

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held April 14, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
John F. Coleman, Jr., Vice Chairman  
Ralph V. Yanora

Brian and Diane Zampatti

C-2020-3021157

v.

West Penn Power Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Charece Z. Collins, issued on January 31, 2022, in the above-captioned proceeding. No Exceptions have been filed. However, we have exercised our right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h). For the reasons stated below, we shall adopt the Initial Decision, as modified, consistent with this Opinion and Order.

## History of the Proceeding

On July 16, 2020, Brian and Diane Zampatti (Complainants) filed a Formal Complaint (Complaint) with the Commission against West Penn Power Company (West Penn or Company) regarding service at 123 Meadow Lane, Belle Vernon, Pennsylvania 15012 (Service Address). In the Complaint, the Complainants alleged that West Penn violated Section 1501 of Title 66 of the Code by failing to provide reliable, safe or quality utility service. The Complainants averred that they lost power to their home multiple times (an average of 6-8 times per week), which led to damaged appliances and several other issues. Complaint at 2-4. The Complainants requested compensation for the loss of their home appliances; the repair of reclosures on the lines on the main roads that branch off to their house; and an explanation as to why they would lose power if the electrical grid would change locations. *Id.* at 5.

On August 25, 2020, West Penn filed a timely Answer and New Matter.<sup>1</sup> In its Answer, West Penn denied that there is a reliability or quality problem with the electric service provided to the Complainants. Answer at 2-3. West Penn averred that the Complainants were not experiencing power outages, but West Penn's reclosures were instead working as designed. Answer at 3. In its New Matter, which was accompanied by a notice to plead, West Penn asserted that the Commission does not have jurisdiction to consider an implied request for reimbursement for property damage, and that the Code does not require perfect service. *Id.* at 7. West Penn requested that the Complainants' Complaint be dismissed with prejudice or denied in its entirety. Alternatively, West Penn requested that the matter be referred to the Commission's Mediation Unit. The matter was referred to mediation where it was not resolved.

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<sup>1</sup> The Complaint was served on West Penn on August 5, 2022. I.D. at 2.

On April 27, 2021, the Commission served an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for May 20, 2021. The ALJ was assigned as the presiding officer. On April 29, 2021, West Penn's counsel filed a request for continuance which was unopposed. By order dated May 7, 2021, the ALJ granted West Penn's continuance request and an initial telephonic hearing in this matter was rescheduled for June 21, 2021. The hearing was held as scheduled on June 21, 2021. Margaret Morris, Esquire attended on behalf of West Penn, along with five witnesses for West Penn. The Complainants did not attend the hearing but called the Office of Administrative Law Judge. Subsequently, the Complainants requested a second hearing. West Penn did not object to their request and by an order dated July 9, 2021, the ALJ granted the request and a new hearing was scheduled for September 27, 2021.

The second hearing was held as scheduled. The Complainants appeared on behalf of themselves, and Margaret Morris, Esquire appeared on behalf of West Penn, along with three witnesses. West Penn submitted thirteen exhibits that were admitted into the record. The Complainants did not submit any exhibits.

The record in this case closed on November 3, 2021, upon the filing of the September 27, 2021 hearing transcript with the Commission.

On January 31, 2022, the Commission issued the Initial Decision of ALJ Collins which dismisses the Complaint filed by the Complainants against West Penn on the grounds that they failed to satisfy their burden of demonstrating that West Penn violated the Code, a Commission order or regulation or a Commission-approved tariff of the Company with respect to the service provided to them regarding a power surge at their home.

## Discussion

Section 332(a) of the 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 Code, the Commission’s Regulations, or an outstanding order of the Commission. 66 Pa. C.S. §§ 332(a), 701. In this proceeding, the Complainants have alleged that West Penn violated section 1501 of the Code regarding reasonable, safe and quality service. 66 Pa. C.S. § 1501. Therefore, the Complainants have 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. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burleson v. Pa. PUC*, 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. PUC*, 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 Code. *See Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008); *see also Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977); *see also Pettko v. Pa. Am. Water Co.*, 39 A.3d 473 (Pa. Cmwlth. 2012). The Commission's jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977). The statutory array of Commission remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. *Id.* The Complainants claimed in their Complaint that they lost several appliances due to power surges caused by West Penn. West Penn responded by averring that its service has at all times been reasonable, and the Commission does not have the authority to award damages. West Penn is correct that the Commission does not have the authority to award damages, and therefore, the Complainants' claims for damages are dismissed.

While damages cannot be awarded to complainants by the Commission, utility companies are required by law to provide the Complainants with adequate and reasonable service. Section 1501 of the 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. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995); *Brockway Glass Co. v. Pa. PUC*, 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. PUC*, 594 A.2d 816 (Pa. Cmwlth. 1991), *alloc. denied*, 605 A.2d 335 (Pa. 1992), 66 Pa. C.S. § 316. West Penn's Electric Service Tariff states that West Penn does not guarantee a continuous, uninterrupted or regular supply of electric service. West Penn may, without liability, interrupt or limit the supply of electric service for the purpose of making repairs, changes or improvements in any part of its system for the general good of the service or the safety of the public. West Penn shall not be liable for any damages due to accident, strike, storm . . . or any other cause beyond West Penn's control. West Penn Tariff Rule 21, Electric Pa. P.U.C. No. 40, effective May 3, 2015 ("West Penn Tariff Rule 21"); Exhibit 11.

### **ALJ's Initial Decision**

ALJ Collins made twenty-one Findings of Fact and reached sixteen Conclusions of Law. I.D. at 3-5, 12-14. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law except as reversed or modified by this Opinion and Order, either expressly or by necessary implication.

The ALJ found that the Complainants' Complaint should be dismissed based on the fact that they failed to sustain their burden of proof as demonstrated by the record of the case. Specifically, the ALJ found that the Complainants testified that they began losing power in their home between 2015 and 2016 and that they called West Penn to report the outages, but they could not remember the dates of the calls. I.D. at 8. Furthermore, they also did not identify the persons they spoke with. *Id.* In addition, although the Complainants testified that they experienced 200 power outages a year, the record evidence does not reflect this testimony. *Id.*

The Complainants also testified that they lost appliances in their home between 2017 and 2019 due to power surges however, they did not submit any documentation into evidence regarding loss of power, the reason for the loss of power, or damage to their appliances. *Id.* Consequently, the ALJ found that there is no evidence in the record to prove that West Penn provided unreasonable service and caused damage to the Complainants' appliances or violated 66 Pa. C.S. § 1501. *Id.*

In further support of failing to sustain their burden of proof, the Complainants themselves testified that West Penn came to their home to resolve their power issues. Specifically, West Penn replaced equipment at the Complainants' home, replaced a transformer that blew in March 2021, and it worked on the power lines.<sup>2</sup> *Id.* Apart from the replaced transformer, the Complainants did not provide a timeframe for when these improvements occurred. After West Penn made all of the aforementioned replacements, the Complainants experienced fewer power outages than they had previously experienced. I.D. at 8-9. Specifically, the Complainants testified that they

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<sup>2</sup> We note that although the cover page of the Tariff Rule in West Penn's Exhibit 11 is from the Company's tariff which indicates an effective date of June 21, 2021; the relevant Rule 21, which is applicable in this case, is on page two of Exhibit 11 and became effective on May 3, 2015. In addition, West Penn's expert also testified that the effective date of Tariff Rule 21 was May 3, 2015. I.D. at 9.

only experienced outages “every once in a while” following West Penn’s improvements. *Id.* at 9.

The Complainants also testified that West Penn did not take their power outage issues seriously until years after their reports began. *Id.* However, the evidentiary record shows that when the Complainants filed a claim with West Penn on November 19, 2018, alleging damages sustained on November 17, 2018, due to a power surge caused by West Penn, West Penn promptly investigated that claim and issued a denial letter on November 20, 2018. *Id.* Furthermore, West Penn presented testimony that when an outage complaint is filed, a claims representative will open the customer’s account to try to find the cause of the power outage (reclosure event, planned outage, etc.). *Id.* If the representative does not find any issues, they will then look at the circuit or substation to search for issues. *Id.* If issues are found, the representative will complete an investigation and refer to West Penn’s Tariff Rule 21 to ascertain the Company’s liability, if any. *Id.*

After completing its investigation, West Penn determined that there were no reports of abnormal voltage on November 17, 2018, and a storm had occurred on November 17, 2018, which resulted in a tree on the power line. *Id.* Consistent with its Tariff Rule 21,<sup>3</sup> West Penn determined that it was not liable for any alleged damage to appliances caused on November 17, 2018. *Id.*

Furthermore, West Penn submitted documentation of power outages at the Complainants’ home from November 2017 and September 2021. Specifically, between November 2017 and April 2021, the Complainants experienced a total of fourteen outage events, five of which were planned outages to upgrade facilities and replace equipment;

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<sup>3</sup> “West Penn shall not be liable for any damages due to accident, strike, storm . . . or any other cause beyond West Penn’s control . . .” West Penn Tariff Rule 21.

two of which were forced; four of which were caused by tree issues; and three of which were due to equipment failures. I.D. at 10. There were no service interruptions from May 1, 2021 to June 9, 2021. *Id.* Between June 10, 2021 and August 29, 2021, the Complainants experienced eight reclosure events lasting one minute or less. *Id.* There were no reclosure events from August 30, 2021 to September 29, 2021. *Id.*

As stated above, West Penn's tariff does not guarantee a continuous, uninterrupted supply of electric service. West Penn may, without liability, interrupt or limit the supply of electric service for the purpose of making repairs, changes or improvements in any part of its system for the general good of the service or the safety of the public. West Penn is also not liable for any damages due to accident, strike, storm, or any other cause beyond West Penn's control. *Id.*

The ALJ noted that Section 1501 of the 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 several of the outages experienced by the Complainants were due to West Penn performing maintenance in the area to improve its systems. Over the span of four years, the evidence of record shows that West Penn experienced three equipment failures which led to temporary outages. West Penn testified that it does periodic inspections of its equipment and facilities consistent with American National Standards Institute Incorporated (ANSI). *Id.* West Penn's inspections would not guarantee that its equipment would not sometimes fail. However, three equipment failures over four years would not constitute unreasonable service. The regular maintenance that West Penn performed on its equipment and power lines demonstrates reasonable service. The Complainants testified that they experienced fewer power outages after West Penn made repairs in the area and that the work done by West Penn led to improvement of their electricity service. *Id.* The evidence of record supports the finding that West Penn did not violate the Code, a Commission order or regulation or a

Commission-approved tariff. West Penn provided reasonable service in accordance with the Code and its Commission-approved tariff. *Id.*

Regarding the Complainants' alleged outages in the year 2015, the evidentiary record reflects a claim filed with the Commission's Bureau of Consumer Services on July 28, 2015, which was denied on December 28, 2015. I.D. at 11. There is no evidence in the record regarding claims by the Complainants that were not heard and investigated.<sup>4</sup> *Id.*

Additionally, in their Complaint, the Complainants alleged that West Penn's reclosures were not working properly and caused power surges. In response, West Penn presented a witness, Michael Shawn Hindman, who is a reliability engineer for West Penn. Mr. Hindman has been employed with West Penn for 32 years. He has held his current position for six years. *Id.* Mr. Hindman testified that a "reclosure" performs similar to a circuit breaker in a home: When a fuse blows in a home, a circuit breaker can be turned off to stop the flow of electricity to prevent further damage. Similarly, when an electrical fault occurs on a power line, the reclosure will automatically stop the flow of electricity and prevent sustained outages to customers. *Id.* Mr. Hindman further testified that reclosures do not cause power surges or change the voltage on a power line; reclosures only stop the flow of electricity. *Id.* While the Complainants argued that reclosures should prevent power surges, Mr. Hindman testified that it is not the purpose of reclosures to prevent power surges, but to briefly stop the flow of electricity in the event of an electrical fault. *Id.* A reclosure cannot impact the amount of voltage that enters a person's home. *Id.*

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<sup>4</sup> In her closing statement, which is not sworn testimony, Mrs. Zampatti argued that two years passed before West Penn acted on her complaints, but no evidence was presented to support this argument. I.D. at 11.

Lastly, in their Complaint, the Complainants alleged that the location of their power grid had been changed. However, Mr. Hindman testified that his understanding of this allegation was not clear, but that the Complainants' service location has always been served by the same substation and circuit. I.D. at 11. Therefore, the ALJ also rejected this argument.

Accordingly, for the reasons stated above, the ALJ dismissed the Complaint on the grounds that the Complainants failed to sustain their burden of proof. *Id.*

### **Disposition**

As a preliminary matter, any argument that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. We are not required to consider expressly or at length each contention or argument raised by parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). On exercise of our independent review of the Parties' positions in their pleadings in this case, we shall adopt the Initial Decision, as modified, consistent with the following discussion.

The record in this case indicates the Complainants experienced a total of fourteen outages from November 16, 2017 to April 22, 2021. Further, the Complainants experienced eight reclosure events, with interruptions lasting less than one minute, between June 10, 2021 and August 29, 2021.

In addition, the record does indicate that West Penn took steps to remedy the service concerns claimed by the Complainants. Such actions include replacing

equipment at or near the home including a transformer. Importantly, the record also indicates the Complainants experienced fewer outages after these actions were taken.

Under the circumstances of this case and the apparent good faith efforts of West Penn and the corresponding results, we find that the ALJ correctly dismissed the Complaint because the Complainants failed to sustain their burden of proof. While the circumstances in this case do not rise to such a level to support sustaining this Complaint, they do warrant further review by Commission staff to help ensure continued reliable, safe and quality service into the future. To that end, we find it prudent and necessary to refer this proceeding, and specifically the service interruptions disclosed in the record herein, to the Bureau of Technical Utility Services – Reliability Division for monitoring and any other appropriate actions deemed necessary.

**Conclusion**

Based on the foregoing, we shall adopt the Initial Decision of ALJ Collins, as modified, consistent with this Opinion and Order; **THEREFORE,**

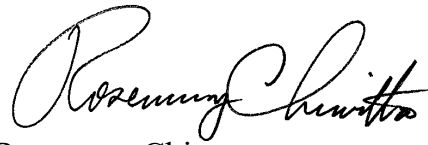
**IT IS ORDERED:**

1. That the Initial Decision of Administrative Law Judge Charece Z. Collins issued on January 31, 2022, is adopted as modified, consistent with this Opinion and Order.
  
2. That the matter of the Formal Complaint of Brian and Diane Zampatti at Docket No. C-2020-3021157 be referred to the Bureau of Technical Utility Services – Reliability Division for monitoring and any other appropriate actions as deemed necessary.

3. That the Formal Complaint filed by Brian and Diane Zampatti on July 16, 2020, at Docket Number C-2020-3021157, is dismissed, consistent with this Opinion and Order.

4. That the proceeding at Docket No. C-2020-3021157 be marked closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: April 14, 2022

ORDER ENTERED: April 25, 2022