

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kenneth Williams	:	
	:	
v.	:	C-2020-3023499
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal Complaint of Kenneth Williams against Duquesne Light Company because he failed to meet his burden of proving that Duquesne Light Company caused damage to his computer or provided him with inadequate or unreasonable service.

HISTORY OF THE PROCEEDING

On December 3, 2020, Kenneth Williams (Complainant) filed a formal Complaint (Complaint) against Duquesne Light Company (Duquesne, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant indicated that on September 5, 2020, his lights flickered and his computer “blew out.” The Complainant further indicated: that he called Duquesne about the issue; that an agent came out and informed him that he needed two ground wires for his house; that a Duquesne technician drilled a hole by his meter to regulate the charge going into his house; and that on September 11, 2020, approximately ten transformers “blew out” around the area, and his lights flickered again. As relief,

the Complainant requested that his house be grounded correctly, that Duquesne check the transformer, and that Duquesne reimburse him for the damages to his computer.

On January 20, 2021, Duquesne filed an Answer denying any wrongdoing related to the electric service provided to the Complainant's residence. The Respondent further answered that the Complainant is not entitled to the sole relief sought, monetary damages, because granting such relief is outside of the Commission's jurisdiction.

Also on January 20, 2021, the Respondent filed a Preliminary Objection to the Complaint. The Preliminary Objection sought dismissal of the Complaint in its entirety because the Commission lacks the legal authority and jurisdiction to provide the Complainant with the requested relief in the form of monetary damages. The Respondent's Preliminary Objection was endorsed with a Notice to Plead, advising the Complainant he had 10 days to file a written answer to the objection or a judgment may be entered against him. The Complainant did not file a response to the preliminary objection.

By Call-In Telephonic Hearing Notice dated February 17, 2021, a call-in telephonic hearing was scheduled for April 13, 2021, and the matter, including the outstanding Preliminary Objection, was assigned to me.

I issued a Prehearing Order on February 25, 2021. The Prehearing Order directed the parties to comply with various procedural requirements and explained that the Complainant bears the burden of proof to establish that the Respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

By Interim Order issued on April 1, 2021, I granted in part and denied in part the Respondent's Preliminary Objection. I granted the Preliminary Objection and dismissed the Complaint to the extent that the Complainant seeks monetary damages, and directed that the April 13, 2021 hearing proceed as scheduled to address the remaining allegations of reasonableness and adequacy of service set forth in the Complaint.

The hearing convened as scheduled on April 13, 2021. The Complainant appeared *pro se* and testified. The Respondent also appeared and was represented by Emily M. Farah, Esq. The Respondent presented the testimony of Margaret Mueller, a Regulatory Consumer Relations Specialist, and Gene Belenciaga, a Senior Manager of Field Operations. The Respondent offered nine exhibits, all of which were admitted into the record. (Duquesne Exhibits D, E, G, H, I, J, K, L, and M).

The record consists of a 63-page transcript and nine exhibits. The record closed on May 5, 2021, the date the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant in this case is Kenneth Williams.
2. The Respondent in this case is Duquesne Light Company.
3. The Complainant resides at 958 Illinois Avenue, Pittsburgh, PA 15221 (service address) and has received electric service from the Respondent since May 31, 1985. Tr. 8, 19, 37.
4. The service address has single-phase service from a three-wire, 120/240 service from a pole to the customer outlet. Tr. 38-39.
5. Under single-phase service, the Company owns the meter while the customer, including Complainant, is responsible for maintaining the meter base. Tr. 53, 55; Duquesne Exh. L.
6. Single-phase meters do not have a ground, nor are they grounded to a ground rod. Tr. 53.

7. It is not the Company's responsibility to ground the Complainant's panel box. Tr. 54.
8. The Company's transformers have lightning and overcurrent protection. Tr. 54.
9. On August 3, 2020, the Complainant experienced his home lights flickering over an eight-minute-period. Tr. 8-9.¹
10. The Complainant's lights never went out on that date. Tr. 13.
11. Approximately one hour after the Complainant's lights flickered, he tried to power-up his computer. Tr. 10.
12. The Complainant was not able to turn on his computer. Tr. 9-10.
13. The Complainant is no longer able to use his computer. Tr. 10.
14. On August 3, 2020, the Complainant contacted the Company to report voltage problems, flickering lights and damage to his computer. Tr. 11, 22, 24-25, 30, 38; Duquesne Exhs. E & H.
15. On August 3, 2020, the Company dispatched a technician to investigate the Complainant's Claim. Tr. 30, 38.
16. The Company's technician used test-equipment to check the voltage and subvoltage at the Complainant's meter base. Tr. 38-39.

¹ Although the Complainant testified that this incident occurred on September 5, 2020, Company records reflect that he reported his lights flickering and damage to his computer on August 3, 2020.

17. There are two wires that go into the meter, each referred to as legs, each having 120 volts for a combined 240 volts, for a 120/240 service. Tr. 46, 55.

18. The technician received voltage readings on both legs of the transformer that services the service address; the combined voltage on both legs indicated that the transformer was working. Tr. 40.

19. The technician requested the Company send a Regulation Technician to the service address to monitor the Complainant's electric service. Tr. 40.

20. The Regulation Technician checked the voltage meter base and, with the Complainant's permission, installed a voltage monitoring device used to monitor voltage for an approximate eight-day period. Tr. 41.

21. A voltage monitor is used to take continuous voltage readings whenever a customer or the company feels there may be an issue with the service. Tr. 42.

22. The voltage monitor used at the service address was installed on August 3, 2020, and continually monitored the voltage until it was removed on August 11, 2020. Tr. 42, 44-45; Duquesne Exh. K.

23. The voltage monitor detected the following six voltage swells on the Complainant's meter:

Date	Duration	Voltage
8/4/2020	34 seconds, .779milliseconds	127.250
8/5/2020	37 Seconds, .337 milliseconds	127.375
8/6/2020	42 seconds, .371 milliseconds	128.625
8/7/2020	40 seconds, .725 milliseconds	128.250
8/8/2020	38 seconds, .667 milliseconds	127.250
8/10/2020	40 seconds, .850 milliseconds	127.500

Tr. 45-47; Duquesne Exh. K.

24. The Regulation Technician also monitored the voltage at a neighboring address serviced by the same transformer. Tr. 41.

25. The voltage monitor at the neighboring address showed that there was only one voltage swell. Tr. 41.

26. On August 18, 2020, the Company's Claims Department denied and closed the Complainant's complaint. Tr. 32; Duquesne Exh. I.

27. By letter dated August 28, 2020, the Company advised the Complainant that the Company's investigation into his claim revealed that the Company's equipment worked properly, that there were no abnormal circuit operations that could have caused his damage, and that his claim had been denied. Tr. 33; Duquesne Exh. J.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, the Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, the 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.P.U.C. 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. P.U.C. 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.Cmwlth. 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.Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 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 & W. 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.Cmwlth. 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 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).

In the present case, the Complainant alleged that the Respondent's electric service caused damage to some of his personal property. The Complainant has raised a claim of inadequate and unreasonable service.

Duquesne is required by law to provide the Complainant with adequate and reasonable service. Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, provides, in relevant part:

§1501. Character of service and facilities

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable

interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

Interpreting this provision in *W. Penn Power Co. v. Pa. Publ. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984), the Commonwealth Court stated:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.

478 A.2d at 949 (footnote omitted). The statutory definition of "service" is to be broadly construed.² *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995). In applying the facts to the law, the issue becomes whether Duquesne's actions as described in the Complaint rise to the level of inadequate service that constitutes a violation of the Public Utility Code.

Additionally, Commission regulations provide in pertinent part the following regarding allowable voltage variation:

For service rendered primarily for lighting purposes, the allowable variation in voltage measured at the service terminals of the customer may not exceed, for a longer period than 1 minute in each instance, 5% above or below the standard nominal service voltage and a total variation from minimum to maximum of 8% during normal system operation.

52 Pa.Code § 57.14(b).

² "Service." Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them 66 Pa. C.S.A. § 102.

The Complainant testified that on September 5, 2020,³ his lights flickered over an eight-minute period. Tr. 8-9. The Complainant further testified that his lights never went out. Tr. 13. However, the Complainant testified that when he tried to use his computer approximately one-hour after his light's flickered, he was not able to turn on his computer. Tr. 9-10. The Complainant testified that he is no longer able to use this computer. Tr. 10. The Complainant argued that the issue with his computer was directly related to his flickering lights, a ground wire, and to problems with transformers in the area. Tr. 11-12, 15. The Complainant further indicated that his lights continue to flicker, although he acknowledged that he has not reported this continued flickering to the Company. Tr. 13-14.

In the present case, the Complainant asserted Duquesne is responsible for the damage to his computer. However, the Complainant did not present any competent evidence beyond his own opinions to demonstrate that Duquesne is responsible for the damage to his computer. No matter how honest and strong the Complainant's assertions are, they cannot form a basis for a finding of fact in his favor. Mere bald assertions, personal opinions or perceptions do not constitute evidence to bolster a claim. *Mid-Atl. Power Supply Ass'n of Pa. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196 (Pa.Cmwlt. 2000) citing *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

In response to the Complaint, Duquesne's witnesses testified that single-phase meters, such as the one that services the Complainant's home, do not have a ground, nor are they grounded to a ground rod. Tr. 53. Duquesne's witnesses further testified that it is not the Company's responsibility to ground the Complainant's panel box. Tr. 54.

Additionally, Duquesne investigated the Complainant's concerns and was not able to find any problems at the Complainant's meter, or with his service. Following a contact from the Complainant on August 3, 2020, the Company sent a technician to his house to investigate his concerns. Tr. 22, 24, 30, 38; Duquesne Exhs. E & H. The technician checked the voltage at

³ As previously noted, the Company's records reflect that the Complainant actually reported this occurrence to the Company on August 3, 2020.

the Complainant's meter base. Tr. 38. The technician also checked the transformer that services the service address and determined that it was working. Tr. 40.

The technician subsequently requested the Company send a Regulation Technician to the service address to monitor the Complainant's electric service. Tr. 40. The Regulation Technician checked the voltage meter base and, with the Complainant's permission, installed a voltage monitoring device used to monitor voltage for an approximate eight-day period. Tr. 41. The voltage monitor used at the service address was installed on August 3, 2020 and removed on August 11, 2020. Tr. 44-45; Duquesne Exh. K.

The voltage monitor detected the following six swells on the Complainant's meter:

Date	Duration	Voltage
8/4/2020	34 seconds, .779 milliseconds	127.250
8/5/2020	37 Seconds, .337 milliseconds	127.375
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8/8/2020	38 seconds, .667 milliseconds	127.250
8/10/2020	40 seconds, .850 milliseconds	127.500

Tr. 45-47; Duquesne Exh. K. The Regulation Technician also monitored the voltage at a neighboring address serviced by the same transformer. Tr. 41. The voltage monitor showed one swell at the neighboring address, but nothing more. Tr. 41.

The Company concluded, based upon the investigation, that their equipment worked properly. Tr. 33; Duquesne Exh. J. The Company further concluded that there were no abnormal circuit operations that could have caused his damage. *Id.*

The record in this matter does not support a conclusion that Duquesne's electric service was responsible for the problem with the Complainant's computer, or that the Company is providing the Complainant with inadequate or unreasonable service. While the Complainant asserted that the flickering lights he experienced on August 3, 2020, demonstrates that Duquesne's electric service is directly responsible for his damaged computer, he did not offer any evidence to

substantiate his claim. On the contrary, the record demonstrates that it is not the Company's responsibility to ground the Complainant's panel box. Moreover, Duquesne's investigation into the Complainant's concerns demonstrated that the Complainant is receiving electric service at the service address at voltage levels that are consistent with the Commission's regulations at 52 Pa.Code § 57.14(b), since the swells recorded at the property were under one-minute in duration. Accordingly, the Complainant's Complaint is denied in its entirety.

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. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service. 66 Pa.C.S. § 1501.

5. For service rendered primarily for lighting purposes, the allowable variation in voltage measured at the service terminals of the customer may not exceed, for a longer period than 1 minute in each instance, 5% above or below the standard nominal service voltage and a total variation from minimum to maximum of 8% during normal system operation. 52 Pa.Code § 57.14(b).

6. Mere bald assertions, personal opinions or perceptions do not constitute evidence to bolster a claim. *Mid-Atl. Power Supply Ass'n of Pa. v. Pa. Pub. Util. Comm'n*, 746

A.2d 1196 (Pa.Cmwlth. 2000) citing *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

7. The Complainant failed to meet his burden of proving that the Respondent provided him with inadequate and unreasonable service.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Kenneth Williams against Duquesne Light Company at Docket No. C-2020-3023499 is denied; and
2. That the record at C-2020-3023499 be marked closed.

Date: July 29, 2021

/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge