

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sabrina Payonk	:	
	:	
v.	:	C-2020-3021202
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

This Initial Decision finds the Complainant did not meet her burden of proving that the transformer and facilities installed by PECO at the service address are not adequate, safe, and reasonable. Therefore, the Complaint will be dismissed.

HISTORY OF THE PROCEEDING

On August 7, 2020, (Karenlyne) Sabrina Payonk (Ms. Payonk or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO, Respondent, or the Company) with the Pennsylvania Public Utility Commission (Commission). She contended that PECO improperly maintained and installed a transformer that is 12 feet from her well, that the transformer does not have Polychlorinated biphenyl, or PCB, labeling and that the Company should test for contamination. As relief, the Complainant wanted PECO to move the transformer and pay for all costs associated with the move, and test for contamination.

On August 19, 2020, PECO filed an Answer, denying the material allegations of the Complaint. PECO further stated in the Answer that PECO offered to relocate the submersible transformer to a pad mount transformer. It was explained that PECO would deliver and install the new pad mount at no cost to the Complainant. The Complainant would be responsible for hiring an electrician to relocate the primary and secondary cables and install the transformer base supplied by PECO. PECO further stated that the Company advised the Complainant that the Company would install a new transformer and remove the old one. The Complainant would be responsible for all electrician costs. PECO would absorb all remaining costs. Once the transformer was removed, if there was any evidence of leaking or contamination, PECO Energy would address it at that time and sample her well water.

On August 25, 2020, a Resolution Conference Notice was issued assigning the matter to the Commission's Mediation Unit. The matter was not resolved.

On October 14, 2020, an Initial Telephonic Hearing Notice was issued setting the hearing for December 9, 2020. The hearing was rescheduled to December 17, 2020. A Prehearing Order was issued on October 19, 2020.

The hearing convened as scheduled on December 17, 2020. Ms. Payonk appeared *pro se* and testified on her behalf. Kadijah Scott, Esquire, represented the Respondent, and presented the testimony of Stephen Reilly, PECO Senior Engineer in the new business Department for Delaware and Chester Counties, and Anna Mae Migliaccio, a PECO Regulatory Assessor.

Prior to the hearing, PECO replaced the transformer. During the hearing, the Complainant reiterated her concern about contamination. She also stated during the hearing that a remaining issue is whether the old vault for the transformer should be replaced. Tr. 9, 16.

The following Exhibits were admitted into the record during the hearing:

Complainant Exhibit A -- deed
Complainant Exhibit B -- photos
Complainant Exhibit C -- emails

PECO Exhibit 1 -- account activity statement for David Resnik
PECO Exhibit 2 -- account activity statement for Karenlynn S. Payonk¹
PECO Exhibit 4 -- internal work order
PECO Exhibit 5 -- BCS informal complaint
PECO Exhibit 6 -- BCS decision

PECO was directed to submit photos of the newly installed transformer. On December 17, 2020, PECO submitted photos of the new transformer.

On January 8, 2021, the Complainant submitted a response with her own late-filed exhibits.

On January 13, 2021, PECO filed an objection to the late-filed exhibits of the Complainant. The Complainant was given ten days to file a response to PECO's objection.

On January 22, 2021, the Complainant submitted a reply to PECO's objection to Complainant's late-filed exhibits and additional late-filed exhibits.

The late-filed exhibits submitted are:

PECO late-filed Exhibit 7 -- Photos of the new transformer
Complainant late-filed exhibit F -- Section 450 NEC excerpts
Complainant late-filed exhibit G -- NEC Section 450 Excerpts w/comments

All late-filed exhibits will be admitted in the ordering paragraphs of this Decision.²

The record closed on January 22, 2021, upon receipt of the Complainant's reply to PECO's objection to admission of the Complainant's late filed exhibits.

¹ During the hearing, the Complainant objected to the admission of PECO Exhibit 3, which was determined irrelevant to these proceedings and therefore not admitted. Tr. 58-59.

² Documents previously marked as Complainant Exhibits D and E are the Complainant's reply to PECO's objection to Complainant late-filed exhibits F and G and will be filed in the record as a reply.

FINDINGS OF FACT

1. The Complainant is (Karenlyne) Sabrina Payonk.
2. The Respondent is PECO Energy Company.
3. The Complainant owns 2963 Flowing Springs Road, Spring City, Pennsylvania (service address). Tr. 5-6; Complainant Exhibit 1.
4. There is an inground PECO transformer at the service address. Tr. 5.
5. The transformer is located near the Complainant's well. Tr. 8.
6. The transformer installed at the property was a pole transformer from the 1960s. Tr. 7; Complainant Exhibit B.
7. The old transformer did not include PCB labeling. Tr, 6,7; Complainant Exhibit B.
8. The transformer was placed in an underground vault. Tr. 7,21.
9. The bottom of the transformer vault is open gravel that allows for drainage. Tr. 33.39; Complainant Exhibit B and PECO late-filed Exhibit 7.
10. A heavy slotted lid is used for the transformer vault because it is designed to vent the space and allow water to drain through. Tr. 11, 46-47.
11. PECO replaced the old transformer with a new transformer in the same location on December 2, 2020. Tr.6, 18; PECO Exhibit 4.

12. PECO did not replace the 1960s' transformer vault, or casing, when replacing the transformer. Tr. 8, 21 Complainant Exhibit B.

13. The new transformer has a label plate that states "Filled with Type 2 mineral oil containing no PCB at time of manufacture" and "Less than one part per million." Tr. 27; PECO late-filed exhibit 7.

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 Sabrina Payonk 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, she 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).

PECO Objection to Admission of Complainant's late-filed Exhibits

PECO objected to Complainant late-filed exhibits F and G, titled National Electric Code (NEC) – Article 450 - Transformers and Transformer Vaults and NEC Section 450 Excerpts w/comments. Specifically, PECO contended that the NEC documents are irrelevant because, pursuant to Pennsylvania Public Utility Commission Regulation, 52 Pa Code § 57.28(b), the National Electric Safety Code (NESC), not the NEC, controls the standards of a public utility in the installation, inspection, and maintenance of its equipment. The Complainant then filed a response, referencing the PECO tariff and an article discussion application of the NEC to substations.

Late-filed exhibits F and G will be admitted here. As the Commission noted in *Frompovich v. PECO Energy Co.*, Docket Number C-2015-2474602 (Opinion and Order May 3, 2018), if the evidence is relevant to the issues before the agency and of reasonable probative value, the agency may receive it. 2 Pa. C.S. § 505. The documents at issue reveal the basis for the Complainant's concerns or directly address transformers.

Transformer Installation and Vault

In essence, the Complainant has asserted that PECO service is unsafe, unreasonable, and inadequate under Section 1501, specifically, the PECO transformer installed at the service address. The Complaint sought that PECO be required to remove the old transformer and test for contaminants. The Complainant also questioned whether PECO had properly maintained the transformer and whether the casing around the transformer was adequate or in conformity with the current code regulations and requirements.

Just prior to the hearing, PECO replaced the transformer with a new transformer. The remaining issues at hearing were whether the old casing, or vault, should have been replaced as well. Tr. 14. The Complainant was also concerned about contaminants from the transformer and whether there was testing of the soil for the presence of any contamination. Tr. 17, 18, 47-48.

The Complainant questioned whether the transformer vault provided sufficient protection in case of a malfunction of the transformer, resulting in explosion, or contamination. Tr. 19-21. Of legitimate concern to the Complainant is the safety of the transformer with respect to the well water, the health of her child or children or the property and any possible contamination of her livestock and plant nursery and the proximity of the transformer to the building on the property. Tr. 6, 17, 20, 36.

It is the Complainant's understanding that a pre-cast concrete vault should be used. Tr. 13-14. The Complainant submitted as Complainant late-filed Exhibit F a copy of the NEC – Article 450 - Transformers and Transformer Vaults. In Complainant's late-filed Exhibit G, the Complainant highlights Section 450.42 and contends that PECO has not complied with the requirements for a transformer vault, particularly the floor material, wall thickness, and fire safety.

The Complainant testified that when she requested that the vault be replaced, she was informed by PECO that the current inground vault was sufficient. Tr. 12-13; Complainant

Exhibit C. It was also her understanding that PECO would provide a new casing or vault if the transformer was replaced with an above ground pad mount unit. Tr. 12.

The Complainant presented photos of the old transformer and noted that there was no PCB labeling and that casing appeared to be unraveling or peeling away. Complainant Exhibit B, photo 2. She also noted holes in the side of the vault. Complainant Exhibit B, photos 1, 2 and 3; Tr. 11, 21. The Complainant stated that replacing the vault would satisfy her Complaint. Tr. 16.

PECO presented evidence sufficient to rebut the Complainant's case. PECO engineer Stephen Reilly testified that when he received notice of Ms. Payonk's Complaint, he called her to discuss her concerns about the age of the transformer and the proximity to her well. Mr. Reilly further testified that he offered to replace the transformer. He also testified that while PECO typically charges for any work that PECO has to do to move the transformer, he would waive the cost of any PECO work, but it would be the Complainant's responsibility to hire an electrician to install a transformer base. Tr. 24-25. He explained to the Complainant that she would have to submit a relocation application. The Complainant did not submit a relocation application. Tr. 25-26. PECO replaced the transformer in its original location. PECO Exhibit 4; Tr. 26.

Mr. Reilly also testified that that PECO did not replace the transformer vault because it was in good condition and there was no evidence of dirt or debris in the vault. Tr. 27. With respect to the holes of concern to the Complainant, he stated that one hole was where a cable enters and the other may be a hole where a cable originally came through or that over time occurred while the unit was in the ground. Tr. 28. He does not find that the two holes noted in the vault render the vault defective. In his opinion the vault "has its structural integrity and is keeping the transformer from being covered in dirt and mud." Tr. 34, 28, 43.

With respect to Complainant late-filed Exhibits F and G, it is not clear that the guidance therein regarding transformer vaults applies in this instance. References in the exhibits are to a concrete vault, which was not used here. Additionally, the language of Section 450

states that the vaults should be “constructed of materials that have approved structural strength for the conditions...” The testimony of the PECO engineer as to why PECO used the existing vault under the instant “conditions” outweighed the Complainant’s exhibits.

Mr. Reilly testified that concrete vaults are used for three-phase transformers, for commercial customers who need three-phase power. Residential customers, such as the Complainant, have single-phase transformers. Tr. 29. Such submersible transformers have fiberglass or similar material vaults surrounding them. Tr. 34. Such transformers above ground would also have a fiberglass pad. Mr. Reilly was not aware of any explosions involving transformers in their casings such as that installed at the service address. Tr. 29.

Mr. Reilly testified that the PECO contractor installing the new transformer at the service address reported that the old transformer had not leaked. Tr. 29-30. He stated that the bottom of the vault is open with a gravel bottom to allow rainwater drainage. Tr. 32. He also noted that above ground pad mount transformers also have open bottoms to allow drainage. Tr. 34. Mr. Reilly explained that the vaults are not a containment device but are to allow the company access to the transformers and to keep dirt away from the connection. Tr. 34.

The new transformer is labelled “no PCB at time of manufacture,” and, in parentheses, "Less than one part per million." There was no evidence that the old transformer showed signs of leaking oil from inside the vault. Given this, at this time, it is not unreasonable of PECO not to test for PCBs.

PECO’s position that the fiberglass vault does not need to be replaced is also reasonable. The transformer has an essentially open bottom to allow drainage. Uncontroverted testimony was that the transformer is designed to be vented. The slotted, or vented, cover used by PECO supports the ventilation design. Additionally, given that it is expected that only people and light weight vehicles may pass on top of it, a fiberglass vault for the transformer at the service address, as opposed to a concrete vault that would be installed for heavier vehicle traffic, is reasonable. Tr. 29. Evidence did not establish that the transformer and the vault are unsafe or otherwise inadequate.

The record evidence supports a finding that the Complainant did not prove that PECO has not provided “adequate, efficient, safe, and reasonable” transformer facilities at the service address. The Complaint will be dismissed.

CONCLUSIONS OF LAW

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

2. 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).

3. 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).

4. The Complainant has not established by a preponderance of the evidence that PECO violated the Public Utility Code, regulations, or Commission Order.

5. The evidence does not establish that the transformer, vault or other facility of PECO is unreasonable, unsafe, inadequate or inefficient in violation of 66 Pa.C.S. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant late-filed Exhibits F and G; and PECO late-filed Exhibit 7 are admitted into the record.
2. That the formal Complaint filed by Sabrina Payonk against PECO Energy Company at Docket No. C-2020-3021202 is denied and dismissed.
3. That the Secretary mark this docket closed.

Date: April 14, 2021

_____/s/_____
Darlene Heep
Administrative Law Judge