

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| Thomas & Elizabeth Bierkamp | : | C-2019-3015097 |
| Jeffrey & Gretchen Moyer | : | C-2019-3015098 |
| Jeffrey & Gretchen Moyer | : | C-2019-3015099 |
| Clarence D. Geist, Jr. | : | C-2019-3015100 |
| | : | |
| v. | : | |
| | : | |
| Metropolitan Edison Company | : | |

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaints filed by Thomas and Elizabeth Bierkamp, Jeffrey and Gretchen Moyer, and Clarence D. Geist, Jr. (Complainants) against Metropolitan Edison Company. Complainants failed to satisfy their burden of demonstrating that Respondent violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff with respect to the service provided to them regarding power outages at their service addresses.

HISTORY OF THE PROCEEDING

On December 23, 2019, Thomas and Elizabeth Bierkamp filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Met-Ed or Company), at docket number C-2019-3015097. In their Formal Complaint, the Bierkamps averred that they are having a reliability, safety or quality problem

with their utility service. The Bierkamps allege they have had approximately 14 power outages in the last two years and have had ongoing problems for over 30 years. As requested relief, the Bierkamps state they would like updated equipment, installation of more switches, and extensive tree trimming.

On December 23, 2019, Jeffrey and Gretchen Moyer filed a Formal Complaint with the Commission against Met-Ed, at docket number C-2019-3015098. The complaint at this docket concerned service to the property at 1678 Route 143, Lenhartsville, Pennsylvania. In their Formal Complaint, the Moyers averred that they are having a reliability, safety or quality problem with their utility service. As requested relief, the Moyers state they would like updated equipment, installation of more switches, and extensive tree trimming. The Moyers allege outages have been a chronic problem for over 30 years, and everyone, or almost everyone, in their area owns generators.

On December 23, 2019, the Moyers filed another Formal Complaint with the Commission against Met-Ed, at docket number C-2019-3015099. The complaint at this docket concerned service to the property at 244 Soursley Road, Lenhartsville, Pennsylvania. In their Formal Complaint, the Moyers averred that they are having a reliability, safety or quality problem with their utility service. The Moyers allege there have been numerous outages, i.e., 14 in 24 months. As requested relief, the Moyers state they would like updated equipment, installation of more switches, and extensive tree trimming.

On December 23, 2019, Clarence D. Geist, Jr. filed a Formal Complaint with the Commission against Met-Ed, at docket number C-2019-3015100. In his Formal Complaint, Mr. Geist averred that he is having a reliability, safety or quality problem with his utility service. Mr. Geist alleges chronic outages have been an ongoing problem for over 30 years, and everyone in the area, or almost everyone, owns generators. Mr. Geist, who is 78 years old, states that his wife must use a CPAP (sleep apnea machine), and many nights he has had to go out and hook up a generator to ensure the CPAP machine is operable. As requested relief, Mr. Geist states he would like updated equipment, installation of more switches, and extensive tree trimming.

On December 26, 2019, Gregory Dissinger filed a Formal Complaint with the Commission against Met-Ed, at docket number C-2019-3015145. In his Formal Complaint, Mr. Dissinger averred that he is having a reliability, safety or quality problem with his utility service. Mr. Dissinger alleges he loses electricity too often and, as relief, Mr. Dissinger requests that dead trees be cut down.

On January 13, 2020, Met-Ed filed separate answers and new matters to the Bierkamps' Formal Complaint, the Moyers' two Formal Complaints, and Mr. Geist's Formal Complaint. On January 15, 2020, Met-Ed filed an answer and new matter to Mr. Dissinger's Formal Complaint. On January 27, 2020, the Moyers filed separate replies to Met-Ed's new matters at docket numbers C-2019-3015098 and C-2019-3015099. The Bierkamps, Mr. Geist, and Mr. Dissinger did not file replies to Met-Ed's new matter.

On January 14, 2020, February 4, 2020, February 13, 2020, and February 18, 2020, Chief Administrative Law Judge Charles E. Rainey, Jr. issued interim orders directing the parties at C-2019-3015097 (the Moyers and Met-Ed), C-2019-3015098 and C-2019-3015099 (the Bierkamps and Met-Ed), C-2019-3015100 (Mr. Geist and Met-Ed), and C-2019-3015145 (Mr. Dissinger and Met-Ed), respectively, to attempt mediation.

On January 28, 2022, the Commission issued an initial telephonic prehearing conference notice at C-2019-3015097, C-2019-3015098 and C-2019-3015099, C-2019-3015100 and C-2019-3015145, setting a call-in telephonic prehearing conference for March 16, 2022. On February 8, 2022, Administrative Law Judge Elizabeth H. Barnes (ALJ Barnes) issued a prehearing conference and consolidation order, consolidating the proceedings at docket numbers C-2019-3015097, C-2019-3015098 and C-2019-3015099, C-2019-3015100 and C-2019-3015145, and providing further instructions for the prehearing conference on March 16, 2022.

On March 16, 2022, a prehearing conference for the consolidated proceedings was held as scheduled, with ALJ Barnes presiding. All parties participated in the prehearing conference except Mr. Dissinger.

On March 16, 2022, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for May 3, 2022 at 10:00 a.m. Also on March 16, 2022, ALJ Barnes issued a prehearing order, setting forth various rules that would govern the evidentiary hearing.

On May 2, 2022, the Commission issued a telephonic hearing cancellation/reschedule notice setting a rescheduled formal call-in telephonic hearing for this matter for June 21, 2022 at 10:00 a.m.

On May 4, 2022, Met-Ed filed a certificate of satisfaction to docket number C-2019-3015145 (Dissinger). No objection was received by the Commission, and the docket is marked as closed.

On June 13, 2022, the Commission issued a corrected hearing notice/judge change notice, assigning me as the presiding officer for the June 21, 2022 hearing.

On Monday, June 20, 2022, the parties informally requested a continuance and, without objection, I informally granted the request for continuance via email on June 21, 2022 and canceled the June 21, 2022 hearing. A rescheduled hearing notice was served on June 24, 2022, establishing an initial telephonic hearing in this matter for September 14, 2022 at 10:00 a.m. The Commission served an order on June 28, 2022, formally granting the continuance request.

The hearing was held as scheduled on September 14, 2022 at 10:00 a.m. Margaret Morris, Esquire attended on behalf of Met-Ed, along with two witnesses for Met-Ed: Chad Summy, Reliability Engineer for Met-Ed; and Richard Lamoreaux, Forestry Specialist for Met-Ed. Thomas and Elizabeth Bierkamp, Gretchen Moyer, and Clarence Geist appeared on behalf of themselves. Met-Ed submitted fifteen exhibits that were admitted into the record. Complainants did not submit any exhibits.

The record in this case closed on October 5, 2022, upon the filing of the September 14, 2022 Hearing Transcript with the Commission.

FINDINGS OF FACT

1. The Complainants in this consolidated proceeding are Thomas and Elizabeth Bierkamp, Jeffrey and Gretchen Moyer, and Clarence Geist.
2. The Respondent in this case is Metropolitan Edison Company.
3. Thomas and Elizabeth Bierkamp's Met-Ed service address is 270 Sousley Road, Lenhartsville, Pennsylvania 19534. Tr. 34.
4. Jeffrey and Gretchen Moyer's Met-Ed service address for their personal residence is 1678 Route 143, Lenhartsville, Pennsylvania 19534. Tr. 37.
5. Jeffrey and Gretchen Moyer's Met-Ed service address for their rental property is 244 Sousley Road, Lenhartsville, Pennsylvania 19534. Tr. 37.
6. Clarence Geist's Met-Ed service address is 306 Sousley Road, Lenhartsville, Pennsylvania 19534. Tr. 52.
7. The Bierkamp's Formal Complaint was filed because of the frequent and sometimes long power outages that they experience. Tr. 34.
8. The Moyers own a generator because of the power outages. Tr. 49.
9. Mr. Geist experienced nine incidents with his power in 2022. Tr. 52-53.
10. Complainants' service addresses are located in a densely wooded area that includes a creek and wetlands. Met-Ed Exhibits 1, 2; Tr. 62-64, 106.

11. Met-Ed Exhibit 1 is an aerial map of the area containing Complainants' service addresses. Met-Ed Exhibit 1.
12. Met-Ed Exhibit 2 is a highlighted aerial map of the area containing Complainants' service addresses. Met-Ed Exhibit 2.
13. Met-Ed Exhibit 3 is a list of outage history for the Complainants' Met-Ed service area from January 13, 2018 to September 11, 2022. Met-Ed Exhibit 3.
14. Met-Ed Exhibit 4 are Power-On Orders from January 13, 2018 to May 16, 2022 for the Complainants' Met-Ed service area. Met-Ed Exhibit 4.
15. Met-Ed Exhibit 5 is Met-Ed's Biennial Inspection, Maintenance, Repair and Replacement Plans (Biennial I&M Plan) for the period January 1, 2017 through December 31, 2018. Met-Ed Exhibit 5.
16. Met-Ed Exhibit 6 is Met-Ed's Biennial I&M Plan for the period January 1, 2019 through December 31, 2020. Met-Ed Exhibit 6.
17. Met-Ed Exhibit 7 is Met-Ed's Biennial I&M Plan for the period January 1, 2021 through December 31, 2022. Met-Ed Exhibit 7.
18. Met-Ed Exhibit 8 is a list of off right-of-way trees removed from the period September 2018 through June 2021 for the tap-in area impacting Complainants. Tr. 111; Met-Ed Exhibit 8.
19. Met-Ed Exhibit 10 is a Power-On Order dated August 4, 2020 for the Complainants' Met-Ed service area. Met-Ed Exhibit 10.
20. Met-Ed Exhibit 11 is a Power-On Order dated February 18, 2022 for the Complainants' Met-Ed service area. Met-Ed Exhibit 11.

21. Met-Ed Exhibit 12 is Rule 21 of Met-Ed's Electric Tariff Pa. P.U.C. No. 52. Met-Ed Exhibit 12.

22. Met-Ed Exhibit 13 is a Power-On Order dated July 13, 2022. Met-Ed Exhibit 13 for the Complainants' Met-Ed service area.

23. Met-Ed Exhibit 14 is a Power-On Order dated September 6, 2022. Met-Ed Exhibit 14 for the Complainants' Met-Ed service area.

24. Met-Ed Exhibit 15 is a Power-On Order dated September 11, 2022. Met-Ed Exhibit 15 for the Complainants' Met-Ed service area.

25. On February 18, 2022, a tree fell on an electric wire at the Moyers' personal residence, which started a fire. Tr. 38.

26. The February 18, 2022 outage was caused by an off right-of-way tree on a day with rain and high winds. Met-Ed Exhibits 3, 4, 11; Tr. 86.

27. In August 2020, the Moyers experienced three concurrent episodes of sustained low voltage at their personal residence. Tr. 40.

28. Outages occurred on August 2 and August 4, 2020. Met-Ed Exhibits 3, 4, 10.

29. The August 2 and August 4, 2020 outages were during rain with high winds. Met-Ed Exhibits 3, 4, 10.

30. Complainants are served from Met-Ed's Lynnville Substation and a tap off of Phase B of Circuit 737-1 (Circuit). Tr. 65-66.

31. The tap-in area of the Circuit serving Complainants includes 48 customers. Tr. 66.
32. The Circuit includes equipment intended to prevent outages. Tr. 66-68.
33. Complainants experienced 46 outages from January 2018 to September 2022. Met-Ed Exhibits 3, 4, 10, 11, 13, 14, 15; Tr. 70-71.
34. Seven of the outages were in 2018, eleven were in 2019, eight were in 2020, sixteen were in 2021, and eight in 2022 as of September 14, 2022. Met-Ed Exhibits 3, 4, 10, 11, 13, 14, 15; Tr. 71.
35. Four of the 46 outages were caused by line or Company equipment failure. Met-Ed Exhibits 3, 4, 10, 11, 13, 14, 15; Tr. 71.
36. Four of the 46 outages were caused by unknown reasons. Met-Ed Exhibits 3, 4, 10, 11, 13, 14, 15; Tr. 71.
37. Outages are labeled as unknown reason when a crew patrols the line and finds no permanent condition to explain why the outage occurred. Tr. 71.
38. Two of the 46 outages were caused by right-of-way trees. Met-Ed Exhibits 3, 4, 10, 11, 13, 14, 15; Tr. 72.
39. 35 of the 46 outages were caused by off right-of-way trees. Met-Ed Exhibits 3, 4, 10, 11, 13, 14, 15; Tr. 72-73.
40. One of the 46 outages was a forced outage. Met-Ed Exhibit 3; Tr. 73.
41. A forced outage is when the Company needs to take an outage to do a repair but cannot give notice to customers. Tr. 68.

42. The forced outage was caused by equipment failure. Met-Ed Exhibits 3, 4.
43. The off right-of-way trees that caused outages are located in wetlands. Tr. 73.
44. As part of its Biennial I&M Plans, Met-Ed inspects, repairs, and/or replaces equipment. Met-Ed Exhibits 5, 6, 7; Tr. 78-81.
45. To improve service to Complainants, Met-Ed performed two post-storm sweeps; completed a targeted forestry inspection; and installed a switch and trip saver. Tr. 82.
46. Met-Ed's Biennial I&M Plans include vegetation maintenance. Met-Ed Exhibits 5, 6, 7; Tr. 103-105.
47. Vegetation in the area of each Met-Ed line is assessed and maintained at least once every four years. Tr. 102.
48. Vegetation maintenance was last performed on Complainants' Circuit in 2018. Tr. 102-103.
49. Cycle maintenance is currently in progress for the portion of the Circuit near Complainants' residences. Tr. 102-103, 107-108.
50. From September 2018 through August 2022, 315 trees were either removed or trimmed along the tap-in area of the Circuit serving Complainants. Met-Ed Exhibit 8; Tr. 111.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. 66 Pa.C.S. §§ 332(a), 701.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982). Moreover, the Commission’s decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980). A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960). A complainant cannot establish a case merely by stating his or her personal beliefs, since assertions, personal opinions or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

Public utilities are required by law to provide the Complainants with adequate and reasonable service. Section 1501 of the Public Utility Code Section states:

§ 1501. Character of service and facilities.

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

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

A Section 1501 violation regarding unreasonable service outages is fact specific as to the number of outages, their causes, and a company's corrective actions. *Barry v. Metro. Edison Co.*, Docket No. C-2018-3005410 (Opinion and Order entered Aug. 12, 2019). The Commission does not automatically consider an outage from an off right-of-way tree to exonerate the utility from fault. *Id.* An electric distribution company shall strive to prevent interruptions of electric service and, when interruptions occur, restore service within the shortest reasonable time. 52 Pa. Code § 57.194(d).

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

In this proceeding, Complainants have alleged that Met-Ed violated section 1501 of Title 66 of the Public Utility Code regarding reasonable, safe and quality service. 66 Pa.C.S. § 1501. Therefore, Complainants have the burden of proof in this proceeding.

When provided an opportunity to testify at the September 14, 2022 hearing, Mrs. Bierkamp stated that their complaint was filed because of the frequent and sometimes long power outages that she alleged they experience. Tr. 34. However, when asked if she wished to elaborate on the reasons for complaint, she stated that she would like to defer to Mrs. Moyer. Tr. 35. Met-Ed stated it did not object to the Bierkamps deferring to Mrs. Moyer. Tr. 36. Mrs. Moyer testified as to incidents with specifically her electric service in August 2020 and February 2022, but otherwise stated that Met-Ed's own records of 46 outages in less than four years demonstrate their service is unreliable. Tr. 38, 40, 47. Specifically, Mrs. Moyer asserted that Met-Ed's records show nine incidents identified as "Equipment Failure" or "Patrolled Line – Permanent Condition Identified." Tr. 48. Mrs. Moyer alleges that even nine power outages in four years is too much. Tr. 48. Regarding other incidents caused by trees, Mrs. Moyer avers the trees should be cut down, and switches and equipment can be updated. Tr. 48-49. Mrs. Moyer testified that it is necessary to own a generator because of the power outages. Tr. 49. Mr. Geist testified that he has experienced nine incidents with his power in 2022. Tr. 52-53. Mr. Geist suggested that any problems with service related to service poles in marshland could be solved by moving the poles to dry land. Tr. 53.

Met-Ed submitted documentation of 46 power outages at Complainants' service addresses from January 2018 through September 2022. Met-Ed Exhibits 3, 4, 10, 11, 13, 14, 15; Tr. 70-71. Of the 46 outages, four were caused by line or Company equipment failure, four were caused by unknown reasons, two were caused by right-of-way trees, 35 were caused by off right-of-way trees, and one was a forced outage. Met-Ed Exhibit 3, 4, 10, 11, 13, 14, 15; Tr. 71-73.

Met-Ed contends that the improvements it has made to Complainants' service may have prevented or minimized the service interruptions experienced by Complainants. Tr. 82-83. However, despite Met-Ed's efforts, the topography of the circuit, i.e., the wetlands, hampers the crew's ability to access and remove vegetation. Tr. 114. Additionally, Met-Ed avers the Company has limited ability to remove off right-of-way vegetation, and the majority of outages occurred during some kind of inclement weather. Tr. 73-74. Nonetheless, Met-Ed avers cycle maintenance is currently in progress for the portion of the Circuit near Complainants' residences. Tr. 102-103, 107-108.

Recently, in a different proceeding, the Commission found that fourteen outages and eight reclosure events over approximately three and a half years did not constitute unreasonable service. *Zampatti v. West Penn Power Co.*, Docket No. C-2020-3021157 (Opinion and Order entered Apr. 25, 2022) (*Zampatti*). The Commission did not cite or set a rule about a quantity of outages that constitute inadequate and unreasonable service but did emphasize that West Penn took steps to remedy the service concerns and that those steps did lead to fewer outages. *Id* at 11-12.

Here, Complainants' experienced 46 outages over approximately four years. Met-Ed's witness described steps it has taken to remedy the outages to Complainants' services, but it is not clear that those steps are leading to a decrease in outages. Specifically, seven of the outages were in 2018, eleven were in 2019, eight were in 2020, sixteen were in 2021, and eight in 2022 as of the hearing on September 14, 2022. Met-Ed Exhibits 3, 4, 10, 11, 13, 14, 15; Tr. 71.

Nonetheless, although 46 outages over approximately 4 years may on its face appear unreasonable, I find that Met-Ed successfully rebutted this evidence and therefore Complainants have not met their burden of proof that Met-Ed's service is unreasonable and inadequate. First, the vast majority of outages, 35 out of 46, were caused by things not within Met-Ed's control, i.e., off right-of-way trees. Although the Commission does not automatically consider an outage from an off right-of-way tree to exonerate the utility from fault, the Complainants did not establish in the record that Met-Ed did not provide reasonable or adequate service in relation to managing or attempting to manage the off right-of-way trees that caused outages. Instead, the record does indicate Met-Ed does attempt to take action to manage off right-of-way trees, e.g., Met-Ed Exhibit 8. It is also unclear what caused the outages labelled "Patrolled Line-No Permanent Condition Identified." Therefore, it is not clear that "Patrolled Line-No Permanent Condition Identified" outages were within Met-Ed's control to the same extent as equipment failure or on right-of-way trees. Met-Ed Exhibits 3, 4. Rather, only seven of

the 46 outages are clearly within Met-Ed's control, i.e., were by caused equipment failure¹ or trees on Met-Ed's right-of-way.

Second, even if fault is assigned to Met-Ed for the seven outages that are arguably within Met-Ed's control, Met-Ed's Electric Service Tariff does not guarantee a continuous, uninterrupted, or regular supply of electric service. Met-Ed Exhibit 12. Met-Ed 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 or for the purpose of preventing or limiting any actual or threatened instability or disturbance of the system. *Id.* Additionally, Section 1501 of the Public Utility Code requires reasonable service, not perfect service. 66 Pa.C.S. § 1501; *Elkin*. It is therefore not clear that these seven outages alone constitute unreasonable and inadequate service. Moreover, Met-Ed is also not liable "for any damages due to accident, strike, storm . . . or any other cause" beyond Met-Ed's control. Met-Ed Exhibit 12. Of the seven outages most clearly within Met-Ed's control, only two occurred when there was not a notable weather event, i.e., when the weather was described as fair. Met-Ed Exhibits 3, 4, 10, 11, 13, 14, 15.

Lastly, Met-Ed testified that it maintains Biennial Inspection, Maintenance, Repair and Replacement Plans with the Commission, which reflect its standards as regards inspecting, repairing, and/or replacing equipment and vegetation management. Tr. 78-81; 103-105. Met-Ed testified that it has made equipment modifications to Complainants' tap-in area and is currently undertaking vegetation management in an attempt to mitigate the number of outages experienced by Complainants. Tr. 82, 102-103, 107-108. Therefore, although the number of outages experienced by Complainants over the past several years is not clearly trending downwards, Met-Ed does have established Biennial I&M Plans and it appears that Met-Ed is making good faith efforts to ameliorate the outages for the Complainants' tap-in area of the Circuit in particular.

¹ The record indicates the one forced outage was also caused by equipment failure. Met-Ed Exhibits 3, 4.

Mrs. Moyer also provided specific testimony regarding outages on February 18, 2022, and in August 2020 as reasons for the Moyers' Formal Complaints. Tr. 38-40. Regarding the February 18, 2022 outage, Mrs. Moyer testified that fire companies arrived because a tree fell on a wire and started a fire. Tr. 38.² However, Mrs. Moyer alleged that Met-Ed did not respond for over 10 hours. Tr. 39. In response to Mrs. Moyer's testimony, Met-Ed testified that the first report of interruption of service was 7:08 a.m., and field work was completed by 12:51 p.m. Met-Ed Exhibit 11; Tr. 85.³ Met-Ed also highlighted that the weather that day was rainy with high winds and the tree causing the issue was an off right-of-way tree. Met-Ed Exhibit 11; Tr. 86. Regarding this specific outage, I do not find that there is substantial evidence that Met-Ed provided such a delayed response so that inadequate or unreasonable service was rendered, or that Met-Ed did not restore service within the shortest reasonable time. It is also noteworthy that the outage was caused by an off right-of-way tree during a day with rain and high winds. As noted above, utilities must provide reasonable service, not perfect service.

Regarding the August 2020 outages, the record shows that there were outages on August 2 and August 4, 2022. Met-Ed Exhibits 3, 4, 10. Mrs. Moyer testified that she lost \$6,000 in household appliances because of the outages. Tr. 40.⁴ However, the record shows that

² During Mrs. Moyer's testimony, counsel for Met-Ed objected to Mrs. Moyer's reference to out of court statements as hearsay. Tr. 38-39. Although administrative agencies in Pennsylvania can rely on hearsay for a finding of fact if there is no objection and the hearsay is corroborated (*Walker v. Unemployment Comp. Bd. of Rev.*, 367 A.2d 366 (Pa. Cmwlth. 1976)), this decision neither relies on nor provides any finding of fact regarding any out of court statements that were objected to as hearsay.

³ Mrs. Moyer objected to Met-Ed's witnesses recounting of the times at which Met-Ed responded to the outage on February 18, 2022. Tr. 87. Mrs. Moyer's objections were noted, but Mrs. Moyer's objections were based on her reference to text messages, which were not introduced as evidence into the record. Tr. 87-90. The telephonic hearing notices and prehearing order issued in this proceeding provided instructions on how to submit proposed exhibits ahead of the evidentiary hearing. The Moyers did not circulate any proposed exhibits in this proceeding ahead of the evidentiary hearing.

⁴ Met-Ed objected to Mrs. Moyer's testimony regarding losses associated with the August 2020 outages because it was not specifically included in the Moyers' Formal Complaint and included an allegation regarding damages. Tr. 41-43. Because the Formal Complaint regarded recurring outages experienced by Complainants and Mrs. Moyer did not state during the hearing that she was seeking recovery of damages, Mrs. Moyer was allowed to continue with her testimony. Tr. 44-46. Additionally, Met-Ed was informed they could request further hearings, if they felt it was necessary to further respond to Complainants' testimony. *Id.* Met-Ed did not request any further hearings after the September 14, 2022 evidentiary hearing.

the damage was caused by trees during rain with high winds. Met-Ed Exhibits 3, 4, 10.⁵ As explained above, Met-Ed is not liable “for any damages due to accident, strike, storm . . . or any other cause” beyond Met-Ed’s control. Met-Ed Exhibit 12. There is not substantial evidence to the contrary that events in August 2020 were so within Met-Ed’s control that Met-Ed provided inadequate or unreasonable service. Therefore, Mrs. Moyer’s Formal Complaint is not sustained as regards the August 2020 outages.

As relief, Complainants all request that Met-Ed update equipment, install more switches, and perform extensive tree trimming. The record of this proceeding does show that Met-Ed has taken various steps regarding updating equipment and vegetation management to improve service to the Complainants. Although the annual number of outages does not appear to be clearly decreasing, for the reasons explained above, the record also does not contain substantial evidence that Met-Ed is providing unreasonable and inadequate service and therefore violating the Public Utility Code, a Commission order or regulation or a Commission-approved tariff as it relates to Complainants’ service. Accordingly, the Complainants’ Formal Complaints are dismissed.⁶

CONCLUSIONS OF LAW

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

⁵ The record shows that the August 2, 2020 outage was caused by off right-of-way trees. Met-Ed Exhibit 4. However, it is not clear from the record that the August 4, 2020 outage was caused by an off right-of-way tree. Specifically, page 1 of 2 of Met-Ed Exhibit 10 indicates that the outage was caused by an on right-of-way tree, while page 2 of 2 of Met-Ed Exhibit 10 and a Power-On Order for August 4, 2022 in Met-Ed Exhibit 4 indicate that the outage was caused by an off right-of-way tree.

⁶ In *Zampatti*, although the Commission did not find that the formal complaint should be sustained, it found that the circumstances warranted further review by the Bureau of Technical Utility Services – Reliability Division to help ensure continued reliable, safe and quality service into the future. *Zampatti* at 12. Although Complainants have not met their burden of proof in this proceeding to sustain their formal complaints, the Commission may find it appropriate to provide a referral similar to that made in *Zampatti*.

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

4. 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.

5. "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).

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

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

8. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd.*

of Rev., 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlt. 1984).

9. Utility companies are required to provide adequate and reasonable service. 66 Pa.C.S. § 1501.

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

11. A Section 1501 violation regarding unreasonable service outages is fact specific as to the number of outages, their causes, and a company's corrective actions. The Commission does not automatically consider an outage from an off right-of-way tree to exonerate the utility from fault. *Barry v. Metro. Edison Co.*, Docket No. C-2018-3005410 (Opinion and Order entered Aug. 12, 2019).

12. An electric distribution company shall strive to prevent interruptions of electric service and, when interruptions occur, restore service within the shortest reasonable time. 52 Pa. Code § 57.194(d).

13. Met-Ed does not guarantee a continuous, uninterrupted or regular supply of electric service. Met-Ed 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 or for the purpose of preventing or limiting any actual or threatened instability or disturbance of the system. Met-Ed is also not liable for "any damages due to accident, strike, storm . . . or any other cause" beyond Met-Ed's control. Met-Ed Tariff Rule 21, Electric Pa. P.U.C. No. 52, effective May 3, 2015.

14. Met-Ed provided adequate and reasonable service consistent with Section 1501 of Title 66 of the Public Utility Code. 66 Pa.C.S. § 1501.

