

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rasheed Clark	:	
	:	
v.	:	C-2019-3014882
	:	
Verizon Pennsylvania LLC	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Complainant’s Formal Complaint because he failed to sustain his burden of proof to establish that Verizon Pennsylvania LLC failed to provide him with safe and reliable service.

**HISTORY OF THE PROCEEDING**

On December 6, 2019, Rasheed Clark (Complainant or Mr. Clark) filed a Formal Complaint (Complaint) against Verizon Pennsylvania LLC (Verizon or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant asserts that he is having reliability, safety, or quality of service problems. Specifically, the Complainant alleges that Verizon low hanging wires are causing a hazard and blocking access to his side easement and back yard.

On December 30, 2019, Respondent filed an Answer and New Matter denying the material allegations of the Complaint. Further, the Respondent filed Preliminary Objection on the same date.

On January 15, 2020, the Complainant filed a reply to the Answer and Preliminary Objection.

On February 6, 2020, Motion Judge Assignment Notice which indicated that Administrative Law Judge Eranda Vero was assigned to resolve the issues of the Preliminary Objection.

On April 24, 2020, Judge Vero issued an Order denying the Preliminary Objection and referring the case to the Mediation Unit.

On May 14, 2020, Respondent filed an Amended Answer and New Matter.

On June 26, 2020, the Mediation Unit issued an Interim Order setting the resolution procedures. The parties were able to resolve some of the issues but not all of the issues, so the matter was scheduled for a hearing.

On July 29, 2022, a Hearing Notice was issued which indicated an initial hearing was scheduled in the matter for September 7, 2022, at 10:00 a.m., and assigned to me. I issued a Prehearing Order on August 23, 2022.

The initial hearing in this matter was held as scheduled on September 7, 2022. The Complainant appeared *pro se* and testified on his own behalf. The Complainant presented two exhibits which were entered into the record at the hearing. Respondent appeared and was represented by Susan D. Paiva, Esq., who presented the testimony of two witnesses, Douglas Smith, Vice President of State Government Affairs, and Quentin Todd, Sr., Local Manager of Network Operations. Respondent offered four exhibits which were entered into the record at the time of the hearing.

The hearing resulted in a transcript of 132 pages. The record closed on October 3, 2022, when the transcript was docketed to the case by the Secretary's Bureau.

### FINDINGS OF FACT

1. The Complainant in this case is Rasheed Clark, who resides at 1240 West Hilton Street, Philadelphia, Pennsylvania 19140 (Service Address). Tr. 7.
2. The Respondent in this case is Verizon Pennsylvania LLC.
3. The Complainant, according to his deed, has the right to the use of the easement that is next to the Service Address. Tr. 21; Verizon Exh. 2.
4. Verizon also has the right to use the same easement area for its equipment. Tr. 48, 49-50; Verizon Exh. 1.
5. The Complainant has had issues with low hanging wires across the easement next to his property. Tr. 16, 22.
6. The Complainant first contacted Verizon in 2019 about the issue with the wires. Tr. 19.
7. The Complainant spoke to Verizon employees Randy Tibbs and Quentin Todd, Sr. about these issues. Tr. 18-19.
8. On November 17, 2020, the Company raised and tightened the lines that were sagging and removed unused wires from the side of the Service Address. Tr. 92, 97.
9. Mr. Todd visited the Service Address on four separate occasions to address the Complainant's concerns. Tr. 73.

10. Mr. Todd last visited the Service Address on August 18, 2022 and did not see the splicing box from Verizon down in the easement. Tr. 76, 78.

11. On August 18, 2022, there were not issues with branches interfering with Verizon lines at the Service Address. Tr. 51, 86.

12. As of August 18, 2022, Verizon's wires in the easement by the Service Address were at the correct height and there was not too much slack in the lines. Tr. 86; Verizon Exh. 4.

13. The Complainant also contacted Verizon about overgrown tree branches that were entangled in the wires. Tr. 8.

14. The tree was in a vacant lot adjacent to the Complainant's property. Tr. 17, 51; Complainant Exh. 1 and Verizon Exh. 4.

15. The vacant lot is owned by another party and the City of Philadelphia (City) and Verizon may not take the tree down without consent of the property owner. Tr. 51.

16. The Company will trim branches to the extent needed to keep the growth away from Verizon facilities. Tr. 51.

17. The tree is the responsibility of the owner of the vacant lot. Tr. 51.

18. The City has done some work clearing overgrowth from the vacant lot when there are neighborhood complaints. Tr. 35.

19. Verizon did make attempts to have the tree removed by contacting the City but was informed that the tree is on private property and the City cannot take any action. Tr. 51-52.

20. The Company can also adjust the slack in the wires in the easement area. Tr. 79.

21. The wires must have some slack in them in order to prevent wear and tear on the wires. Tr. 56, 86.

22. The Company complies with the industry standard in terms of the height of their wires<sup>1</sup>. Tr. 52, 54.

23. Lines located in alleys or easements should be at least 9.5 feet off the ground. Tr. 53.

24. The Company does not conduct routine surveys of their wires due to the number of wires that the Company owns. Tr. 99.

25. The Company does have many installation and repair crews in the City every day that visually inspects its lines and also inspects all telephone poles in the City for safety and compliance. Tr. 66.

26. Verizon tracks any trouble reports that it receives. Tr. 67.

27. For maintenance issues, when a customer calls in, a repair ticket is generated and then it is assigned to a technician who is dispatched to resolve the issue. Tr. 67.

28. Verizon relies on customers to report issues with its equipment or its facilities. Tr. 99.

29. The Company will inspect wiring in an area if they are called about a specific issue. Tr. 97-98; PECO Exh. 3.

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<sup>1</sup> The standards are found in the Telcordia Blue Book, a manual of construction procedures which incorporates the National Electrical Safety Code as well as OSHA codes and FCC standards.

30. A box from Verizon's wire fell onto the easement with a wire that is hanging down. Tr. 13; Complainant Exh. 1.

31. The Verizon box fell after Verizon's visit to the property on August 18, 2022. Tr. 25.

32. At the time of the hearing, the wire was on the ground. Tr. 15.

33. The Complainant was provided with Mr. Todd's telephone number to call if there were any further issues at his property. Tr. 26-27.

34. The Complainant did not contact Verizon or Mr. Todd directly about the box and did not inform the Company until the time of the hearing. Tr. 27.

35. Verizon does not have any repair or maintenance tickets regarding the Service Address that are currently open. Tr. 112.

### DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlt. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact

necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and W. Ry. 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. 1960); *Murphy v. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

### Service Dispute

The Complainant alleges that he has had multiple issues with the Verizon wires that run in the easement next to his property. He contends that this has been an ongoing issue and believes that Verizon should conduct regular maintenance of its lines in order to prevent such issues from occurring. The Complainant asserts that the condition of the Company's facilities is preventing him from using the easement which he has the right to use.

As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at

66 Pa.C.S. § 1501 requires public utilities to provide reasonable and adequate, not perfect service. The statute at 66 Pa.C.S. § 1501, provides, in relevant part:

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.

Interpreting this provision, the Commonwealth Court stated:

[I]n order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.

*West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984) (footnote omitted).

The statutory definition of “service” is to be broadly construed.<sup>2</sup> *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995). In applying the facts to the law, the issue becomes whether Verizon's actions as described in the Complaint rise to the level of inadequate service that constitutes a violation of the Public Utility Code.

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<sup>2</sup> “‘Service.’ Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them[.]” 66 Pa.C.S. § 102.

The Complainant testified that he resides at the Service Address. The Complainant has had issues with low hanging wires across the easement next to his property. Tr. 16, 22. The Complainant, according to his deed, has the right to the use of the easement. Tr. 21; Verizon Exh. 2. The Complainant first contacted Verizon in 2019 about the issue with the wires. Tr. 19. The Complainant also contacted Verizon about overgrown tree branches that were entangled in the wires. Tr. 8. Further, the Complainant testified that the Verizon box fell after Verizon's visit to the property on August 18, 2022. Tr. 25. The Complainant was provided with Mr. Todd's telephone number to call if there were any further issues at his property. Tr. 26-27. The Complainant did not contact Verizon about the box and did not inform the Company until the time of the hearing. Tr. 27. Further, Verizon's witness Mr. Todd testified that it does not have any repair or maintenance tickets regarding the Service Address that are currently open. Tr. 112.

Verizon's witness Mr. Smith testified that the Company has the right to use the easement area for its equipment. Tr. 48, 49-50; Verizon Exh. 1. Mr. Todd also testified on behalf of Verizon that he visited the Service Address on four separate occasions to address the Complainant's concerns. Tr. 73. On November 17, 2020, the Company did raise and tighten the lines that were sagging and removed unused wires from the side of the Service Address. Tr. 92, 97. Mr. Todd last visited the Service Address on August 18, 2022 and did not see a box down in the easement. Tr. 76, 78. There were no issues with branches interfering with Verizon lines at the Service Address at that time. Tr. 51, 86. As of August 18, 2022, Verizon's wires in the easement by the Service Address were at the correct height and there was not too much slack in the lines. Tr. 86; Verizon Exh. 4.

Moreover, related to the wire issues, the Company can also adjust the slack in the wires in the easement area. Tr. 79. However, the wires must have some slack in them in order to prevent wear and tear on the wires. Tr. 56, 86. The Company complies with the industry standard in terms of the height of their wires. Tr. 52, 54. Lines located in alleys or easements should be at least 9.5 feet off the ground. Tr. 53. As noted above, Mr. Todd testified that the Company has gone out to the Service Address and reduced the slack in the wires in the easement.

With respect to the vegetation issue, the parties agreed that the tree was in a vacant lot adjacent to the Complainant's property. Tr. 17, 51; Complainant Exh. 1; Verizon Exh. 4. Verizon witness, Mr. Smith, testified the vacant lot is owned by another party and the City and Verizon may not take the tree down without consent of the property owner. Tr. 51. The Company will trim branches to the extent needed to keep the growth away from Verizon facilities. Tr. 51. However, the tree is the responsibility of the owner of the vacant lot. Tr. 51. The Complainant acknowledged that the City has done some work clearing overgrowth from the vacant lot when there are neighborhood complaints. Tr. 35. Verizon did make attempts to have the tree removed by contacting the City but was informed that the tree is on private property and the City cannot take any action. Tr. 51-52.

Regarding the Complainant's maintenance concerns, Mr. Todd testified that the Company does not conduct routine surveys of their wires due to the number of wires that the Company owns. Tr. 99. Mr. Smith stated that the Company does have many installation and repair crews in the City every day that do visual inspections of its lines and also inspect all telephone poles in the City for safety and compliance. Tr. 66. Verizon tracks any trouble reports that it receives. Tr. 67. For maintenance issues, when a customer calls, a repair ticket is generated and then assigned to a technician, who is dispatched to resolve the issue. Tr. 67. Verizon relies on customers to report issues with its equipment or its facilities. Tr. 99. Further, the Company will inspect wiring in an area if they are called about a specific issue. Tr. 97-98.

While there have been some issues with the Verizon wires that run in the easement next to the service address, I do not believe that the service is inadequate or unreasonable. The Company has been to the Service Address on a number of occasions and addressed the Complainant's concerns. The Company relies on customers to report issues that occur on their property. While the Company may not have a regular maintenance schedule, as stated by the Verizon witness, there are crews out in the City every day that are inspecting facilities when they are out in the field. At the last visit to the Service Address by Verizon, there were no issues with the easement in terms of the wires and the vegetation. The current issues with the box and wire that are down occurred after Verizon's last visit and the Complainant acknowledged that he had not contacted the Company about this most recent issue. Verizon

confirmed that there were no outstanding tickets related to the Complainant's property or the easement. The Complainant has not met his burden to established that the Company has failed to provide adequate, safe and reasonable service. As such, the Complainant's Complaint must be denied.

#### CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the complainant.

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

4. To satisfy the burden of proof against a utility, the Complainant must show that the utility is responsible or accountable for the problem described in the Complaint, or that the utility has violated either its duty under the Public Utility Code or the orders or regulations of the Commission. *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976); 66 Pa.C.S. § 701.

5. Every public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities. 66 Pa.C.S. § 1501.

6. Service is defined as "any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, in the performance of their duties to their employees, other public utilities, and

