

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gary Mandekic	:	
	:	
v.	:	C-2019-3009781
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

The complaint of an electric utility customer is denied because he failed to prove that the utility failed to render reasonable service.

HISTORY OF THE PROCEEDINGS

On April 29, 2019, Gary Mandekic (Complainant) filed a formal complaint against West Penn Power Company (West Penn or Company). The Complainant alleges that high winds separated a power line from a pole serving his residence, causing a power surge on February 12, 2019. High winds on March 10, 2019, caused additional damage. According to the Complainant, West Penn failed to adequately inspect and maintain their facilities and failed to adequately respond to his service calls.

West Penn filed an answer to the complaint on May 29, 2019, admitting that the Complainant contacted the Company to report service issues on February 12, 2019 and

March 10, 2019, but denied that West Penn failed to adequately maintain its facilities, or failed to appropriately respond to the Complainant's calls.

The Complainant filed an additional complaint form on June 27, 2019, detailing the appliances damaged in the incidents.

By notice dated July 1, 2019, the complaint was scheduled for a hearing on August 27, 2019, and assigned to me. A prehearing order explaining the procedures for the conduct of the hearing was served on July 9, 2019.

The hearing convened as scheduled. The Complainant appeared, self-represented, and testified on his own behalf. West Penn, represented by Margaret Morris, Esquire, offered the testimony of three witness, Shawn Hindman, Tammy Taylor and Nancy Bridges. West Penn also offered nine exhibits which were admitted into the record. The hearing generated a transcript of 84 pages. The record was closed by interim order dated September 26, 2019.

FINDINGS OF FACT

1. The Complainant, Gary Mandekic, resides at 817 West First Avenue, Derry, Pennsylvania. (N.T. 11)
2. The Respondent, West Penn Power Company, provides electricity service to the Complainant at 817 West First Avenue. (N.T. 11)
3. There is a pole approximately 75 feet away from the Complainant's house. (N.T. 13)
4. The pole is identified by West Penn as number 713262-WP23. (N.T. 29)

5. The pole has two crossarms which hold a sub-transmission circuit and a distribution circuit. (N.T. 28, 29)

6. Each of the two circuits on the pole are affixed to separate crossarms. (N.T. 29)

7. The pole also holds a transformer and a service drop which serves the Complainant. (N.T. 29)

8. On February 12, 2019, high winds separated a power line from a pole which serves the Complainant's residence, creating a power surge. (N.T. 11)

9. The Complainant observed that one of the lower lines had separated from the crossarm which supported the lines. (N.T. 13)

10. The loose line was whipping back and forth from the wind and electricity arced on the crossarm, burning through the wood and causing the crossback to fall to the ground. (N.T. 13; 32; West Penn Ex. 7)

11. The falling crossarm severed the neutral wires which serve the Complainant's house. (N.T. 13; 32; West Penn Ex. 7)

12. The lights in the Complainant's house began to flicker, but did not go out. (N.T. 14)

13. The winds picked up even more, and then a surge tripped the Complainant's circuit breakers, damaging many of his appliances. (N.T. 14; 15-16; 32; West Penn Ex. 7)

14. Thereafter, the Complainant turned off the electricity to the house to avoid further damage. (N.T. 14)

15. The Complainant contacted West Penn on February 12, 2019 around 11:00 a.m. (N.T. 11; West Penn Ex. 1)

16. The Complainant observed electricity “arcing” and sparks flying. (N.T. 12; 18; 47)

17. The Complainant contacted West Penn again on February 12, 2019, around 8:16 p.m. which was characterized in West Penn’s records as a “voltage issue.” (N.T. 12; 60; West Penn Ex. 1)

18. A West Penn technician arrived at Complainant’s home on February 12, 2019 at 9:06 p.m. and stated that the repair crew would arrive to fix the pole. (N.T. 12)

19. The Complainant contacted West Penn again on February 12, 2019, at 10:39 p.m., reporting that the power was on, but the pole was damaged. (N.T. 60; West Penn Ex. 1)

20. The West Penn repair crew arrived around 12:17 a.m. on February 13, 2019. (N.T. 12; 31; West Penn Ex. 7)

21. An insulator on the distribution circuit had failed and burned off the crossarm. (N.T. 32, 41; West Penn Ex. 7)

22. The insulator failed on the inside and cracked and fell over. (N.T. 46)

23. An insulator failure on the inside cannot be detected by exterior visual inspection. (N.T. 46)

24. There were many outages on February 12, 2019, on circuits served by the same repair crews. (N.T. 51-52)

25. Repair calls are prioritized according to the number of customers that are affected. (N.T. 51)

26. On February 13, 2019, the Complainant filed a claim for damages to property following the February 12, 2019 incident. (N.T. 61; West Penn Ex. 3)

27. The Complainant's damage claim was referred to the claims department for West Penn Power. (N.T. 73)

28. West Penn denied the Complainant's claim for damages because West Penn took the position that the equipment failure was unforeseeable and not negligent. (N.T. 73-74)

29. West Penn issued a claim denial letter on February 15, 2019. (N.T. 74; West Penn Ex. 5)

30. Another high wind event occurred on March 10, 2019. (N.T. 12)

31. On March 10, 2019, 1,609 customers on the circuit that serves the Complainant were without electricity for 64 minutes. (N.T. 30, 34)

32. A recloser at the substation which serves the circuit was locked open. (N.T. 33; West Penn Ex. 8)

33. The Complainant contacted West Penn on March 10, 2019, and reported another power line on the same pole as the February 12, 2109 incident was separated from the crossarm. (N.T. 12, 16; 34-35; 63; West Penn Ex. 1)

34. The Complainant observed that the upper power line separated from the crossarm. (N.T. 16)

35. A West Penn technician arrived to investigate the Complainant's report on March 10, 2019, and reported that the insulator was broken and the sub-transmission line was laying on the crossarm. (N.T. 35; *see also* N.T.12)

36. A West Penn repair crew arrived at 10:30 a.m. on March 11, 2019, to repair the line. (N.T. 12)

37. The repair crew put a new insulator on the wire and reattached the line to the crossarm on the pole. (N.T. 19-20)

38. According to West Penn's records, in the last 24 months, Complainant has suffered one outage. (N.T. 29; West Penn Ex. 6)

39. West Penn performs an overhead circuit inspection every six years which involves visually inspecting and recording abnormal conditions, supporting structures, pole hardware, guy wires, grounds and pole-mounted distribution equipment. (N.T. 36)

40. West Penn's records indicate that the last overhead circuit inspection of the circuit servicing Complainant occurred in 2017, and it is scheduled to be inspected again in 2021. (N.T. 37; West Penn Ex. 6)

41. Every six years West Penn performs a sub-transmission inspection of the facility circuits. (N.T. 37)

42. The sub-transmission line was aerially inspected in 2017. (West Penn Ex. 6)

43. West Penn inspects poles every 12 years to inspect the integrity of the pole. (N.T. 37)

44. The last pole inspection of the Complainant's pole occurred in 2015. (N.T. 37; West Penn Ex. 6)

DISCUSSION

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.¹ A person seeking affirmative relief from the Commission has the burden of proof.²

In this matter, the Complainant is the party asking for relief from the Commission; therefore, he has the burden of proof. This means, that the Complainant must establish facts which support his claim by a preponderance of the evidence.³ The term "preponderance of the evidence" means one party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party.⁴ Relief can only be granted if the Complainants prove facts by a preponderance of the evidence, which show that West Penn violated the Public Utility Code or Commission regulations.

Section 1501 of the Code,⁵ mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such

¹ 66 Pa.C.S. § 701.

² 66 Pa.C.S. § 332(a).

³ *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, 1055-56 (Pa. 2007); *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

⁴ *Popowsky*.

⁵ 66 Pa.C.S. § 1501.

repairs, changes, alterations, substitutions, 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. Upon finding that the service or facilities of a public utility are unreasonable, unsafe or inadequate, the Commission may prescribe, by regulation or order, the reasonable, safe and adequate service or facilities that a public utility must furnish or employ.⁶

The Commonwealth Court has cautioned that the Commission may not sustain a complaint pursuant to Section 1501 unless it finds that a utility has violated a duty to render reasonable and reliable service.⁷ Further, the Commission has stated that a utility is not mandated to furnish perfect service:

[Section 1501] 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.^[8]

Thus, the test to determine the adequacy of a utility's service and facilities is that of reasonableness.⁹ This is the test to determine the adequacy of a utility's response to customer service complaints, as well as repairs made to its facilities.¹⁰

Clearly, the incidents relating to the lines becoming detached from the Complainant's pole were alarming to the Complainant. On February 12, 2019, high winds separated a power line from a pole which serves the Complainant's residence, creating a power surge. The Complainant observed that the distribution line had separated from the crossarm which supported the lines. The loose line was whipping back and forth from the wind and

⁶ 66 Pa.C.S. § 1505.

⁷ *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa.Cmwlt. 1984).

⁸ *Re Metropolitan Edison Company*, 80 Pa. PUC 663, 672 (1993).

⁹ *Thurby v. West Penn Power*, C-2011-2254048 (Order April 4, 2013); *Bertsch v. PPL Electric Utilities Corp.*, Docket No. C-2011-2251784 (Final Order April 2, 2012); *Scherich v. Verizon Pennsylvania Inc.*, Docket Nos. C-2008-2061244, C-2008-2068818 (Final Order January 28, 2010).

¹⁰ *Thurby*.

electricity arced on the crossarm, burning through the wood and causing the crossback to fall to the ground. The winds picked up even more and then a surge tripped the Complainant's circuit breakers, damaging many of his appliances. The Complainant testified that he was concerned that the arcing electricity may cause a fire and damage his house. Not more than a month later, the sub-transmission line separated from the upper crossarm on the same pole. Both incidents were caused by broken insulators. While the March incident was less dramatic than the February incident, the Complainant is concerned about the integrity of West Penn's facilities.

Shawn Hindman is a reliability engineer for West Penn. He testified that the pole and other facilities were inspected as required by the Commission's regulations. While both incidents were caused by damaged equipment, it is his view that these equipment failures were both unforeseeable.

The Complainant argued that when the crew repaired the damage from the February incident, they should have properly inspected and secured the sub-transmission line on the upper crossarm. In his view, had they done so, the March incident would not have occurred. Mr. Hindman testified that the repair crew would have inspected the sub-transmission line located above the distribution line. Although it was not noted in the report that the inspection was made, Mr. Hindman stated that it was Company practice to do so.

While Mr. Hindman's testimony regarding what the repair crew "would have done" is less than convincing,¹¹ it is the Complainant who bears the burden of proving that West Penn violated the requirements of the Public Utility Code and the regulations.¹² The Complainant did not offer testimony that the crew that repaired the line in February did not inspect the integrity of the sub-transmission line. Nor is there an obvious connection between the failure of the two insulators which would permit the inference that a failure of the February repair crew caused the equipment failure in March.

¹¹ N.T. 40, 46.

¹² 66 Pa.C.S. § 332.

In sum, I cannot conclude that West Penn Power violated Section 1501 of the Public Utility Code by failing to adequately maintain its facilities. There does not appear to be a connection between the failure of the insulator on the distribution line and the failure of the insulator on the sub-transmission line. Nor is there any evidence that West Penn failed to adequately inspect and repair the insulators.

Section 1501 of the Public Utility Code¹³ also requires West Penn to render reasonable customer service to the Complainant. The Complainant testified that he called West Penn multiple times on February 12, 2019, before the distribution line was repaired. Mr. Hindman testified that there were many outages in the area on that day and that the repair crews repaired the higher priority outages before reaching the Complainant. The records of West Penn Power do not reflect the Complainant's observations that electricity was arcing, which would have placed the Complainant's repair call on a higher priority list. The Complainant's description of the arcing electricity was vivid and detailed. Mr. Hindman confirmed that the damage to the burned crossarm was consistent with arcing electricity. The record is silent as to why the arcing was not recorded in West Penn's records.

It is the Complainant's burden to establish the failure of West Penn's customer service. While he described the arcing of the electricity, and this testimony is credible, he did not establish that he reported this arcing to customer service when he called to notify West Penn that the pole was damaged. Further, given the unrebutted testimony of Mr. Hindman that there were many outage calls on February 12, 2019, I cannot conclude that West Penn's response to the Complainant's service call and repair time was unreasonable.

Finally, the Complainant argues that it was unreasonable that West Penn denied his claim for damages. The Commission does not have jurisdiction to award monetary damages.¹⁴ However, the claim review process of a public utility is part of the customer service

¹³ 66 Pa.C.S. § 1501.

¹⁴ *See In Re: Melograne*, 812 A. 2d 1164 (Pa. 2002); *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (Pa. 1977).

process and is reviewable by the Commission.¹⁵ Nancy Bridges, a claims representative serving West Penn Power, testified that she reviewed the Complainant's claim for damages, which he filed on February 13, 2019. After reviewing West Penn's tariff and the service center records related to the incident, she concluded that the equipment failure was unforeseeable and not due to any negligence on West Penn's part. She denied the Complainant's claim by letter dated February 15, 2019.

While Ms. Bridges' review was expeditious and simply a review of Company records, there is no evidence that her review or handling of the claim was unreasonable. Therefore, the claim by the Complainant that it was unreasonable for West Penn to deny his claim for damages must be dismissed as well.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this dispute. 66 Pa.C.S. § 701.
2. The Complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa.C.S. § 332(a).
3. The Complainant has failed to satisfy the burden of proving that West Penn Power Company failed to provide adequate and reliable service. 66 Pa.C.S. § 1501.

¹⁵ *Lolly v. Duquesne Light Company*, Docket C-2010-2167824 (Opinion and Order entered May 9, 2011)(assessing a civil penalty due to utilities failure to render reasonable customer service by failing to process the complainant's appliance damage claim in a reasonable manner.).

