

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Andrea Berardi :
Andrew Berardi :
v. : C-2021-3028230
PECO Energy Company :

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complaint of Andrea and Andrew Berardi against PECO Energy Company because they failed to carry their burden of proving, by a preponderance of the evidence, that the utility has failed to provide them with reliable, safe, and adequate service.

HISTORY OF THE PROCEEDING

On August 26, 2021, Andrea Berardi filed a formal Complaint (Complaint) with the Public Utility Commission (Commission) against PECO Energy Company (PECO, Respondent, or the Company) alleging that she is having a reliability, safety, or quality problem with her electric service. In particular, she alleges that her family experiences preventable power outages whenever there is a storm or wind. She also alleges that one PECO utility pole is being held up by three wires connected down to the ground in her backyard. According to Mrs. Berardi, this is a defective design that places “unsuspecting innocent people (children playing in the backyard, adults, guests), pets and wild animals ... at risk for electrocution, and/or shock

injury, and tripping over the wires on the ground causing other bodily injuries.” Complaint, ¶ 4. Mrs. Berardi adds that she had a fire in the backyard caused by downed wires after a previous storm and expresses her concern that a potential reoccurrence would place her property at risk. Finally, Mrs. Berardi avers that Verizon Communications and Comcast Corporation have added numerous wires onto the poles below the electric cables. She states that she never gave Verizon nor Comcast permission to go on her property and place these dangerous and unsightly wires because she does not use their services.

As relief, Mrs. Berardi requests that: 1) PECO move electric wires underground at its expense; 2) Verizon Communication remove its wires from her backyard at their expense; and 3) Comcast Corporation remove its wires from her backyard at their expense.¹

On September 14, 2021, PECO filed an Answer denying the material allegations of fact in the Complaint.

A Hearing Notice dated September 15, 2021, notified the parties that an initial hearing was scheduled for November 9, 2021, at 10:00 a.m.

A Prehearing Order was issued on October 22, 2021, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on November 9, 2021. Andrea Berardi appeared *pro se* and testified on her own behalf. She also presented the testimony of her husband, Andrew Berardi. Khadijah Scott, Esq., represented the Respondent, and presented the

¹ According to the Commission’s electronic records, on October 26, 2021, Andrea Berardi filed a formal complaint against Comcast Phone of Pennsylvania, LLC at Docket No. C-2021-3028248, requesting that Comcast remove its wires from a pole in her property. Also on October 26, 2021, Andrea Berardi filed a formal Complaint against Verizon Pennsylvania, LLC at Docket No. C-2021-3028249, requesting that Verizon PA remove the lines attached to PECO utility poles running behind her property. Andrea Berardi’s complaints at Docket Nos. C-2021-3028248 and C-2021-3028249 were referred to Mediation Unit of the Commission’s Office of Administrative Law Judge, wherein they were stayed pending the resolution of the present Complaint.

testimony of Diane Breziner, who is a senior engineer for PECO's New Business Group in the Bucks and Montgomery regions.

After Ms. Breziner's direct testimony, Mrs. Berardi requested a continuance of the hearing in order to submit information on a fire that involved PECO facilities in her backyard. Tr. 106. In addition, Mrs. Berardi requested permission to add her husband, Andrew Berardi, as a Complainant in this matter. Tr. 107.

I granted Mrs. Berardi's requests and directed PECO to submit a four-year reliability report for the circuit serving Mrs. Berardi's property. Tr. 110, 115. Also, during the hearing Mr. Berardi suggested that PECO's facilities, currently located in his backyard, be relocated onto Pine Road. I instructed PECO to use the time until the further hearing to assess the feasibility of Mr. Berardi's proposal. Tr. 112-13.

A Hearing Notice dated November 24, 2021, notified the parties that a further hearing was scheduled for December 14, 2021, at 10:00 a.m.

The further hearing convened as scheduled on December 14, 2021. Andrea Berardi and Andrew Berardi appeared *pro se* and sponsored five exhibits which were admitted into the record. Khadijah Scott, Esq., represented the Respondent, and presented the testimony of Robert Bell – who is a senior real estate representative for PECO, Denise Weinberger – who is a PECO engineer, and James Yeatman – who is a senior engineer at PECO's Distribution Standards and Equipment Group. The Respondent sponsored eight exhibits all of which were admitted into the record in this matter.

Before the conclusion of the further hearing, I instructed PECO to submit as a late-filed exhibit the tree-trimming history of the Berardis' property for the last three years. Tr. 225-26. I also instructed the Complainants to submit a picture of Pole # 717 as a late-filed exhibit. The parties were instructed to submit their late-filed exhibits by no later than December 28, 2021, and any written objections by no later than January 14, 2022. Tr. 297.

The Complainants submitted their late-filed exhibit via email on December 14, 2021. PECO did not object to the admission of this exhibit. Complainants' late-filed exhibit will be marked and identified as Complainants late-filed Exhibit 6 and will be admitted into the record in accordance with the ordering paragraphs below.

On December 22, 2021, PECO submitted via email two late-filed exhibits. The Complainants did not object to the admission of these exhibits. PECO's late-filed exhibit – Vegetation work performed at the property of 128 Red Lion Rd., Huntingdon Valley, PA in 2018 – will be marked and identified as PECO late-filed Exhibit 9. PECO's late-filed exhibit – Most recent contact at the property of 128 Red Lion Rd., Huntingdon Valley, PA, housed in PECO's Customer Information Management System (CIMS) – will be marked and identified as PECO late-filed Exhibit 10. These exhibits will be admitted into the record in accordance with the ordering paragraphs below.

The record in this matter closed on January 14, 2022.

FINDINGS OF FACT

1. Complainants are Andrea and Andrew Berardi who reside at 128 Red Lion Road, Huntingdon Valley, PA 19006 (Service Address). Tr. 9.
2. Respondent is PECO Energy Company.
3. Complainants purchased the Service Address in 2003. Tr. 33, 38, 40.
4. The Service Address is served by PECO's Bethayres_135 circuit, which serves 734 customers. Tr. 180.
5. Bethayres_135 consists of 7.8 miles of aerial conductors and 5.2 miles of underground conductors. Tr. 180, PECO Exhibit 5.

6. The Berardis' property is approximately 36,000 square feet, or slightly less than an acre. Tr. 268-69.

7. There are two PECO wooden poles within the Berardis' property: Pole # 718 and Pole # 720.

8. Pole # 718 was installed by PECO in 1992. Tr. 233.

9. Pole # 718 is stabilized with three guy wire attachments. Tr. 230, Complainants Exhibit 5, page 9.

10. A guy wire is an imposing force to a load that's put upon the wooden pole. It increases the pole load strength and ensures that the pole does not fall over due to the weight of attachments. Tr. 231.

11. The first guy wire on Pole # 718 is attached near the top of the pole to oppose the force of the primary wire. Tr. 231.

12. The other two guy wires on Pole # 718 are attached at the communication level to oppose the force of the weight of the communication lines on that pole. Tr. 231.

13. Guy wires consist of steel stranded cable and are not flammable. Tr. 231.

14. The bottom portion of the guy wires on Pole # 718 has yellow plastic covering to make it highly visible. Tr. 232.

15. Pole # 720 was installed by PECO in 1941. Tr. 233.

16. Both Poles ## 718 and 720 are placed within PECO's easement on Berardis' property. Tr. 175, 233.

17. PECO's easement on Berardis' property was executed on August 9, 1940. Tr. 163-64; PECO Exhibits 6 and 7.

18. The Berardis have never challenged the validity of PECO's easement in an appropriate court of law. Tr. 144.

19. Mr. Berardi has cleared the vegetation from PECO's facilities in his backyard. Tr. 47, 62.

20. PECO Pole # 717 is located in a property adjacent to the Berardis' property. Tr. 270.

21. Pole # 717 is located approximately 40 feet away from the Berardis' property line and approximately 150 feet from their residence. Tr. 272.

22. PECO Pole # 717 was installed in the neighboring property in 1941 and carries a transformer. Tr. 233, 261, 267.

23. On March 2, 2018, a Nor'easter storm caused a broken limb to bring down the primary wire between PECO poles 717 and 718. Tr. 218, 220-21, Complainant Exhibits 3 and 4, PECO Exhibit 8.

24. On March 2, 2018, Andrea Berardi contacted PECO to report a fire at or around the bottom of Pole # 717. Complainants Exhibit 3, PECO Exhibit 8.

25. Service was restored on March 5, 2018, after PECO installed 150 feet of new wire. Tr. 217-18, PECO Exhibit 8.

26. The Nor'easter storm that impacted the area in early March of 2018 was a big storm that left 750,000 customers without power. Tr. 220-21, see PECO Exhibit 5.

27. On October 29, 2021, Mrs. Berardi contacted PECO to report a partial power outage. Tr. 214-15.

28. On October 30, 2021, the Berardis experienced a full power outage. PECO Exhibit 5.

29. On October 30, 2021, PECO contractors replaced the transformer on Pole # 717. Tr. 237, 261.

30. PECO determined that the October 30, 2021, outage was not related to a storm, but was caused by a tree limb falling on PECO equipment. Tr. 260-61; PECO Exhibit 5.

31. From November 4, 2017, to November 4, 2021, the Berardis experienced the following sustained power outages:

| | Date | Storm (Y=yes N=no) | Cause | Interruption Duration (minutes) |
|----|-------------|-----------------------------------|---------------------------------------|--|
| 1 | 3/4/2018 | Y | Weather – Downed Wire | 2057 |
| 2 | 3/7/2018 | Y | Equipment -Fuse | 18 |
| 3 | 3/7/2018 | Y | Weather – Tree | 497 |
| 4 | 6/3/2018 | Y | Other – Recloser Opened during storm | 10 |
| 5 | 8/3/2018 | N | Equipment – Downed Wire | 295 |
| 6 | 5/29/2019 | Y | Vegetation – Tree Limb | 110 |
| 7 | 7/6/2019 | N | Vegetation – Vines on secondary lines | 114 |
| 8 | 8/7/2019 | Y | Vegetation – Tree limb | 69 |
| 9 | 8/4/2020 | Y | Vegetation – Tree limb | 530 |
| 10 | 10/30/2021 | N | Vegetation – Tree limb | 855 |

PECO Exhibit 5.

32. A sustained outage is defined as any outage over five minutes in duration. Tr. 181, PECO Exhibit 5.

33. Bethayres_135 was a top priority circuit in 2011, 2015, 2017, and 2019. Tr. 183.

34. PECO's top priority circuit program is a Commission-mandated program to reduce sustained interruptions that customers experience and improve customer satisfaction by addressing reliability on the top five percent worst performing circuits on PECO's system. Tr. 183.

35. On October 10, 2018, PECO installed 1,300 feet of tree resistant cable on the Welsh Road portion of Bethayres_135. Tr. 183; PECO Exhibit 5.

36. On July 21, 2021, PECO replaced approximately 10 rotted poles on Bethayres_135. Tr. 183; PECO Exhibit 5.

37. On February 26, 2021, PECO completed large scale tree trimming and equipment upgrades on sections of Bethayres_135. Tr. 183; PECO Exhibit 5.

38. The last routine tree trimming on Bethayres_135 took place on February 2, 2018. Tr. 200; PECO Exhibit 5.

39. During a routine trimming cycle, PECO or its contractors patrol the length of the circuit inspecting PECO's cable and equipment for possible interference by vegetation. Tr. 200.

40. The tree trimming cycle includes PECO equipment located in customers' backyards like that in Mr. and Mrs. Berardi's property. Tr. 200-201.

41. Pursuant to PECO standards, tree trimming is performed to provide PECO's 13 KV cables with 15 feet of clearance from overhanging fast-growing trees and 12 feet of clearance from medium and slow-growing trees. Tr. 218.

42. The next routine tree trimming cycle is scheduled to take place in 2022. PECO Exhibit 5.

43. On September 20, 2021, PECO contractors completed a tree trimming order at or near the Service Address to remove a tree that had fallen over the wires. PECO late-filed Exhibit 10.

44. The last circuit patrol/thermography of Bethayres_135 was conducted on February 13, 2020. Tr. 201; PECO Exhibit 5.

45. PECO's circuit patrols are mainly conducted visually with the goal of identifying any equipment that is at risk, like leaning poles, splitting cross-arms, etc. Tr. 201.

46. PECO's thermography patrol is conducted using a thermal scanning device that identifies any equipment that is overheating and has the potential to fail. Tr. 202.

47. The circuit patrol and the thermography patrol include PECO equipment located in customers' backyards like that in Mr. and Mrs. Berardi's property. Tr. 202.

48. The next circuit/thermography patrol of Bethayres_135 is scheduled for 2022. PECO Exhibit 5.

49. PECO's poles are inspected visually every ten years through its pole inspection program. Tr. 231-33.

50. The last inspection of the poles in the Bethayres_135 circuit was conducted in 2014, and the next one is scheduled to take place in 2024. Tr. 236-37, see also Tr. 233.

51. The uppermost wire on the two PECO poles in Berardis' property is the secondary wire, which is the connection that provides powers to homes and businesses. Tr. 234, Complainant Exhibit 5, pp. 9-10.

52. The lower wires on the two PECO poles in Berardis' property are communication facilities belonging to Comcast, Verizon, or other similar companies. Tr. 234, Complainant Exhibit Complaint 5, pp. 9-10.

53. In accordance with joint-use agreements reached between PECO and telecommunication companies, PECO must allow telecom facilities to attach their facilities on its poles. Tr. 235.

54. PECO provides telecommunication companies with a standard for the clearances that their facilities must maintain from the ground, from PECO facilities, and from each other. Tr. 235.

55. PECO Standard S0550 indicates vertical clearances between facilities on aerial structures. Tr. 235.

56. Pursuant to PECO Standard S0550, the lower-most communication facility should be 16 feet above grade. Tr. 235, 252.

57. The highest communication facility allowed on PECO's aerial structures cannot exceed 27 feet 2 inches above grade. Tr. 235.

58. If the Berardis want the communication attachments removed from their property, they will have to approach the appropriate companies that own those facilities. Tr. 234-35, see Complainant Exhibit 5, pp. 9-10.

59. Mrs. Berardi contacted PECO on July 17, 2020, explaining that there were loose electric wires running from pole to pole in her backyard. Tr. 77.

60. PECO sent Mrs. Berardi a Service and Meter Application, which is used by PECO customers to request a new service or a change to their existing electric service. Tr. 78.

61. The Complainants did not return the first Service and Meter Application to PECO. Tr. 77.

62. Following the filing of the Complaint, Ms. Breziner contacted Mrs. Berardi via email and sent her a second Service and Meter application. Tr. 78.

63. On June 24, 2021, the Berardis submitted the Service and Meter application to PECO, requesting that the Company move the primary and secondary wires underground. Tr. 82-83; PECO Exhibit 3.

64. By email dated June 25, 2021, Ms. Breziner explained to the Complainants that PECO would not pay the expense of the relocation because these facilities are located inside the customer's property, and that, according to PECO's Tariff, it is the customer who bears the costs of these requests. Tr. 83-86; PECO Exhibits 1 and 4.

65. The June 25, 2021, email also recommended that the Berardis contact Verizon and Comcast to have their respective facilities relocated underground. *Id.*

66. PECO calculates that the cost of relocating underground all its facilities that are currently on the Complainants' property amounts to \$7,809. Tr. 148.

67. Following the initial hearing, a PECO designer visited the Service Address and concluded that, due to the way that PECO's facilities are configured, their relocation to Pine Road is "very complicated to achieve." Tr. 148-49; 152.

68. No relocation costs were calculated for the relocation of PECO facilities from the Berardis' backyard onto Pine Road. Tr. 149.

DISCUSSION

Legal standard

As the proponents of a rule or order, the Berardis bear the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To satisfy this burden, they must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. This must be shown by a preponderance of the evidence. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990) *alloc. den.*, 602 A.2d 863 (Pa. 1992). In addition, 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. A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by the Complainants of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainants shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight to the evidence presented by the Complainants, the Complainants have not satisfied their burden of proof. The Complainants would then be required to provide additional

evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

Service reliability

It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" to its customers. 66 Pa.C.S.A. § 1501. Such service also shall be reasonably continuous, without unreasonable interruptions or delay, and in conformity with the regulations and orders of the Commission. *Id.*

In their Complaint and at the hearings, the Complainants requested that PECO relocate its facilities – Pole # 718, Pole # 720, and electric wires – which are currently located in their backyard, underground or onto the adjacent Pine Road. See Complaint ¶ 5, Tr. 12-13, 45, 63. According to the Complainants, the relocation of these PECO facilities will improve the reliability of their electric service. Tr. 10, 25. The evidence collected in this matter clearly indicates that the Bethayres_135 circuit which serves the Service Address was one of the top five percent worst performing circuits on PECO's system in 2011, 2015, 2017, and 2019. Tr. 183. To address the situation, PECO made Bethayres_135 a top priority circuit during those years and intensified its reliability improvement efforts on this circuit. Tr. 183, PECO Exhibit 5. In addition to the routine tree trimming cycle and circuit patrol/thermography, PECO installed 1,300 feet of tree resistant cable on the Welsh Road portion of Bethayres_135 on October 1, 2018, replaced approximately 10 rotted poles on July 21, 2021, and completed large scale tree trimming and equipment upgrades on February 26, 2021. Tr. 183, 200-201; PECO Exhibit 5. These efforts have resulted in a decrease in the number of sustained outages experienced by the Complainants in the last four years. More specifically, the Service Address was impacted by five sustained outages in 2018, three sustained outages in 2019, one sustained outage in 2020,

and one sustained outage in 2021. Tr. 183, PECO Exhibit 5. In view of the above, I find that PECO's service to the Service Address has improved through the years, with the Company offering reliable service to the Complainants in the years 2020 and 2021.

More importantly, relocating the two PECO poles and wires currently located in the Complainants' backyard underground or onto Pine Road will have small to insignificant impact on service reliability to the Complainants considering that Bethayres_135 circuit, which serves the Service Address, consists of 7.8 miles of aerial conductors and 5.2 miles of underground conductors. Tr. 180, PECO Exhibit 5. Notably, the two PECO poles in Complainants' backyard (Pole # 718 and Pole # 720) and the wires that provides electricity to the Service Address do not have a history of reliability failures. On March 2, 2018, a Nor'easter storm caused a broken limb to bring down the primary wire between PECO Poles ## 717 and 718. Tr. 218, 220-21, Complainant Exhibits 3 and 4, PECO Exhibit 8. However, the Nor'easter storm that impacted the area in early March of 2018 was a big storm that left 750,000 customers without power and is the only incident that involved PECO's facilities in Complainants' backyard. See Tr. 220-21.

Safety of service and facilities

In their Complaint and at the hearings, the Complainants requested that PECO relocate its facilities underground or onto the adjacent Pine Road because they represent a safety hazard to them and the surrounding area. See Complaint, ¶ 4, Tr. 12, 101, 147. They averred that PECO Pole # 718 is a safety hazard because it is supported by three guy wires. Tr. 12, 147; Complainants Exhibit 5, page 9. PECO witness, James Yeatman explained that a guy wire is an imposing force to a load that's put upon the wooden pole. It increases the pole's load strength, and it makes sure that the pole does not fall over due to the weight of attachments. Tr. 231. The first guy wire on Pole # 718 is attached near the top of the pole to oppose the force of the primary wire. Tr. 231. The other two guy wires on Pole # 718 are attached at the communication level to oppose the force of the weight of the communication lines on that pole. Tr. 231. Guy wires consist of steel stranded cable and are not flammable. Tr. 231. The bottom

portion of the guy wires on Pole # 718 has yellow plastic covering to make it highly visible. Tr. 232.

Next, the Complainants testified that the electric wires in their backyard are too low and represent a safety hazard to them and to neighborhood children that may play in their backyard. Tr. 12, 27, 43, 54-55. In addition, they pointed out that the other PECO pole in their backyard, Pole # 720, was installed in 1941. Tr. 238-39, 288. In his testimony, Mr. Yeatman explained that Poles ## 718 and 720, were inspected during the last pole inspection conducted in 2014. Additionally, PECO's facilities in the Complainants' backyard were inspected during the last circuit patrol/thermography of Bethayres_135 that was conducted on February 13, 2020. Tr. 201-202, 236-37. The record contains no indication that the poles and the electric wires in question need repairs. Furthermore, the poles and the electric wires in Complainants' backyard were also inspected as part of PECO's last routine tree trimming on Bethayres_135, which took place on February 2, 2018. Tr. 200; PECO Exhibit 5. The record contains no details of what if any vegetation maintenance was performed by PECO's contractors in Complainants' backyard. However, that is not surprising considering Mr. Berardi's testimony that he meticulously clears vegetation from PECO's facilities in his backyard. Tr. 47, 62.

Looking at the pictures submitted by the Complainants, Mr. Yeatman testified that the PECO facilities that were visible in Complainants Exhibit 5, pp. 9-10 appear in good condition and not in violation of any safety standard. Tr. 236. "There's no siding. There's no leaning. I cannot ascertain the actual height [of the electric wires], but there does not appear to be any sort of clearance violation." Tr. 236. Mr. Yeatman also explained that the uppermost wire on the two PECO poles in Berardis' property is the secondary wire, which is the connection that provides powers to homes and businesses. Tr. 234, Complainant Exhibit 5, pp. 9-10. The lower wires on the two PECO poles are communication facilities belonging to Comcast, Verizon, or other similar companies. Tr. 234, Complainant Exhibit Complaint 5, pp. 9-10. He testified that PECO cannot remove or repair the telecommunication facilities attached to its poles. The Berardis were advised to contact Verizon or Comcast with concerns about those facilities. Tr. 83-86; PECO Exhibits 1 and 4.

Last, the Berardis testified that PECO Pole # 717 presents a safety concern for them and the surrounding area. They pointed out that PECO Pole # 717 was involved in a fire in March 2018 and had an issue with a transformer in October 2021. Tr. 34-35, 237-261. According to the Berardis, Pole # 717 represents a safety concern because the pole is loose or unstable and because of poor vegetation maintenance on the part of PECO. Tr. 34-35, 59-62, 288-89. In response, PECO witness Denise Weinberger testified that on March 2, 2018, a Nor'easter storm caused a broken limb to bring down the primary wire between PECO poles 717 and 718. On the same day Mrs. Berardi reported a fire at or around the bottom of Pole # 717. Tr. 218, 220-21, Complainant Exhibits 3 and 4, PECO Exhibit 8. Service was restored on March 5, 2018, with PECO installing 150 feet of new wire. Tr. 217-18, PECO Exhibit 8. With regard to the October 30, 2021, outage, Ms. Weinberger testified that the outage was not related to a storm but was caused by a tree limb falling on PECO equipment. Tr. 260-61; PECO Exhibit 5. PECO contractors replaced the transformer on Pole # 717. Tr. 237, 261.

Mr. Berardi attempted to refute PECO's testimony regarding the October 30, 2021 outage by stating:

Well, that report's incorrect, totally incorrect. Did you inspect the transformer? There was no vegetation whatsoever on it. There is no vegetation near it. I can send you a picture now of it. Nobody cut any trees down. There's no vegetation near it.

Tr. 256. This despite insisting that poor vegetation maintenance on the part of PECO is responsible for creating hazardous conditions at or around Pole # 717. See Tr. 33, 61-62, 288-89, 293.

Importantly, PECO Pole # 717 is not located in the Berardis' property. Instead, it is located in a property adjacent to the Berardis'. Tr. 270. More specifically, Pole # 717 is located approximately 40 feet away from the Berardis' property line and approximately 150 feet from their residence. Tr. 272. Additionally, Complainants late-filed Exhibit 6 purporting to show PECO Pole #717 depicts a sturdy-looking wooden pole that is neither leaning nor loose. Although vegetation clearance around the pole is hard to assess from the picture angle, the

transformer appears to be firmly affixed to the pole and none of the wires appear to be hanging low. Complainants late-filed Exhibit 6

In view of the above, I find that the Complainants have failed to carry their burden of proving by a preponderance of the evidence that PECO has failed in its duty to provide them with safe service.

A public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316, *Kossmann v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997); and *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977). If the Complainants still wish to relocate their electric service underground, they will bear the cost of relocation in accordance with the provisions of Sections 3.6 and 10.7 of PECO Electric Tariff which state, *inter alia*, that “customers desiring an underground service from overhead wires must bear the excess cost incident thereto.” PECO Exhibit 4.

The Berardis’ Complaint against PECO Energy Company is dismissed in its entirety with prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. As the proponents of a rule or order, the Complainants bear the burden of proof. 66 Pa.C.S. § 332(a).

3. To satisfy the burden of proof, the Complaints must demonstrate by the preponderance of the evidence that the respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

4. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990) *alloc. den.*, 602 A.2d 863 (Pa. 1992).

5. 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. A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

6. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

7. It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" to its customers. 66 Pa.C.S. § 1501.

8. Service shall be reasonably continuous, without unreasonable interruptions or delay, and in conformity with the regulations and orders of the Commission. 66 Pa.C.S. § 1501.

9. A public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316, *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997); and *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).

