

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Adam Tercek	:	
	:	C-2022-3032118
v.	:	
	:	
Duquesne Light Company	:	

**INITIAL DECISION**

Before  
Mary D. Long  
Administrative Law Judge

**INTRODUCTION**

A complaint of an electric distribution customer is sustained. The complainant proved that the utility failed to render reasonable service because the noise emitted from transformers outside his home was unreasonable. The utility also failed to perform a full investigation of the customer complaint because it did not inspect the transformers to determine whether they were functioning properly and were installed correctly on the pole.

**HISTORY OF THE PROCEEDINGS**

On April 14, 2022, Adam Tercek filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Duquesne Light). He alleged that a transformer that Duquesne Light installed in his front yard emits a “perpetual loud humming noise.” He further stated in his complaint that several Duquesne Light employees visited his property and admitted that the noise was loud. As relief, he wants the transformer moved off his property and “to be compensated for the loss in value of my property.”

On May 16, 2022, Duquesne Light filed an answer and new matter along with preliminary objections. Duquesne Light admits that there are transformers mounted to a pole on Mr. Tercek's property, but the pole is located in Duquesne Light's right-of-way and the transformers are operating within accepted operational parameters. According to Duquesne Light, the company has not violated the Public Utility Code.

In its preliminary objections, Duquesne Light requests that the Commission dismiss the portion of Mr. Tercek's complaint that seeks damages in the form of compensation for the loss in value of his property. According to Duquesne Light, even if all of the facts in Mr. Tercek's complaint were true, the Commission does not have authority to award monetary damages to Mr. Tercek. By interim order dated June 21, 2022, I held the preliminary objections in abeyance until the hearing.<sup>1</sup>

The Office of Administrative Law Judge served a hearing notice on June 16, 2022, scheduling the hearing for July 20, 2022. I issued a prehearing order on June 21, 2022, which explained the procedures which govern the conduct of the hearing.

The hearing convened as scheduled on July 20, 2022. Adam Tercek was self-represented. He presented his testimony along with the testimony of two of his neighbors, Georgette Pellegrino and John Harahus. Duquesne Light appeared and was represented by David Beane, Esquire. Duquesne Light presented the testimony of three witnesses, Roxanne Morris, Nathaniel Ostrander and Jeremiah Pisano. Duquesne Light offered Duquesne Light Exhibits 1-9 for admission into the record. Duquesne Light Exhibits 2-9 were admitted. Duquesne Light Ex. 1 was excluded from the record. The hearing produced a transcript of 103 pages.

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<sup>1</sup> The preliminary objections sought dismissal of Mr. Tercek's claim for damages. The preliminary objections were granted at the hearing. Tr. 101.

## FINDINGS OF FACT

1. The Complainant is Adam Tercek who resides at 571 Dewalt Drive, Pittsburgh, Pennsylvania. Tr. 8.

2. Duquesne Light Company, the Respondent, is a jurisdictional public utility.

3. Mr. Tercek bought his home at 571 Dewalt Drive in September 2018. Tr. 9.

4. Mr. Tercek lives in a residential neighborhood where the houses line the street on both sides and appear to be relatively close to one another. Duquesne Light Exs. 5 and 6.

### **Installation of the New Pole**

5. The existing electric distribution pole on Mr. Tercek's property failed a pole inspection. Tr. 54.

6. In 2019, Duquesne Light installed a new pole in front of Mr. Tercek's home. Tr. 10; Duquesne Light Ex. 3.

7. The new pole was installed eight feet closer to Mr. Tercek's home than the old pole. Tr. 57.

8. Duquesne Light installed transformers on the new pole in October 2019. Tr. 54.

9. Both the old pole and the new pole had three transformers installed which step down the voltage from 23kV to 4 kV. Tr. 54.

10. The new pole is the same height as the old pole. Tr. 67-68.

11. Duquesne Light installed three transformers on the new pole at the same height the transformers were located on the old pole. Tr. 67-68.

12. Duquesne Light did not upgrade the transformers on the new pole but installed new transformers that were the same type of transformers as those on the old pole. Tr. 55, 59.

13. When Duquesne Light replaces a pole, it is company policy to replace the transformers also. Tr. 54.

14. All transformers hum because of the vibrations of the inner connections. Tr. 65.

15. The more load on a transformer, the louder the transformer noise will be. Tr. 65-66.

16. If a transformer is excessively loud the remedy is to replace the transformer. Tr. 57.

### **Description of the Noise**

17. Although Mr. Tercek noticed a low humming noise initially after Duquesne Light replaced the pole, the sound level increased as summer arrived and more people began to use their air conditioning. Tr. 10.

18. The noise generated by the transformers is louder in the summer and winter when people are using their air conditioning and heating. Tr. 10; 16-18.

19. Although the noise level is lower in the spring, Mr. Tercek can still hear the humming inside his house when the windows are closed. Tr. 17.

20. Mr. Tercek can hear the transformer noise inside his home at 2 AM through insulated walls. Tr. 12.

21. Mr. Tercek keeps his windows closed but hears the humming noise from the transformers inside his house. Tr. 12.

22. Mr. Tercek hears the noise every time he grills outside, goes to get the paper or speaks to his next-door neighbor. Tr. 13.

23. Mr. Tercek characterizes the noise level “like I have 1,962 Frigidaire deep freezers in my front yard plugged in all the time.” Tr. 13.

24. Georgette Pelligrino, lives next door to Mr. Tercek at 565 DeWalt Street. Tr. 21.

25. Ms. Pelligrino has lived in her home for 20 years. Tr. 22.

26. Before Duquesne Light installed the new pole, she did not hear noise from the transformers. Tr. 22.

27. Since Duquesne Light installed the new pole, she hears noise from the transformers every time she walks outside and the noise has gotten progressively louder. Tr. 22.

28. Ms. Pelligrino has to raise her voice to talk over the noise when speaking to a neighbor outside. Tr. 22.

29. Ms. Pellegrino agrees with Mr. Tercek that the noise is louder in the summer than in the fall and spring. Tr. 24.

30. John Harahus lives next door to Mr. Tercek at 577 Dewalt Drive. Tr. 27.

31. Mr. Harahus has lived in his home for 11 years. Tr. 28.

32. Mr. Harahus did not hear humming noises from the transformers on the pole on Mr. Tercek's property before Duquesne Light installed the new pole. Tr. 28.

33. Mr. Harahus mostly hears the noise outside during the summer when it is hot outside, but he can hear the transformer noise inside his house as well. Tr. 29-30.

34. Mr. Harahus has heard humming from the transformers while on Mr. Tercek's back porch. Tr. 30.

### **Duquesne Light's Investigation**

35. Mr. Tercek first contacted Duquesne Light to complain about the noise created by the transformers on December 1, 2021. Tr. 44; Duquesne Light Ex. 7.

36. Duquesne Light sent a "troubleshooter" to investigate the complaint on December 1, 2021. Tr. 44; Duquesne Light Ex. 8.

37. Mr. Tercek called Duquesne Light a second time on December 14, 2021, to complain about the noise created by the transformers. Tr. 44; Duquesne Light Ex. 7.

38. Duquesne Light sent a troubleshooter to investigate the complaint on December 14, 2021. Tr. 44; Duquesne Light Ex. 8.

39. Mr. Tercek called Duquesne Light a third time on March 7, 2022, to complain about the noise created by the transformers. Tr. 45; Duquesne Light Ex. 7.

40. Duquesne Light referred the complaint to the district to investigate.  
Tr. 45.

41. Mr. Tercek called Duquesne Light a fourth time on March 17, 2022, to complain about the noise created by the transformers. Tr. 47; Duquesne Light Ex. 7.

42. Duquesne Light does not have a record of the company's response to Mr. Tercek's March 17, 2022 call. Tr. 47.

43. An employee of Duquesne Light who visited Mr. Tercek's home advised Mr. Tercek to use a ceiling fan to drown out the noise. Tr. 11.

44. An employee of Duquesne Light who visited Mr. Tercek's home advised him that if Duquesne Light moved the pole "it would just be someone else's problem." Tr. 11.

45. Nathaniel Ostrander is an electrical engineer in the lines maintenance program planning group at Duquesne Light. Tr. 52.

46. A week before the hearing, Mr. Ostrander conducted a clearance study which examined the horizontal clearances of the distribution pole and the step-down transformers at Mr. Tercek's property. Tr. 53.

47. Mr. Ostrander used equipment and examined construction drawings to determine that the pole, distribution lines and transformers were installed at the appropriate horizontal and vertical distances to comply with applicable codes and standards, including NESC.<sup>2</sup> Tr. 56, 59-60.

48. Mr. Ostrander did not examine the transformers themselves or the hardware that connects the transformers to the pole; he only measured the clearances. Tr. 60.

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<sup>2</sup> National Electric Safety Code. See 52 Pa. Code § 57.28.

49. If Duquesne Light determined that an overhead transformer was excessively loud, it would replace the transformer. Tr. 61.

50. Mr. Ostrander is not aware of a device that can be mounted to the pole to dampen the noise from overhead transformers. Tr. 61.

51. Jeremiah Pisano is an engineer line worker supervisor with Duquesne Light. Tr. 69.

52. Mr. Pisano's job responsibilities include reviewing prints and paperwork for assigned jobs and determining what information the work crew may need to complete a job assignment. Tr. 70.

53. Mr. Pisano's educational background includes Duquesne Light Electrical Distribution Technology training, which includes annual trainings for work on higher voltage systems required to become a journey line worker.

54. Mr. Pisano is qualified as a journey line worker.

55. On April 21, 2022, Mr. Pisano used a handheld device to take decibel readings near Mr. Tercek's home. Tr. 71.

56. Mr. Pisano has used the device on one or two other complaint investigations, but did not identify any specialized training in sound engineering, acoustics or noise studies. Tr. 72.

57. Mr. Pisano did not know what level of noise would cause hearing loss. Tr. 86-87.

## DISCUSSION

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or not done by a public utility which violates any laws which the Commission has the authority to administer, or any regulation or order of the Commission.<sup>3</sup> A person who wants the Commission to do something to resolve their complaint has the burden of proof.<sup>4</sup>

In this matter, Mr. Tercek is the party asking for relief from the Commission; therefore, he has the burden of proof. This means, that Mr. Tercek must present facts which support his claim and prove facts that show that Duquesne Light violated the Public Utility Code, regulation or Commission order by a preponderance of the evidence.<sup>5</sup> The term “preponderance of the evidence” means one party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party.<sup>6</sup>

Mr. Tercek contends that the noise generated by the transformers outside his home is unreasonable. Section 1501 of the Public Utility Code requires that all utilities must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public.<sup>7</sup> If the Commission concludes that the service or facilities of a public utility are unreasonable, unsafe, or inadequate, the Commission may prescribe, by regulation or

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<sup>3</sup> 66 Pa.C.S. § 701.

<sup>4</sup> 66 Pa.C.S. § 332(a).

<sup>5</sup> *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040 (Pa. 2007) (*Popowsky*); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

<sup>6</sup> *Popowsky*.

<sup>7</sup> 66 Pa.C.S. § 1501.

order, the reasonable, safe and adequate service or facilities that a public utility must furnish or employ.<sup>8</sup>

The Commonwealth Court has cautioned that the Commission may not sustain a complaint pursuant to Section 1501 of the Public Utility Code unless it finds that a utility has violated a duty to render reasonable and reliable service.<sup>9</sup> Further, the Commission has stated that a utility is not mandated to furnish perfect service:

[Section 1501] does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.<sup>[10]</sup>

The requirement to render reasonable service applies to all aspects of a utility's service to customers. A utility's response to and investigation of customer complaints also must be reasonable and adequate.<sup>11</sup>

Mr. Tercek lives in a residential neighborhood where the houses line the street on both sides and appear to be relatively close to one another.<sup>12</sup> Mr. Tercek presented his own testimony as well as the testimony of two of his neighbors who described the level of noise generated by the transformers outside Mr. Tercek's home. All three witnesses testified that there was no significant humming noise from the transformers before Duquesne Light replaced the pole outside Mr. Tercek's home. Mr. Tercek stated that he purchased the home in 2018 and any noise from the transformers did not trouble him until Duquesne Light replaced the transformers in 2019. He hears a disturbing level of noise inside his home even when the windows are closed. The noise is especially disturbing in the summer. When he goes outside to

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<sup>8</sup> 66 Pa.C.S. § 1505.

<sup>9</sup> *W. Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984).

<sup>10</sup> *Re Metro. Edison Co.*, 80 Pa. PUC 663, 672 (1993).

<sup>11</sup> *Thurby v. W. Penn Power Co.*, Docket No. C-2011-2254048 (Final Order Apr. 4, 2013).

<sup>12</sup> See Duquesne Light Exs. 5 and 6.

get the paper or prepare food on his grill, the noise is very loud. Mr. Tercek characterizes the noise level “like I have 1,962 Frigidaire deep freezers in my front yard plugged in all the time.”

Mr. Tercek’s next-door neighbor, Georgette Pelligrino, testified that she had lived in her home for 20 years, and did not notice any unusual noise from the transformers until Duquesne Light replaced the pole and transformers. While she does not routinely hear the noise inside her home, she testified that she has to raise her voice above the noise to speak to neighbors outside her home. She agreed with Mr. Tercek that the noise was louder in the summer and winter than in the fall and spring.

Mr. Tercek’s other next-door neighbor, John Harahus, also testified that he hears the transformer noise when he joins Mr. Tercek on Mr. Tercek’s back porch. He also hears the noise from the transformers outside his own home. Mr. Harahus, who has lived in his home for 11 years, testified that he did not hear noise from the transformers before Duquesne Light replaced the pole outside Mr. Tercek’s home.<sup>13</sup>

Duquesne Light’s witness, Jeremy Pisano, testified that he lives near Mr. Tercek’s property and sometimes walks through the neighborhood with his dog. He testified that, in his opinion, the transformers near Mr. Tercek’s home sound similar to transformers in other areas of the township.<sup>14</sup>

I find Mr. Tercek’s, Ms. Pelligrino’s and Mr. Harahus’ testimony more persuasive than the testimony of Mr. Pisano. All three individuals live in close proximity to the pole and transformers and offered detailed and specific testimony regarding the level of noise emitted from the transformers. All three individuals offered consistent testimony that the transformer noise became louder after Duquesne Light replaced the pole and transformers in front of Mr. Tercek’s home. In contrast, Mr. Pisano does not live in the neighborhood and passes through at

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<sup>13</sup> Mr. Harahus testified regarding noise from another transformer near his house, but that incident occurred several years ago and is not directly relevant to Mr. Tercek’s complaint.

<sup>14</sup> Tr. 79-80.

unspecified times while he is walking with his family or his dog. His testimony was a general comparison and does not rebut the specific testimony of the other three witnesses.

Duquesne Light's witness, Nathaniel Ostrander, testified that Duquesne Light replaced the pole in front of Mr. Tercek's home in 2019 because the existing pole had failed an inspection. Duquesne Light installed the new pole eight feet closer to Mr. Tercek's house. Both the old pole and the new pole had three transformers installed which step down the voltage from 23kV to 4 kV. Duquesne Light did not upgrade the transformers on the new pole but installed the same type of transformers as those on the old pole.

Mr. Ostrander explained that all transformers hum because of the vibrations of the inner connections. He also stated that the more load on a transformer, the louder the transformer noise will be. However, Mr. Ostrander did not inspect the transformers themselves nor did he inspect the hardware that connects the transformers to the pole.

Duquesne Light did not offer any evidence to explain the difference in the noise levels generated by the transformers that had been on the existing pole and the newer transformers that Duquesne Light installed on the new pole. Both Mr. Harahus and Ms. Pelligrino, longtime residents, testified that before Duquesne Light replaced the pole and transformers, there was no significant noise from the pole. Duquesne Light did not upgrade the transformers, but installed units that are essentially the same model as the transformers that were installed on the old pole. The only change in the configuration of the pole and transformers is that the pole is now located closer to Mr. Tercek's house. While the new location may explain why Mr. Tercek can hear the humming inside his own home, it does not explain why Mr. Harahus and Ms. Pelligrino can hear the humming noise on their properties when they did not hear similar noise before Duquesne Light replaced the pole.

Mr. Ostrander testified that he is not aware of any technology that can be installed on an overhead transformer to dampen the noise. He stated that if Duquesne Light determines that a transformer is making an unusual noise, the solution would be to exchange the transformer.

Mr. Ostrander testified that it is Duquesne Light's policy to replace transformers when they are not functioning properly. Duquesne Light did not offer any evidence which explains why Duquesne Light did not replace the transformers on Mr. Tercek's pole when Mr. Tercek repeatedly complained. According to Mr. Tercek's un rebutted testimony, Duquesne Light workers told him that they could hear the noise. One worker advised Mr. Tercek to run a ceiling fan to drown the noise.

Although Duquesne Light's records indicate that a series of "troubleshooters" visited Mr. Tercek's home, those individuals were not called to testify. The notes from the exhibit state that the troubleshooter did not find a problem with the transformers. But, without the testimony of the troubleshooter, these conclusions are not admissible.<sup>15</sup> There is no record of what the troubleshooter did, therefore there is no foundation in the record which supports the conclusion that there was "no trouble found."

Duquesne Light did not challenge or rebut the testimony that the noise described by Mr. Tercek, Ms. Pellegrino and Mr. Harahus is emitted by the transformers on the pole in front of Mr. Tercek's home. Duquesne Light also did not offer any evidence that the humming noise coming from the transformers was normal for transformers operating correctly or that the noise was appropriate from an engineering standpoint. Mr. Ostrander only performed a clearance investigation and stated that the configuration of the pole was consistent with NESC requirements. He did not offer any testimony regarding NESC standards, if any, regarding appropriate noise levels for overhead transformers installed in residential areas.

Duquesne Light offered the testimony of Jeremiah Pisano regarding decibel readings he took with a handheld device. This testimony does not support a conclusion that the transformers were operating correctly and emitting a "normal" level of noise. Mr. Pisano is not qualified as a sound expert. He does not have any specific training or education in sound

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<sup>15</sup> *Duquesne Light Co. v. Woodland Hills Sch. Dist.*, 700 A.2d 1038 (Pa. Cmwlth. 1997)(although facts stated in a consultant's report were admissible under the business record exception, the consultant's conclusions and recommendations were not admissible.); *Ganster v. W. Pa. Water Co.*, 504 A.2d 186 (Pa. Super. 1985)(the report that an employee took a water sample was admissible as a business record but the employee's opinion noted in the report was not admissible.).

engineering, acoustics or a similar field. He testified that his job responsibilities include organizing work crews and that he qualifies as a journey line worker. He testified that he had used the hand-held device “on a few other complaints.”<sup>16</sup> Although he reported the measurements that he took with the device, he could not interpret them in any meaningful way. For example, he did not know what level of noise might cause hearing loss or what a 50-decibel machine might sound like.<sup>17</sup> Without a witness with appropriate training or expertise to testify about the decibel measurements, the measurements taken by Mr. Pisano are inadmissible and irrelevant.

The Commission does not have a regulation which sets forth reasonable noise standards for transformers in residential areas. Duquesne Light’s presentation at the hearing focused on whether the transformers were safe. However, the mandate of the Public Utility Code is broader than just safety. Section 1501 of the Public Utility Code mandates that service and facilities be “reasonable.” It is not reasonable for a new set of transformers to cause a level of noise in a residential neighborhood such that the noise can be heard inside a customer’s home when all of the windows are shut or that a customer has to raise her voice to speak to a neighbor on her doorstep. Duquesne Light did not offer any evidence to explain why newer but otherwise identical transformers would emit significant noise when the transformers on the older pole did not emit noise that disturbed customers in the vicinity. Duquesne Light did not offer any credible evidence which demonstrated that the noise emitted from the newer transformers at the levels described by Mr. Tercek, Ms. Pellegrino and Mr. Harahus was “normal.”

Section 1505(a) of the Public Utility Code<sup>18</sup> authorizes the Commission to direct a utility to repair or replace facilities which the Commission determines are unreasonable or inadequate:

(a) General rule.--Whenever the commission, after reasonable notice and hearing, upon its own motion or upon complaint, finds that the service or facilities of any public utility are

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<sup>16</sup> Tr. 72.

<sup>17</sup> Tr. 86.

<sup>18</sup> 66 Pa.C.S. § 1505(a).

unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of this part, the commission shall determine and prescribe, by regulation or order, the reasonable, safe, adequate, sufficient, service or facilities to be observed, furnished, enforced, or employed, including all such repairs, changes, alterations, extensions, substitutions, or improvements in facilities as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public.

There is no evidence that the newer transformers on the new pole are operating correctly. Indeed, the evidence suggests the opposite. The older transformers did not emit noise at an unreasonable level. When Duquesne Light replaced the older transformers with new units that Mr. Ostrander testified were essentially identical, the noise level became excessive. There is no evidence that Duquesne Light inspected the transformers either before they were installed or at any time after they were installed. There is no explanation for the increased level of noise emitted by the newer transformers even though they are substantially the same as the older transformers. The only explanation for the difference in the level of noise emitted by the transformers is some sort of malfunction.

Mr. Ostrander testified that if a transformer is excessively loud, the remedy is to replace the transformer. Mr. Tercek offered sufficient credible testimony, which includes the supporting testimony of Ms. Pellegrino and Mr. Harahus, that the transformers on the new pole are excessively loud. Therefore, it is appropriate to direct Duquesne Light to replace the transformers pursuant to the authority in Section 1505 of the Public Utility Code.

Section 57.12 of the Commission's regulations require public utilities to make "a full and prompt" investigation of complaints by customers.<sup>19</sup> Duquesne Light clearly did not make a "full" investigation of Mr. Tercek's complaint. As explained above, although Duquesne Light submitted evidence that it responded to calls made by Mr. Tercek to complain about the noise, the only testimony in the record about what happened during those response calls is from Mr. Tercek. Mr. Tercek testified that the Duquesne Light employees were dismissive and told

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<sup>19</sup> 52 Pa. Code § 57.12.

him to run a ceiling fan to drown out the noise. Duquesne Light performed additional investigations after Mr. Tercek filed his complaint with the Commission but focused solely on whether the pole met NESC clearance requirements or posed a safety concern. Mr. Tercek did not complain about the clearance requirements, nor did he express a concern that the transformers posed a safety hazard. Instead he complained that the level of noise had significantly increased following the installation of the new pole and transformers. It appears that Duquesne Light dismissed this complaint and did very little to assess the noise problem.

Commission decisions in *Nixon*,<sup>20</sup> *Sherman*<sup>21</sup> and *Hodak*<sup>22</sup> are instructive regarding the level of investigation the Commission expects in order to address noise and other quality issues raised by customers. In each of these cases the utilities went to great lengths to take the customer complaints seriously and performed extensive investigations which demonstrated that their facilities were operating correctly and that no malfunction or equipment failure caused the problem articulated by the customer.

In *Nixon*, Victor Nixon complained that “a low frequency noise was being emitted from a West Penn transmission line pole down the slope from an electricity substation on top of a hill behind Bursca Industrial Park in South Fayette Township.” West Penn Power submitted evidence regarding the thorough investigation, including an inspection of the facilities, measurements of the corona with a Daycor camera and RFI equipment. West Penn Power reviewed sound recordings provided by Mr. Nixon. Several engineers testified at the hearing regarding the investigation of Mr. Nixon’s sound complaint. After reviewing all of the evidence, the presiding administrative law judge concluded:

West Penn presented substantial evidence gathered from the use of sophisticated equipment that measures sound level, distinct sounds and corona. The instrument used by Dr. Thornton, in particular, allows the user to measure for distinct sounds.

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<sup>20</sup> *Nixon v. W. Penn Power Co.*, Docket No. C-2011-2228810 (Final Order entered Sept. 30, 2011) (*Nixon*).

<sup>21</sup> *Sherman v. PPL Elec. Utils. Corp.*, Docket No. C-2015-2499616 (Opinion and Order entered Oct. 12, 2016).

<sup>22</sup> *Hodak v. Pa. Elec. Co.*, Docket No. C-2011-2274277 (Opinion and Order entered Jan. 24, 2013).

Nothing out of the ordinary was found by West Penn engineers or by Dr. Thornton while investigating Mr. Nixon's noise complaint. No noise like the noise described in Mr. Nixon's complaint was detected. West Penn took the matter seriously and took measures to identify any problems. None were found. Mr. Nixon did not prove West Penn failed to provide reasonable, adequate and safe service and facilities pursuant to 66 Pa. C.S. §1501.<sup>[23]</sup>

In *Sherman*, PPL performed a similarly thorough investigation when Perry Sherman complained about the high levels of noise emanating from its transmission line near Mr. Sherman's home. Mr. Sherman complained that that facilities of the Susquehanna-Roseland transmission line emitted an unreasonable level of noise. In response, a PPL engineer and a transmission and distribution foreman testified that they visited the property and did not hear any unusual noise. Nevertheless, PPL inspected the conductors and facilities by helicopter and did not detect any abnormalities. Mr. Sherman's complaint was dismissed, because I concluded that he did not prove a violation of the Public Utility Code. I specifically observed that PPL's investigation of the complaint was reasonable within the meaning of Section 1501 of the Public Utility Code.<sup>24</sup> In adopting the decision, the Commission agreed that Mr. Sherman had failed to prove a violation of the Public Utility Code, but noted that there was a lack of evidence regarding the standards for transmission line noise or options for noise mitigation.

*Hodak* was not a noise complaint, but is nevertheless instructive. In that case, the complainants, sisters Mary Jane and Judith Hodak, alleged that problems with their electric service resulted in erratic lighting and appliance operation, damage to appliances, crackling and snapping noises in the proximity of the electric lines in the home, and burns and bruises to the occupants of the home. In adopting the presiding administrative law judge's decision dismissing the complaint, the Commission noted that Penelec had made several service calls to the residence to investigate the complaint. As part of the company's investigation it installed volt meters and stray voltage monitors over four separate multi-day periods and detected no voltage issues. Importantly, Company witnesses testified that: (1) transformer malfunctions would have been

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<sup>23</sup> *Nixon*, Initial Decision at 7.

<sup>24</sup> *Sherman*, Initial Decision at 7.

revealed by the voltage tests; (2) Penelec physically inspected the transformer; and (3) the other four customers served by the transformer have not complained to Penelec. Penelec also investigated the Complainants' observations that their service problems are concurrent with the operation of a generator by a neighboring business. Penelec reported that none of the four customers that share a transformer with the Complainants have bidirectional meters that would permit them to put power into the Company's distribution system. In short, Penelec submitted evidence that they thoroughly investigated the complaint and that its equipment was operating correctly.

In *Nixon, Sherman and Hodak*, the public utility took the customer's complaint seriously and went beyond merely responding to the customer's contact to the utility. In each case, the public utility thoroughly investigated the complaint to ensure that the utility's equipment was operating correctly and not malfunctioning. Duquesne Light's treatment of Mr. Tercek and its investigation of his complaint shares neither of these characteristics. The evidence produced at the hearing establishes that the transformers on the old pole did not produce a level of noise that Mr. Tercek or his neighbors found disturbing. The evidence further establishes that after Duquesne Light replaced the pole and installed new transformers, that the noise from the transformers increased to a level that Mr. Tercek could hear the noise inside his home with the windows closed, and his neighbors could hear it outdoors at a level that was significantly louder than it was before. Although Duquesne Light responded to Mr. Tercek's phone calls to complain about the noise, there is no evidence that Duquesne Light performed more than the most perfunctory investigation. There is no evidence that Duquesne Light inspected the transformers to ensure that they were operating properly or that they were mounted to the pole correctly. Mr. Ostrander conducted the engineering inspection solely for the purposes of the hearing and not in response to Mr. Tercek's complaint. Moreover, his inspection did not address the functioning of the transformers at all and only reviewed the vertical and horizontal distances of the distribution facilities in relation to Mr. Tercek's home. Duquesne Light offered no explanation at all for the increased level of noise described by Mr. Tercek, Ms. Pelligrino and Mr. Harahus. In short, Duquesne Light failed to render reasonable customer service to

Mr. Tercek and failed to perform a full investigation as required by Section 57.12 of the Commission's regulations.<sup>25</sup>

### **Civil Penalty**

Having concluded that Duquesne Light failed to render reasonable service in violation of Section 1501 of the Public Utility Code and failed to fully investigate Mr. Tercek's complaint in violation of Section 57.12 of the Commission's regulations, it is appropriate to consider whether the Commission should assess a civil penalty for these violations.

Section 3301 of the Public Utility Code provides that if any public utility fails to comply with any Commission regulation it shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000.00 per day of violation.<sup>26</sup> To implement this section, the Commission has adopted certain standards that it will consider when imposing a civil penalty for violations of Commission directives and regulations.<sup>27</sup> Section 69.1201(a) of the Commission's regulations states:

The Commission will consider specific factors and standards in evaluating litigated ... cases involving violations of 66 Pa.C.S. (relating to the Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate.<sup>28</sup>

These factors and standards to be considered are enumerated in subsection (c):

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher

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<sup>25</sup> 52 Pa.Code § 57.12.

<sup>26</sup> 66 Pa.C.S. § 3301.

<sup>27</sup> See 52 Pa. Code § 69.1201; see also, *Rosi v. Bell Atl.-Pa., Inc. & Sprint Commc 'ns Co.*, Docket No. C-00992409 (Opinion and Order entered February 10, 2000) (*Rosi*).

<sup>28</sup> 52 Pa. Code § 69.1201(a).

penalty. When the conduct is less egregious, such as administrative filing, or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.<sup>29</sup>

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<sup>29</sup> 52 Pa. Code § 69.1201(c).

Even where the Commission concludes that there has been a violation of the Public Utility Code, the Commission may exercise its discretion and decline to assess a penalty.

#### *Unreasonable and Inadequate Facilities*

As explained above, I have concluded that the transformers installed on the new pole in front of Mr. Tercek's home are excessively loud. I have further concluded that this level of noise, which was not present before Duquesne Light installed virtually identical transformers, is unreasonable. Therefore, Duquesne Light failed to render adequate and reasonable service as required by Section 1501 of the Public Utility Code. However, I also find that it is not necessary to assess a civil penalty for this violation because I have directed Duquesne Light to replace the transformers.<sup>30</sup>

#### *Failure to Fully Investigate the Complaint*

As explained above, Duquesne Light failed to fully investigate Mr. Tercek's complaint. This failure is a violation of Section 1501 of the Public Utility Code which requires public utilities to render reasonable customer service. This failure is also a failure of Section 57.12 of the regulations which requires electric utilities to *fully* investigate complaints.

It is indeed a serious violation<sup>31</sup> of the Public Utility Code and Commission regulations to fail to fully investigate a customer complaint, especially when it involves utility facilities. While it appears that Duquesne Light responded to Mr. Tercek's contact by sending employees to visit his property, the record is silent as to what occurred during those visits other than Mr. Tercek's testimony that he found the employees dismissive of his concerns. Duquesne Light did assign Mr. Ostrander to conduct an engineering investigation, but that assignment 1) did not occur until after Mr. Tercek filed his Formal Complaint with the Commission and in preparation for the hearing; and 2) did not address Mr. Tercek's complaint regarding the

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<sup>30</sup> Cf., *Rounce v. PECO Energy Co.*, Docket No. C-2015-2506941 (Opinion and Order entered December 9, 2016) (declining to assess a civil penalty in light of the utility's attempts at remediation).

<sup>31</sup> 52 Pa. Code § 69.1201(c)(1).

excessive noise, but instead focused solely on the clearances of Duquesne Light's facilities. This cursory investigation is not the sort of conduct that the Commission expects from its jurisdictional utilities. This factor suggests a higher penalty be imposed.

However, the violation in this case did not result in personal or property damage. This factor suggests a lower penalty.<sup>32</sup> It does not appear that Duquesne Light's conduct was intentional, but was instead negligent. This factor also warrants a lower penalty.<sup>33</sup>

Another factor the Commission considers is the number of customers affected by the violation. In this case, although Mr. Tercek filed the complaint, Ms. Pellegrino and Mr. Harahus also testified that the excessive noise emitted from the transformers affected them as well.

Other factors require consideration of the utility's efforts to modify its internal practices and procedures and the utility's compliance history.<sup>34</sup> There is no evidence in the record on either of these points, therefore these factors play no role in my determination of a reasonable civil penalty here. Similarly, there was no Commission investigation at issue, therefore this factor is irrelevant in this case and plays no role in my determination.<sup>35</sup> Nor have I located other Commission decisions in similar situations which might influence my civil penalty assessment.<sup>36</sup>

The final and arguable most pivotal factor is the amount of penalty necessary to deter future violations.<sup>37</sup> Duquesne Light is a large public utility. Yet, the violation here involves one pole and one set of transformers in one neighborhood in a large distribution

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<sup>32</sup> 52 Pa. Code § 69.1201(c)(2).

<sup>33</sup> 52 Pa. Code § 69.1201(c)(3).

<sup>34</sup> 52 Pa. Code § 69.1201(c)(4), (6).

<sup>35</sup> 52 Pa. Code § 69.1201(c)(7).

<sup>36</sup> 52 Pa. Code § 69.1201(c)(9).

<sup>37</sup> 52 Pa. Code § 69.1201(c)(8).

network. The Commission does not require a public utility to provide perfect utility service. But customer service is essential to appropriate service to the public. Duquesne Light's response here falls far short and is certainly far less than what its sister utilities have undertaken when investigating other customer complaints involving noise<sup>38</sup> or mysterious problems affecting utility service.<sup>39</sup>

Seven months passed between December 1, 2021, when Mr. Tercek first complained about the excessive noise emitted by the transformers until the hearing was held on July 20, 2022. A civil penalty totaling \$ 3,500 (\$500 for each month that Duquesne Light failed to fully investigate Mr. Tercek's complaint) is appropriate. This amount is considerably less than \$1,000 per day which the statute authorizes, but is sufficient to deter Duquesne Light from repeating the same course of conduct.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this complaint. 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. Duquesne Light failed to maintain reasonable and adequate facilities regarding the new transformers installed on the complainant's property. 66 Pa.C.S. § 1501.
4. The Commission has the authority to direct Duquesne Light to replace the transformers on the complainant's property which are emitting excessive noise. 66 Pa.C.S. § 1505.

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<sup>38</sup> Nixon; Sherman.

<sup>39</sup> Hodak; Rounce.

5. Duquesne Light failed to fully investigate the complaint that the transformers were emitting an excessive level of noise. 66 Pa.C.S. § 1501; 52 Pa. Code § 57.12.

6. Section 3301(a) and (b) of the Public Utility Code authorizes the Commission to impose a maximum civil penalty of \$1,000.00 per day for violations of the statute, regulations and orders. 66 Pa.C.S. § 3301(a) and (b).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Adam Tercek v. Duquesne Light Company at Docket C-2022-3032118 is sustained.

2. That within 30 days of the Commission's final order in this proceeding Duquesne Light shall replace the transformers on the pole located on Mr. Tercek's property.

3. That within 30 days of entry of the final order of the Commission, Duquesne Light Company shall pay a civil penalty in the amount of \$3,500 in accordance with Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, by sending a certified check or money order payable to the Commonwealth of Pennsylvania to:

Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building, 2nd Floor  
400 North Street  
Harrisburg, PA 17120

4. That upon payment of the penalty, and replacement the transformers on the pole located on Mr. Tercek's property, this docket shall be marked closed.

Date: October 26, 2022

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/s/  
Mary D. Long  
Administrative Law Judge