

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

George Groff	:	
	:	
v.	:	C-2019-3009167
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Darlene Davis Heep  
Administrative Law Judge

**INTRODUCTION**

This decision finds in part for the Complainant and in part for PECO Energy Company. PECO provided reasonable service in response to Complainant reporting a transformer flare near, and an outage at, his home. However, PECO will be directed to reconsider application of Section 12.1 of its electric tariff that provides for liquidated damages to the claim filed by the Complainant.

**HISTORY OF THE PROCEEDING**

On April 1, 2019, George Groff (Complainant or Mr. Groff) filed a Formal Complainant against PECO Energy Company (PECO or Respondent). In the Complaint, Mr. Groff states that at about 12:01 a.m. on February 14, 2019,<sup>1</sup> there was a power surge and outage at his home in Phoenixville, Pennsylvania. He avers that PECO provided unreasonable service in that the company was not responsive to his calls, and that the company unduly delayed

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<sup>1</sup> PECO records state that this event actually occurred the night of February 20-21, 2019. (PECO Exhibits 1, 5, and 6; Tr. 27).

responding to the situation. He further states that his household had over \$1600 in damages as a result of the surge and outage.

On May 1, 2019, PECO filed an Answer and New Matter. PECO averred that the surge was caused by equipment failure from normal wear and tear and that there was not any delay in maintenance by PECO. PECO stated that consistent with Section 12.1 of the Commission approved PECO electric tariff, the Company cannot guarantee continuous service. PECO also averred that the cause of the surge and damage was out of the Company's control and therefore PECO is not liable.

As a New Matter, PECO stated, pursuant to 52 Pa. Code § 5.62(b), that the Complainant failed to state a claim upon which relief may be granted. Particularly, PECO contends that the Complainant is seeking monetary damages and that this relief is beyond the jurisdiction of the Commission.

On May 24, 2019, a Call-In Telephone Hearing Notice was issued setting a hearing for July 16, 2019. A prehearing order addressing various procedural matters was issued on June 5, 2019.

On July 16, 2019, the hearing was held by telephone as scheduled. Mr. Groff represented himself. PECO was represented by Shawane Lee, Esquire, who presented three witnesses. The witnesses for PECO were Michael Begley, PECO Regulatory Assessor; Timothy Grow, PECO Claims Manager; and Madeline Devlin, PECO Engineer.

PECO also introduced 7 Exhibits. They were

- No. 1 Executive Summary of Claim of George Groff
- No. 2 PECO Tariff Excerpt - Section 12, Service Continuity
- No. 3 Outage Management System Reports
- No. 4 Google Map Photos of Service Address Area
- No. 5 Contact History
- No. 6 Meter Surge Event Summary

All six exhibits were admitted into the record.

PECO submitted late-filed exhibit No. 7, Weather Report, on July 30, 2019. This exhibit is admitted into the record in the ordering paragraphs.

The record closed on August 15, 2019, upon receipt of the 134-page transcript.

### FINDINGS OF FACT

1. The Complainant is George Groff, who is a PECO customer at 1295 Ellwanger Drive, Phoenixville, Pennsylvania, the service address.
2. PECO Energy Company is the Respondent.
3. On February 21, 2019, at approximately 12:01 a.m., the Complainant and his wife called PECO after the Complainant saw and heard an explosion from the PECO transformer that is located approximately 50 feet from his home (hereinafter, "the Event"). (Tr. 6-7).
4. The explosion that Mr. Groff witnessed was a fuse failure that can be loud and create a flash. (Tr. 67).
5. A fuse is an isolating device that is designed to "blow," i.e., isolate outages to prevent equipment from being further damaged by fault current. (Tr. 83-84, 86).
6. Following the Event, the Complainant was without electricity for approximately 12 hours. (Tr. 11, 110).
7. Other homes in the neighborhood were also affected. (Tr. 14-15).
8. The Complainant or his wife called PECO at least seven times before a PECO technician arrived to inspect the transformer near the service address. (PECO Exhibit 6).

9. Every couple of hours, the Complainant's wife would call PECO. (Tr. 10; PECO Exhibits 5,6).

10. The Complainant and his wife were told multiple times that the power would be restored within two hours. (Tr. 10).

11. After the Complainant himself called and stated that there was an explosion at the transformer, a truck from PECO arrived shortly thereafter at approximately 10:21 a.m. on February 21, 2019. (Tr. 10-11).

12. PECO began to dispatch crews to the area at 12:23 a.m. (PECO Exhibit 6).

13. Crews were initially sent out to gather information and to repair lines at the location where the Event originated, which was around the corner from the Complainant's home. (Tr. 58, 59, 64).

14. Once PECO restored power to the area, only part of the electricity in the Complainant's home functioned. (Tr. 15, PECO Exhibit 5, p. 19).

15. PECO technicians entering the service address told the Complainant that part of his fuse box was melted. (Tr. 15- 16; Tr. 20-21).

16. Damage to the Complainant's fuse box occurred as a result of the Event.

17. There were three PECO circuits involved in the Event. (Tr. 59-60).

18. At various intervals, PECO interrupted and restored power on the circuits and other PECO facilities. (Tr. 60-64).

19. Complainant filed a claim with PECO for the damage caused by the Event. (PECO Exhibit 1; Tr. 16).

20. Damage caused by the Event included damage to the Complainant's refrigerator, dishwasher, lightbulbs, light strips on the aquarium, central air conditioner and washing machine and surge protectors in the house "turned black."(Tr. 19-20).

21. There were 37 customers who filed claims related to the Event. (Tr. 28).

22. PECO denied all of the claims related to the Event. (Tr. 28).

23. PECO has fuses on every PECO transformer. (Tr. 87).

24. PECO Electric Tariff provision 12.1 limits liability to \$1000 maximum for PECO interruption, reversal, spike, surge or variation in supply or voltage, transient voltage, or any other failure in the supply of electricity. (PECO Exhibit 1; Tr. 32).

### DISCUSSION

In order to prevail, Complainants must establish that the offense complained of constitutes a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. A party seeking relief from the Commission has the "burden of proof." 66 Pa.C.S. § 332(a). To satisfy the burden of proof, Complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 134 Pa. Commw. 218, 221-222; 578 A.2d 600, 602 (1990); *alloc. den.*, 602 A.2d 863 (1992). The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. *Lehigh Valley Transp. Servs. v. Pa. Pub. Util. Comm'n*, 56 A.3d 49, n. 6 (Pa. Cmwlth. 2012).

Upon the presentation by a complainant of a *prima facie* case, i.e., evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence

to rebut the evidence of the customer shifts to the respondent. If the evidence presented by the respondent is of co-equal value or “weight,” the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that 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 going forward with the evidence 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.Cmwlth. 2001).

The Public Utility Code in Section 1501 provides 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 interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501. Further, 52 Pa. Code § 57.194(a), (d) provide as follows:

(a) An EDC 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.

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(d) An EDC shall strive to prevent interruptions of electric service and, when interruptions occur, restore service within the shortest reasonable time. If service must be interrupted for maintenance purposes, an EDC should, where reasonable and practicable, attempt to perform the work at a time which will cause minimal inconvenience to customers and provide notice to customers in advance of the interruption.

Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. *Pennsylvania Electric Co. v. Pa. Pub. Util. Comm'n* (Pa. Cmwlth. 1995) cited in *Larry Moyer v. PPL Utilities Corporation*, Docket Number C-2015-251190 (Order entered August 8, 2019). PECO's Tariff Rule 12 provides in pertinent part:

## 12. SERVICE CONTINUITY

### 12.1 LIMITATION ON LIABILITY FOR SERVICE INTERRUPTIONS AND VARIATIONS.

The Company does not guarantee continuous, regular and uninterrupted supply of service. The Company may, without liability, interrupt or limit the supply of service for the purpose of making repairs, changes, or improvements in any part of its system for the general good of the service or the safety of the public or for the purpose of preventing or limiting any actual or threatened instability or disturbance of the system. The Company is also not liable for any damages due to accident, strike, storm, riot, fire, flood, legal process, state or municipal interference, or any other cause beyond the Company's control.

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Tariff provision 12.1 also provides as follows:

In all other circumstances, the liability of the Company to customers or other persons for damages, direct or consequential, including damage to computers and other electronic equipment and appliances, loss of business, or loss of production caused by any interruption, reversal, spike, surge or variation in supply or voltage, transient voltage, or any other failure in the supply of electricity shall in no event, unless caused by the willful and/or wanton misconduct of the Company, exceed an amount in liquidated damages equivalent to the greater of \$1000 or two times the charge to the customer for the service affected during the period in which such interruption, reversal, spike, surge or variation in supply or voltage, transient voltage, or any other failure in the supply of electricity occurs. In addition, no charge will be made to the customer for the affected service during the period in which such interruption, reversal, spike, surge or variation in supply or voltage, transient voltage, or any other failure in the supply of electricity occurs. A variety of protective

devices and alternate power supplies that may prevent or limit such damage are available for purchase by the customer from third parties.

The customer here contends: 1) that PECO did not reasonably respond to the power surge and outage when he and his wife called PECO customer service, and 2) that PECO should not have denied his claim for damages.<sup>2</sup>

### PECO RESPONSE TO OUTAGE

The evidence presented brings into question whether PECO's response to the Event was reasonable. Near midnight on February 20, 2019, Mr. Groff contacted PECO after he saw and heard an explosion from the PECO transformer that is located approximately 50 feet from his home. (Tr. 6-7). Mr. Groff described the incident as the sky lighting up in colors. He thought that something had hit the house and he went out to look for any damage. It was completely dark and there were no lights on at any house that he could see. (Tr. 7,8).

Mr. Groff lost electricity to his home and several homes in the neighborhood were also affected by the Event. (Tr. 6, 14-15). The Complainant and his wife began to call PECO - first to report the Event and then periodically to express concern about a delay in response. (Tr. 13-18). On several occasions when the Complainant and his wife called PECO, a recorded message stated that there was only one customer affected by the subsequent outage. Mr. Groff or his wife called PECO at least seven times before the Complainant saw any PECO personnel near his home. (PECO Exhibit 6). The Complainant and his wife were told multiple times that the power would be restored within two hours. (Tr. 10).

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<sup>2</sup> During the hearing, Mr. Groff wondered whether he was charged for electricity that passed through his home during the event. (Tr. 18). Michael Begley, PECO Regulatory Assessor, testified that the Complainant was not charged for any service during the event because the meter would not have measured any electricity usage. Mr. Begley also testified that there was only a 3-kilowatt hour difference between the Complainant's bill including the Event (January 22, 2019 to February 20, 2019) and the bill issued after the Event (February 20, 2019 to March 21, 2019). (Tr. 90-92). Mr. Groff appeared satisfied and therefore that issue will not be addressed further herein. (Tr. 92).

PECO personnel did not arrive at the transformer near the Complainant's home until approximately 10:21 a.m. (PECO Exhibit 6). Once PECO restored power, the electricity did not work in part of the Complainant's home because part of his fuse box had melted. (Tr. 15-16; Tr. 20-21; PECO Exhibit 5, p. 19). The Complainant established a *prima facie* case of unreasonable service.

However, PECO presented effective rebuttal on this issue. What the Complainant witnessed was a fuse failure. A fuse is an isolating device that is designed to "blow," i.e., isolate outages to prevent equipment from being further damaged by fault current. (Tr. 83-84, 86).

Madeline Devlin, PECO Engineer, and Tim Grow, PECO Senior Claims Case Manager, testified that the Event began around the corner from Mr. Groff's home. (Tr. 57, 77). An insulator failed, which caused higher voltage to come down in the lower voltage, which then caused the fuse on the transformer to cause the volt current that Mr. Groff saw as an explosion when the fuse on the transformer blew. (Tr. 36, 57-58). When PECO responded, the technicians were sent first to the site of the insulator failure around the corner from the service address. (Tr. 57,77).

Estimates of the response time and when the power would be restored that were conveyed to Mr. Groff were based on the information available to the PECO staff answering the phones. Although the information provided to the Complainant and his wife may have been inaccurate at times, providing such information under the circumstances was not unreasonable. As Mr. Begley testified, an event is entered into the system and periodically updated by PECO dispatch. (Tr. 110). Status and estimates change as PECO personnel arrive at the scene and begin repairs and assess the situation. (Tr. 62-64, Tr. 10).

PECO's system recorded that there was an "event" at about 12:01 a.m. (PECO Exhibit 6). A PECO crew was dispatched at 12:23 a.m. (PECO Exhibit 6). Crews were sent out to the initial location around the corner to gather information and to repair lines. (Tr. 58, 59, 64). There were three circuits impacted and PECO personnel continued to make repairs from the

dispatch at 12:23 a.m. until the PECO equipment and lines were repaired or restored. (Tr. PECO Exhibit 6).

The Complainant's power had not yet been restored and he called PECO again at about 10:25 a.m.<sup>3</sup> and stated that he had heard a loud boom at the transformer near his home. (PECO Exhibit 6). A crew, then aware of the explosion, was dispatched to the area shortly thereafter. (PECO Exhibits 5,6). There PECO crews continued to work. *Id.*

At about 4:00 p.m., the Complainant told PECO personnel at the scene that he only had partial power restored. (Tr. 15). The Complainant stated that "... they were kind of nice in that they sent two of their guys into the house." *Id.* Two technicians entered the Complainant's home and found that his fuse box was burned, partly melted. (Tr. 15).

Given that PECO began to respond to the Event shortly after it became aware of the incident and that the company sent technicians to work throughout the night to restore service, PECO provided reasonable service with respect to its response to the Event. Its customer service personnel provided information based on what they knew at the time, which was also reasonable.

No evidence presented by the Complainant invalidated the rebuttal evidence of the Respondent. Therefore, the Complainant cannot prevail on this claim.

#### DENIAL OF CLAIM

Mr. Groff alleges that his household had over \$1600 in damages as a result of the Event. Damage caused by the Event included damage to the Complainant's refrigerator, dishwasher, lightbulbs, light strips on an aquarium, central air conditioner and washing machine as well as surge protectors that "turned black." (Tr. 19-20). He filed a claim with PECO for the damage his household sustained as related to the Event. (PECO Exhibit 1).

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<sup>3</sup> PECO Exhibit 5 indicates that the Complainant called around 9:25 a.m.

PECO does not deny or refute that the damage identified by Mr. Groff was related to the Event. Nevertheless, PECO denied Complainant's claim. PECO also denied the claims of 37 other customers related to the Event. (Tr. 16-17, 27-28; PECO Exhibit 1).

It is well-settled that the Commission lacks jurisdiction to award monetary damages to a complainant in adjudicating a complaint properly brought before this Commission. *See Poorbaugh v. Pa. Pub. Util. Comm'n*, 666 A. 2d 744 (Pa. Cmwlth. 1995), *cited in Thomas Baker v. PECO Energy Company*, Docket Number C-2016-2573166 at n.2 (Order entered November 8, 2018). Requests for compensatory damage should be made before a court of common pleas or a district magistrate. Therefore, the Commission cannot directly award the Complainant compensatory damages.

However, the Commission approved PECO's tariff. PECO Electric Tariff Section 12.1 provides that the Company may be liable "to customers . . . for damages, direct or consequential, including damage to computers and other electronic equipment and appliances . . . caused by any interruption, reversal, spike, surge or variation in supply or voltage, transient voltage, or any other failure in the supply of electricity shall in no event, unless caused by the willful and/or wanton misconduct of the Company, exceed an amount in liquidated damages equivalent to the greater of \$1000 or two times the charge to the customer for the service affected."

PECO contended through the testimony of Mr. Grow that Complainant's claim was denied because the company does not guarantee continuity of service. (Tr. 31). Mr. Grow is correct. The company does not guarantee continuity of service and that is stated in Tariff Section 12.1. However, Mr. Groff's claim is not concerning continuity of service. It is regarding damage that occurred as a result of the Event. Tariff Section 12.1 provides that PECO may be liable for and pay up to \$1000 for such damages. Tariff Section 12.1, *supra*. The first paragraph of Tariff Section 12.1 does not absolve PECO of liability.

The last sentence in the first paragraph of Section 12.1 states:

The Company is also not liable for any damages due to accident, strike, storm, riot, fire, flood, legal process, state or municipal interference, or any other cause beyond the Company's control.

PECO testimony suggested that this provision relieved the company of liability here. (Tr. 32). However, this matter does not involve accident, strike, storm, riot, fire, flood, legal process, state or municipal interference, or any other cause beyond the Company's control.

PECO records and testimony were that the cause of the initial event was "undetermined." (Tr. 59; PECO Exhibits 5, 6). It is not clear from the record whether the damage was a result of the initial Event or occurred as PECO interrupted and restored power on the circuits and other PECO facilities during the repair. (Tr. 60-64).

There was clearly no riot, fire, flood, legal process, state or municipal interference involved in the Event. There was no rebuttal evidence that this Event was caused by an accident or strike. Mr. Groff credibly testified that there was no ice or storm in his vicinity when he went outside to investigate the explosion sound of the transformer and the Weather Report submitted by PECO does not contradict Mr. Groff. (PECO Exhibit 7). Therefore, as the last sentence of the first paragraph of PECO Tariff Section 12.1 may not preclude PECO from possible liability under 12.1, PECO should reconsider the claim filed by the Complainant in light of the second paragraph of Section 12.1 and send its decision to the Complainant within 30 days.<sup>4</sup>

## PENALTY

Where a utility has violated the Code or a Commission Order or Regulation, it may be subjected to a civil penalty of up to \$1000 per violation for every day of that violation's continuing offense. *See* 66 Pa. C.S. § 3301(a)-(b). Given that that the company here misapplied a

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<sup>4</sup> Unlike the interpretation of a tariff provision approved by the Commission (See *Larry Moyer v. PPL Utilities Corporation*, Docket Number C-2015-251190 (Order entered August 8, 2019)), if the Complainant questions the sufficiency, correctness or amount of any damages determination by PECO, that is for another forum.

tariff provision rather than committed a violation of the Code, Regulation of Commission Order, a penalty would not be appropriate here.

### CONCLUSIONS OF LAW

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

2. The burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

4. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. *Pennsylvania Electric Co. v. Pa. Pub. Util. Comm'n* (Pa. Cmwlth. 1995) cited in *Larry Moyer v. PPL Utilities Corporation*, Docket Number C-2015-251190 (Order entered August 8, 2019).

5. The Commission is not authorized to grant monetary damages. *Elkin v. Bell*, 420 A.2d 371 (Pa. 1980); *Loma, Inc. v. Pa. Pub. Util. Comm'n*, 682 A.2d 425 (Pa. Cmwlth. 1996).

6. "Every public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make all repairs, changes, alterations, substitutions, extensions, and improvements in or to its 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.

7. The Complainant has not met his burden of proof to show that the response of PECO technicians and customer service representatives when the Complainant called the company about the outage on February 21, 2019 was unreasonable in violation of 66 Pa.C.S. § 1501.

8. PECO is not liable for any damages due to accident, strike, storm, riot, fire, flood, legal process, state or municipal interference, or any other cause beyond the Company's control. *PECO Electric Tariff* Section 12.1.

9. PECO can be liable for and pay an amount in liquidated damages equivalent to the greater of \$1000 or two times the charge to the customer for the service affected. *PECO Electric Tariff* Section 12.1.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That late-filed PECO Exhibit 7 is admitted into the record.
2. That the Complaint of George Groff against PECO Energy Company at Docket No. C-2019-3009167 is denied, in part, and granted, in part.
3. That the claim that PECO's response to the outage on February 21, 2019 was unreasonable is denied and dismissed.
4. That the claim contesting PECO's treatment and denial of the Complainant's claim for damages pursuant to PECO Electric Tariff Section 12.1 is granted.

5. That within 30 days of the final order of this matter, PECO shall reconsider the Complainant's claim under PECO Tariff Section 12.1 as discussed herein and issue a decision to the Complainant.

6. That Docket No. C-2019-3009167 be marked closed.

Date: December 2, 2019

\_\_\_\_\_/s/\_\_\_\_\_  
Darlene D. Heep  
Administrative Law Judge