

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gene Goebel	:	
	:	
v.	:	C-2021-3028188
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Decision dismisses the formal complaint filed by Gene Goebel against PECO Energy Company. Mr. Goebel failed to satisfy his burden of demonstrating that PECO Energy Company violated the Public Utility Code, a Commission order or regulation or its Commission-approved tariff with respect to the service provided to him regarding a power surge at his home.

HISTORY OF THE PROCEEDING

On August 25, 2021, Gene Goebel (“Complainant” or “Mr. Goebel”) filed a formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) against PECO Energy Company (“PECO” “Company” or “Respondent”). In the Complaint, Mr. Goebel alleged that PECO violated Section 1501 of Title 66 of the Public Utility Code by failing to provide reliable, safe or quality utility service. Mr. Goebel averred that there was a power surge on his street on July 25, 2021 which was not weather related and which the Company refused responsibility for the damages caused to his property. Mr. Goebel alleged

that the Company violated its Commission approved tariff in this matter. Mr. Goebel requested damages for appliances that were ruined due to the power surge.

Mr. Goebel's Complaint was served on PECO on August 30, 2021. On September 13, 2021, PECO filed a timely Answer and New Matter. In its Answer, PECO denied that there is a reliability or quality problem with the electric service provided to Mr. Goebel. In its New Matter, which was accompanied by a notice to plead, PECO 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. PECO requested that Complainant's Complaint be dismissed with prejudice or denied in its entirety.

On September 20, 2021, the Complainant filed a reply to the Answer and New Matter in which he denied that the Company had provided him with reasonable, safe and adequate service at his property.

On September 29, 2021, the Commission served an Initial Telephonic Hearing Notice setting a formal call-in telephonic hearing for this matter for November 17, 2021, at 10:00 a.m., assigning me as the presiding officer.

In anticipation of that hearing, I served a Prehearing Order on September 29, 2021, setting forth hearing information and the rules that would govern that proceeding.

The hearing was held as scheduled on November 17, 2021. Mr. Goebel appeared on his own behalf, and Khadijah Scott, Esquire appeared on behalf of PECO, along with one witness, Mr. Robert Nickens, a PECO Senior Claims Case Manager. PECO submitted five exhibits that were admitted into the record. Mr. Goebel submitted five exhibits that were admitted into the record.

The record in this case closed on December 6, 2021, upon the filing of the November 17, 2021 hearing transcript with the Commission.

FINDINGS OF FACT

1. The Complainant in this case is Gene Goebel who resides at 7 Quaker Lane, Glen Mills, Pennsylvania 19342 (“Service Address”). Tr. 8.
2. The Respondent in this case is PECO Energy Company.
3. On July 25, 2021, at approximately 9:00 p.m., the Complainant experienced a power surge at the Service Address, where the lights flickered off and on and lasted a couple of seconds. Tr. 9.
4. After the power surge, the Complainant had several appliances that were no longer working which included a wall oven, microwave unit, swimming pool pump, washing machine, thermostat and computer. Tr. 9-10; Complainant Exh. 3.
5. The Complainant contacted PECO after the incident on July 25, 2021. Tr. 11; Complainant Exh. 1.
6. The Complainant filed a Claim Registration Form with PECO on July 29, 2021 listing the items that were damaged in the power surge. PECO Exh. 1.
7. There were thunderstorms on the night of July 25, 2021, around 9:00 p.m., within the Complainant’s zip code. Tr. 15, 23; Complainant Exh. 2; PECO Exh. 5.
8. The Service Address is supplied with electricity from PECO’s Scott 002 circuit. Tr. 23.
9. On the night of July 25, 2021, two outages took place on the Scott 002 circuit around the time that the Complainant reported his issue occurred. Tr. 23; PECO Exh. 4.

10. There were no outages at the Service Address itself on July 25, 2021. Tr. 22; PECO Exh. 4.

11. PECO denied the Complainant's claim on July 30, 2021, via email. Tr. 25-26; PECO Exh. 2.

12. PECO tariff Section 12.1 indicates that the Company is not responsible for damage caused by circumstances that are beyond its control, such as thunderstorms. Tr. 26-27; PECO Exh. 3.

13. PECO uses the website *WEATHER UNDERGROUND*¹ to get data regarding weather events when there is a claim from a customer. Tr. 27-28; PECO Exh. 5.

14. The Company inputs the customer's zip code into the website to obtain the weather data for a particular date and location. Tr. 27; PECO Exh. 5.

15. PECO obtained the weather data for July 25, 2021 for the Complainant's zip code 19342 from the *WEATHER UNDERGROUND* website. Tr. 27-28; PECO Exh. 5.

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

¹ <https://www.wunderground.com>

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. Goebel alleged that PECO violated section 1501 of Title 66 of the Public Utility Code regarding reasonable, safe and quality service. 66 Pa.C.S. § 1501. Therefore, Mr. Goebel has 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. Goebel claimed in his complaint that he lost several appliances due to the power surge on July 25, 2021. PECO responded by averring that its service has at all times been reasonable, and the Commission does not have the authority to award damages. PECO is correct that the Commission does not have the authority to award damages, and therefore, Mr. Goebel'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 Complainant 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); *Stiteler 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.

PECO's Electric Service Tariff states that PECO does not guarantee a continuous, uninterrupted or regular supply of electric service. Specifically, PECO shall not be liable for any damages due to accident, strike, storm . . . or any other cause beyond PECO's control. PECO Energy Company Tariff Rule 12.1, Electric Pa. P.U.C. No. 5, effective January 1, 2016 ("PECO Tariff Section 12.1"); PECO Exh. 3.

Failure to Meet Burden

Mr. Goebel testified that on July 25, 2021, at approximately 9:00 p.m., he experienced a power surge at the Service Address, where the lights flickered off and on and lasted a couple of seconds. Tr. 9. After the power surge, the Complainant had several appliances that were no longer working which included, a wall oven, microwave unit, swimming pool pump, washing machine, thermostat and computer. Tr. 9-10; Complainant Exh. 3. The Complainant contacted PECO after the incident on July 25, 2021. Tr. 11; Complainant Exh. 1. Mr. Goebel then filed a Claim Registration Form with PECO on July 29, 2021 listing the items that were damaged in the power surge. PECO Exh. 1. Mr. Goebel acknowledged that there were thunderstorms on the night of July 25, 2021, around 9:00 p.m. within his zip code. Tr. 15, 23; Complainant Exh. 2; PECO Exh. 5. However, Mr. Goebel insisted there was no severe weather in his direct vicinity on that night.

PECO's witness, Mr. Nickens, testified that he investigated the Complainant's claim for damages at the Service Address due to the power surge on July 25, 2021. Mr. Nickens indicated that the Service Address is supplied with electricity from PECO's Scott 002 circuit. Tr. 23. He also stated that on the night of July 25, 2021, there were two events that took place on the Scott 002 circuit around the time that the Complainant reported his issue occurred. Tr. 23; PECO Exh. 4. However, he noted that there were no outages at the Service Address itself on July 25, 2021. Tr. 22; PECO Exh. 4. Mr. Nickens indicated that PECO denied the Complainant's claim on July 30, 2021, via email. Tr. 25-26; PECO Exh. 2.

Further, Mr. Nickens asserted that PECO uses the website *WEATHER UNDERGROUND* to get data regarding weather events when there is a claim from a customer.

Tr. 27-28; PECO Exh. 5. The Company inputs the customer's zip code into the website to obtain the weather data for a particular date and location. Tr. 27; PECO Exh. 5. Mr. Nickens testified that PECO obtained the weather data for July 25, 2021, for the Complainant's zip code 19342 from the *WEATHER UNDERGROUND* website. Tr. 27-28; PECO Exh. 5. Mr. Nickens stated that the data showed thunderstorms in the area on that evening, which Mr. Goebel acknowledged. Tr. 15, 23; Complainant Exh. 2; PECO Exh. 5.

As stated above, PECO's Electric Service Tariff states that PECO does not guarantee continuous, uninterrupted or regular supply of electric service. Specifically, PECO shall not be liable for any damages due to accident, strike, storm . . . or any other cause beyond PECO's control. PECO Energy Company Tariff Rule 12.1, Electric Pa. P.U.C. No. 5, effective January 1, 2016; PECO Exh. 3.

Also, 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 there were two events on the circuit that supplies electricity to the Service Address on July 25, 2021. Weather data for that date shows that there were thunderstorms in the Complainant's zip code on that evening around the time that the power surge occurred. Under its Commission-approved tariff, PECO is not responsible for storm damage that is beyond its control. While Mr. Goebel disputes the weather data evidence for that evening, claiming there were no storms in his neighborhood, he does acknowledge that there were storms in his zip code that night. Mr. Goebel presented no evidence to establish that the circuit supplying electricity to his property was not affected by the storms. The Complainant did not provide any evidence to establish that PECO was responsible for the damage he sustained at his property. As such, the evidence of record does not support a finding that PECO violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff. PECO provided reasonable service in accordance with the Public Utility Code and its Commission-approved tariff.

Accordingly, for the reasons stated above, the Complainant's Complaint is denied.

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. PECO provided reasonable service to Complainant consistent with Section 1501 of Title 66 of the Public Utility Code. 66 Pa.C.S. § 1501.

15. Mr. Goebel failed to satisfy his burden to demonstrate that PECO 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 Gene Goebel against PECO Energy Company on August 25, 2021, at docket number C-2021-3028188 is hereby dismissed.
2. That this matter is marked closed.

Date: March 3, 2022

_____/s/
Marta Guhl
Administrative Law Judge