their opinions contained in those invoices.

10. Mr. Williams contacted West Penn seeking reimbursement for a new refrigerator, since his refrigerator was not functioning. Tr. 11.

11. West Penn advised Mr. Williams that it was not responsible for the refrigerator damage. Tr. 11.

12. West Penn Exhibit 1 is West Penn's Major Event Report, demonstrating that Mr. Williams' service area experienced a major weather event in November of 2018. Tr. 21; West Penn Exhibit 1.

13. Mr. Williams experienced outages during the major weather event on November 15, 2018, November 16, 2018, and November 17, 2018. Tr. 21; West Penn Exhibit 1.

14. The major weather event affected 75,000 customers in West Penn's service territory. Tr. 21; West Penn Exhibit 1.

15. The major weather event was a storm involving freezing rain, ice accumulation on trees and power lines, and strong wind gusts. Tr. 22; West Penn Exhibit 1.

16. West Penn had over 1,900 workers involved in the efforts to respond to the major weather event. Tr. 22.

17. During the major weather event, road conditions were hazardous. Tr. 22.

18. During the major weather event, West Penn completed 155 orders that were either initiated by a 911 emergency call or a call indicating a road closure. Tr. 23.

19. The first outages during the major weather event occurred on November 15, 2018 and the last affected customers had power restored on November 21, 2018. Tr. 22.

20. West Penn restored each of Mr. Williams' outages on the same day they occurred during the major weather event. Tr. 24.

21. Mr. Williams' outages were caused by off right-of-way trees damaging the circuit serving Mr. Williams' service address. Tr. 24.

22. West Penn regularly attempts to remove what it deems to be "danger trees", even when those trees are outside of West Penn's right-of-way. Tr. 27.

23. West Penn must obtain the agreement of the affected landowner to remove any "danger trees", due to the fact that those trees are outside of West Penn's right-of-way. Tr. 27, 28.

24. Given the extent of the major weather event in this case, even removing all "danger trees" from West Penn's right-of-way would not have prevented all of the outages from occurring. Tr. 28, 29.

### 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, 70 A.2d 854 (Pa. 1950). 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.

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. Of note, Section 1501 does not require utilities to provide constant service - only reasonably continuous service without unreasonable interruption or delay.

In the case of In Re Metropolitan Edison Company, 80 Pa. PUC 662 (1993), *rev'd on other grounds*, Popowsky v. Pa. Pub. Util. Comm'n, 653 A.2d 1385 (Pa.Cmwlth. 1995), the Commission adopted the Recommended Decision of Administrative Law Judge John H. Corbert, Jr., as its action in a similar case. In his Decision, ALJ Corbet stated: "The Code only requires a public utility to furnish *reasonable* service. It 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." *Id.* at 672 (emphasis in original; citation omitted); *see also*, Niksa v. West Penn Power Co., Docket Number C-00992819 (Initial Decision at 10, Feb. 11, 2000, Final Order entered March 27, 2000) (Niksa) ("If this were a perfect world equipment would never fail and electric service would never be interrupted."); Curley v. Pennsylvania Electric Company, Docket Number C-2013-2351468 (Initial Decision July 18, 2014, Final Order entered Sept. 15, 2014).

The Commission's Regulations at 52 Pa. Code § 57.194 provide that electric distribution companies shall:

[F]urnish 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).

Reviewing the evidence in this case, Mr. Williams' opinion is that the act of partial power restoration, in and of itself, represents some kind of error or mistake on the part of West Penn (Tr. 46, lines 13-19). However, Mr. Williams did not offer any evidence of error or mistake on the part of West Penn to support his contentions. In that regard, although I accepted Mr. Williams' Exhibits C1 and C2 into the record, I did so subject to the objection of counsel for West Penn. Review of Exhibits C1 and C2 indicates that the opinions expressed by Mr. Williams' electricians in those Exhibits (that the partial power restoration caused the appliance failure) are hearsay since those electricians did not appear at the hearing to testify about their opinions. Since those statements are hearsay, they were excluded from consideration in rendering this decision, as they do not constitute evidence upon which findings of fact can be made.<sup>1</sup> Moreover, even if I were to accept as true the opinions of Mr. Williams' electricians in his Exhibits C1 and C2, Mr. Williams would still need to produce competent evidence to show that the partial restoration of power amounted to unreasonable service under Section 1501 of the Public Utility Code.

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<sup>1</sup> Under prevailing caselaw precedent ("Walker Rule"), hearsay that is properly objected to at a hearing does not constitute competent evidence upon which any findings of fact may be made. Walker v. UCBR, 27 Pa. Cmwlth. 522, 367 A.2d 366 (1976). West Penn properly objected to this evidence.

For its part, West Penn's witnesses produced evidence demonstrating that Mr. Williams experienced outages during the major weather event on November 15, 2018, November 16, 2018, and November 17, 2018. Tr. 21; West Penn Exhibit 1. This major weather event was a storm involving freezing rain, ice accumulation on trees and power lines, and strong wind gusts that affected 75,000 customers in West Penn's service territory. Tr. 21; West Penn Exhibit 1.

West Penn had over 1,900 workers involved in the efforts to respond to the major weather event; these workers had to deal with hazardous road conditions and respond to 155 orders that were either initiated by a 911 emergency call or a call indicating a road closure. Tr. 22, 23. The first outages during the major weather event occurred on November 15, 2018 and the last affected customers had power restored on November 21, 2018. Tr. 22.

Regarding Mr. Williams' situation, West Penn restored each of Mr. Williams' outages on the same day it occurred during the major weather event. Tr. 24. West Penn discovered that Mr. Williams' outages were caused by off right-of-way trees damaging the circuit serving Mr. Williams, despite West Penn's regular attempts to remove what it deems to be "danger trees", even when those trees are outside of West Penn's right-of-way. Tr. 24, 27.

I conclude that Mr. Williams failed to meet his burden of proof to demonstrate that West Penn did not provide reasonable service as required by Section 1501 of the Public Utility Code. Although Mr. Williams is convinced that West Penn initially restored partial power to his home, and that such restoration was an error or mistake, he has failed to produce competent evidence to show that an error or mistake was in fact made by West Penn. Additionally, the evidence produced by West Penn demonstrates that its service territory experienced a major weather event which caused widespread outages and required more than 1,900 to work from November 15, 2018 through November 21, 2018 to fully restore power to all the affected homes. The evidence produced by West Penn also showed that power was restored the same day to Mr. Williams each time an outage occurred at his service address. Finally, the evidence produced by West Penn showed that it had taken proactive measures to minimize storm related outages that might be caused by out of right-of-way trees, but that no amount of proactive

intervention could have prevented to widespread outages in this case, due to the magnitude of the storm in question.

In sum, Mr. Williams failed to demonstrate, through competent record evidence, that West Penn failed to provide reasonable service, or that the actions of West Penn otherwise violated the Public Utility Code, a Commission Order or Regulation or a Commission-approved company Tariff with regard to the provision of service to him. Given that Mr. Williams has failed to meet his burden of proof in this case, the Complaint in this matter is hereby dismissed. An appropriate Order shall follow below.

### 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). "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).

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. 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.

5. Public utilities are required to provide reasonable service to their customers. 66 Pa. C.S.A. § 1501.

6. The Public Utility Code only requires a public utility to furnish reasonable service - it does not mandate perfect service nor must a public utility provide the best possible service. In Re Metropolitan Edison Company, 80 Pa. PUC 662 (1993), rev'd on other grounds, Popowsky v. Pa. Pub. Util. Comm'n, 653 A.2d 1385 (Pa.Cmwlth. 1995).

7. 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).

8. The Commission's 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).

9. The Complainant has failed to satisfy his burden of proof in this proceeding to demonstrate that West Penn failed to provide him with reasonable service, or that West Penn has violated the Public Utility Code, a Commission Order or regulation or a Commission-approved tariff. 66 Pa.C.S. § 332(a).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Robert Williams against West Penn Power Company at Docket Number C-2019-3007655 is hereby denied.

