

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Carolyn Onyeka	:	
	:	
v.	:	C-2021-3028342
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Charece Z. Collins
Administrative Law Judge

INTRODUCTION

This Decision dismisses the formal complaint filed by Carolyn Onyeka against Metropolitan Edison Company. Ms. Onyeka failed to satisfy her burden of demonstrating that Metropolitan Edison Company violated the Public Utility Code, a Commission regulation or Commission order with respect to the maintenance of a tree near her home.

HISTORY OF THE PROCEEDING

On August 23, 2021, Carolyn Onyeka (“Complainant” or “Ms. Onyeka”) filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission”) against Metropolitan Edison Company (“Met-Ed”). In her complaint, Ms. Onyeka alleged that Met-Ed violated Section 1501 of Title 66 of the Public Utility Code by failing to provide reliable, safe or quality utility service. Ms. Onyeka averred that Met-Ed failed to properly maintain a tree outside of her home, causing the trunk of the tree to split. Ms. Onyeka requested that Met-Ed pay half of the cost to remove the “hazardous” tree.

Ms. Onyeka's complaint was served on Met-Ed on September 7, 2021. On September 27, 2021, Met-Ed filed a timely answer¹. In its answer, Met-Ed denied that there is a reliability or quality problem with the service provided to Ms. Onyeka. Met-Ed averred that the tree referenced in Ms. Onyeka's complaint was trimmed in 2018 and scheduled for inspection in 2022. Met-Ed further averred that the tree was outside of the right-of-way for Met-Ed's facilities and located in an alley behind Ms. Onyeka's home that was inaccessible with standard equipment. Met-Ed averred that it cut all branches that were on or near the power lines near Ms. Onyeka's home, and the remainder of the tree was Ms. Onyeka's responsibility. Lastly, Met-Ed averred that the tree was not split, and it was not causing a hazard to Ms. Onyeka's home. Met-Ed requested that Complainant's complaint be dismissed with prejudice or denied in its entirety.

On October 20, 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. and assigning me as the presiding officer. In anticipation of that hearing, I served a prehearing order on October 20, 2021, setting forth hearing information and the rules that would govern the proceeding.

The hearing was held as scheduled on November 17, 2021 at 10:00 a.m. Ms. Onyeka appeared on behalf of herself, and Margret Morris, Esquire attended on behalf of Met-Ed, along with three witnesses for Met-Ed (two of which testified). Met-Ed submitted nine exhibits that were admitted into the record, including one late-filed exhibit. Ms. Onyeka did not submit any exhibits.

The record in this case closed on December 21, 2021 upon the filing of the November 17, 2021 hearing transcript with the Commission.

FINDINGS OF FACT

1. The Complainant in this case is Carolyn Onyeka.

¹ While Met-Ed titled its document, "Answer and New Matter," no new matter was included with Met-Ed's answer to the complaint.

2. The Respondent in this case is Metropolitan Edison Company.
3. The Complainant's service address is 838 McKnight St., Reading, PA 19601.
4. Ms. Onyeka's service location is served by Met-Ed's Schuylkill Ave., 154 Circuit. Tr. 44.
5. Vegetation along the Schuylkill 154 Circuit is performed every four years and may sometimes be performed outside of that timeframe as needed. Tr. 44-45.
6. Met-Ed is responsible for maintaining vegetation within the right-of-way along its circuit to ensure that vegetation is not encroaching upon the service lines. Tr. 45.
7. The customer is responsible for maintaining vegetation along the circuit on private property (off-right-of-way vegetation). Tr. 45.
8. Met-Ed has limited rights to remove off-right-of-way trees; however, it may remove trees that are dead, dying or leaning, or trees that may potentially interfere with its facilities, such as its power lines. Tr. 45.
9. Ms. Onyeka called Met-Ed on March 5, 2021 to report that limbs of a tree on her property were on a wire near her home and request that the limbs be trimmed. Tr. 15, 32-33; Exhibit 1.
10. The tree that Ms. Onyeka called about is an off-right-of-way tree, located on private property. Tr. 45.
11. The limbs of the tree on Ms. Onyeka's property have been maintained on a 4-year cycle to keep them from interfering with Met-Ed's facilities. Tr. 45-46, 50.

12. The tree was last trimmed by Met-Ed in 2018. Tr. 46.
13. Met-Ed came to Ms. Onyeka's home on June 23, 2021 to inspect the tree. Tr. 16, 46.
14. At the time of its inspection on June 23, 2021, Met-Ed was informed that Ms. Onyeka's private tree contractor was going to remove the tree. Tr. 46-47.
15. For a safe tree removal, branches needed to be removed to create the required clearance for the contractor to do the work. Tr. 46-47.
16. Met-Ed safely removed the branches on June 23, 2021 and created a ten-foot clearance for the private contractor, consistent with the National Electric Safety Code. Tr. 46, 48; Exhibit 8; NESC § 218.A.1.
17. Prior to being trimmed, the tree was alive and healthy, and there was no mechanical strain on the power line from the tree. Tr. 47-48.
18. The tree remained alive and healthy after being trimmed. Tr. 48-49, 51.
19. The tree was not diseased and dying, but it was instead alive and thriving. Tr. 50-51.
20. A hazardous tree is a tree that is either dying or has the potential to interfere with the Company's facilities. Tr. 50.
21. The tree in Ms. Onyeka's backyard was not a hazardous tree. Tr. 50.

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. § 701. In this proceeding, Ms. Onyeka has alleged that Met-Ed violated section 1501 of Title 66 of the Public Utility Code regarding reasonable, safe and quality service. 66 Pa.C.S. § 1501. Therefore, Ms. Onyeka 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 with the 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).

Utility companies are required by law to provide adequate and reasonable service. Section 1501 of the Public Utility Code 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).

The Code provides that “the Statewide minimum inspection and treatment cycle for vegetation management is between 4-8 years for distribution facilities.” 52 Pa. Code § 57.198(n)(1). The Code further requires electric distribution companies to submit a condition-based plan for vegetation management for its distribution system facilities explaining its treatment cycle. *Id.* The plan must be consistent with the National Electrical Safety Code, Codes and Practices of the Institute of Electrical and Electronic Engineers, Federal Energy Regulatory Commission Regulations and the provisions of the American National Standards Institute, Inc. 52 Pa. Code § 57.198(b).

Safety regulations under the National Electric Safety Code require that there is a distance of ten feet between the energized line and vegetation. NESC § 218.A.1².

² See also *PECO Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996 (Pa. Cmwlt. 2007).

Failure to Meet Burden

Ms. Onyeka testified that in the year 2018 or 2019, she discovered an opening in the trunk of a tree outside of her home. Tr. 13. She first consulted “[her] tree person,” discussed the tree with him, and asked him to come to her home and inspect the tree. Tr. 14-15. She later contacted Met-Ed to discuss her tree. Tr. 15³. Ms. Onyeka further testified that prior to trimming the tree on June 23, 2021, Met-Ed never did anything to maintain the tree on her property during her 21 years of living there, and the tree had become damaged as a result. Tr. 17-18, 51-52, 79-80. She requested that the Commission find that the base of the tree is damaged. Tr. 79. She further requested that the Commission order Met-Ed to pay for half of the cost to remove the tree. Tr. 80.

Met-Ed’s principal witness was Richard Lamoreaux, who has been a Forestry Specialist for 15 years. Tr. 8, 39-40. Mr. Lamoreaux is an Arborist certified by the International Society of Arboriculture, which means that he has been trained in all aspects of arboriculture, including tree ID, tree biology, pruning standards, soil biology, tree nutrition, fertilization, and the industry's best vegetation management and safe practices. He has been certified since 1999. Tr. 42-43.

Mr. Lamoreaux testified that Met-Ed went to Ms. Onyeka’s home on June 23, 2021 to inspect the tree at issue, and when Met-Ed arrived, it was informed that a private contractor would be coming out to remove the tree. Tr. 46-47. Mr. Lamoreaux explained that for a safe removal of the tree, branches needed to be removed to create the required clearance between the tree and the wire for the contractor to do the work. Tr. 46-47. Mr. Lamoreaux testified that safety regulations under the National Electric Safety Code require that there is a distance of ten feet between the energized line and vegetation. Tr. 48; NESC § 218.A.1.⁴ In accordance with the National Electric Safety Code, Met-Ed took a planned power outage on

³ The evidence of record indicates that Ms. Onyeka first discussed the alleged split in the tree with Met-Ed on June 10, 2020. Tr. 29, Exhibit 3. However, she first requested that the limbs be trimmed on March 5, 2021. Tr. 32-33; Exhibit 1.

⁴ See also *PECO Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996 (Pa. Cmwlth. 2007).

June 23, 2021 to safely remove the branches and create a ten-foot clearance for the private contractor. Tr. 46, 48; Exhibit 8.

Prior to the tree being trimmed, Mr. Lamoreaux noted that the tree was alive and healthy, and there was no mechanical strain on the power line from the tree. Tr. 47-48. Mr. Lamoreaux further noted that the tree remained alive and healthy after being trimmed. Tr. 48-49, 51. Mr. Lamoreaux testified that the tree was not dangerously split or damaged. Tr. 51-52. Mr. Lamoreaux submitted pictures of the middle to top of the tree, after the work was completed on June 23, 2021, to show that the tree was growing normally. Tr. 49-50; Exhibit 8.

Moreover, Mr. Lamoreaux testified that Met-Ed is responsible for maintaining vegetation within the right-of-way along its circuit to ensure that vegetation is not encroaching upon the service lines. Tr. 45. Mr. Lamoreaux also testified that Met-Ed's customers are responsible for maintaining vegetation along the circuit on private property (off-right-of-way vegetation). Tr. 45. Mr. Lamoreaux testified that the tree near Ms. Onyeka's home is an off-right-of-way tree, located on private property, and Met-Ed has limited rights to remove off-right-of-way trees; however, it may remove trees that are dead, dying or leaning, or trees that may potentially interfere with its facilities, such as its power lines. Tr. 45. Consistent with the Code, Mr. Lamoreaux testified that Ms. Onyeka's service location is served by the Company's Schuylkill Ave., 154 Circuit, and vegetation along that circuit is performed every four years and may sometimes be performed outside of that timeframe as needed. Tr. 44-45; 52 Pa. Code § 57.198(n)(1).

Mr. Lamoreaux further testified that, though it was an off-right-of-way tree, Met-Ed trimmed the tree on Ms. Onyeka's property on a four-year cycle to keep it from interfering with the power line that serviced Ms. Onyeka's home. Tr. 45-46, 50. The tree was last trimmed in 2018, and it was planned to be inspected again in 2022, consistent with its vegetation management four-year cycle plan. Tr. 50-51; Exhibit 9⁵. Nevertheless, Met-Ed came out to trim

⁵ *Met-Ed Biennial Inspection, Maintenance, Repair and Replacement Plan (2021 through 2022)*, Docket No. M-2009-2094773, filed October 1, 2019, approved January 15, 2020; 52 Pa. Code § 57.198(b).

the tree on June 23, 2021, outside of its vegetation management cycle. Tr. 46, 48. The tree was trimmed at that time to enable Ms. Onyeka's private contractor to safely remove the tree, consistent with the National Electric Safety Code. Tr. 48; NESC § 218.A.1⁶. At the end of the trimming, Mr. Lamoreaux noted that the tree was alive and thriving. Tr. 50-51. Mr. Lamoreaux explained that a hazardous tree is a tree that is either dying or has the potential to interfere with the Company's facilities, and that the tree on Ms. Onyeka's property was not a hazardous tree. Tr. 50. The actions of Met-Ed in this case demonstrate reasonable service under Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501.

It is Ms. Onyeka's burden to establish that Met-Ed violated the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. §§ 332(a), 701. It is only after a complainant establishes a *prima facie* case that the burden shifts to the utility to rebut the evidence presented. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001). Ms. Onyeka did not establish a *prima facie* case. She testified that there was an opening in the trunk of her tree, Tr. 13, but she did not submit any evidence, pictures or otherwise, of the tree at the hearing. Ms. Onyeka testified that she spoke with a "tree person" regarding the tree, Tr. 14-15, but she did not present this person as a witness at the hearing to testify about the tree. Ms. Onyeka testified that she was concerned that the tree was damaged and hazardous, Tr. 17-18, 51-52, 79-80, but she did not present expert testimony regarding the state of the tree or the danger that the tree might pose. Moreover, Ms. Onyeka testified that Met-Ed failed to properly maintain the tree near her home, Tr. 17-18, but she did not submit any evidence in support of that testimony. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence. *Mid-Atl. Power Supply Assoc. v. Pa. PUC*, 746 A.2d 1196 (Pa. Cmwlth. 2000); *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). There is no objective evidence in the record upon which to find that Met-Ed failed to properly maintain the tree near Ms. Onyeka's home, or that Met-Ed did anything to cause the tree to become a hazard to her property.

It is noted that Met-Ed did not provide a picture of the bottom of the tree, which was specifically at issue in this case. However, it was the Complainant's burden to prove that

⁶ See also *PECO Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996 (Pa. Cmwlth. 2007).

the tree was diseased and dying or “open” in the base of the trunk. *See* Tr. 15, 51-52; 66 Pa.C.S. § 332(a). While Met-Ed’s pictures in Exhibit 8, which only show the middle and top of the tree, are not persuasive to prove that the tree was not dangerously split or damaged at the bottom, Complainant did not submit any pictures of the tree, or expert testimony regarding the tree, and she therefore did not establish her burden of proving that the tree was in fact split, dying or dangerous. Mr. Lamoreaux testified that his pictures in Exhibit 8 show that the tree was clearly alive and thriving. Tr. 50. Mr. Lamoreaux also testified that the tree was not open in the base of the trunk of the tree. Tr. 52. Mr. Lamoreaux’s testimony, while credible, may not have been persuasive without supporting evidence; however, it was Ms. Onyeka’s burden to first establish that the tree was not alive and was hazardous, and she provided no evidence in the record upon which to base that fact. There is no evidence in the record that proves that Met-Ed is responsible for removing the tree near Ms. Onyeka’s home. The evidence of record shows that Met-Ed’s actions in this case were reasonable and consistent with all applicable laws, regulations and orders.

In the absence of evidence in the record that supports Ms. Onyeka’s claims, I must find that Ms. Onyeka failed to establish her burden that Met-Ed violated any laws in connection with the maintenance of a tree near her home. Ms. Onyeka also did not establish that Met-Ed is responsible for the removal of the tree. There is no evidence in the record to prove that Met-Ed provided unreasonable service to Ms. Onyeka. 66 Pa.C.S. § 1501.

Accordingly, for the reasons stated above, the Complainant’s Complaint is dismissed.

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 with the 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 the amount of 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. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence. *Mid-Atl. Power Supply Assoc. v. Pa. PUC*, 746 A.2d 1196 (Pa. Cmwlth. 2000); *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

10. The Statewide minimum inspection and treatment cycle for vegetation management is between 4-8 years for distribution facilities. 52 Pa. Code § 57.198(n)(1).

11. The Commission's regulations require electric distribution companies to submit a condition-based plan for vegetation management for its distribution system facilities explaining its treatment cycle. 52 Pa. Code § 57.198(n)(1). The plan must be consistent with the National Electrical Safety Code, Codes and Practices of the Institute of Electrical and Electronic Engineers, Federal Energy Regulatory Commission Regulations and the provisions of the American National Standards Institute, Inc. 52 Pa. Code § 57.198(b).

12. Safety regulations under the National Electric Safety Code require that there is a distance of ten feet between the energized line and vegetation. NESC § 218.A.1. *See also PECO Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996 (Pa. Cmwlth. 2007).

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

14. Met-Ed provided reasonable service consistent with Section 1501 of Title 66 of the Public Utility Code. 66 Pa.C.S. § 1501.

15. Ms. Onyeka has failed to satisfy her burden to demonstrate that Met-Ed has violated the Public Utility Code, a Commission regulation or Commission order. 66 Pa.C.S. §§ 332(a), 701.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Carolyn Onyeka against Metropolitan Edison Company on August 23, 2021 at docket number C-2021-3028342 is hereby dismissed.
2. That this matter is marked closed.

Date: March 18, 2022

/s/
Charece Z. Collins
Administrative Law Judge