

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Donald Mion	:	
	:	
v.	:	C-2020-3022986
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

The Complainant filed a formal complaint against his electric distribution company wherein he alleges that the placement of smart grid recloser equipment on a pole in front of his property constitutes unreasonable and unsafe service. He requests that the utility be directed to relocate the equipment at its expense. This initial decision dismisses the complaint, finding that the Complainant failed to carry his burden of proving that the Respondent violated the Public Utility Code, a Commission regulation or order, or the utility’s tariff.

HISTORY OF THE PROCEEDING

On September 16, 2020, the Complainant, Donald Mion, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL), Docket No. C-2020-3022986. In his complaint, Mr. Mion alleges that the installation by PPL of smart grid reclosure equipment on a pole in front of his vacation property constitutes unreasonable and unsafe service. He alleges that the equipment detracts from the view from his vacation house, and he questions whether the electromagnetic field (EMF) emitted

from the equipment creates a health and safety problem. Mr. Mion requests that the Commission direct PPL to relocate the equipment away from his property at its own expense. The formal complaint is an appeal of a decision of the Commission's Bureau of Consumer Services (BCS) to an informal complaint filed by Mr. Mion on August 25, 2020, at BCS Case No. 3770265.

PPL filed an answer to Mr. Mion's complaint on December 14, 2020. In its answer, PPL admits that it installed a new pole and a smart grid line recloser near the Complainant's house. It further admits it informed Mr. Mion that, pursuant to its tariff, he would have to pay an estimated \$18,000 to have the relocater moved to a different location. PPL denies that the recloser equipment causes adverse health effects or that PPL's actions otherwise constitute unreasonable or unsafe service. PPL requests that the complaint be denied.

By Call-In Telephone Hearing Notice dated December 16, 2020, the Commission scheduled a telephonic hearing in this proceeding for January 27, 2021 and assigned me as the Presiding Officer.

The hearing was held as scheduled on January 27, 2021. Mr. Mion appeared and testified on behalf of himself. He offered one exhibit that was admitted into the record. PPL appeared and was represented by Nicholas Stobbe, Esquire and Devin Ryan, Esquire. PPL presented the testimony of one witness and offered six exhibits, all of which were admitted into the record. The record consists of a 65-page transcript, one Complainant exhibit and six Respondent exhibits. The record closed on February 17, 2021, upon my receipt of the hearing transcript.

FINDINGS OF FACT

1. The Complainant in this proceeding is Donald Mion.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation.

3. The service address to which service to the Complainant is provided by PPL is 1079 Aquarius Drive, Lake Ariel, PA. Tr. 9.

4. Mr. Mion bought the property in the 1970s as a country vacation getaway property. Tr. 10.

5. In May of 2020, Mr. Mion went to the property and saw a new pole with recloser equipment attached to it near the front of his house. Tr. 10; Mion Ex. 1.

6. A recloser is a piece of equipment that acts similarly to a circuit breaker in a home in that it detects trouble on a line and interrupts the power flow along the line to prevent the trouble from cascading down the line and affecting more customers. Tr. 26.

7. PPL and other electric distribution companies have been installing and using reclosers as part of their facilities for decades. Tr. 27.

8. PPL has several thousand recloser units throughout its service territory. Tr. 27.

9. The recloser unit is attached to a new pole installed by PPL to one side of the front of Mr. Mion's property and is between Mr. Mion's house and the lake in his development. Tr. 11-12; Mion Ex. 1; PPL Ex. 3.

10. The new pole is right beside an older pole that PPL replaced when it installed the recloser equipment. Tr. 49.

11. PPL provided Mr. Mion with an estimate of \$18,000 to move the recloser equipment to a different location. Tr. 13.

12. If a customer requests that PPL relocate its facilities located on the customer's property, PPL's tariff provides that the customer must pay the costs associated with the relocation work. Tr. 38; PPL Ex. 6.

13. PPL determined that a recloser unit was necessary in the area to prevent an electricity outage from cascading down the line and potentially affecting over 900 customers. Tr. 33-34.

14. PPL chose to locate the recloser equipment on Mr. Mion's property because it is an effective mid-point for the customers served by that line. Tr. 34.

15. PPL chose the specific pole location because there was no other occupying equipment, such as transformers, needed on the pole at that location. Tr. 34.

16. The pole on which the recloser unit is attached is located within an existing easement which PPL has held since 1971. Tr. 34-35.

17. Installing the recloser equipment at a different location along the line would have resulted in less efficient overlapping and redundant facilities at a higher cost. Tr. 34.

18. A storm on April 13, 2020 caused an electricity outage on the line that serves Mr. Mion. Tr. 36.

19. The recloser equipment reacted to the outage and interrupted service to approximately 459 customers until the problem was corrected. Tr. 37.

20. If the recloser equipment had not been installed at that location, the April 13, 2020 outage would have cascaded and interrupted service to 926 customers. Tr. 37.

21. On January 15, 2021, PPL conducted a study near Mr. Mion's house to determine the level of electromagnetic fields (EMF) at the new pole on his property and at several other locations near his property. Tr. 42; PL Ex. 8.

22. EMF readings were taken at the base of the pole on which the recloser equipment is attached, and at four other locations containing PPL facilities near Mr. Mion's residence. Tr. 43; PPL Ex. 8.

23. The EMF readings obtained at the pole on Mr. Mion's property were less than, but comparable to, the readings obtained at the four other locations near his property. Tr. 43, 50-51; PPL Ex. 8.

24. The readings obtained at all five locations showed very low levels of EMF emissions. Tr. 43; PPL Exs. 7-8.

25. The EMF readings obtained from the five locations were well within typical EMF readings obtained from several common household appliances. PPL Ex. 7.

26. The reclosure equipment installed by PPL on the pole on Mr. Mion's property does not produce high EMF levels. Tr. 43; PPL Ex. 8.

27. The reclosure equipment installed by PPL on the pole on Mr. Mion's property does not pose health or safety risks to Mr. Mion. Tr. 46; PPL Ex. 8.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. Here, Mr. Mion alleges that the installation by PPL of a smart grid reclosure unit on a pole in front of his vacation property constitutes unreasonable and unsafe service. He alleges that the equipment detracts from the view from his vacation house, and he questions whether the electromagnetic field (EMF) emitted from the equipment creates a health

and safety problem. Mr. Mion requests that the Commission direct PPL to relocate the equipment away from his property at its own expense. Therefore, as the proponent of a rule or order in this proceeding, Complainant has the burden of proof pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and 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 Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, 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.Cmwth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa.Cmwth. 1984).

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 his/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.Cmwth. 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. Mion alleges in his complaint that the installation by PPL of smart grid reclosure equipment on a pole in front of his vacation property constitutes unreasonable and unsafe service. He first argues that the equipment is an eyesore and detracts from the view from his vacation house, thereby diminishing the country feel of his property. He further questions whether the electromagnetic field (EMF) emitted from the equipment creates a health and safety problem. Mr. Mion would like the Commission to direct PPL to relocate the equipment away from his property at its own expense.

Mr. Mion testified that the equipment is directly in his view when he looks out his window and that it blocks his view of the lake. Tr. 11-12. He considers the new equipment an “eyesore” and believes it could have a negative impact on the value of his home if he tries to sell the property. Tr. 10, 12, 16-18. He testified PPL explained to him what the equipment was and informed him that if he wanted the equipment relocated, he would have to pay the estimated cost of \$18,000. Tr. 11, 13. He is unwilling to pay the cost and wants PPL to move the equipment at its own expense.

PPL presented the testimony of Mark Musheno, a Senior Engineer in the company’s Regional Rehabilitation Group, and a licensed professional engineer in Pennsylvania. Tr. 21. He explained that a recloser is a piece of equipment that acts similarly to a circuit breaker in a home. If the recloser detects trouble on an electric line, it will interrupt the flow of power on the line until such time as the problem is corrected. Tr. 26. He testified that the purpose of a recloser is to prevent the problem from “cascading” down the line and interrupting service to potentially many more customers. Tr. 26. He testified that electric distribution companies have been using reclosers for decades and that PPL has thousands of reclosers operating in its service territory. Tr. 27.

Mr. Musheno testified that when choosing locations for recloser equipment, PPL considers several factors, including the outage history in an area, customer counts along the line,

accessibility of poles and the distance between devices. Tr. 27. He testified that the location of the recloser equipment at the front of Mr. Mion's property was selected after considering customer counts along the line, that it was a mid-point for the customer count in the area and because there was a lack of other occupying equipment, such as transformers, on the existing pole. Tr. 34. Mr. Musheno explained that, without a recloser unit at that location, an outage on the line that serves the area could "cascade" down the line and affect the service of over 900 customers. Tr. 33. By way of illustration, Mr. Musheno testified that the line that serves Mr. Mion experienced an outage on April 13, 2020, due to a storm that passed through the area. Tr. 36. He stated that that recloser interrupted service to approximately 459 customers until the problem was corrected. Tr. 37. He testified that if the recloser has not been installed at that location, the outage would have resulted in the interruption of service to 926 customers. Tr. 37.

I find that the location of the recloser equipment does not constitute unreasonable service by PPL. While Mr. Mion may have raised understandable concerns about the negative impact the equipment may have on the country feel of his property and the aesthetic view of the lake and surrounding area from his house, I believe that PPL has demonstrated legitimate operational justifications for the location of the recloser equipment on the pole at the front of Mr. Mion's property.

As Mr. Musheno explained, PPL considers several factors when choosing locations for its recloser equipment, including the outage history in an area, customer counts along the line, accessibility of poles and the distance between devices. Tr. 27. As noted above, he testified that the location of the recloser equipment at the front of Mr. Mion's property was selected after considering customer counts along the line, the fact that it was a mid-point for the customer count in the area and because there was a lack of other occupying equipment, such as transformers, on the existing pole. Tr. 34. PPL determined that locating the new pole and recloser equipment in the front of Mr. Mion's property would best serve the operational needs of the approximately 926 customers served by the line in question. The example of the April 13, 2021 outage and the fact that the recloser equipment prevented the outage from impacting a much greater number of customers fully supports PPL's decision as to the location of the equipment. He testified that installing the recloser equipment at a different location along the

line would have resulted in less efficient overlapping or redundant facilities at a higher cost. Tr. 34. Based on the record evidence, I find that PPL's operational considerations, which impacts the service provided to over 900 customers, outweigh the concerns expressed by Mr. Mion.

Mr. Mion next challenges PPL's insistence that, if he would like the company to relocate the recloser equipment, he will be responsible for payment of the associated costs. He argues that, since PPL made the decision to place the equipment in the front of his property, it should move the equipment at its own expense. Tr. 16-17.

PPL estimates that it will cost approximately \$18,000 to move the equipment to a different location. Tr. 37. Mr. Musheno testified that under Rule 4 of PPL's tariff, customers are responsible for payment of the costs associated with the relocation of company facilities when done at the customer's request. Tr. 38; PPL Ex. 6. PPL Tariff Rule 4 provides, in relevant part, "[t]he relocation of Company facilities, when done at the request of others, is at the applicant's expense and payment of the Company's estimated cost of the relocation is required in advance of construction." Supplement No 59, PPL Tariff Electric Pa. P.U.C. No. 201, Rule 4 (I)(2); PPL Ex. No. 6.

Pennsylvania law is clear that a utility's tariff has the force and effect of law and is binding on the utility and its customers. *Pa. Elec. Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995); *Guagenti v. PECO Energy Co.*, Docket No. F-2018-3001891 (Opinion and Order entered December 19, 2019). Here, in requiring Mr. Mion to pay the estimated cost to relocate, at his request, the recloser equipment placed in the front of his property, PPL is merely following, as it is required by law to do, the terms of its tariff. Mr. Mion's preference that PPL relocate the recloser equipment at its own expense certainly does not render PPL's actions in this regard unreasonable or in violation of a Commission regulation or order, or the company's own tariff.

Finally, Mr. Mion questions whether the recloser equipment will emit dangerous EMF, thereby rendering the placement of the equipment in front of his house a safety hazard. Mr. Mion testified that he raised this concern with PPL when he discovered the equipment on his

property in May of 2020. Tr. 11. Other than merely raising this concern, however, Mr. Mion presented no evidence proving either (1) the precise level of EMF given off by the equipment, or (2) that the actual EMF emitted by the equipment will have an adverse health impact on him.

Mr. Musheno testified that the location of the recloser equipment on Mr. Mion's property poses no health or safety risks to Mr. Mion. Tr. 46. In support of PPL's position, Mr. Musheno presented an EMF and Health Fact Sheet that provides basic information about EMF and provides EMF levels for a number of common household appliances. PPL Ex. 7. He next described a study he performed in January of 2021 to measure EMF levels at the location of the recloser equipment of Mr. Mion's property as well as at four other locations near his house where PPL has facilities. Tr. 42; PPL Ex. 8. Mr. Musheno testified that the EMF levels recorded at the base of the pole in front of Mr. Mion's property were comparable to the readings recorded at the four other locations near his home. Tr. 43. He next explained that the readings recorded at the five test sites were all toward the low end of the range of EMF readings for common household appliances described in PPL Ex. 7, all of which emit very low-level EMF. Tr. 43. Mr. Musheno testified credibly that the results of his study demonstrate that the recloser equipment poses no health or safety risks to Mr. Mion. Tr. 46.

As noted, Mr. Mion merely questioned whether EMF from the recloser equipment posed a health risk to him. Beyond raising a concern, however, he presented no evidence proving that such a risk, in fact, exists as a result of the placement of the equipment near his home. Bald assertions, opinions or perceptions do not constitute evidence. *Rivera v. Phila. Gas Works*, Docket No. C-2010-2164222 (Order entered January 12, 2012), *citing Pa. Bureau of Corrs. v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987). PPL, on the other hand, presented credible record evidence demonstrating that EMF levels from the recloser equipment are at very low levels and do not, in fact, pose a health or safety risk to Mr. Mion.

As the party seeking affirmative relief from the Commission, Mr. Mion bears the burden of proof in this proceeding. 66 Pa.C.S. § 332(a). For the reasons described above, I find that Mr. Mion failed to prove that PPL violated the Public Utility Code, a Commission regulation

or order, or the company's own Commission-approved tariff in the placement of smart grid recloser equipment on his property. Accordingly, the complaint is denied.

CONCLUSIONS OF LAW

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

2. As the proponent of a rule or order in this proceeding, Complainant has the burden of proof. 66 Pa.C.S. § 332(a).

3. To establish a sufficient case and 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 Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

4. Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).

5. Bald assertions, opinions or perceptions do not constitute evidence. *Rivera v. Phila. Gas Works*, Docket No. C-2010-2164222 (Order entered January 12, 2012) *citing Pa. Bureau of Corrs. v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987).

6. A utility's Commission-approved tariff has the force and effect of law and is binding on the utility and its customers. *Pa. Elec. Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995); *Guagenti v. PECO Energy Co.*, Docket No. F-2018-3001891 (Opinion and Order entered December 19, 2019).

7. Tariff provisions that have been approved by the Commission are *prima facie* reasonable. *Lynch v. Pa. Pub. Util. Comm'n*, 140 Pa. Cmwlth. 599, 594 A.2d 816 (1991); *alloc. den.* 529 Pa. 670, 605 A.2d 335 (1992); 66 Pa. C.S. § 316.

8. Complainant has failed to meet his burden of proving that he is entitled to the relief he seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Donald Mion against PPL Electric Utilities Corporation at Docket No. C-2020-3022986 is hereby denied.
2. That the proceeding at Docket No. C-2020-3022986 be marked closed.

Date: May 11, 2021

_____/s/
Steven K. Haas
Administrative Law Judge