

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

George and Margaret Robinson	:	
	:	
v.	:	C-2022-3030593
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Decision dismisses the formal complaint filed by George and Margaret Robinson against PECO Energy Company. Mr. and Mrs. Robinson failed to satisfy their 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 maintenance of a tree near their home.

HISTORY OF THE PROCEEDING

On January 27, 2022, George and Margaret Robinson (Robinsons or Complainants) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission or PUC) against PECO Energy Company (PECO or Respondent). In the complaint, the Robinsons alleged that PECO failed to properly maintain a tree outside of their home which fell onto power lines causing a fire that damaged their home and property. Complainants also averred that PECO failed to promptly respond to their inquiries concerning

the incident and refused to take remedial action until an underwriter's certification was supplied.¹ As relief, the Complainants requested that PECO replace the power lines that were damaged by the fallen tree, replace a damaged pole owned by the Robinsons, and reconcile a claim for damages made by the Robinsons with their insurance company.²

On February 16, 2022, PECO filed an answer along with new matter in which PECO admitted that it provides residential electric service to the Robinsons at their home and acknowledged that it was aware of the January 10, 2022, incident at their home.

In its answer, PECO acknowledged that on January 26, 2022, the Robinsons were informed that an underwriter's certificate was required for PECO Energy to make repairs at their property. PECO averred that on February 4, 2022, the Robinsons were informed that an investigation into the incident had not been conducted because a claim had not been filed with PECO. The answer also acknowledged that the Robinsons filed a claim on February 8, 2022, which was under investigation by PECO as of February 16, 2022, the date the answer was filed.

PECO's answer included new matter in which it averred that the Complainants failed to state a claim upon which relief may be granted. The new matter also argued that to the extent that the Complainants seek an award of monetary damages, the Commission lacks jurisdiction to award money damages. A notice to plead attached to the answer advised the Complainants that any response to the new matter must be filed within twenty days of service. The Robinsons did not file a response to the new matter raised by PECO.

On April 21, 2022, an Initial Call-In Telephone Hearing Notice was issued to all parties. The Notice assigned the case to me and advised the parties that the hearing would be held on June 7, 2022.

¹ The allegations in the complaint were somewhat broader than the scope of the Robinsons' testimony. As noted below, the Robinsons provided scant testimony regarding inadequate service after January 10, 2022. They provided virtually no testimony concerning the requirement that they provide an underwriter's certificate to PECO.

² Mr. Robinson provided little testimony regarding desired remedies. Tr 5 – 6, 10 – 11. Neither Mr. nor Mrs. Robinson provided testimony as to any on-going issues involving any insurance claim filed with their insurance company.

The hearing convened as scheduled on June 7, 2022. Mr. and Mrs. Robinson appeared *pro se* and testified on their own behalf. They presented no exhibits at the hearing.

PECO was represented by Khadijah Scott, Esquire. Timothy Grow, Senior Claims Case Manager and Skshigiz Bhandari, Senior Program Manager for Vegetation Management appeared as witnesses for PECO.

Attorney Scott presented the following exhibits which, without objection, were admitted into evidence during the hearing.

- Exhibit-1 Report of an Investigation (Event Number: EV2022120317)
- Exhibit-2 Photo of PECO Transformer Pole, Robinsons' Private Property Pole, Power Line and Fallen Tree
- Exhibit-3 Photo of Power Line and Fallen Tree
- Exhibit-4 Photo of Sawed Tree or Tree Limb
- Exhibit-5 Photo of Sawed Tree or Tree Limb (Robinson home in background)
- Exhibit-6 Photo of Robinsons' Private Property Pole, Ladder Leaning on the Pole, and Farm Building
- Exhibit-7 PECO Electronic Work Packet (DSOMPEART Report dated 6/7/20)
- Exhibit-8 PECO Vegetation Management Notification / Customer Consent Form dated 09-09-20, signed by Mr. Robinson
- Exhibit-9 Tracker Spreadsheet of Priority Trees Removed in 2021 at 2604 Horseshoe Trail

The record, which consists of the nine above-listed exhibits and 67-page transcript for the telephonic hearing, closed on July 1, 2022, upon receipt of the transcript.

FINDINGS OF FACT

1. The Complainants are George and Margaret Robinson.
2. The Respondent is PECO Energy Company.
3. The Complainants' service address is 2604 Horseshoe Trail, Chester Springs, PA 19425. Tr. 10.

4. Electrical service to the Robinsons' home and other structures on the property is provided by PECO on secondary power lines leading from the main road to the Robinsons' home. Tr. 38 - 39.

5. The secondary power lines leading from the main road to the Robinsons' home are located on private property. Tr. 45.

6. On January 10, 2022, a tree fell onto the secondary power lines on the Robinsons' property. Tr. 40; PECO Exhibit 1.

7. The force of the falling tree damaged the secondary service line, a pole owned by the Robinsons, PECO equipment and the Robinsons' residence. Tr. 24 – 25; PECO Exhibit 1.

8. PECO is responsible for maintaining vegetation along primary service lines. Tr. 52 - 53.

9. PECO is not responsible for maintaining vegetation along secondary service lines located on private property. Tr. 45, 53; PECO Exhibit 1.

10. Prior to January 10, 2022, PECO had responded to requests to trim trees on the Robinsons' property. Tr. 20 - 21, 56 – 58; PECO Exhibits 7, 8, 9.

11. Prior to January 10, 2022, PECO had informed the Robinsons that it would not trim the tree that later fell and caused the fire. Tr. 16 -17.

12. The Robinsons did not trim the tree that fell and caused the fire on January 10, 2022. Tr. 19.

13. On January 10, 2022, PECO was notified of a fire at the service location by first responders. Tr. 43; PECO Exhibit 1.

14. A PECO representative went to the service location on the morning of January 10, 2022, and made an acknowledgement call to Mrs. Robinson to discuss the fire event. Tr. 43; PECO Exhibit 1.

15. On January 26, 2022, PECO informed the Robinsons that an underwriter's certificate was required for the Company to make repairs at their property. PECO Exhibit 1.

16. On February 9, 2022, PECO initiated an investigation into the January 10, 2022, incident based on a claim registration form and formal complaint filed by the Robinsons. Tr. 36. PECO Exhibit 1.

17. PECO informed the Robinsons of the results of the investigation on February 16, 2022. Tr. 36 – 37, 44.

18. The January 10, 2022 incident involved a secondary service line located on private property and was not within the scope of PECO's vegetation management policy. Tr. 44 - 45.

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, the Robinsons have alleged that PECO

violated section 1501 of the Public Utility Code regarding reasonable, safe, and quality service. 66 Pa.C.S. § 1501. Therefore, the Robinsons have the burden of proof.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains with the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth 2001); *see also*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth 1982).

Moreover, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980). A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super 1960). A complainant cannot establish a case merely by stating his or her personal beliefs, since assertions, personal opinions or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

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

Reasonableness of Service

The parties provided consistent testimony as to the location and ownership of the tree that fell onto the powerline on January 10, 2022, agreeing that the tree was located on private property and owned by the Robinsons. Tr. 12, 39. The parties also provided consistent testimony that the fallen tree was located between the last PECO pole and a private pole owned by the Robinsons. Tr. 12 – 13, 39.

In their testimony, the Robinsons argued that PECO's actions prior to and after the January 10, 2022, incident were unreasonable. The Robinsons alleged that PECO was responsible for trimming the tree and they should be compensated for property damage that occurred when it fell and caused a fire. Tr. 11. They also alleged that initially, PECO failed to respond to their inquiries, and subsequently refused to take remedial action until an underwriter's certification was supplied to PECO. Tr. 10 – 11.

Mr. Robinson asserted that PECO could have prevented the event by cutting the tree that caused the January 10, 2022, incident. Tr. 11. He opined that as the owner of the wires that fell on January 10, 2022, PECO was responsible for trimming any tree that might interfere with their operation. Tr. 13. He stated that the tree that fell was located on "the last aerial span that PECO owns." Tr. 13. He also testified that the poles supporting the power lines "are owned by the utility up until the point where the transformer has been [there is] one more span and then we own a pole . . . then it goes underground from there . . . to feed the house." Tr. 12 – 13.

Mr. Robinson acknowledged that when called about potentially dangerous tree conditions prior to January 10, 2022, PECO responded to such requests. Tr 20 – 21. He confirmed that the Robinsons had made such a request in September 2020 and in response PECO

had removed four (4) trees from the Robinsons' property in 2021.³ Tr 20 – 21. In addition, he confirmed that prior to the January 10, 2022, PECO had refused the Robinsons' request to trim the tree that later fell and caused the fire. Tr. 15. Furthermore, Mr. Robinson testified that he had previously taken measures to remove trees “on the aerial line that [he] own[s].” Tr. 21. He acknowledged that the Robinsons did not trim the tree that later fell, or have it trimmed because he believed or understood that “if it fell on that wire then PECO would come after me and I would be responsible for paying PECO to repair that line.” Tr. 19. The Robinsons provided no evidence of any request for tree trimming after January 2021.

PECO Senior Claims Case Manager, Timothy Grow, testified that he conducted an investigation into the January 10, 2022, incident. He testified that PECO's “primary line” serving the Robinsons' property, carries thousands of volts and runs along the main road. Tr. 47. The “secondary line” carrying 600 volts runs from the road to the Robinsons' home. Tr. 47. The secondary line is supported by a total of six poles on the Robinsons' property. The first four poles leading from the main road toward the Robinsons' home are owned by PECO and a transformer is affixed to the PECO pole closest to the home. Tr. 39. Mr. Grow also testified that the Robinsons own two private property poles and, at the end of the second property pole the service lines travel underground to the home. Tr. 39. Mr. Grow identified the portion of the service line from the main road to the Robinsons' home as a “private property line extension.” Tr. 38, 47.⁴

Mr. Grow explained that under its vegetation management policy, PECO “does not trim for secondary wires.” Tr. 45, 47. He also testified that PECO “[does] not enter onto private property where [secondary lines] continue to service homes.” Tr. 53. In his testimony, he repeatedly stated that the location of the wires on private property, not the type of service or ownership of the poles or wires, determines whether the tree fell within the scope of PECO's

³ The service lines referenced in the documentation relating to the removal of four (4) Ash trees in January 2020 were “phase primary and neutral lines” in the driveway. There is no reference to a secondary line. PECO Exhibits 8 – 9.

⁴ Mr. Grow seemed to use the words “secondary wire” and “private property line” interchangeably. Tr. 47, 38. To clarify his testimony, Mr. Grow provided the following analogy: “for example [if] the Robinson's [sic] lived along the roadway, the service line from the pole on the road to an attachment of [the] home that would be considered a service line and that's private property and PECO does not trim for service lines.” Tr. 47.

responsibility under its vegetation management policy. Tr. 40, 48. Finally, he testified that based on his investigation, he concluded that the tree that fell, causing the line to come down and the fire was clearly on private property and not within the scope of PECO's vegetation management program responsibility. Tr. 40, 44.

Mr. Bhandari, a senior program manager in vegetation management, also testified as to PECO's vegetation management policy and tree trimming done on the Robinsons' property during the past few years. Tr. 54 – 55. PECO Exhibit 7, 8, 9. When questioned about the reason for PECO's failure to remove the tree that fell on January 10, 2022, at the Robinsons' request, he responded: "the only reason I can think of is the tree being outside of [PECO's] maintenance criteria that would apply to a private property next to a service wire." Tr. 58. He also testified that PECO had responded to requests for tree removal at the Robinsons' property in 2020 and the work was completed in January 2021. Furthermore, he testified that he was "not aware of any request after January of '21." Tr. 59.

As noted above, Mr. Grow testified unequivocally that the tree that fell on January 10, 2022, was not within PECO's vegetation management program responsibility because it was "clearly on private property." Tr. 40. The Robinsons introduced no physical evidence demonstrating that PECO was responsible for maintenance of the tree that caused the January 10, 2022, incident. Mere bald assertions, personal opinions or perceptions do not constitute evidence. *Rivera v. Phila. Gas Works*, Docket No. C-2010-2164222 (Opinion and Order entered January 12, 2012), *citing*, *Pa. Bureau of Corr. v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987) (*Bureau of Corr.*). Mere opinion, without more, is insufficient to meet the Complainant's burden. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered November 16, 2006) (*citing Bureau of Corr.*, 532 A.2d 12 (1987)).

Prior to January 10, 2022, PECO responded to requests for tree trimming on the Robertsons' property, provided tree trimming that fell within its vegetation management policy and informed the Robinsons of any request that were denied because they fell outside the scope of PECO's vegetation management policy. In sum, the Robinsons have failed to demonstrate that PECO provided unreasonable service prior to January 10, 2022.

As to PECO’s customer service on and after the January 10, 2022, incident, PECO provided undisputed evidence of its response to the incident at the service location demonstrating that PECO representatives contacted the Robinsons about the event commencing on the day it occurred. Exhibit 1. PECO also provided undisputed testimony and evidence that the Robinsons did not file a claim registration form relating to the January 10, 2022, incident until February 8, 2022. Tr. 36 – 37. PECO Ex. 1. In addition, evidence demonstrates that a PECO investigator contacted Mrs. Robinson by telephone on February 9, 2022 and visited the property on February 16, 2022. PECO Ex. 1. Mr. Grow testified that he contacted Mrs. Robinson on February 18, 2022, and informed her that the PECO claim filed by the Robinsons had been denied because the tree that caused the line to come down and caused the fire was “not the responsibility of PECO to own, trim or maintain” Tr. 44.

While the Robinsons expressed frustration relating to their contacts with PECO,⁵ they failed to provide detailed testimony as to their allegation that PECO failed to promptly address the January 10, 2022, incident or adequately respond to their inquiries.⁶

Regarding customer service issues, the Public Utility Code does not require that a utility provide perfect service. *See Re: Metro. Edison Co.*, 80 Pa. PUC 662 (November 19, 1993). The service must be reasonable. 66 Pa.C.S. § 1501. The testimony presented by the Complainants is insufficient to support a finding that the service provided by PECO, before and after the January 10, 2022, event, was unreasonable under 66 Pa.C.S. § 1501. There is no violation here of the Public Utility Code, Commission regulations or a Commission Order.

Damages

It is well established that the Commission does not have the authority to order a public utility to pay monetary damages. *See Byer v. Peoples Nat. Gas Co.*, 380 A.2d 383 (Pa. Super. 1977) (holding that the Commission does not have the authority to award damages);

⁵ Tr. 30 – 32.

⁶ When specifically asked if he wished to provide testimony on the matter, Mr. Robinson declined to do so. Tr. 62.

Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977) (holding that the Commission does not have the authority to award damages); *DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980).

To the extent that the Robinsons seeks monetary damages for alleged injury arising out of PECO's actions, the Complaint must be denied because the remedy is outside the purview of the Commission's authority and jurisdiction under the Code. 66 Pa.C.S. § 1501. Civil questions of negligence and liability for damages are issues for the civil courts should Complainants choose to pursue such avenue.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties of this proceeding. 66 Pa.C.S. § 701.
2. The party filing the complaint bears the burden of proving by a preponderance of the evidence that they are entitled to relief from the Commission. 66 Pa.C.S. § 332(a).
3. A complainant must show that the 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 evidence, or more evidence more convincing, even by 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 Commissions' regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. If a complainant established 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 persuasion may shift back and forth during a proceeding, but the burden of proof never shifts. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is the amount of evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. 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. 1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa.Cmwlth. 1984).

9. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence. *Mid-Atl. Power Supply Assoc. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196 (Pa.Cmwlth. 2000); *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

10. 66 Pa.C.S. § 1501 requires a utility to provide reasonable and adequate service, not perfect service. *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super. 1977).

11. The service provided by PECO was not unreasonable under 66 Pa.C.S. § 1501.

12. Mr. and Mrs. Robinson have failed to satisfy the burden of demonstrating that PECO violated the Public Utility Code, a Commission regulation or Commission order. 66 Pa.C.S. §§ 332(a), 701.

13. The Public Utility Commission does not have the power to award monetary damages. *See DeFrancesco v W. Pa. Water Co.*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell Tel. Co. of Pa*, 420 A.2d 371 (Pa. 1980).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint in the matter of George and Margaret Robinson v. PECO Power Company at Docket Number C-2022-3030593 is hereby denied.

2. That the Secretary shall mark this docket closed.

Date: August 18, 2022

/s/
Arlene Ashton
Administrative Law Judge