

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sherry Yosko	:	
	:	
v.	:	C-2021-3028897
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

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

**HISTORY OF THE PROCEEDING**

On September 25, 2021, Sherry Yosko (“Complainant” or “Ms. Yosko”) filed a formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) against PECO Energy Company (“PECO,” “Company,” or “Respondent”). In the Complaint, Ms. Yosko alleged that PECO failed to provide reliable, safe or quality utility service. 66 Pa.C.S. § 1501. Ms. Yosko averred that a power surge in her home on September 14 and 15, 2021 caused damages to her property for which the Company has refused to take

responsibility. Ms. Yosko requested damages for a window air conditioning unit and electrician bill that was caused by the power surge.

Ms. Yosko's Complaint was served on PECO on October 1, 2021. On October 12, 2021, PECO filed a timely Answer and New Matter. In its Answer, PECO denied that there is a reliability or quality problem with the electric service provided to Ms. Yosko. In its New Matter, which was accompanied by a notice to plead, PECO asserted that the Commission does not have jurisdiction to consider an implied request for reimbursement for property damage, and that the Public Utility Code does not require perfect service. PECO requested that Complainant's Complaint be dismissed with prejudice or denied in its entirety.

On November 9, 2021, the Commission served an Initial Telephonic Hearing Notice setting a formal call-in telephonic hearing for this matter for December 22, 2021, at 10:00 a.m., and assigning me as the presiding officer.

The hearing was held as scheduled on December 22, 2021. Ms. Yosko appeared on her own behalf, and Khadijah Scott, Esquire, appeared on behalf of PECO, along with two witnesses, Mr. Timothy Grow, a PECO Senior Claims Case Manager, and Mr. Daniel Miller, a Reliability Engineer for Delaware and Chester Counties. PECO submitted four exhibits that were admitted into the record. Ms. Yosko requested leave to file a late filed exhibit which was the electrician's bill. I gave the Complainant until December 27, 2021 to file the late filed exhibit and PECO until January 3, 2022 to file any objection to the exhibit.

The Complainant filed the late filed exhibit on December 27, 2021 and PECO did not file any objection to the exhibit. As such the late filed exhibit will be entered into the record through this decision.

The record in this case closed on January 26, 2022, upon the filing of the December 22, 2021 hearing transcript with the Commission with exhibits.

## FINDINGS OF FACT

1. The Complainant in this case is Sherry Yosko who resides at 444 Queen Street, Spring City, Pennsylvania 19745 (“Service Address”). Tr. 7.
2. The Respondent in this case is PECO Energy Company.
3. On September 15, 2021, the Complainant was awakened to three power surges at the Service Address. Tr. 8.
4. After the power surges, the Complainant had lost power at the Service Address. Tr. 8.
5. There was no storm in the area on September 15, 2021. Tr. 8.
6. When the Complainant woke up the next morning, she only had power in half of the residence. Tr. 8.
7. The Complainant contacted PECO who then visited the Service Address on September 15, 2021 and left notice that the Complainant should call an electrician. Tr. 8.
8. The Complainant contacted an electrician who checked her breaker box on the afternoon of September 15, 2021 and was able to get power to the rest of the residence. Tr. 8, 10.
9. The Complainant’s window air conditioning unit was not working even after the electrician visited the residence. Tr. 8.
10. The Service Address is served by a circuit called Spring City 1. Tr. 21.
11. The Complainant experienced a sustained power outage on September 15, 2021. Tr. 21-22.

12. PECO's outage management system records information regarding sustained outages which last over five minutes. Tr. 21-22.

13. The outage management system indicated that the outage on September 15, 2021 was caused by a tree that fell on PECO's right-of-way near the Spring City substation and came into contact with the primary wires that feed the substation. Tr. 22; PECO Exh. 3.

14. PECO's last routine tree trimming was performed around April 1, 2021 to clear vegetation around the primary facilities. Tr. 23; PECO Exh. 4.

15. PECO also performed an annual patrol of the circuit on March 26, 2021 looking for defects and any unsafe conditions around the lines. Tr. 23; PECO Exh. 4.

16. At that time, there was no indication that there were issues with vegetation and facilities on the Spring City 1 circuit. Tr. 23-24; PECO Exh. 4.

17. PECO denied the Complainant's claim dated October 13, 2021 as the outage was caused by a non-preventable tree fall. Tr. 16-17; PECO Exh. 1, 3 and 4.

18. PECO tariff Section 12.1 indicates that the Company is not responsible for damage caused by circumstances that are beyond its control. Tr. 17.

## 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.P.U.C. 196 (1990). "Burden of proof" means a duty to establish a fact by a preponderance of the

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

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth 2001); *see also, Burlison 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. Yosko claimed in her complaint that she lost a window air conditioning unit due to the power surge on September 15, 2021. PECO responded by averring that its service has at all times been reasonable, and the Commission does not have the authority to award damages. PECO is correct that the Commission does not have the authority to award damages, and therefore, Ms. Yosko's claims for damages are dismissed.

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

**§ 1501. Character of service and facilities.**

Every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the Commission.

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

A utility's Commission-approved tariff (list of services, rules for service and rates for service) has the force of law and is binding on the utility and its customers. *Pa. Elec. Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977). Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. Pa. Pub. Util. Comm'n*, 594 A.2d 816 (Pa. Cmwlth. 1991), *alloc. den.*, 605 A.2d 335 (Pa. 1992); 66 Pa.C.S. § 316.

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

#### Failure to Meet Burden

Ms. Yosko testified that on September 15, 2021, she was awakened to three power surges at the Service Address. Tr. 8. After the power surges, the Complainant indicated that she had lost power in the Service Address. Tr. 8. Ms. Yosko testified that there was no storm in the area on September 15, 2021. Tr. 8. When the Complainant woke up the next morning, she only had power in half of the residence. Tr. 8. The Complainant contacted PECO and they visited on September 15, 2021 and left notice that the Complainant should call an electrician. Tr. 8. The Complainant contacted an electrician who checked her breaker box and was able to get power to the rest of the residence. Tr. 8. The Complainant testified that her window air conditioning unit was not working even after the electrician visited the residence. Tr. 8.

PECO's witness, Mr. Grow, testified that he investigated the Complainant's claim for damages at the Service Address due to the power surge on September 15, 2021. Mr. Grow indicated that PECO denied the Complainant's claim because the outage was caused by a non-preventable tree fall which was beyond its control. Tr. 16-17; PECO Exh. 1, 3 and 4.

Further, Mr. Miller, a reliability engineer, testified that the Service Address is served by a circuit called Spring City 1. Tr. 21. Mr. Miller stated that the Complainant experienced a sustained power outage on September 15, 2021. PECO Exh. 3. However, Mr. Miller noted that PECO's outage management system records information regarding sustained outages which last over five minutes. Tr. 21-22. The outage management system indicated that the outage on September 15, 2021 was caused by a tree that fell in the PECO right-of-way near the Spring City substation and came into contact with the primary wires that feed the substation. Tr. 22; PECO Exh. 3 and 4. Mr. Miller testified that PECO's last routine tree trimming was

performed for the circuit around April 1, 2021 to clear vegetation around the primary facilities. Tr. 23; PECO Exh. 4. PECO also performed an annual patrol of the circuit on March 26, 2021 looking for defects and any unsafe conditions around the lines. Tr. 23; PECO Exh. 4. Mr. Miller testified that there was no indication that there were issues with vegetation and facilities on the Spring City 1 circuit when the annual patrol was performed. Tr. 23-24; PECO Exh. 4.

As stated above, PECO's Electric Service Tariff states that PECO does not guarantee continuous, uninterrupted or regular supply of electric service. Specifically, PECO shall not be liable for any damages due to accident, strike, storm or any other cause beyond PECO's control. *PECO Tariff Section 12.1.*

Also, Section 1501 of the Public Utility Code requires reasonable service, not perfect service. 66 Pa.C.S. § 1501; *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super. 1987). The record reflects that there was an outage at the Service Address on September 15, 2021. However, PECO records indicate that the outage was caused by a tree falling and coming in contact with primary wires feeding the Spring City substation. PECO determined that the tree fall was non-preventable because routine tree trimming and an annual patrol were performed on the circuit that serves the Service Address, in April and March 2021. Under its Commission-approved tariff, PECO is not responsible for damage that is beyond its control. The Complainant did not dispute that the Company had performed tree trimming and an annual patrol of the circuit that serves the Service Address. The Complainant did not provide any evidence to establish that PECO was responsible for the damage she sustained at her property. PECO performed its responsibilities with the tree trimming and annual patrol on the circuit. As such, the evidence of record does not support a finding that PECO violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff. PECO provided reasonable service in accordance with the Public Utility Code and its Commission-approved tariff.

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

## CONCLUSIONS OF LAW

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

8. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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

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

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

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

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

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

15. Ms. Yosko 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 Complainant's Late Filed Exhibit No. 1 is entered into the record.
2. That the formal complaint filed by Sherry Yosko against PECO Energy Company on September 25, 2021, at docket number C-2021-3028897 is hereby dismissed.
3. That this matter is marked closed.

Date: April 25, 2022

\_\_\_\_\_/s/  
Marta Guhl  
Administrative Law Judge