

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Brian and Diane Zampatti	:	
	:	
v.	:	C-2020-3021157
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Charece Z. Collins
Administrative Law Judge

INTRODUCTION

This Decision dismisses the formal complaint filed by Brian and Diane Zampatti against West Penn Power Company. Mr. and Mrs. Zampatti failed to satisfy their burden of demonstrating that West Penn Power Company violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with respect to the service provided to them regarding a power surge at their home.

HISTORY OF THE PROCEEDING

On July 16, 2020, Brian and Diane Zampatti (“Complainants” or “Mr. and Mrs. Zampatti”) filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission”) against West Penn Power Company (“West Penn”). In their complaint, Mr. and Mrs. Zampatti alleged that West Penn violated Section 1501 of Title 66 of the Public Utility Code by failing to provide reliable, safe or quality utility service. Mr. and Mrs. Zampatti averred that they lost power to their home multiple times (an average of 6-8 times per week), which led to damaged appliances and several other issues. Mr. and Mrs. Zampatti requested compensation

for the loss of their home appliances; the repair of reclosures on the lines on the main roads that branch off to their house; and an explanation as to why they would lose power if the electrical grid would change locations.

Mr. and Mrs. Zampatti's complaint was served on West Penn on August 5, 2020. On August 25, 2020, West Penn filed a timely answer and new matter. In its answer, West Penn denied that there is a reliability or quality problem with the electric service provided to Mr. and Mrs. Zampatti. West Penn averred that Mr. and Mrs. Zampatti were not experiencing power outages, but West Penn's reclosures were instead working as designed. In its new matter, which was accompanied by a notice to plead, West Penn asserted that the Commission does not have jurisdiction to consider an implied request for reimbursement for property damage, and that the Public Utility Code does not require perfect service. West Penn requested that Complainants' complaint be dismissed with prejudice or denied in its entirety. Alternatively, West Penn requested that the matter be referred to the Commission's mediation unit. The matter was referred to mediation where it was not resolved.

On April 27, 2021, the Commission served an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for May 20, 2021 at 10:00 a.m. and assigning me as the presiding officer. In anticipation of that hearing, I served a prehearing order on April 27, 2021, setting forth hearing information and the rules that would govern that proceeding. In response to an unopposed request for a continuance by West Penn's counsel, I served an order dated May 7, 2021 granting West Penn's continuance request. A rescheduled hearing notice was served on May 7, 2021, establishing an initial telephonic hearing in this matter for June 21, 2021 at 10:00 a.m.

The hearing was held as scheduled on June 21, 2021 at 10:00 a.m. Margret Morris, Esquire attended on behalf of West Penn, along with five witnesses for West Penn. Mr. and Mrs. Zampatti did not attend the hearing. Following the June 21, 2021 hearing, Mr. and Mrs. Zampatti requested a second hearing. West Penn did not object to Mr. and Mrs. Zampatti's request. I granted the request for a new hearing via order dated July 9, 2021, and a rescheduled

hearing notice was served on July 9, 2021, establishing an initial telephonic hearing in this matter for September 27, 2021 at 10:00 a.m.

The hearing was held as scheduled on September 27, 2021. Mr. and Mrs. Zampatti appeared on behalf of themselves, and Margaret Morris, Esquire appeared on behalf of West Penn, along with three witnesses. West Penn submitted thirteen exhibits that were admitted into the record. Mr. and Mrs. Zampatti did not submit any exhibits.

The record in this case closed on November 3, 2021 upon the filing of the September 27, 2021 hearing transcript with the Commission.

FINDINGS OF FACT

1. The Complainants in this case are Brian Zampatti and Diane Zampatti.
2. The Respondent in this case is West Penn Power Company.
3. The Complainants' service address is 123 Meadow Lane, Rostraver Township, PA 15012.
4. Mr. and Mrs. Zampatti moved into their home in 2011. Tr. 22.
5. Mr. and Mrs. Zampatti periodically called West Penn to report power outages, but they do not remember the dates of the calls. Tr. 22-23.
6. In response to Mr. and Mrs. Zampatti's calls, West Penn visited Mr. and Mrs. Zampatti's home to replace equipment at their home. West Penn also replaced a transformer that blew in March 2021, and it worked on power lines. Tr. 35-37. Apart from the replaced transformer, Mr. and Mrs. Zampatti did not provide a timeframe for when these improvements occurred.

7. After West Penn replaced Mr. and Mrs. Zampatti's equipment, replaced the transformer and worked on power lines, Mr. and Mrs. Zampatti experienced fewer power outages than they had previously experienced. They only experienced outages "every once in a while" following West Penn's improvements. Tr. 39-42.

8. A "reclosure" performs similar to a circuit breaker in a home; when an electrical fault occurs, the reclosure will temporarily stop the flow of electricity and prevent sustained outages to customers. Tr. 61-62.

9. A reclosure causes electricity to stop for a very brief period. Tr. 62.

10. From November 16, 2017 to April 22, 2021, Mr. and Mrs. Zampatti experienced a total of fourteen outages: five of which were planned outages to upgrade facilities and replace equipment; two of which were forced outages; four of which were caused by tree issues; and three of which were due to equipment failures. Tr. 63-72; Exhibit 1; Exhibit 2.

11. There were no service interruptions from May 1, 2021 to June 9, 2021. Tr. 78; Exhibit 6.

12. Between June 10, 2021 and August 29, 2021, Mr. and Mrs. Zampatti experienced eight reclosure events lasting one minute or less. Tr. 79; Exhibit 7.

13. There were no reclosure events from August 30, 2021 to September 29, 2021. Tr. 79; Exhibit 8.

14. West Penn performs periodic inspections of its equipment and facilities consistent with American National Standards Institute Incorporated (ANSII). Tr. 81-82.

15. A reclosure will not introduce a higher voltage on a transmission line. Tr. 84.

16. Mr. and Mrs. Zampatti's service location has always been served by the same substation and circuit. Tr. 84-85.

17. A reclosure will not prevent power surges. Tr. 85.

18. When an outage complaint is filed with West Penn, a claims representative will open the customer's account to try to find the cause of the power outage (reclosure event, planned outage, etc.). If the representative finds no issues, they will then look at the circuit or substation to search for issues. If issues are found, the representative will complete an investigation and refer to West Penn's Tariff rule 21 to ascertain the company's liability, if any. Tr. 123-124.

19. Mrs. Zampatti filed a claim with West Penn on November 19, 2018, alleging damages to two refrigerators caused by a power surge on November 17, 2018. Tr. 126-127.

20. West Penn promptly investigated that claim, and Mrs. Zampatti's claim was denied by West Penn on November 20, 2018. Tr. 126-128; Exhibit 12.

21. Mr. and Mrs. Zampatti filed a claim with the Commission's Bureau of Consumer Services on July 28, 2015, which was closed on December 28, 2015. Exhibit 13.

DISCUSSION

Legal Standard

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence,

or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. §§ 332(a), 701. In this proceeding, Mr. and Mrs. Zampatti have alleged that West Penn violated section 1501 of Title 66 of the Public Utility Code regarding reasonable, safe and quality service. 66 Pa.C.S. § 1501. Therefore, Mr. and Mrs. Zampatti have the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth 2001); *see also, Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth 1982). Moreover, 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. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980). A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super 1960). A complainant cannot establish a case merely by stating his or her personal beliefs, since assertions, personal opinions or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

It is well settled that the Commission lacks the authority to award damages. The Commission is a creature of the legislature and only has the duties, powers, responsibilities and jurisdiction given to it by the Public Utility Code. *See Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008); *see also Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977); *see also Pettko v. Pa. Am. Water Co.*, 39 A.3d 473 (Pa. Cmwlth. 2012). The Commission's jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell*, 383

A.2d 791 (Pa. 1977). The statutory array of Commission remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. *Id.* Mr. and Mrs. Zampatti claimed in their complaint that they lost several appliances due to power surges caused by West Penn. West Penn responded by averring that its service has at all times been reasonable, and the Commission does not have the authority to award damages. West Penn is correct that the Commission does not have the authority to award damages, and therefore, Mr. and Mrs. Zampatti's claims for damages are dismissed.

While damages cannot be awarded to complainants by the Commission, utility companies are required by law to provide the Complainants with adequate and reasonable service. Section 1501 of the Public Utility Code Section states:

§ 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.

66 Pa.C.S. § 1501. This section does not require utility companies to provide perfect service. *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super 1987).

A utility's Commission-approved tariff (list of services, rules for service and rates for service) has the force 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); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Stitel v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977). Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. Pa. Pub. Util. Comm'n*, 594 A.2d 816 (Pa. Cmwlth. 1991), *alloc. den.*, 605 A.2d 335 (Pa. 1992), 66 Pa.C.S. § 316.

West Penn's Electric Service Tariff states that West Penn does not guarantee a continuous, uninterrupted or regular supply of electric service. West Penn may, without liability, interrupt or limit the supply of electric service for the purpose of making repairs, changes or improvements in any part of its system for the general good of the service or the safety of the public. West Penn shall not be liable for any damages due to accident, strike, storm . . . or any other cause beyond West Penn's control. West Penn Tariff Rule 21, Electric Pa. P.U.C. No. 40, effective May 3, 2015 ("West Penn Tariff Rule 21")¹; Exhibit 11.

Failure to Meet Burden

Mr. and Mrs. Zampatti testified that they began losing power in their home between 2015 and 2016. Tr. 22. They testified that they called West Penn to report the outages, but they could not remember the dates of the calls. Tr. 22-23. They also did not identify the persons they spoke with. Mr. and Mrs. Zampatti testified that they experienced 200 power outages a year. Tr. 91. The evidence of record presented does not reflect this testimony. Exhibits 1 – 9.

Mr. and Mrs. Zampatti further testified that they lost appliances in their home between 2017 and 2019 due to power surges. Tr. 22-23. Mr. and Mrs. Zampatti did not submit any documentation into evidence regarding loss of power, the reason for the loss of power, or damage to their appliances. The Commission does not have authority to award damages. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977). However, there is no evidence in the record to prove that West Penn provided unreasonable service and caused damage to Mr. and Mrs. Zampatti's appliances. 66 Pa.C.S. § 1501.

Mr. and Mrs. Zampatti testified that West Penn came to their home to resolve their power issues. West Penn replaced equipment at Mr. and Mrs. Zampatti's home. West Penn also replaced a transformer that blew in March 2021, and it worked on power lines. Tr. 35-37.

¹ The cover page of the Tariff Rule in West Penn's Exhibit 11 is from the company's tariff effective June 21, 2021; however, page two of Exhibit 11, which is the relevant Rule 21, is effective May 3, 2015. West Penn's expert also testified that the effective date of the tariff rule was May 3, 2015. Tr. 125.

Apart from the replaced transformer, Mr. and Mrs. Zampatti did not provide a timeframe for when these improvements occurred. After West Penn replaced Mr. and Mrs. Zampatti's equipment, replaced the transformer and worked on power lines, Mr. and Mrs. Zampatti experienced fewer power outages than they had previously experienced. Mr. and Mrs. Zampatti testified that they only experienced outages "every once in a while" following West Penn's improvements. Tr. 39-42.

Mrs. Zampatti testified that West Penn did not take their power outage issues seriously until years after their reports began. Tr. 36. However, the evidentiary record shows that Mr. and Mrs. Zampatti filed a claim with West Penn on November 19, 2018, alleging damages sustained on November 17, 2018 due to a power surge caused by West Penn, and West Penn promptly investigated that claim and issued a denial letter on November 20, 2018. Tr. 124; 126-127; Exhibit 12. West Penn testified that when an outage complaint is filed, a claims representative will open the customer's account to try to find the cause of the power outage (reclosure event, planned outage, etc.). If the representative finds no issues, they will then look at the circuit or substation to search for issues. If issues are found, the representative will complete an investigation and refer to West Penn's Tariff rule 21 to ascertain the company's liability, if any. Tr. 123-124.

After its investigation of Mr. and Mrs. Zampatti's claim, West Penn determined that there were no reports of abnormal voltage on November 17, 2018, and a storm had occurred on November 17 which resulted in a tree on the power line. Tr. 127-128. Consistent with its Tariff rule 21², West Penn determined that it was not liable for any alleged damage to appliances caused on November 17, 2018. Tr. 129; West Penn Tariff Rule 21; Exhibit 11.

Furthermore, West Penn submitted documentation of power outages at Mr. and Mrs. Zampatti's home from November 2017 and September 2021. Between November 2017 and April 2021, Mr. and Mrs. Zampatti experienced a total of fourteen outage events, five of which were planned outages to upgrade facilities and replace equipment; two of which were forced

² "West Penn shall not be liable for any damages due to accident, strike, storm . . . or any other cause beyond West Penn's control . . ." West Penn Tariff Rule 21.

outages; four of which were caused by tree issues; and three of which were due to equipment failures. Tr. 63-72; Exhibits 1 – 2. There were no service interruptions from May 1, 2021 to June 9, 2021. Tr. 78; Exhibit 6. Between June 10, 2021 and August 29, 2021, Mr. and Mrs. Zampatti experienced eight reclosure events lasting one minute or less. Tr. 79; Exhibit 7. There were no reclosure events from August 30, 2021 to September 29, 2021. Tr. 79; Exhibit 8.

As stated above, West Penn’s tariff does not guarantee a continuous, uninterrupted supply of electric service. West Penn may, without liability, interrupt or limit the supply of electric service for the purpose of making repairs, changes or improvements in any part of its system for the general good of the service or the safety of the public. West Penn is also not liable for any damages due to accident, strike, storm . . . or any other cause beyond West Penn’s control. West Penn Tariff Rule 21; Exhibit 11.

Moreover, Section 1501 of Title 66 of the Public Utility Code requires reasonable service, not perfect service. 66 Pa.C.S. § 1501; *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super 1987). The record reflects that several of the outages experienced by Mr. and Mrs. Zampatti were due to West Penn performing maintenance in the area to improve its systems. Over the span of four years, the evidence of record shows that West Penn experienced three equipment failures which led to temporary outages. West Penn testified that it does periodic inspections of its equipment and facilities consistent with ANSI. Tr. 81-82. West Penn’s inspections would not guarantee that its equipment would not sometimes fail. However, three equipment failures over four years would not constitute unreasonable service. The regular maintenance that West Penn performed on its equipment and powerlines demonstrates reasonable service. Mr. and Mrs. Zampatti testified that they experienced fewer power outages after West Penn made repairs in the area. Tr. 39-42. The work done by West Penn led to improvement of Mr. and Mrs. Zampatti’s electricity service. The evidence of record supports the finding that West Penn did not violate the Public Utility Code, a Commission order or regulation or a Commission-approved tariff. West Penn provided reasonable service in accordance with the Public Utility Code and its Commission-approved tariff.

Regarding Complainants' alleged outages in the year 2015, the evidentiary record reflects a claim filed with the Commission's Bureau of Consumer Services on July 28, 2015, which was denied on December 28, 2015. Exhibit 13. There is no evidence in the record regarding claims by Mr. and Mrs. Zampatti that were not heard and investigated.³

Additionally, in their complaint, Mr. and Mrs. Zampatti alleged that West Penn's reclosures were not working properly and caused power surges. In response, West Penn presented a witness, Michael Shawn Hindman, who is a reliability engineer for West Penn. Mr. Hindman has been employed with West Penn for 32 years. He has held his current position for six years. Tr. 56. Mr. Hindman testified that a "reclosure" performs similar to a circuit breaker in a home: When a fuse blows in a home, a circuit breaker can be turned off to stop the flow of electricity to prevent further damage. Similarly, when an electrical fault occurs on a power line, the reclosure will automatically stop the flow of electricity and prevent sustained outages to customers. Tr. 61-62. Mr. Hindman further testified that reclosures do not cause power surges or change the voltage on a power line; reclosures only stop the flow of electricity. Tr. 84. While Mr. and Mrs. Zampatti argued that reclosures should prevent power surges, Mr. Hindman testified that it is not the purpose of reclosures to prevent power surges, Tr. 85, but to briefly stop the flow of electricity in the event of an electrical fault. Tr. 62. A reclosure cannot impact the amount of voltage that enters a person's home. Tr. 85.

Lastly, in their complaint, Mr. and Mrs. Zampatti alleged that the location of their power grid had been changed. Mr. Hindman testified that his understanding of this allegation was not clear, but that Mr. and Mrs. Zampatti's service location has always been served by the same substation and circuit. Tr. 84-85. Therefore, this argument will also be rejected.

Accordingly, for the reasons stated above, the Complainants' Complaint is dismissed.

³ In her closing statement, which is not sworn testimony, Mrs. Zampatti argued that two years passed before West Penn acted on her complaints, but no evidence was presented to support this argument.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter within its regulations and the parties to this proceeding. 66 Pa.C.S. § 701.
2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990).
4. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).
5. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.
6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).
7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. 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. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

9. The Commission is a creature of the legislature and only has the duties, powers, responsibilities and jurisdiction given to it by the Public Utility Code. *See Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008); *see also Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977); *see also Pettko v. Pa. Am. Water Co.*, 39 A.3d 473 (Pa. Cmwlth. 2012).

10. The Commission's jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

11. The statutory array of Commission remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

12. Utility companies are required to provide reasonable service. 66 Pa.C.S. § 1501.

13. Section 1501 of Title 66 of the Public Utility Code does not require utility companies to provide perfect service. *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super 1987); 66 Pa.C.S. § 1501.

14. West Penn does not guarantee a continuous, uninterrupted or regular supply of electric service. West Penn is also not liable for any damages due to accident, strike,

storm . . . or any other cause beyond West Penn's control. West Penn Tariff Rule 21, Electric Pa. P.U.C. No. 40, effective May 3, 2015.

15. West Penn provided reasonable service consistent with Section 1501 of Title 66 of the Public Utility Code. 66 Pa.C.S. § 1501.

16. Mr. and Mrs. Zampatti have failed to satisfy their burden to demonstrate that West Penn has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Brian and Diane Zampatti against West Penn Power Company on July 16, 2020 at docket number C-2020-3021157 is hereby dismissed.
2. That this matter is marked closed.

Date: January 31, 2022

/s/
Charece Z. Collins
Administrative Law Judge