

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Douglas Randall	:	
	:	
v.	:	C-2020-3019786
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Darlene Heep  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision finds that the Complainant did not establish that PECO violated the Public Utility Code, a regulation, or Order of the Commission by using a guy wire to secure a pole in front of the Complainant’s home and dismisses the Complaint. Although no violation was found, a copy of this decision will be sent to the Commission’s Bureau of Technical Utility Services for any action it deems appropriate regarding the safety of the structure.

**HISTORY OF THE PROCEEDING**

On May 13, 2020, Douglas Randall (Mr. Randall or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO, Respondent, or the Company) alleging that the Company improperly installed a guy wire outside of his home, posing ingress and egress issues. As relief he requests PECO remove the wire.

On June 2, 2020, PECO filed an Answer denying the material allegations of the Complaint. PECO also contended that the wire was properly installed and that it cannot be safely removed.

On June 10, 2020, a Resolution Conference Notice was issued but the matter was not able to be resolved.

On July 28, 2020, an Initial Telephonic Hearing Notice was issued setting the hearing for August 27, 2020. A Prehearing Order was issued on July 29, 2020.

The hearing convened as scheduled on August 27, 2020. Mr. Randall appeared *pro se* and testified on his behalf.

Angela Lorenz, Esq., represented the Respondent, and presented the testimony of Thomas Santacroce, PECO Senior Real Estate Representative, and Richard Keshgegian, who is currently a PECO supervisor for the underground team but at the time of installation of the guy wire was a design and construction consultant.

Following the hearing, PECO was directed to submit additional information regarding its pole attachment agreements and to submit a brief by September 17, 2020. The Complainant was given until October 1, 2020 to file a response to the additional information and brief.

PECO timely submitted its brief and additional information. The Complainant requested additional time to respond due to a family matter. The record closed on November 9, 2020 after Complainant's reply to the PECO brief and additional information were filed in the record.

The record consists of a 40-page transcript and the following exhibits:

Complainant 1 - PUC-2-9-24a -Photo of PECO Pole at 1640 North Street  
Complainant 2 - PUC-3-9-24a -Photo of PECO Pole at 1640 North Street  
Complainant 3 - PUC-4-9-24a -Photo of PECO Pole at 1640 North Street  
PECO 1 - Photo of Guy wire and Complainant's door  
PECO 2 - Photo closeup of guy wire and Complainant's home  
PECO 3 - Right of Way Street Card, City of Philadelphia  
PECO 4 - Copy of Public Utility Code, 66 Pa.C.S. § 1501  
PECO 5 - BCS Decision Report, Case #003756081  
PECO 6 - PECO Pole Attachment Agreement  
PECO 7 - PECO Comcast Pole Attachment Agreement  
PECO 8 - PECO Verizon Pole Attachment Agreement  
PECO 9- Affidavit of RICHARD KESHGEGIAN, PECO  
Supervisor of Underground Electric Operations at PECO

For reasons discussed below, the Complaint will be dismissed.

#### FINDINGS OF FACT

1. The Complainant is Douglas Randall, who resides at 1610 North Street Philadelphia, Pennsylvania. (Tr. 7).
2. The Respondent is PECO Energy Company.
3. A PECO pole located near the street side of the sidewalk outside of the Complainant's front door began to lean during the construction of a development next to the Complainant's home. (Tr. 26, 33; PECO 1).
4. The pole began to lean due to the attachment of communications wires to serve the development and the ground shifting during construction. (Tr. 27).
5. PECO installed a heavy guy wire to support the PECO pole on the sidewalk near the Complainant's front door. (Tr. 7, Tr, 14; PECO 1; PECO 2).

6. The pole and guy wire are in the sidewalk, between 15 and 20 feet from the Complainant's front door. (Tr. 14).

7. The guy wire does not prevent or impede the Complainant from entering or exiting the front door of his residence. (Tr. 14).

8. Thomas Santacroce is a PECO Senior Real Estate Representative. (Tr. 18).

9. Richard Keshgegian is currently a PECO supervisor for an underground team and was previously a design and construction consultant for PECO. (Tr. 25).

10. PECO tried several unsuccessful methods of securing the pole before installing a guy wire. (Tr. 27-28; PECO 9).

### DISCUSSION

The Pennsylvania Public Utility Code ("Code") requires each public utility to provide the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501. As the proponent of a rule or order, Complainant Mr. Randall bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To satisfy this burden, he 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 to the evidence presented by the Complainant, the Complainant has not satisfied his burden of proof. The Complainant would then 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).

Mr. Randall asserted that the guy wire that PECO attached to a pole near his front door is unsightly, unsafe, and unnecessary and decreases his property value and poses ingress and egress issues. (Tr. 10-11, 14). He would like PECO to remove the wire or install a proper pole that can support the 20,000 to 30,000 pounds of cables on the pole without a guy wire. (Complainant Reply to PECO Brief; Tr. 10-12). The Complainant also inquired as to possibly placing the cables underground. (Tr. 12-13). The Complainant testified that he was told that he would have to pay the cost of placing the cables underground. (Tr. 13). As relief, Mr. Randall requests that the Commission order PECO to remove the guy wire and use a different method to secure the pole. (Complaint).

The pole began leaning after PECO allowed companies to attach cables to the pole to accommodate a development next to Complainant's home. (Tr. 11, 26-27; PECO 1). PECO sent out technicians who installed a guy wire to support and raise the pole.

*Id.* Subsequently, the Complainant called PECO and stated that he would like the guy wire removed. According to the Complainant, and not refuted by the Company, the Complainant was told by a PECO representative that the Company was within its rights to install the guy wire and would not remove it. (Tr. 8-9).

PECO presented evidence that the pole was in the public right of way and not on Complainant's property. (PECO Exhibits 1 and 3, Tr. 19-20.) Thomas Santacroce, a PECO Senior Real Estate Representative, testified that PECO is allowed to install in the public right of way what PECO needs to maintain and support its facilities. (Tr. 22-23). In addition to the communications cables on the pole at issue is a cable that feeds PECO transformers. (Tr. 2,11,31). Companies pay a fee to PECO to attach their cables to PECO poles. (Tr. 34, PECO Exhibits 6-8).

Richard Keshgegian was a PECO design and construction consultant at the time that this matter arose and is currently a PECO Supervisor of Underground Electric Operations. He testified that he worked with the developer of the new construction located on the Complainant's block. He further stated that the weight of the communications wires was pulling the pole and that guy wire was installed as a safety precaution. (Tr. 26-27).

Mr. Keshgegian also testified that the Company tried several different methods of securing the pole. The Company determined that replacing the pole was impossible due to the amount of wiring. According to Mr. Keshgegian, PECO did not own the communications wires on the pole and therefore PECO could not relocate them.<sup>1</sup> (Tr. 28, 31). The Company then tried pole foam at the base to keep the pole in a firm position. The Company also tried to hammer a

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<sup>1</sup> A review of the Pole Attachment Agreements provided by PECO suggests that although PECO could not remove the cables, PECO could require the communication wires to be relocated or removed by the communication companies if there was a safety issue. *See* PECO 6,7,8.

wooden block in the base to straighten out the pole. Those efforts were not successful, and the guy wire was the last option. (Tr. 27-28).

Mr. Keshgegian also testified that normally a guy wire would be placed closer to the Complainant's door and the garage entrance but in consideration of the customer, the guy wire was placed as close to the pole as possible to eliminate safety concerns. (Tr. 29).

Mr. Randall asserted that the wires can be put underground or that a different method of securing the pole can be used. Mr. Randall provided a photo of a pole at 1640 North Street where wires appear to have been installed underground. (Complainant 1-3, Tr. 12-13).

PECO maintained that the person requesting that wires be moved underground would be responsible to pay the cost of relocation. (Tr. 30). Mr. Keshgegian also testified that replacing the pole with a larger pole or a metal pole were not options because, as far as he knew, PECO does not use metal poles, and the pole that was in place had the largest width available. (Tr 33, 35).

To prevail here, 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. The record evidence does not support a finding that PECO violated a regulation, law, code, or order of the Commission.

The evidence did not establish that the guy wire is a safety hazard. Additionally, during the hearing, the Complainant stated that the guy wire does not impede his entering or exiting his home. (Tr. 14). Also, there is no evidence in the record that PECO committed a violation by using a guy wire to secure the pole.

As far as the allegation that the guy wire reduces the property value of the Complainant's home, the Complainant introduced no estimates on the value of his property with or without the pole. (Tr. 10). In any event, that would be an issue for another venue. *See DeFrancesco v. W. Pa. Water Co.*, 499 Pa. 374, 453 A.2d 595 (1982); *Elkin v. Bell of Pa*, 491

Pa. 123, 420 A.2d 371 (1980). “Civil questions of negligence and liability for damages are the province of the civil courts, not the Commission.” *Utter v. Metro. Edison Co.*, Docket Number C-2018-3005969 at 25 (Order and Opinion entered October 8, 2020) (remanded on other grounds).

This matter will be dismissed. However, a copy of this decision will be forwarded to the Commission’s Bureau of Technical Utility Services for any action it deems appropriate regarding the safety of the structure.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties of this proceeding.  
66 Pa.C.S. § 701.
2. Liability for damages is the province of the civil courts, not the Commission. *Utter v. Metro. Edison Co.*, Docket Number C-2018-3005969 (Order and Opinion entered October 8, 2020).
3. The party filing the Complaint bears the burden of proving by a preponderance of the evidence that he is entitled to relief from the Commission.  
66 Pa.C.S. § 332(a).
4. A Commission 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).
5. The Complainant has not established by a preponderance of the evidence that PECO violated the Public Utility Code, regulations, or Commission Order by attaching a guy wire to a pole located near his home.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Douglas Randall against PECO Energy Company at Docket No. C-2020-3019786 is denied and dismissed.

2. That a copy of this decision be forwarded to the Commission's Bureau of Technical Utility Services.

2. That the Secretary mark this docket closed.

Date: February 16, 2021

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