

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Martha Dennis	:	
	:	
v.	:	C-2020-3019952
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision grants Martha Dennis’ Complaint against West Penn Power Company upon finding that Complainant successfully carried her burden of proving that the utility failed to provide her with safe, adequate, and reasonable service.

HISTORY OF THE PROCEEDING

On April 8, 2020, Martha Dennis (Ms. Dennis or Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (West Penn, Company, or Respondent) alleging that a power disruption in December of 2019 caused electrical damage to the wiring in her residence, the dishwasher, the lights in her garage, her radio/CD player, her clocks and some batteries to the drainage system in the basement. According to the Complainant, the power outage resulted from West Penn’s negligence and failure to replace a faulty wire in its system instead of repeatedly splicing it through the years. As relief, Complainant has requested to be reimbursed for replacing the damaged items and repairing the wiring and to be compensated for the stress and time spent dealing with this matter.

On June 16, 2020, Respondent filed an Answer and New Matter. In its Answer, West Penn specifically denies that the outage was the result of its negligence or of any improper conduct on the part of its employees. According to the Company, the failure of its equipment was an unforeseen and unplanned event. In its New Matter, West Penn argues that: 1) the Public Utility Code (the Code) does not confer upon the Commission the power to award monetary damages; 2) the Code does not mandate that the Respondent provide “perfect service”; and 3) West Penn’s Commission-approved tariff has the force and effect of law and is binding on both the public utility and its customers.

Also, on June 16, 2020, the Respondent filed a Preliminary Objection averring that the Formal Complaint includes impertinent matter in its requested relief because the Commission is without authorization to assess monetary damages. The Respondent requests that the Commission: 1) grant its Preliminary Objection and strike the Complainant’s request for monetary damages; 2) expressly prohibit the Complainant from introducing any testimony or exhibits at any evidentiary hearing regarding alleged damages; and 3) grant the Respondent such relief as may be just and reasonable under the circumstances.

A Hearing Notice dated July 24, 2020, notified the parties that a telephonic evidentiary hearing was scheduled in this matter for August 26, 2020, at 10:00 a.m., and assigned the matter to me.

By Order dated August 4, 2020, I granted in part and denied in part Respondent’s Preliminary Objection. The Order dismissed Ms. Dennis’ Complaint to the extent that it sought monetary damages but allowed Ms. Dennis’ challenge to the quality of service provided to her by the Respondent to proceed to the evidentiary hearing as scheduled.

A Prehearing Order was issued on August 4, 2020, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

By e-mail dated August 19, 2020, counsel for Respondent informed me that a family emergency had rendered one of the key witnesses for the Respondent unavailable on the

day of the hearing. She requested that the hearing be continued for a later date and indicated that the Complainant did not object to this request.

The Respondent's request for a continuance of the hearing was granted by e-mail dated August 21, 2020. A Hearing Cancellation/Reschedule Notice dated August 24, 2020, notified the parties that the initial telephonic hearing was rescheduled in this matter for September 23, 2020, at 10:00 a.m.

On September 8, 2020, a second Prehearing Order was issued, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on September 23, 2020. Martha Dennis appeared *pro se* and testified in support of the Complaint. She sponsored two exhibits which were admitted into the record. Margaret A. Morris, Esq., represented the Respondent, and presented the testimony of Charles Howlett, M. Shawn Hindman, Raymond Skinner, David Brumbaugh, Michael Kirkpatrick, Caroline Fulciniti. The Respondent sponsored 13 exhibits, which were admitted into the record.

The record in this matter closed 30 days after the evidentiary hearing, on October 23, 2020.

FINDINGS OF FACT

1. The Complainant is Martha Dennis, who resides at 12237 Blue Mountain Avenue, Waynesboro, PA 17268 (Service Address). Tr. 12.
2. The Respondent is West Penn Power Company, a jurisdictional public utility providing electric service in the Commonwealth of Pennsylvania.
3. Ms. Dennis has resided at the Service Address since 2014. Tr. 135-36.

4. Ms. Dennis established electric service with West Penn on March 14, 2014. Tr. 64.
5. The Service Address is more than 30 years old. Tr. 135.
6. The Service Address is served by a triplex conductor that runs between a secondary pole and the service entrance at the Service Address. Tr. 104, 108.
7. A triplex conductor consists of three wires twisted together in one bundle to make them easier to handle and install. Tr. 103, 107.
8. The three individual wires consist of two hot legs and a neutral wire. Tr. 103, 108, 183, Complainant Exhibit 2.
9. The two hot legs are insulated, whereas the neutral is bare wire. Tr. 103, 108, 183, Complainant Exhibit 2.
10. The triplex cable that serves the Service Address was repaired with a splice before December 2019. Tr. 108.
11. West Penn's business records do not indicate when the repair was made. Tr. 46, 109.
12. The cloth tape that was used to wrap and insulate the old splice indicates that the repair was made at least 30 years ago. Tr. 109, Complainant Exhibit 2.
13. Cloth tape has not been used by West Penn technicians and the industry in general for over 30 years. Tr. 109.
14. At the time when the triplex was first repaired, the technician would have cut the damaged section and installed splice sleeves to adjoin the wires. Tr. 109, Complainant Exhibit 2.

15. The wires would have been crimped with a compression tool and insulated using the cloth tape. Tr. 109, Complainant Exhibit 2.

16. During the repair process, even the neutral splice would be insulated with cloth tape to keep it from rubbing on the splices on the other two legs of the triplex. Tr. 111, see also, Tr. 184.

17. This manner of repair was consistent with industry standards and the National Electric Safety Code at the time. Tr. 109-10.

18. Over time the cloth tape insulating the old splice on the triplex cable deteriorated in the elements and came off. Tr. 110.

19. The neutral became exposed and came into contact with one of the hot legs causing an arcing flare and heat damage to the wires. Tr. 110-11, 186-87.

20. The neutral serves to balance out the voltage and return the current back to the system. Tr. 76, 93.

21. A balanced voltage is 114 up to 126 volts per service leg. Tr. 198-99.

22. When the neutral is lost or damaged, the electric current tries to find another path to ground. Tr. 94.

23. On December 22, 2019, Ms. Dennis experienced the effects of an open neutral in the form of a power surge throughout her property. Tr. 38-39, 165.

24. The power surge damaged two batteries for Ms. Dennis' basement drainage system, which cost \$1,200.00 each to replace. Tr. 38-39.

25. The power surge damaged Complainant's dishwasher, several lights in the garage, a CD player, a radio, and a couple of clocks. Tr. 38-39, 165.

26. The power surge damaged some of the wires and breakers inside the Service Address and caused thick black smoke to come out of her satellite box. Tr. 37, 40, and 153.

27. On December 22, 2019, electricity went off in parts of the Service Address. Tr. 13, 65.

28. Ms. Dennis heard a loud noise, followed by sparks flying from the triplex that connects her property to the pole. Tr. 13, 65, West Penn Exhibit 2.

29. On December 22, 2019, at 9:05 a.m., Ms. Dennis contacted West Penn and reported the partial power outage to them. Tr. 13, 64, West Penn Exhibit 1.

30. West Penn troubleshooter, David Brumbaugh, visited the Service Address on December 22, 2019, in response to Ms. Dennis' call. Tr. 14, 147.

31. Mr. Brumbaugh checked the electrical box inside the Service Address and found that some of the breakers were off. Tr. 14.

32. Mr. Brumbaugh tried to turn some of the breakers on but left them off once sparks began to fly. Tr. 14.

33. Mr. Brumbaugh instructed Ms. Dennis to leave those breakers off until they were repaired. Tr. 14.

34. Mr. Brumbaugh checked the voltage coming into the property and found it to be imbalanced. Tr. 15, 147-48.

35. Outside the Service Address, he went to inspect the pole and saw a flasher arcing and pinpointing the section where the triplex was damaged. Tr. 147-48.

36. Mr. Brumbaugh had to deenergize the triplex in order to perform the repairs. Tr. 148-49.

37. Mr. Brumbaugh removed the old splices and installed new splices on all three legs of the triplex conductor. Tr. 149, West Penn Exhibit 3.

38. The use of cloth tape is no longer the industry standard for splices. Tr. 112.

39. The current industry standard for splices requires the cutting of the bad section of wire and the use of a modern style splice. Tr. 112.

40. The modern style splice consists of an aluminum tube covered by a premade insulation that is installed at the factory. Tr. 112.

41. The modern splice eliminates the need to wrap the splice with tape. Tr. 112.

42. While at the Service Address, Mr. Brumbaugh also repaired a bad neutral connection at the pole. Tr. 15, 35, 155-56, West Penn Exhibit 3.

43. Mr. Brumbaugh did not find that the bad neutral connection was the cause of the power surge and of the partial power outage. Tr. 15, 35, 155-56, West Penn Exhibit 3.

44. Before leaving, Mr. Brumbaugh checked the voltage at the meter and found it to be normal. Tr. 150.

45. Mr. Brumbaugh explained to Ms. Dennis that it was the failure of West Penn's equipment that had caused high voltage to go through her property and damage her electrical appliances or equipment. Tr. 19-20, 153.

46. Mr. Brumbaugh directed the Complainant to file a claim with the Respondent's Claims Department for the damages that she suffered. Tr. 19-22, 153.

47. On January 6, 2020, Ms. Dennis filed a claim with the Respondent seeking damages as a result of the December 22, 2019 event. Tr. 65, 210, West Penn Exhibit 4.

48. By letter dated January 7, 2020, West Penn informed Ms. Dennis that her claim for damages was denied because the incident was caused by an unforeseen equipment failure beyond the Company's control. Tr. 210, West Penn Exhibit 7.

49. Repairing lines, rather than replacing them, is consistent with industry standards and the National Electric Safety Code. Tr. 114.

50. The splices that the Company installs are rated for the wire. Tr. 114.

51. When the splice is installed with the proper tools, it matches the full load of the wire as well as its physical strength. Tr. 115, 117, 126.

52. A splice is considered a permanent repair of the line and not a temporary one. Tr. 113.

53. Even with a splice in place, the integrity of the wire is considered intact. Tr. 117-18.

54. The Company has inspection, maintenance, repair, and replacement programs for its distribution facilities. Tr. 81.

55. Every six years each circuit is visually inspected. Tr. 81.

56. The facilities that are visibly inspected include conductors, which are the wire cables, supporting structures like wood poles, pole hardware guide grounds, pole mounted distribution equipment which includes transformers and cutout. Tr. 81-82.

57. Inspection of splices is part of West Penn's visual inspection of the overhead circuit, which occurs every six years. Tr. 95-96.

58. Any abnormal conditions to the overhead circuit equipment are noted for future repairs or replacement. Tr. 82.

59. The Service Address is served by Respondent's Amsterdam Circuit, the East Waynesboro substation. Tr. 75-76.

60. The latest overhead circuit inspection for the Amsterdam Circuit was completed in 2015, whereas the next inspection is scheduled for 2021.

61. In 2017, West Penn performed its comprehensive cycle tree trimming for the Amsterdam circuit. The next cycle is scheduled for 2022. Tr. 82.

62. Poles are inspected every 12 years. The last pole inspection was done in 2009, and the next one is scheduled for 2021. Tr. 82.

63. Underground pad inspection was performed in 2016 and the next one is scheduled for 2021. Tr. 82.

64. Infrared inspection was done on Zone 1 and high-impact Zone 2 in 2018. Tr. 82.

65. Reclosers are inspected annually, whereas substation inspections are completed monthly. Tr. 82-83, West Penn Exhibit 11.

66. Before December 22, 2019, Ms. Dennis experienced numerous power outages which she did not report to the Company because they were less than five minutes in duration. Tr. 169-70.

67. Power outages that last less than five minutes are called momentary power outages. Tr. 192.

68. The Company neither tracks nor reports on momentary power outages. Tr. 193.

69. The only way the Company is notified of a momentary power outage is when a customer calls and reports the outage to the Company. Tr. 191, 94.

DISCUSSION

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied her burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence 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 persuasion 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 West Penn facility at issue in this case is the triplex conductor, which runs between a secondary pole and the service entrance at the Service Address. Tr. 104, 108. A triplex conductor consists of three wires twisted together in one bundle to make them easier to handle and install. Tr. 103, 107. The three individual wires consist of two hot legs and a neutral wire. The two hot legs are insulated, whereas the neutral is bare wire. Tr. 103, 108, 183, Complainant Exhibit 2.

The triplex cable that serves the Service Address was repaired with a splice before December 2019. Tr. 108. West Penn's business records do not indicate when the repair was made; however, the cloth tape that was used to wrap and insulate the splices indicates that the repair was made "at least 30 years ago." Tr. 109, Complainant Exhibit 2. Cloth tape has not been used by West Penn technicians and the industry in general for over 30 years. Tr. 109. At the time when the triplex was first repaired, the technician would have cut the damaged section and installed splice sleeves to adjoin the wires. Tr. 109, Complainant Exhibit 2. They would have been crimped with a compression tool and insulated using the cloth tape. *Id.* During the repair process, even the neutral splice would be insulated with cloth tape to keep it from rubbing on the splices on the other two legs of the triplex. Tr. 111, *see also*, Tr. 184. This manner of repair was consistent with industry standards and the National Electric Safety Code at the time. Tr. 109-10. Over time the cloth tape insulating the old splice on the triplex cable "deteriorated ...in the elements and came off." Tr. 110. The neutral became exposed and came into contact with one of the hot legs causing and an arcing flare and heat damage to the wires. Tr. 110-11, 186-87.

The neutral serves to balance out the voltage and return the current back to the system. Tr. 76, 93. A balanced voltage is 114 up to 126 volts per service leg. Tr. 198-99. When the neutral is lost or damaged the electric current tries to find another easy path to ground. Tr. 94. In the present case, that path led to the Service Address. When that happened on

December 22, 2019, Ms. Dennis experienced the effects of an open neutral in the form of a power surge throughout her property which damaged two batteries for Ms. Dennis' basement drainage system, her dishwasher, several lights in the garage, a CD player, a radio and a couple of clocks. Tr. 38-39, 165. In addition, the surge damaged some of the wires and breakers inside the Service Address and caused thick black smoke to come out of her satellite box. Tr. 37, 40, and 153.

Eventually, the electricity at the Service Address went off partially and Ms. Dennis heard a loud noise coming from outside, followed by sparks flying from the triplex that connects her property to the pole. Tr. 13, 65, West Penn Exhibit 2. On December 22, 2019, at 9:05 a.m., Ms. Dennis contacted West Penn and reported the partial power outage to them. Tr. 13, 64, West Penn Exhibit 1.

West Penn troubleshooter, David Brumbaugh, visited the Service Address on December 22, 2019, in response to Ms. Dennis' call. Tr. 14, 147. He checked the electrical box inside the Service Address and found that some of the breakers were off. Tr. 14. Mr. Brumbaugh tried to turn some of the breakers on but left them off once sparks began to fly. Tr. 14. He instructed Ms. Dennis to leave those breakers off until they were repaired. Tr. 14. Next, Mr. Brumbaugh checked the voltage coming into the property and found it to be imbalanced. Tr. 15, 147-48. Outside the Service Address, he went to inspect the pole and saw a flasher arcing and pinpointing the section where the triplex was damaged. Tr. 147-48. Mr. Brumbaugh had to deenergize the triplex in order to perform the repairs. Tr. 148-49. He removed the old splices and installed new splices on all three legs of the triplex conductor. Tr. 149, West Penn Exhibit 3. The use of cloth tape is no longer the industry standard for splices. Tr. 112. In order to install the new splices, Mr. Brumbaugh followed the current industry standard for splices, which requires the cutting of the bad section of wire and the use of a modern style splice. Id. The modern style splice consists of an aluminum tube covered by a premade insulation that is installed at the factory. Its use eliminates the need to wrap the splice with tape. Tr. 112.

While at the Service Address, Mr. Brumbaugh also repaired a bad neutral connection at the pole although he did not deem it to be the cause of the power surge and of the partial power outage. Tr. 15, 35, 155-56, West Penn Exhibit 3. Before leaving, Mr. Brumbaugh

checked the voltage at the meter and found it to be normal. Tr. 150. He explained to Ms. Dennis that it was the failure of West Penn's equipment that had caused high voltage to go through her property and damage her electrical appliances or equipment. Tr. 19-20, 153. Mr. Brumbaugh directed her to file a claim with the Respondent's Claims Department for the damages that she suffered. Tr. 19-22, 153.

On January 6, 2020, Ms. Dennis filed a claim with the Respondent seeking damages as a result of the December 22, 2019, event. Tr. 65, 210, West Penn Exhibit 4. She reported damage to a satellite/cable box, refrigerator, and dishwasher due to a faulty wire. Tr. 66, West Penn Exhibit 4. Her report was sent to the Respondent's Claims Department to investigate and respond. Id.

Caroline Fulciniti is a Claims Representative with the Respondent. Tr. 204-205. She investigated the events surrounding Ms. Dennis' claim, and on January 7, 2020, sent Ms. Dennis a letter informing her that her claim for damage was denied. Tr. 209-210, West Penn Exhibit 7. Ms. Fulciniti concluded that the outage on December 22, 2019, was not the result of any improper conduct on the part of West Penn or its employees. According to Ms. Fulciniti, the incident was caused by equipment failure which is an unforeseen and unplanned event. Tr. 210, West Penn Exhibit 7.

At the hearing, Ms. Dennis argued that the Respondent's actions were negligent because more than 30 years ago it had chosen to replace the damaged section of the triplex with a splice instead of installing a new triplex cable. Tr. 25, 26, 34, 225. She also challenged the Company's conclusion that the events of December 22, 2019 were unforeseen and beyond the Company's control and the resulting denial of her damage claim. Tr. 224-25.

In response, Respondent presented the testimony of Raymond Skinner who is a Line Supervisor with West Penn. Mr. Skinner denied Complainant's contention that the reason the line failed in 2019 was because it was not properly repaired approximately 30 years ago. Tr. 113-14. Mr. Skinner testified that the replacement of the line is not consistent with industry standards and the National Electric Safety Code. Tr. 114. He added that it is normal practice to repair lines rather than replace them and that the splices that the Company installs are rated for

the wire. Id. Mr. Skinner explained that, when the splice is installed with the proper tools, it matches the full load of the wire as well as its physical strength. Tr. 115, 117, 126. Looking at pictures of the old splice removed by Mr. Brumbaugh on December 22, 2019, Mr. Skinner opined that the line was properly repaired with a splice 30 years ago. Tr. 113. He stated that the old splice was considered a permanent repair of the line and not a temporary one. Tr. 113. He further stated that the even with a splice in place, the integrity of the wire is considered intact. Tr. 117-18.

Mr. Skinner rejected Ms. Dennis' contention that a new wire would have lasted longer than the splice. Tr. 126. He explained that even a new line is not impervious to failures in the course of 30 years. Tr. 114. He testified that everything in the Company's system is subject to weather and time; however, it is incorrect to say that its facilities have definite life spans and that the Company has to replace them when that life span expires. Tr. 126.

Looking at the picture of the removed splices, Mr. Skinner pointed out the fact that, while cloth tape on two of the wires – the neutral and one of the hot legs – had almost completely disintegrated, the third wire appeared almost intact. Tr. 129-30. According to Mr. Skinner, this meant not only that the original insulation of the splice had been properly performed but also that “there was some physical difference in what that wire experienced.” Tr. 132; *see also* Tr. 134.

To reinforce the idea that a physical interference of some form was responsible for the failure of the splice, Respondent's witness Mr. Brumbaugh testified that during his visit at the Service Address on December 22, 2019, he saw a patch of grass in Ms. Dennis' yard that was of a different color and type than the rest. This led Mr. Brumbaugh to believe that a tree might have been planted there at some point in time and had served as the physical interference to which Mr. Skinner alluded. Tr. 132, 134.

These statements were rebutted by the testimony of Ms. Dennis and Respondent's witness, Mr. Hindman. First, Ms. Dennis testified that while the Service Address is older than 30 years, she only moved there in 2014. Tr. 135. Also, while she could not testify as to what was on her property before 2014, she credibly testified that there had been no tree or other

physical hindrance to the triplex conductor during the time she resided at the Service Address. Tr. 171.

Next, Mr. Hindman testified as a Reliability Engineer with the Respondent. Tr. 73. He explained that the Company has inspection, maintenance, repair, and replacement programs for its distribution facilities. Every six years each circuit is visually inspected. The facilities that are visibly inspected include conductors, which are the wire cables, supporting structures like wood poles, pole hardware guide grounds, pole mounted distribution equipment which includes transformers and cutout. Tr. 81-82. Inspection of splices is part of West Penn's visual inspection of the overhead circuit, which occurs every six years. Tr. 95-96. Mr. Hindman explained that any abnormal conditions to the overhead circuit equipment are noted for future repairs or replacement. Tr. 82.

Mr. Hindman further testified that the Service Address is served by Respondent's Amsterdam Circuit, the East Waynesboro substation. Tr. 75-76. He stated that the latest overhead circuit inspection for the Amsterdam Circuit was completed in 2015, whereas the next inspection is scheduled for 2021. Mr. Hindman could not tell if any issues were detected in the latest visual inspection of Ms. Dennis' circuit. Tr. 97.

Additionally, Mr. Hindman testified that, in 2017 West Penn performed its comprehensive cycle tree trimming for the Amsterdam circuit. The next cycle is scheduled for 2022. Tr. 82. Poles are inspected every 12 years. The last pole inspection was done in 2009, and the next one is scheduled for 2021. Underground pad inspection was performed in 2016 and the next one is scheduled for 2021. Infrared inspection was done on Zone 1 and high-impact Zone 2 in 2018. Mr. Hindman added that reclosers are inspected annually, whereas substation inspections are completed monthly. Tr. 82-83, West Penn Exhibit 11.

Mr. Hindman's testimony on Company's inspection and maintenance cycles was limited to only the very last inspection and maintenance cycles and the upcoming ones. If that is an indication of West Penn's long-term adherence to its inspection and maintenance schedule, then the Company would have detected and addressed any physical impediment that could damage its facilities, specifically the splice in Ms. Dennis' triplex.

Next, the Company argued that the electric system inside Ms. Dennis' residence was responsible for the degree of damage caused by the open neutral. First, Mr. Brumbaugh suggested that the Service Address was not properly grounded. During cross examination, he backtracked and admitted that he had not inspected the grounding system at the Service Address. However, Mr. Brumbaugh maintained that the damage that occurred at the Service Address would have been smaller or not have happened at all if the property were equipped with a grounded electrical system. Tr. 167-68.

In turn, Ms. Dennis testified credibly that the electrical system of her residence was updated by an electrician when she renovated her kitchen after she moved into the Service Address in 2014. Tr. 172-73. Furthermore, I note and take official notice¹ of the fact that the type and magnitude of the damages that Ms. Dennis experienced are similar to those suffered by complainants in *Kelley v. Pa. Electric Co.*, Docket No. C-20066673 (Opinion and Order entered May 1, 2008) (brightening lights, smoking appliances); *Strickhouser v. Metropolitan Edison Co.*, Docket No. C-20077273 (Opinion and Order entered December 20, 2007) (smoking appliances and light bulbs that had popped); *Utter v. Metropolitan Edison Co.*, Docket No. C-2018-3005969 (Opinion and Order entered October 8, 2020) (streak of soot on the side of the house, damaged surge protectors, and affected appliances). In these three cases, an open neutral on the company's facilities caused surges of power in the complainants' residences. In none of them did the utility company challenge the adequacy of the complainant's grounding system although Metropolitan Edison Company and Pennsylvania Electric Company are sister companies of West Penn.

Last, the Company addressed Ms. Dennis' statement that she experienced numerous power outages before December 22, 2019. Mr. Brumbaugh testified that, had Ms. Dennis reported the outages timely, he or another troubleshooter for the Company would have investigated the issue and detected and repaired any abnormal wear and tear on the old

¹ See *Ramos v. Pa. Bd. of Probation & Parole*, 954 A.2d 107, 110 (Pa.Cmwlth. 2008) (quoting *Falasco v. Pa. Bd. of Probation & Parole*, 521 A.2d 991, 995, n.6 (Pa.Cmwlth. 1987) ("'Official notice' is the administrative counterpart of judicial notice and is the most significant exception to the exclusiveness of the record principle ... [O]fficial notice is a broader doctrine than is judicial notice and recognizes the special competence of the administrative agency in its particular field and also recognizes that the agency is a storehouse of information on that field consisting of reports, case files, statistics and other data relevant to its work."))

splice. Tr. 151. Ms. Dennis responded that she did not report to the Company because the outages were less than five minutes in duration. Tr. 169-70. Reporting the issue to the Company would have taken longer. Tr. 168-70. The Company's other witness, Mr. Hindman, testified that the Company encourages its customers to report momentary outages because they may signal bigger problems with the Company's system. Tr. 193. The Company neither tracks nor reports the momentary outages but relies exclusively on customer reports to learn about momentary interruptions in its system. Tr. 193, 190. Mr. Hindman was unable to provide reliable testimony on how exactly the Company encourages its customer base to report momentary interruptions or how it educates them on the importance of such reports for the operation of its systems. Tr. 194-95.

Upon careful review of the evidence, I find that the Company provided the Complainant with reasonable safe and adequate service when it repaired the triplex with the original splice and when it was repaired again with a new splice in December of 2019. The fact remains, however, that a very old splice in West Penn's system caused an open neutral and power surge on December 22, 2019, which damaged Ms. Dennis' electric appliances and electrical system and created unsafe conditions inside the Service Address. It is also undisputed that the old splice was insulated using cloth tape. More than 30 years ago, the industry rejected cloth tape for splice insulations in favor of a modern style splice, which consists of an aluminum tube covered by a premade insulation that is installed at the factory. The modern style splice specifically eliminates the need to wrap the splice with tape. Tr. 112. While there may be many splices in West Penn's system insulated with cloth tape that function properly every day (Tr. 127), that does not mean that the Company provided the Complainant with safe and adequate service when it allowed an old splice with outdated insulation service Ms. Dennis' residence.

Pursuant to Section 1501 of the Code, a public utility has a duty to maintain "adequate, efficient, safe, and reasonable service and facilities" and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. *See* 66 Pa. C.S. § 1501. Section 1501 of the Code, 66 Pa. C.S. § 1501, provides, in pertinent part, as follows:

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 and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa. C.S. § 1501 (Emphasis added).

Additionally, pursuant to Section 57.28(a)(1) of Commission regulations, an electric distribution company (EDC) must use reasonable efforts to properly warn and protect the public from danger and to exercise reasonable care to reduce the hazards to which customers may be subjected to by reason of the EDC's provision of electric utility service and its associated equipment and facilities. *See* 52 Pa. Code § 57.28(a)(1).

The Company brought forth evidence that it has performed in its latest cycles of inspection and maintenance on the Amsterdam circuit. However, the Respondent's witness, Mr. Hindman, was unable to provide any evidence beyond the years when the cycles were completed. He was unable to tell if any issues were detected in the latest visual inspection of the Amsterdam circuit, including the triplex conductor that serves her residence and the splice that failed. Tr. 97. As a result, there is no evidence on the record as to whether the latest inspection of the circuit in 2015 revealed any signs of wear and tear on the splice, or potential obstructions that could compromise the physical stability of the splice. If there were signs of abnormal wear and tear or of physical obstruction that West Penn failed to detect in its latest inspection or address in a timely manner, then the Company failed in its duty to provide the Complainant with safe and adequate service. If indeed there were no concerning signs of wear and tear and no physical obstructions that needed to be addressed, but the splice still failed in 2019 because its cloth tape insulation "deteriorated in the elements and came off" (Tr. 110-11, 186-87), then its age and the outdated method of repair become determining factors in the splice's performance.

West Penn owns the Amsterdam circuit, the triplex conduit that serves the Service Address, and the splice that failed in 2019. Tr. 177. The splice in question was so old that West Penn had no record of when it was installed and could only estimate the inner limits of the time

range for the installation of the splice to “at least 30 years ago,” based on the time when the industry standards no longer allowed for cloth tape insulation of splices. At one point, Mr. Brumbaugh even testified that the Service Address was “obviously built in the 40’s.” Tr. 166. If any credibility is to be assigned to Mr. Brumbaugh’s assessment of architectural styles, then the splice in question was installed anytime between the 1940s and the 1990s, making it anywhere between 30 and 80 years old. Although the industry does not assign a specific life span to triplex cable or a splice, it is not with the expectation that they will never approach the end of their usefulness. By allowing an aged splice to fail and damage Ms. Dennis’ property as well as endanger her safety, West Penn failed in its duty to perform “**changes, alterations, substitutions ... and improvements**” to its facilities that were “**necessary or proper for the accommodation, convenience, and safety of its patrons.**” 66 Pa.C.S. § 1501 (Emphasis added).

In view of the above, I find that Ms. Dennis successfully carried her burden of proving that West Penn failed to provide adequate, safe and reasonable service to her in violation of 66 Pa.C.S. § 1501 and 52 Pa.Code § 57.28(a)(1).

Under Public Utility Code Sections 3301(a) and (b), "the Commission may levy a fine of up to \$ 1,000 per day for continuing violations of the Public Utility Code." 66 Pa.C.S. § 3301. The Commission has set forth, in a statement of policy, the factors and standards for evaluating proceedings involving violations of the Public Utility Code for purposes of determining appropriate civil penalty amounts. *See*, 52 Pa. Code § 69.1201(c). These factors and standards are as follows:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa. Code § 69.1201(c). These factors, relative to this proceeding, are examined below.

First, the evidentiary record collected in this matter does not contain sufficient evidence to conclude that West Penn's failure to replace the old splice before its failure in 2019 was willfully fraudulent or a misrepresentation. Second, West Penn's failure to comply with 66 Pa.C.S.A. § 1501 resulted in property damage but no personal injury. Third, the record in this case supports a finding that the violation of section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, resulted from the Respondent's negligence in not detecting and repairing the wear and tear in Ms. Dennis' old splice during the latest overhead inspection of the Amsterdam circuit or in allowing

an old splice, which by all indications was approaching the end of its usefulness, to continue to serve the Service Address. Fourth, no remedial measures were mentioned by West Penn witnesses other than the scheduled inspection and maintenance of the circuit.

Fifth, the record indicates that the only party affected by West Penn's failure to replace the old splice before it caused the open neutral was Ms. Dennis. Sixth, the record does not include a history of PGW's past offenses; and seventh, the Commission did not conduct an investigation in this proceeding. The eighth, ninth and tenth factors listed in 52 Pa. Code § 69.1201(c) are inter-related in this case and they are, respectively: the amount of a civil penalty required to deter future violations; prior Commission decisions in similar cases; and the catch-all "other relevant factors."

After reviewing the evidence collected in this matter, I conclude that a civil penalty in the amount of \$1,000.00, is appropriate in this proceeding. This amount is apt to deter future violations of this nature and to draw the Company's attention to the need for heightened scrutiny of aging equipment.

Within 30 days of the Commission's Final Order in this case, West Penn shall pay a civil penalty in the amount of \$1,000.00 by sending a certified check or money order payable to the Commonwealth of Pennsylvania. In addition, West Penn shall cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. § 101 *et seq.*, and the regulations of the Pennsylvania Public Utility Commission, 52 Pa.Code § 1.1 *et seq.*

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S. § 332(a), 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 Transp. Corp. v. Pa. Pub. Util. Comm’n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

4. It is every public utility’s duty to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities,” and to “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. 66 Pa C.S. § 1501.

5. An electric distribution company must use reasonable efforts to properly warn and protect the public from danger and to exercise reasonable care to reduce the hazards to which customers may be subjected to by reason of the EDC's provision of electric utility service and its associated equipment and facilities. 52 Pa. Code § 57.28(a)(1).

6. Under Public Utility Code Sections 3301(a) and (b), the Commission may levy a fine of up to \$1,000 per day for continuing violations of the Public Utility Code. 66 Pa.C.S. §§ 3301(a),(b).

7. The Complainant met her burden of proving that Respondent failed to provide her with reasonable service.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Martha Dennis against West Penn Power Company at Docket No. C-2020-3019952 is granted.

2. That West Penn Power Company shall pay a civil penalty in the amount of One Thousand Dollars (\$1,000.00) by sending a certified check or money order payable to the Commonwealth of Pennsylvania, within thirty (30) days from the entry of the Final Commission Order to:

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

3. That West Penn Power Company shall cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. § 101 *et seq.*, and the regulations of the Pennsylvania Public Utility Commission, 52 Pa.Code § 1.1 *et seq.*

4. That the Secretary mark this docket closed.

Date: February 1, 2021

_____/s/
Eranda Vero
Administrative Law Judge