

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tiffany McCall	:	
	:	
v.	:	C-2019-3012597
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This decision denies the Complaint, finding that the Complainant did not establish that PECO Energy Company provided unreasonable service with respect to maintenance and notification prior to working on a line. This decision also denies the Complainant's claim for damages because the Commission does not have the authority to award monetary damages.

HISTORY OF THE PROCEEDING

On September 2, 2019, Tiffany McCall (Complainant or Ms. McCall) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Respondent or Company). In the Complaint, Ms. McCall is seeking to recoup the cost of damages to her home/landline telephone that she states occurred during PECO's line tripping events.

On September 12, 2019, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint. PECO averred that the Company received a claims registration from the Complainant stating that in January of 2019, a power outage caused damage to her home telephone; however, the Company investigated and found no power outage on PECO lines servicing the Complainant's home. PECO averred that any alleged momentary outage was not due to any equipment failure, transformer or other maintenance issue on PECO's part.

The hearing convened by telephone on October 30, 2019. The Complainant appeared by telephone, *pro se*. PECO was present by telephone, represented by Edward Fisher, Esq.

PECO presented three witnesses. They were Kahlua Rashid, PECO Reliability Engineer for Delaware and Chester Counties; Timothy Grow, PECO Senior Claims Case Manager; and Jonathan Frissora, Manager of the PECO Claims Department. PECO also presented two exhibits, both of which were admitted.

During the hearing, Ms. McCall also questioned PECO's maintenance and notification practices relative to her damages claim. PECO did not object to Ms. McCall presenting these new claims; therefore, they were accepted as an amendment to the Complaint and PECO was given the opportunity to respond.

Also during the hearing, the Complainant stated that she had just received outage documentation from PECO. (Tr. 7-8). PECO's counsel stated that these documents were sent to the Complainant on October 11, 2019. (Tr. 17). Ms. McCall was advised that she would be allowed two weeks following the hearing to provide responses to these documents. (Tr. 8, 80).

On November 5, 2019, Ms. McCall submitted a "Response to PECO's Service Liability Report," which is marked Complainant Exhibit 1 and will be admitted herein. The record closed on December 12, 2019 upon receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Tiffany McCall, who is a PECO residential gas and electric customer in Brookhaven, Pennsylvania. (Tr. 5; PECO Exhibit 1).

2. The Respondent is PECO Energy Company.

3. On or before February 1, 2019, the Complainant called PECO and reported an outage and damage to her telephone. (Tr. 11-13; PECO Exhibit 2).

4. A PECO claims representative emailed the Complainant a claim for Property Damages form on February 1, 2019. (Complainant Exhibit 1).

5. Ms. McCall called PECO on or about April 1, 2019, again reporting problems with her telephone after it stopped working completely. (Tr. 13).

6. On April 4, 2019, Ms. McCall completed and later submitted the claim form sent to her by PECO in February of 2019. (Tr. 13, 18).

7. The claim form submitted to PECO by the Complainant states that the date of loss or damage was in January of 2019. (Tr. 19; PECO Exhibit 2).

8. PECO denied the claim for damages submitted by the Complainant. (Tr. 54, PECO 2).

9. A breaker on a line can "trip" or temporarily shut off when something touches the wire. (Tr. 30).

10. On February 1, 2019, there was a momentary tripping of 1-minute duration on the PECO electric line on the Complainant's circuit. (PECO Exhibit 2).

11. Other than the momentary tripping on February 1, 2019, there is no record of line outages or other problems on the Complainant's circuit between January 2019 and April 4, 2019. (PECO Exhibit 2).

12. PECO sends customers notice of planned maintenance. (Tr. 37-38).

13. The Complainant has received notice from PECO of planned maintenance. (Tr. 80)

DISCUSSION

In order to prevail in an action against a utility before the Commission, 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); 66 Pa.C.S. § 701.

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 (Pa. 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).

Section 1501 of the Public Utility Code 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) provides that:

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.

52 Pa. Code § 57.194(a).

"Service" is also addressed in the PECO tariff. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. *Pa. Electric Co. v. Pa. Pub. Util. Comm'n*, 633 A.2d 281 (Pa. Cmwlth. 1995), cited in *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.

PECO Energy Company - Tariff Electric Pa. P.U.C. No. 5, Page No. 21. A utility is required to provide reasonable and adequate service, not perfect service. *See, Schell v PPL Electric Utilities Corporation*, Docket Number C-2017-2592821 (Order entered June 14, 2018).

The Complainant is seeking reimbursement for the cost of damages to her home telephone that she contends occurred during PECO line tripping or outages in January of 2019. (Tr. 8-9). She filed a claim with PECO seeking reimbursement for the damages. (FOF 3-6). PECO denied the claim. (FOF 7).

The claim for damages will be denied. Any request for monetary damages is denied because the Commission cannot award monetary damages to a private litigant. *Feingold v. Bell of Pa.*, 477 Pa. 1, 383 A.2d 791 (1977); *Morrow v. Bell Telephone Co. of Pa.*, 330 Pa.Super. 276, 479 A.2d 548 (1984); *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 104 Pa.Cmwlt. 21, 521 A.2d 75 (1987); *Ostrov v. I.F.T., Inc.*, 402 Pa.Super. 87, 586 A.2d 409 (1991). A request for monetary damages must be pursued in a Magisterial District Court or a Court of Common Pleas.

The Complainant raised questions during the hearing regarding the reasonableness of PECO's service under 66 Pa.C.S. § 1501 and 52 Pa. Code § 57.194. Ms. McCall further questioned PECO's maintenance practices in Complainant Exhibit 1.

Particularly, Ms. McCall questioned the maintenance of the lines by PECO and whether PECO adequately notifies its customers when a line would be turned off and on due to maintenance. Complainant did not establish by a preponderance of the evidence any violations by PECO.

Although PECO records show that there was a momentary outage on the Complainant's circuit on February 1, 2019, this is not a sufficient basis upon which to find a violation. As noted by the testimony of Mr. Grow, PECO Senior Claims Case Manager, PECO's Tariff Rule 12 provides that the Company does not guarantee continuous service. A utility is required to provide adequate service, not perfect service under 66 Pa.C.S. § 1501 and 52 Pa. Code § 57.194. (Tr. 50-51; PECO Exhibit 2).

As far as notice of the February 1, 2019 outage, the record supports a finding that there was no opportunity for notice here. Mr. Frissora, PECO Claims Department Manager, testified that the outage was caused by a high side breaker trip. (Tr. 62). Such events are caused by a foreign object touching the line. (*Id.*) Kahlua Rashid, PECO Reliability Engineer, testified that this momentary interruption caused by tripping was beyond the Company's control. There was no evidence to the contrary. A 1-minute momentary tripping of the circuit does not constitute a violation by PECO of the Public Utility Code, a Commission regulation or order or a Commission-approved tariff.

The Complainant also expressed concern regarding PECO's maintenance of lines and notification to customers that the Company would perform maintenance on a line. The Complainant did not prove by a preponderance of the evidence that the approach by PECO on both matters is unreasonable.

Kahlua Rashid testified that PECO has a preventive maintenance program, keeps service reliability reports and proactively identifies equipment that needs replacement. (Tr. 37-38). As for notification, Ms. Rashid testified that for planned maintenance, PECO sends out notification to customers prior to the maintenance taking place. (Tr. 43-44). The Complainant testified that she has received such notices. (Tr. 80). The Complainant failed to establish a violation by PECO.

Accordingly, the Complaint will be dismissed in its entirety.

CONCLUSIONS OF LAW

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

2. Any offense alleged by the Complainant 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.

3. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. *Pa. Electric Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995).

4. PECO Energy Company does not guarantee continuous, regular and uninterrupted supply of service. PECO Tariff Rule 12.

5. A public utility is required to provide reasonable and adequate service. 66 Pa.C.S. § 1501, 52 Pa. Code § 57.194(a).

6. The Commission cannot award monetary damages to a private litigant. *Feingold v. Bell of Pa.*, 477 Pa. 1, 383 A.2d 791 (1977); *Morrow v. Bell Telephone Co. of Pa.*, 330 Pa.Super. 276, 479 A.2d 548 (1984); *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 104 Pa.Cmwlth. 21, 521 A.2d 75 (1987); *Ostrov v. I.F.T., Inc.*, 402 Pa.Super. 87, 586 A.2d 409 (1991).

7. The Complainant has not met the burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant Exhibit 1 is admitted into the record.
2. That the Complaint of Tiffany McCall filed against PECO Energy Company at Docket No. C-2019-3012597 is denied.
3. That Docket No. C-2019-3012597 be marked closed.

Date: March 2, 2020

/s/
Darlene Davis Heep
Administrative Law Judge