

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mary Cressman	:	
	:	
v.	:	C-2021-3028358
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Charece Z. Collins
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On September 7, 2021, Mary Cressman (“Complainant” or “Ms. Cressman”) filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission”) against PECO Energy Company (“PECO”). In her complaint, Ms. Cressman alleged that PECO failed to provide reliable, safe or quality utility service. *See* 66 Pa.C.S. § 1501. Ms. Cressman averred in her Complaint that on July 2, 2021, PECO had an equipment failure that sent a power surge through her home, causing “extensive damage,” including the loss of appliances, the loss of food, and the loss of her home security system. Complaint at page 2. Ms. Cressman further averred

that she sustained a total financial loss of \$8,000, and she expected to be reimbursed by her insurance company in the amount of \$5,000. Ms. Cressman averred that PECO offered to pay her \$1,000. Ms. Cressman requested that the Commission order PECO to pay a total of \$3,000 to cover the remainder of her financial loss. Ms. Cressman attached to her complaint an itemized list of damages, and a letter from BCS, dated September 1, 2021, which closed her informal complaint.

Ms. Cressman's complaint was served on PECO on September 8, 2021. On September 22, 2021, PECO filed a timely answer and new matter. In its answer, PECO admitted that a surge event occurred on the Wicker-001 Circuit in Ms. Cressman's area on July 2, 2021. PECO further admitted that a crossarm failure caused a line to make contact with the Wicker-001 Circuit, which caused a surge event. PECO averred that the Wicker-001 Circuit was last inspected on February 25, 2020, and the circuit on which the failed crossarm was located was last inspected on January 22, 2021. PECO averred that during the last circuit patrol, no defects were noted on the crossarm. PECO cited its Tariff Rule 12.1 which limits damages to \$1,000 absent willful and/or wanton misconduct of the Company. PECO averred that Ms. Cressman was informed on July 13, 2021 that she would be reimbursed \$1,000 as a result of her loss, consistent with its Tariff. In its new matter, which was accompanied by a notice to plead, PECO argued that the Commission does not have jurisdiction to award monetary damages and requested that Complainant's complaint be dismissed. PECO attached a service reliability report, a section of its electric service tariff, and the underlying BCS Decision to its answer.

On October 4, 2021, Ms. Cressman filed a timely reply to PECO's new matter. Ms. Cressman argued that the Commission should have jurisdiction over monetary damages, and that PECO should be responsible for more than the \$1,000 that it offered to cover her expenses.

On October 5, 2021, the Commission served an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for November 30, 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 5, 2021, setting forth hearing information and the rules that would govern the proceeding. On October 8, 2021, the Commission served a second hearing notice, rescheduling

the hearing for December 15, 2021 at 10:00 a.m. due to a case scheduling conflict. I served a second prehearing order on October 8, 2021 in anticipation of the rescheduled hearing.

The hearing was held as scheduled on December 15, 2021 at 10:00 a.m. Ms. Cressman appeared on behalf of herself, and Khadijah Scott, Esquire, attended on behalf of PECO, along with three witnesses for PECO. Ms. Cressman submitted two exhibits that were admitted into the record. PECO submitted six exhibits that were admitted into the record.

The transcript of the hearing was filed with the Commission on January 11, 2022. The exhibits from the hearing were filed with the Commission on January 18, 2022. The record in this case closed on January 18, 2022 upon the filing of the completed December 15, 2021 hearing transcript with the Commission.

FINDINGS OF FACT

1. The Complainant in this case is Mary Cressman.
2. The Respondent in this case is PECO Energy Company.
3. The Complainant's service address is 216 Highland Drive, Landenberg, PA 19340.
4. Ms. Cressman experienced a power surge at her home between 6:00 a.m. and 6:30 a.m. on July 2, 2021, which caused her power to go out. Tr. 10 -11; PECO Exhibit 4.
5. The power outage lasted slightly over three hours. PECO Exhibit 4.
6. Ms. Cressman experienced damage to her home equipment and appliances as a result of the power surge. Tr. 11.

7. When PECO's customers experience an outage, a message displays on PECO's computer system to alert its crew members. Tr. 21.

8. Outages are reported to PECO's system via customer phone calls and PECO's Advanced Metering Infrastructure (AMI), in which a customer's meter pings to PECO's outage management system to signal that it has lost power. Tr. 21.

9. When PECO's crew members receive a message indicating an outage, they are dispatched to the location of the outage to determine the cause of the outage and how to repair it. Tr. 21.

10. PECO's system alerts crew members of power quality issues, such as a partial power outage or flickering lights. Tr. 21.

11. Ms. Cressman's service location is fed by PECO's Wicker-001 Circuit. Tr. 21.

12. The Wicker-001 Circuit is about 12.2 miles long and serves 324 customers in Chester County. Tr. 22.

13. The Wicker-001 Circuit is connected from a 34-kilovolt ("34 kV") feeder circuit. Tr. 22.

14. PECO's outage management system confirmed that Ms. Cressman experienced a sustained outage around 6:29 a.m. on July 2, 2021. Tr. 22-23; PECO Exhibit 4.

15. A "sustained outage" is a power outage that is five minutes or longer in duration. Tr. 22.

16. PECO investigated the incident and determined the cause of the outage that Ms. Cressman sustained and the repair work that was necessary. Tr. 37.

17. The cause of the outage at Ms. Cressman's property on July 2, 2021 was a failed crossarm on a 34 kV feeder circuit along Chesterville Road, that caused the primary wire to fall into contact with Ms. Cressman's Wicker-001 Circuit. Tr. 23-24, 37-38; PECO Exhibit 3; PECO Exhibit 4.

18. The primary wire coming into contact with the Wicker-001 Circuit resulted in a surge event, which caused a sustained outage at Ms. Cressman's service location. Tr. 24; PECO Exhibit 3; PECO Exhibit 4.

19. PECO's crews replaced the failed crossarm on the 34 kV circuit on July 6, 2021. Tr. 26; PECO Exhibit 5.

20. Prior to the July 2, 2021 surge event, the 34 kV feeder circuit was last inspected by PECO on January 22, 2021. Tr. 25; PECO Exhibit 5.

21. The January 22, 2021 inspection did not reveal any crossarm defects on the 34 kV feeder circuit. Tr. 25.

22. Crossarm defects can occur between inspections. Tr. 25-26.

23. During PECO's circuit inspections, crew members visually inspect the pole lines and distribution equipment, searching for signs of deterioration, fraying, rusting, denting, damage, broken parts, or something of the like. Tr. 30-31.

24. PECO also utilizes thermography during circuit inspections. Tr. 30.

25. Thermography looks for "hot spots" that could be caused by a potentially failing connection or improperly operating equipment. Tr. 30-31.

26. Thermography allows PECO to see potential equipment failure in the infrared spectrum before physically seeing the failure. Tr. 31.

27. If any defects are spotted during circuit inspection, PECO's crews are dispatched to make the necessary repairs. Tr. 31.

28. Ms. Cressman filed a claim with PECO on July 7, 2021 for the damages she sustained due to the surge event. Tr. 37-38; PECO Exhibit 1.

29. In response to Ms. Cressman's claim, PECO emailed Ms. Cressman with an acceptance of liability for the claim and an offer to pay \$1,000, consistent with the limit of liability under its Electric Service Tariff. Tr. 38, 40-41; PECO Exhibits 1-3; PECO Tariff Rule 12.1, Electric Pa. P.U.C. No. 6, Original Page No. 22, issued December 21, 2018, effective January 1, 2019.

30. Ms. Cressman was not satisfied with the \$1,000 tariff limitation. Tr. 11-14, 40; Cressman Exhibit 1; PECO Exhibit 2.

31. PECO's outage management system showed a storm flag on July 2, 2021, which means that a storm occurred somewhere in Chester County, although not the specific Landenberg area where Ms. Cressman resides. Tr. 23; PECO Exhibit 4.

32. A storm was not the cause of Ms. Cressman's power outage on July 2, 2021. Tr. 23, 37-38.

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. Cressman has alleged that PECO failed to provide reliable, safe or quality utility service. See 66 Pa.C.S. § 1501. Therefore, Ms. Cressman has the burden of proof in this proceeding with respect to the service that PECO provided to her regarding a power surge at her home.

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) (*Feingold*); *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*. 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.* Ms. Cressman claimed in her complaint that she lost home equipment and several appliances due to the power surge caused by PECO. PECO responded by averring that the Commission does not have the authority to award damages. PECO has also accepted liability for the power surge, and it has offered Ms. Cressman a payment of \$1,000, which is the maximum payment allowed under its Commission-approved tariff.¹ PECO is correct that the Commission does not have the authority to award damages.² Therefore, Ms. Cressman’s claim for damages is dismissed.

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

¹ PECO Tariff Rule 12.1, Electric Pa. P.U.C. No. 6, Original Page No. 22, issued December 21, 2018, effective January 1, 2019.

² *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).

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).

Moreover, 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. PECO shall not be liable for any damages due to accident, strike, storm . . . or any other cause beyond PECO's control. In all other circumstances, PECO's liability shall not exceed \$1,000, absent willful or wanton misconduct. PECO Tariff Rule 12.1, Electric Pa. P.U.C. No. 6, Original Page No. 22, issued December 21, 2018, effective January 1, 2019 ("PECO Tariff Rule 12.1"); PECO Exhibit 1.

Failure to Meet Burden

Ms. Cressman testified that she incurred over \$8,000 in damages to her home equipment and appliances due to the power surge that she experienced on July 2, 2021. Tr. 10 - 11; Cressman Exhibit 1. Ms. Cressman testified that her homeowner's insurance denied a little more than \$2,000 of the damages that she incurred, and she also had to pay a deductible of \$1,000 to her insurance company. Tr. 13-14. Ms. Cressman argued that PECO should be responsible for the full amount of her financial loss, and not the limited amount of \$1,000, because PECO was negligent in the maintenance of its equipment. Tr. 11.

There are two issues to address in this case: (1) Whether PECO provided reasonable service to Ms. Cressman; and (2) Whether PECO engaged in willful or wanton misconduct in the maintenance of its equipment or in the occurrence of the surge that Ms.

Cressman sustained on July 2, 2021. If PECO engaged in willful or wanton misconduct, it would potentially be liable for more than the \$1,000 limit provided in its tariff.

For the reasons that will follow, I find that PECO provided reasonable service in this case, and it did not engage in willful or wanton misconduct with respect to the outage event that occurred on July 2, 2021. PECO will, however, be directed to pay the \$1,000 limit that its tariff provides.

Reasonable Service

Ms. Cressman has alleged that PECO was negligent in the maintenance of its equipment. Tr. 11; Cressman Exhibit 1. Negligence is not the standard that must be met under PECO's Commission-approved tariff; however, I liken the standard of negligence to the reasonable service standard under Section 1501 of the Public Utility Code. According to Black's Law Dictionary, negligence is defined as:

[t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm except for conduct that is intentionally, wantonly, or willfully disregarding of others' rights; the doing of what a reasonable person would not do under the particular circumstances, or the failure to do what such a person would do under the circumstances.

Negligence, BLACK'S LAW DICTIONARY (11th ed. 2019). Section 1501 of the Public Utility Code requires utilities to provide reasonable service. 66 Pa.C.S. § 1501. I therefore interpret Ms. Cressman's negligence argument to mean that PECO failed to provide reasonable service in this case.

I do not find that PECO provided unreasonable service in this matter. Daniel Miller is the Delaware and Chester County Reliability Engineer for PECO. Tr. 18. Mr. Miller's responsibilities include reviewing the daily outage events that come in at PECO, looking for reliability trends, reporting on the frequency and duration of events, and analyzing the data to

determine ways to improve PECO's systems. Tr. 19. Mr. Miller testified that when PECO's customers experience an outage, a message displays on PECO's computer system to alert its crew members. Tr. 21. Mr. Miller explained that power outages are reported to PECO's system via customer phone calls and PECO's Advanced Metering Infrastructure (AMI), in which a customer's meter pings to PECO's outage management system to signal that it has lost power. Tr. 21. Mr. Miller further testified that when PECO's crew members receive a message, they are dispatched to the location of the outage to determine the cause of the outage and how to repair it. Tr. 21.

Mr. Miller testified that Ms. Cressman's service location is fed by PECO's Wicker-001 Circuit. Tr. 21. The Wicker-001 Circuit is connected from a 34 kV feeder circuit. Tr. 22. PECO's outage management system confirmed that Ms. Cressman experienced a sustained outage around 6:29 a.m. on July 2, 2021. Tr. 22-23; PECO Exhibit 4. A "sustained outage" is a power outage that is five minutes or longer in duration. Tr. 22. Ms. Cressman's power outage lasted slightly over three hours. PECO Exhibit 4. Mr. Miller testified that the cause of the outage at Ms. Cressman's property on July 2, 2021 was a failed crossarm on a 34 kV feeder circuit along Chesterville Road, that caused the primary wire to fall into contact with Ms. Cressman's Wicker-001 Circuit. Tr. 23-24, 37-38; PECO Exhibit 3; PECO Exhibit 4. The wire coming into contact with the Wicker-001 Circuit resulted in a surge event, which caused a sustained outage at Ms. Cressman's service location. Tr. 24; PECO Exhibit 3; PECO Exhibit 4. PECO's crews replaced the failed crossarm on the 34 kV circuit on July 6, 2021. Tr. 26; PECO Exhibit 5.

The evidence of record shows that PECO has systems in place to provide reasonable and safe service to its customers. Its outage management system alerts crew members of major power outages, as well as other power quality issues, such as partial power outages or flickering lights. Tr. 21. PECO's crew members are dispatched to the troubled location when a message comes in, and the crew members work to make any necessary repairs. Tr. 21. PECO's system is not only informed by incoming customer calls, but an automated metering infrastructure that enables electric meters to ping to PECO's system and inform it of an outage. Tr. 21. When PECO was informed of the outage in this case, its crews went out to

inspect the damage. Tr. 21. Ms. Cressman's power was restored in a little over three hours. PECO Exhibit 4. The crossarm was also replaced on July 6, 2021. Tr. 26; PECO Exhibit 5.

The fact that PECO restored Ms. Cressman's power in approximately three hours and replaced the failed crossarm by July 6, 2021 supports the finding that despite the equipment failure, PECO provided reasonable service by quickly assessing and resolving the issue. PECO's Tariff does not guarantee a continuous, uninterrupted or regular supply of electric service. PECO Tariff Rule 12.1. Section 1501 of the Public Utility Code also does not require utility companies to provide perfect service. *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super. 1987). When the power outage occurred, PECO quickly resolved the issue.

Ms. Cressman also testified that PECO's circuit inspection was negligent and insufficient. Tr. 11-12. I do not agree. Mr. Miller testified that during PECO's circuit inspections, crew members visually inspect the pole lines and distribution equipment, searching for signs of deterioration, fraying, rusting, denting, damage, broken parts, or something of the like. Tr. 30-31. PECO also utilizes thermography during circuit inspections. Tr. 30. Thermography looks for "hot spots" that could be caused by a potentially failing connection or improperly operating equipment. Tr. 30-31. Thermography allows PECO to see potential equipment failure in the infrared spectrum before physically seeing the failure. Tr. 31. If any defects are spotted during circuit inspection, PECO's crews are dispatched to make the necessary repairs. Tr. 31. Mr. Miller also testified that the Wicker-001 Circuit is about 12.2 miles long and serves 324 customers in Chester County. Tr. 22. Thus, the visualization inspection, combined with the thermography inspection, is a reasonable inspection method to cover the long circuit and try to prevent any problems from occurring.

Mr. Miller testified that prior to the July 2, 2021 surge event, the 34 kV feeder circuit had last been inspected by PECO on January 22, 2021, and that inspection did not reveal any crossarm defects. Tr. 25; PECO Exhibit 5. Mr. Miller noted, however, that crossarm defects can occur between inspections. Tr. 25-26. It is not unreasonable that an equipment defect can occur on a circuit in between inspections, and in fact, occasional equipment failures should likely be expected. Section 1501 of the Public Utility Code requires PECO to provide reasonable

service, not perfect service. 66 Pa.C.S. § 1501; *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super. 1987).

PECO's crossarm, which impacted the Wicker-001 Circuit, failed on July 2, 2021. Despite the equipment failure, Ms. Cressman's power was restored in a little over three hours, PECO Exhibit 4, and the crossarm was fully replaced by July 6, 2021. Tr. 26; PECO Exhibit 5. The evidence of record shows that PECO has a system in place to inspect the length of the circuit, and even after inspection, if a problem occurs, it quickly addresses the issue. The evidence of record does not support a finding that PECO's service in this case was unreasonable.

Additionally, Ms. Cressman filed a claim with PECO on July 7, 2021, for damages sustained from the power surge and outage. Tr. 37-38; PECO Exhibit 1. Robert Nickens is the senior claims case manager for PECO. Tr. 35. Mr. Nickens testified that in response to Ms. Cressman's claim, PECO emailed Ms. Cressman with an acceptance of liability for the claim and an offer to pay \$1,000, consistent with the limit of liability under its Electric Service Tariff. Tr. 38, 40-41; PECO Exhibits 1-3; PECO Tariff Rule 12.1. PECO did not deny liability for the claim; it accepted its role and offered Ms. Cressman the maximum payment allowable under its tariff. *Id.* Ms. Cressman expressed that she was not satisfied with the \$1,000 tariff limitation, as her damages exceeded the limitation amount. Tr. 11-14, 40; Cressman Exhibit 1; PECO Exhibit 2. Still, PECO's admission of liability and offer of the maximum payment under its tariff was reasonable.

Lastly, in her closing argument, which is not sworn testimony, Ms. Cressman argued that PECO allowed excessive vegetation growth and ignored a number of leaning poles near her area. Tr. 53. Ms. Cressman argued that this was an example of PECO's negligent management of its equipment. Tr. 53. However, Ms. Cressman did not provide testimony that included specific locations, dates of the excessive growth or leaning poles, or any objective evidence to support her unsworn argument. Ms. Cressman did not provide evidence to prove that PECO was negligent in the maintenance of its equipment. 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). Ms. Cressman therefore did not prove that PECO provided unreasonable service, and her argument that PECO violated Section 1501 of the Public Utility Code is dismissed.

Willful or Wanton Misconduct

Ms. Cressman has not alleged that PECO engaged in willful or wanton misconduct, but she has alleged that PECO is responsible for the full financial loss that she sustained as a result of the surge event on July 2, 2021. As the Commission has no authority to award damages³, the primary legal standard in this case for PECO's financial liability is PECO's Commission-approved Tariff Rule 12.1. 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 customers⁴. PECO's tariff states that PECO is not responsible for damages caused by events beyond its control, and in all other circumstances, PECO's liability shall not exceed \$1,000, absent willful or wanton misconduct. PECO Tariff Rule 12.1. Therefore, unless PECO engaged in willful or wanton misconduct to cause the power surge to Ms. Cressman's home, its liability under its tariff is limited to a maximum payment of \$1,000. PECO Tariff Rule 12.1.

I do not find that PECO engaged in willful or wanton misconduct in this case. Black's Law Dictionary defines willful as "[v]oluntary and intentional . . . [a] voluntary act becomes willful in law, only when it involves conscious wrong or evil purpose on the part of the actor, or at least inexcusable carelessness." *Willful*, BLACK'S LAW DICTIONARY (11th ed. 2019). Moreover, Black's Law Dictionary defines wanton as "[u]nreasonably or maliciously risking harm while being utterly indifferent to the consequences." *Wanton*, BLACK'S LAW DICTIONARY (10th ed. 2014).

³ 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).

⁴ *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).

There is no evidence in the record that shows that PECO engaged in willful or wanton misconduct in this case. There is no evidence that PECO unreasonably or maliciously risked harm while being utterly indifferent to the consequences. *Wanton*, BLACK'S LAW DICTIONARY (10th ed. 2014). There is no evidence that PECO's maintenance of its equipment involved conscious wrong or evil purpose, or inexcusable carelessness. *Willful*, BLACK'S LAW DICTIONARY (11th ed. 2019). As stated above, PECO inspected the 34 kV feeder circuit on January 22, 2021, and it found no defects with the crossarm at that time. Tr. 25; PECO Exhibit 5. On July 2, 2021, the crossarm failed, and PECO's crews went out to assess the damage, restored Ms. Cressman's power in about three hours, and replaced the crossarm by July 6, 2021. Tr. 26; PECO Exhibit 4; PECO Exhibit 5. PECO also admitted liability for Ms. Cressman's claim and offered the maximum payment under its tariff. Tr. 38, 40-41; PECO Exhibits 2-3; PECO Tariff Rule 12.1. Ms. Cressman presented no evidence to indicate that PECO engaged in willful or wanton misconduct in this case. To the contrary, PECO's actions have not been reckless and have instead been reasonable.

While a Court of Equity may have more broad authority in addressing Ms. Cressman's claims, the Commission has no authority to award damages, and there is no finding of willful or wanton misconduct that would make PECO liable for any more than the \$1,000 allowed under its Commission-approved tariff. Ms. Cressman's argument that PECO is liable for more than its \$1,000 tariff limit is therefore dismissed. PECO will be directed to pay Ms. Cressman the \$1,000 limit in its tariff.

Additional Evidence Considered

In addition to her complaint (Cressman Exhibit 1), Ms. Cressman provided a printout of a screenshot of the weather forecast for July 2, 2021 (Cressman Exhibit 2). Ms. Cressman argued that while PECO's service reliability report indicated that there was a storm on July 2, 2021, there was not a storm on that date. PECO Exhibit 4, Cressman Exhibit 2, Tr. 11 - 12. PECO testified that a storm did not cause its crossarm to fail. Tr. 23, 37-38. PECO further testified that its outage management system showed a storm flag on July 2, 2021, which means that a storm occurred somewhere in Chester County, although not in the specific Landenberg

area where Ms. Cressman resides. Tr. 23; PECO Exhibit 4. PECO further testified that the cause of the surge and outage at Ms. Cressman's property on July 2, 2021 was a failed crossarm on a 34 kV feeder circuit along Chesterville Road, that caused the primary wire to fall into contact with Ms. Cressman's Wicker-001 Circuit. Tr. 23-24, 37-38; PECO Exhibit 3; PECO Exhibit 4. Still, I will address Ms. Cressman's argument and evidence.

Had the occurrence of a storm been at issue in this matter, Cressman Exhibit 2 is not objective evidence to confirm that a storm did not occur on July 2, 2021. Ms. Cressman provided a printout of a weather report from the website www.weather.com, and at the top, it says that the report is as of 10:18 a.m. The report for July 2, 2021 also stated that it was cloudy and 79 degrees. However, a single printout from a website does not prove that a storm did not occur that day. Moreover, even if a printout could confirm whether a storm occurred, Ms. Cressman testified, and PECO's Service Reliability Report shows, that her power outage occurred between 6:00 a.m. and 6:30 a.m. on July 2, 2021. Tr. 10-11; PECO Exhibit 4. Cressman Exhibit 2 does not show what the weather conditions were at that time. Cressman Exhibit 2 is therefore not sufficient to prove that a storm did not occur.

Moreover, as stated above, PECO has admitted liability for the power surge, and PECO testified that a storm did not cause the power surge to Ms. Cressman's home. Tr. 23, 37-38, 40-41; PECO Exhibits 2-3. As PECO has admitted liability for the power surge and confirmed that a storm was not the cause for the power surge, Ms. Cressman's argument and evidence regarding the absence of a storm are moot.

Next, PECO's third witness, Wanda Rucker, regulatory assessor, testified about the underlying BCS determination. Tr. 45-49. Informal BCS decisions are "determinations" whereas the result of a formal complaint is termed a "decision." In addition, informal BCS determinations are governed primarily by Sections 3.111 to 3.113, 52 Pa. Code §§ 3.111, *et seq.*, whereas formal complaints are governed by Chapter 5, 52 Pa. Code, §§ 5.1 *et seq.* More importantly, informal BCS determinations expressly notify the Complainant of a right to appeal by filing a formal complaint. If filed, the Commission provides a hearing *de novo*. *De novo* means to "look at an issue as if from the start. *De novo*, Latin for 'anew' or 'from the first,'

refers to an appellate standard of review that requires the court to look at an issue afresh, without deference to the lower court's decision. An appeal *de novo* is a complete consideration of all of the issues, facts, and law in the case without regard for the findings made by the court that had previously heard the case.” Bouvier Law Dictionary, *de novo* (12th edition). BCS functions as an informal arbiter of disputes between a utility provider and customers. 66 Pa.C.S. § 308(d). This function usually produces cost-effective results without additional use of agency resources and time. However, the Commission has never agreed to be formally bound by these informal determinations. *See Suggs v. Bell Tele. Co. of Pa.*, Docket No. F-00162258 (Opinion and Order entered July 15, 1993). Therefore, although Ms. Rucker’s testimony was credible, I have not relied upon her testimony in my decision.

Conclusion

As stated above, Ms. Cressman has requested that the Commission order PECO to pay the full amount of her financial loss. Because I find no willful or wanton misconduct by PECO, I am ordering that, if it has not already done so, PECO pay the maximum of \$1,000 under its Tariff, as it has already offered to do.

The evidence of record supports a finding that PECO had a crossarm that failed and caused a power surge to enter Ms. Cressman’s home. Tr. 23-24, 37-38; PECO Exhibit 3; PECO Exhibit 4. Ms. Cressman’s power was restored in approximately three hours. PECO Exhibit 4. PECO went out to the area and replaced the crossarm on July 6, 2021. Tr. 26; PECO Exhibit 5. PECO had last inspected the crossarm approximately six months prior to the surge event. Tr. 25; PECO Exhibit 5. PECO acknowledged that equipment failure can happen in between inspections. Tr. 25-26. PECO’s Tariff Rule 12.1 states that PECO does not guarantee a continuous, uninterrupted or regular supply of electric service. PECO Tariff Rule 12.1. Moreover, 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. PECO’s Tariff Rule 12.1 further states that PECO is not liable for any damages due to accident, strike, storm . . . or any other cause beyond PECO’s control, and in all other circumstances, PECO’s liability shall not exceed \$1,000, absent willful or wanton misconduct.

PECO Tariff Rule 12.1. PECO accepted liability for the power surge. Tr. 38, 40-41; PECO Exhibits 2-3. PECO contacted Ms. Cressman and offered to pay the maximum allowable penalty under its Commission-approved Tariff. Tr. 38, 40-41; PECO Exhibit 2; PECO Tariff Rule 12.1.

There is no evidence of record to show that PECO engaged in willful or wanton misconduct to cause a power surge at Ms. Cressman's service location on July 2, 2021. It is not unreasonable to anticipate an occasional outage or equipment failure, and PECO's actions following the outage event in this case, which included replacing the failed equipment, accepting liability for the power surge, and offering payment to Ms. Cressman, support a finding that the service it provided to Ms. Cressman's location was reasonable.

Accordingly, for the reasons stated above, the Complainants' Complaint, which seeks an order for PECO to pay more than its Tariff limit, is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter 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. *De novo* refers to an appellate standard of review that requires the court to look at an issue afresh, without deference to the lower court's decision. *de novo*, BOUVIER LAW DICTIONARY (12th edition).

13. The Commission has never agreed to be formally bound by informal BCS determinations. *See Suggs v. Bell Tel. Co. of Pa.*, Docket No. F-00162258 (Opinion and Order entered July 15, 1993).

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

15. 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.

16. PECO does not guarantee a continuous, uninterrupted or regular supply of electric service. PECO is also not liable for any damages due to accident, strike, storm . . . or any other cause beyond PECO's control. In all other circumstances, PECO's liability shall not exceed \$1,000, absent willful or wanton misconduct. PECO Tariff Rule 12.1, Electric Pa. P.U.C. No. 6, Original Page No. 22, issued December 21, 2018, effective January 1, 2019.

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

18. PECO did not engage in willful or wanton misconduct in the maintenance of its equipment or connected to the power surge that occurred on July 2, 2021. *Willful*, BLACK'S LAW DICTIONARY (11th ed. 2019); *Wanton*, BLACK'S LAW DICTIONARY (10th ed. 2014); PECO

Tariff Rule 12.1, Electric Pa. P.U.C. No. 6, Original Page No. 22, issued December 21, 2018, effective January 1, 2019.

19. Ms. Cressman has failed to satisfy her 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 Mary Cressman against PECO Energy Company on September 7, 2021 at docket number C-2021-3028358 is hereby dismissed.
2. That, if it has not already done so, PECO remit the \$1,000 payment that it offered to Ms. Cressman, consistent with its Electric Service Tariff.
3. That this matter is marked closed.

Date: April 14, 2022

/s/
Charece Z. Collins
Administrative Law Judge