

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

Public Meeting held March 16, 2023

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
Stephen M. DeFrank, Vice Chairman  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

Adam Tercek

C-2022-3032118

v.

Duquesne Light Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Duquesne Light Company (DLC or the Company) on November 15, 2022, to the Initial Decision (I.D.) of Administrative Law Judge Mary D. Long (ALJ), issued on October 26, 2022, in the above-captioned matter, which concerns a Formal Complaint (Complaint) filed on April 14, 2022, by Adam Tercek (Mr. Tercek or Complainant), in which he alleged that DLC failed to provide reasonable service because it refused to resolve the unreasonable level of humming noise emitting from the transformers outside his home. In her Initial Decision, ALJ Long sustained the Complaint, directed DLC to replace the transformers,

and assessed a civil penalty of \$3,500 against the Company for its failure to fully investigate the Complaint. No Replies to the Exceptions were filed. For the reasons discussed below, we shall deny DLC's Exceptions and adopt the ALJ's Initial Decision, consistent with this Opinion and Order.

### **I. History of the Proceeding**

On April 14, 2022, Mr. Tercek filed a Complaint against DLC in which he alleged that the newly-installed step-down transformers that DLC installed in his front yard emitted a "perpetual loud humming noise" that he could hear through the insulated brick walls in his house even when all of the windows are closed. For relief, he requested that the Company remove the transformers from his property, or at the very least, eliminate the noise coming from the transformers. He also requested compensation from DLC for the loss in value of his property due to the noise. Complaint at 2-3.

On May 16, 2022, DLC filed an Answer and New Matter along with Preliminary Objections. In its Answer, DLC stated that there are transformers mounted to the pole on Mr. Tercek's property, which is located in DLC's right-of-way, and the transformers are operating within accepted operational parameters. DLC further averred that it had not violated the Public Utility Code (Code). Answer at 2. With respect to the New Matter, DLC submitted that the Code does not grant the Commission the authority to award monetary damages in connection with disputes over service between customers and the public utility. *Id.* at 3. Accordingly, DLC filed Preliminary Objections that requested the Commission dismiss that portion of Mr. Tercek's Complaint that seeks compensation for the loss in value of his property.

On July 20, 2022, the hearing convened as scheduled. The Complainant, who appeared *pro se*, testified and presented testimony from two of his neighbors as witnesses. The Company was represented by counsel, who presented the testimony of

three witnesses and submitted nine exhibits, eight of which were admitted into the record. The hearing produced a transcript of 103 pages. I.D. at 2. In addition, the ALJ granted the Company's Preliminary Objections which sought dismissal of Mr. Tercek's claims for damages. Tr. at 101.

On October 26, 2022, the Commission served ALJ Long's Initial Decision, which sustained the Complaint based on her conclusion that DLC failed to maintain reasonable and adequate facilities, in violation of the Code, with respect to the new transformers that were installed on the Complainant's property. The ALJ also directed DLC to replace the transformers on the Complainant's property that are emitting excessive noise and assessed a civil penalty of \$3,500 on DLC (\$500 for each month DLC failed to fully investigate the Complaint) for its failure to fully investigate Mr. Tercek's Complaint that the transformers were emitting an excessive level of noise. I.D. at 21-23.

As noted, *supra*, DLC filed Exceptions on November 15, 2022. The Complainant did not file Replies to Exceptions.

## **II. Background**

On October 3, 2019, DLC replaced an old distribution pole that was located on Mr. Tercek's property because it failed the Company's pole inspection. Tr. at 54. The new pole, which is the same height as the old pole, was located in the right-of-way, but about ten feet closer to Mr. Tercek's house. Tr. at 33, 41, 57, 67. The Company's standard practice, where there are step-down transformers on the pole being replaced, is to install new transformers on the new pole in order to shorten the outage time. Tr. at 54. Therefore, the Company replaced the three old 167 kVA transformers that were on the old pole with three new 167 kVA transformers on the new pole. Tr. at 53-54, 64.

Mr. Tercek claimed that he started to hear a humming noise coming from the new transformers that was not present with the old transformers. Tr. at 10. He said he hears the sound 365 days a year, but the humming was lower in the off-peak times and grew louder with air conditioning running in the summer months and electric heat in use in the winter months. *Id.* He also stated he could always hear the humming of the transformers in his bedroom and through his walls and with the windows closed, even after he insulated the walls after the humming sound started. Tr. at 12, 16, 18. He is concerned, based on what he was told by a DLC employee, that the noise will get worse as more people in the township begin purchasing and charging electric vehicles. Tr. at 13. Mr. Tercek presented two witnesses, both neighbors, who corroborated Mr. Tercek's account that the noise emitted from the transformers only started after the new pole and transformers were installed. Tr. at 22-24, 26-36.

DLC claims the three new step-down transformers are functioning within accepted operational parameters, and that the audible sound levels from the transformers are reasonable to persons of ordinary sensibilities, consistent with 66 Pa. C.S. § 1501. Tr. at 78-79. In addition, the Company claims that the placement of the new pole and transformers were designed and installed in compliance with all applicable codes and standards, including the National Electric Code (NEC) requirement that they be placed at a minimum of six feet away from a house or building. Tr. at 55. The Company acknowledged that the more load placed on a transformer, the louder it will hum. Tr. at 65. The Company further noted that, unlike ground-mounted transformers, overhead transformers cannot be retrofitted to dampen excessive noise. Tr. at 61-62. If an overhead transformer is excessively loud, DLC's practice is to replace the transformer rather than trying to modify it. Tr. at 57.

The Company indicated that it sent out troubleshooters several times in response to Mr. Tercek's telephone calls complaining about the transformer noise and each time the assigned troubleshooters determined that "no trouble was found" or that

“DLC is clear.” Tr. at 44-5. Also, the Company’s Engineer Line Worker Supervisor testified that he took sound measurements of the transformers on Mr. Tercek’s property on April 21, 2022, with a handheld “W.S. 1631” sound meter; however, as discussed, *infra*, the ALJ did not admit Exh. DLC-1 with those readings into the record. Tr. at 71, 77-79, 86-87.

Mr. Tercek testified that he doesn’t trust the Company’s measurements and that asking them to confirm a decibel level is a “conflict of interest” because they “know the lowest load time to give us the measurements.” Tr. at 18, 99.

### **III. Discussion**

#### **A. Legal Standards**

Initially, we note that any issue or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

##### **1. Burden of Proof**

As the proponent of a rule or order, the Complainant bears the burden of proof to establish that he is entitled to the relief he is seeking in this proceeding pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing

must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 484 Pa. 109, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by a complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of the complainant shifts to the respondent. If the evidence presented by the respondent is of co-equal value or "weight," the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 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. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

## **2. Safe, Adequate and Reasonable Service**

A public utility has a duty to maintain safe, adequate and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa. C.S. § 1501. Section 1501 of the Code provides, in pertinent part, as follows:

**§ 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. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service.

66 Pa. C.S. § 1501.

In addition, 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. *W. Penn Power Co. v. Pa. PUC*, 478 A.2d 947 (Pa. Cmwlth. 1984). 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.

*Re Metro. Edison Co.*, 80 Pa. PUC 663, 672 (1993). However, a public utility is obligated to provide service that is reasonable and adequate. *Analytical Lab. Servs., Inc. v. Metro. Edison Co.*, Docket No. 20066608 (Order entered December 21, 2007).

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. *Thurby v. W. Penn Power Co.*, Docket No. C-2011-2254048 (Final Order entered April 4, 2013).

## **B. The ALJ's Initial Decision**

ALJ Long made fifty-seven Findings of Fact and reached six Conclusions of Law. I.D. at 3-8, 23-24. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In her Initial Decision, ALJ Long found the testimony of Mr. Tercek, and his witnesses, Ms. Pelligrino and Mr. Harahus, more persuasive than the testimony of DLC's witness, Mr. Pisano, because they live in close proximity to the pole and transformers and offered detailed and specific testimony regarding the level of noise emitted from the transformers, which they stated became louder after Duquesne Light replaced the pole and transformers in front of Mr. Tercek's home. I.D. at 11. In contrast, the ALJ concluded that DLC witness Mr. Pisano's testimony was only a general comparison of the transformers in the neighborhood and does not rebut the specific testimony of the other three witness. She further explained that Mr. Pisano does not live in the neighborhood and passes through at unspecified times while he is walking with his family or his dog. *Id.*

As to DLC witness Mr. Ostrander's testimony, the ALJ noted that although he testified that all transformers hum because of the vibrations of the inner connections and that the more load on a transformer, the louder the transformer noise will be, he did not inspect the transformers themselves; nor did he inspect the hardware that connects the transformers to the pole or offer any evidence to explain the difference in the noise level generated by the old transformers compared to the new louder transformers.. I.D. at 12. While the ALJ reasoned that the new location of the pole closer to Mr. Tercek's house

could make the noise louder for him, the ALJ posited that this does not explain why Mr. Tercek's witnesses can now hear the humming on their properties when they did not hear similar noise before DLC replaced the pole. I.D. at 12. The ALJ noted that, while Mr. Ostrander testified that it is DLC's policy to replace transformers when they are not functioning properly, he did not offer any evidence explaining why DLC did not replace the transformers when Mr. Tercek repeatedly complained about the noise level. I.D. at 13.

Furthermore, the ALJ found that DLC never challenged or rebutted the witnesses' testimony that the noise is emitted by the transformers on the pole in front of Mr. Tercek's home; nor did DLC 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. I.D. at 13. DLC's witness Mr. Ostrander only performed a clearance investigation and stated that the configuration of the pole was consistent with NESC requirements. *Id.*

In addition, as discussed, *supra*, the ALJ concluded that DLC's witness Mr. Pisano's testimony did not support a conclusion that the transformers were operating correctly and emitting a normal level of noise. The ALJ determined that Mr. Pisano is not a qualified sound expert because he does not have any specific training or education in sound engineering, acoustics or a similar field, and he could not interpret the measurements taken on a sound-measuring device in a meaningful way. Thus, the ALJ concluded, that without a witness with appropriate training or expertise to testify about the decibel measurements, Mr. Pisano's measurements are irrelevant and inadmissible. I.D. at 14.

Next, the ALJ ruled, under 66 Pa. C.S. § 1501, that 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. I.D. at 14. The ALJ stated that DLC 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, nor did it offer any credible evidence to demonstrate that the noise emitted from the newer transformers at the levels described by the Complainant and his witnesses was “normal.” *Id.*

The ALJ concluded that the evidence in this proceeding suggests that the newer transformers on the new pole are not operating correctly and, therefore, should be replaced. She found that there is no evidence in the record that DLC inspected the transformers before or after they were installed, and there is no explanation for the increased level of noise emitted by the new transformers that are essentially the same as the older transformers. Concluding that the only explanation for the difference in the level of noise emitted by the transformers is some sort of malfunction, and because DLC witness Mr. Ostrander testified that the remedy for an excessively loud transformer is that it be replaced, the ALJ directed DLC to replace the transformers pursuant to 66 Pa. C.S. § 1505(a). *Id.* Also, the ALJ found that DLC did not comply with 52 Pa. Code § 57.12, which requires public utilities to make “a full and prompt” investigation of complaints by customers. I.D. at 15-18.<sup>1</sup>

Finally, the ALJ concluded that DLC failed to render adequate and reasonable service to the Complainant in violation of Section 1501 of the Code; however,

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<sup>1</sup> The ALJ cited to three prior cases that were before this Commission and provided a brief discussion on why each case is instructive with respect to the level of investigation the Commission expects in addressing noise and other quality issues raised by customers. Those cases and the relevant pages in the Initial Decision addressing each case are as follows: (1) *Nixon v. W. Penn Power Co.*, Docket No. C-2011-2228810 (Final Order entered Sept. 30, 2011) (*Nixon*) (I.D. at 16-17, 18-19); (2) *Sherman v. PPL Elec. Utils. Corp.*, Docket No. C-2015-2499616 (Opinion and Order entered Oct. 12, 2016) (I.D. at 17, 18-19); and (3) *Hodak v. Pa. Elec. Co.*, Docket No. C-2011-2274277 (Opinion and Order entered Jan. 24, 2013) (I.D. at 17-19).

she did not assess a civil penalty for this violation because she directed DLC to replace the transformers. I.D. at 21. Moreover, the ALJ assessed a civil penalty of \$3,500 (\$500 for each month the DLC failed to fully investigate Mr. Tercek's complaint) on the Company because it violated both Section 1501 of the Code, which requires public utilities to render reasonable service, and Section 57.12 of our Regulations, which requires electric utilities to fully investigate complaints. I.D. at 21-23.

### **C. DLC's Exceptions**

DLC filed two Exceptions to the ALJ's Initial Decision. In its first Exception, DLC argues that the ALJ incorrectly found the Complainant met his burden to demonstrate that humming from the transformers is excessively loud. DLC Exc. at 4-10. DLC submits that the Complainant's testimony, and that of his neighbors, offered no sound level readings or expert testimony to support their verbal claims. DLC Exc. at 4. Instead, the entirety of their testimony included only a description of the noise emitting from the transformers as an excessively loud humming noise that the Complainant characterized as "like I have 1,962 Frigidaire deep freezers in my front yard plugged-in all the time." DLC Exc. at 4-5 (citing I.D. at 11). DLC contends that the Complainant's subjective testimony, and that of his neighbors who echoed the Complainant's description of the noise emitted from the transformers, constituted the entirety of the Complainant's evidence in this proceeding. DLC Exc. at 5.

DLC argues that bald assertions, personal opinions and perceptions, by themselves, are not substantial evidence for burden of proof purposes. *Id.* (citing *McCauley v. Pennsylvania Electric Co.*, Docket No. C-2013-2369789 (Order entered April 3, 2014)). DLC further avers that the Complainant testified that he does not have evidence that DLC is breaking the law regarding the decibel level, and the ALJ noted in the Initial Decision that "the Commission does not have a regulation which sets forth reasonable noise standards for transformers in residential area." DLC Exc. at 4. DLC

asserts, however, that it presented objective evidence in this proceeding through its witness, Mr. Pisano, who testified that during frequent walks with his dog through the neighborhood, he observed that the humming from the three transformers on Mr. Tercek's property is no louder than the perpetual humming by other step-down transformers he passes in the neighborhood. DLC Exc. at 5-6. Furthermore, DLC adverted to Mr. Pisano's testimony where he compared the noise level of the transformers to ordinary conversation and that that sound level readings of 47 and 48 from the transformers are less than decibel level readings of 58-62 that he recorded during the telephonic hearing in this matter. DLC Exc. at 6.

For these reasons, DLC disagrees with the ALJ's conclusion that Mr. Tercek met his burden of proof based on her finding that Mr. Tercek's testimony was more persuasive than Mr. Pisano's. According to DLC, in concluding that the Complainant met his burden of proof, the ALJ incorrectly: (1) disregarded Mr. Pisano's testimony on the grounds that he is not a sound expert; (2) declined to admit Exh. DLC-1, a record of decibel readings taken of the transformers, because it is not a business record; (3) declined to credit the un rebutted evidence of Exhibit DLC-8 that DLC inspectors found the transformers to be operating normally; and (4) found that DLC presented no evidence that the transformers were operating correctly. *Id.*

With respect to the ALJ's disregard of Mr. Pisano's testimony on the grounds that he is not a sound expert, DLC avers that the ALJ instead relied upon Mr. Tercek's subjective lay testimony. DLC Exc. at 7. In disregarding DLC's corresponding testimony because it was not proffered by a sound expert, DLC submits that the ALJ inappropriately applied a double standard to the sufficiency of evidence with regard to the level of humming noise emanating from the transformers. *Id.* DLC expounds that when it sought to elicit similar subjective testimony from Mr. Pisano, who was not called as an expert, the ALJ deemed his testimony incompetent, taking the position that such testimony can only be proffered by a witness with qualified expertise in

sound monitoring. *Id.* DLC believes that the ALJ's error regarding evidentiary sufficiency in this instance is fatal to her finding that the transformers are too loud, as the record is devoid of any substantial evidence by the Complainant to support a finding that humming from the transformers is excessive. *Id.*

With respect to the ALJ's refusal to admit Exhibit DLC-1 into the record because it is not a business record, DLC submits that it was further handicapped in its presentation of Mr. Pisano's testimony. *Id.* DLC avers that it laid a proper foundation for such inclusion as Mr. Pisano testified that it is DLC's business practice to send an inspector like himself to a property following noise complaints from customers to perform a decibel level inspection using a handheld decibel meter, to record the decibel meter measurements in a notes application on his phone, and to then forward those results to his supervisor, all of which was done in this instance. DLC Exc. at 7-8. DLC notes that the Complainant did not object to acknowledging Exh. DLC-1 as a business record; however, the ALJ refused to acknowledge it as such and then used the exclusion as the basis for refusing to credit Mr. Pisano's testimony relative to the decibel readings of the transformers. DLC Exc. at 8. DLC argues that the ALJ's decision to exclude Exhibit DLC-1 and not weigh Mr. Pisano's testimony is misplaced because, first, DLC demonstrated at the hearing that Exhibit DLC-1 is a business record, and second, even if Exhibit DLC-1 had not been qualified as a business record, it should have been admitted because the technical rules of evidence do not limit administrative hearings, where all relevant evidence of reasonably probative value is admissible. *Id.* (citing *Gasparro v. Pa. PUC*, 814 A.2d 1283, nt. 3 (Pa. Cmwlth. 2003)). The Company contends that no prejudice would inure to the Complainant by admitting Exhibit DLC-1, which was authenticated by the operator of the handheld decibel meter, and who was available for cross-examination. DLC Exc. at 8.

Next, DLC objects to the ALJ's refusal to credit the unrebutted evidence of Exhibit DLC-8 which was proffered to demonstrate that DLC inspectors confirmed that

the transformers were operating normally. DLC contends that the ALJ erroneously found that DLC offered no evidence to support its defense that the transformers were operating correctly. However, DLC argues that the only pertinent evidence in the record demonstrating that DLC did inspect the transformers is in the references in Exhibit DLC-8, which document multiple inspections of the transformers in which the troubleshooters found no problems. Furthermore, DLC asserts that the Complainant offered no evidence suggesting that DLC failed to thoroughly inspect the transformers. DLC Exc. at 8.

DLC also objects to the ALJ's decision to disregard the findings in Exhibit DLC-8 because she found they lacked details of the inspections. DLC maintains that the ALJ assumed, without foundation, that the inspections were inadequate and that such a finding is not evidence that the transformers are malfunctioning. DLC argues that it is the Complainant's burden to demonstrate inadequacy, not DLC's, and the record is devoid of any such evidence. DLC Exc. at 9. Moreover, DLC believes the ALJ committed an error of law by excluding certain findings from Exh. DLC-8 as a business record. According to DLC, it offered Exhibit DLC-8 to document that inspections of the transformers occurred and that no abnormalities were identified. DLC avers that the findings referred to in Exhibit DLC-8 are factual in nature and not conclusions in the form of expert opinions that would warrant their exclusion from evidence absent the author's availability. *Id.* Since the records were not offered in the form of expert opinions, and the Complainant did not object to their admission in the record, DLC asserts that the ALJ should not have excluded the unrebutted factual findings of its Exhibit DLC-8. *Id.*

In concluding its first Exception, DLC argues that it offered comparative testimony in an attempt to provide context to the decibel readings taken by Mr. Pisano. DLC maintains that as part of his testimony, Mr. Pisano compared decibel readings from the transformers, which the Complainant contended were malfunctioning, to decibel

readings of other step-down transformers, which the Complainant did not contend were malfunctioning, on the block where the Complainant lives. In addition, DLC notes that Mr. Pisano also offered un rebutted evidence during the hearing when he indicated that the normal speaking voices of the parties and counsel participating in the hearing resulted in decibel levels higher than the humming noise from the transformers. DLC Exc. at 10.

In its second Exception, DLC objects to the ALJ's directive that the Company replace transformers on the grounds they are "emitting excessive noise." DLC Exc. at 10. DLC argues that the ALJ's directive to replace the transformers is not based on any factual grounds and she assumes that replacement of step-down transformers will not emit as much humming. *Id.* DLC maintains, however, that there is no record evidence that supports the ALJ's determination that replacement transformers will be any quieter. *Id.* DLC contends that the ALJ's directive cannot stand. *Id.*

As an alternative to the immediate replacement of the transformers, DLC suggests that the Commission reopen the record for the submission of testimony regarding the feasibility and effectiveness of replacement transformers to address the humming of which Mr. Tercek complains, including what level of humming qualifies as excessive. DLC Exc. at 10-11.

DLC points out that the ALJ's Initial Decision did not establish a sound level baseline that the Company must meet as part of any transformer replacement. DLC Exc. at 11. DLC avers that there is no reason for the Commission to mandate that step-down transformers in a residential neighborhood must be quieter than a person's normal speaking voice. Also, DLC contends that if the directive in the Initial Decision to replace the transformers is left to stand, it would cause confusion with regard to allowable sound level values for step-down transformers in residential neighborhoods throughout the Commonwealth of Pennsylvania. As a result, DLC believes that this would establish an unworkable bright-line rule that would require all utilities to replace

similarly situated step-down transformers with decibel readings greater than 47-48 decibels. *Id.*

No Reply Exceptions were filed.

#### **D. Disposition**

Based upon our review of the record, we agree with the ALJ that Mr. Tercek proved that DLC failed to render reasonable service because the noise emitted from the transformers outside his home was unreasonable. Mr. Tercek presented his own testimony, as well as the testimony of two of his neighbors, to support that the humming noise generated by the transformers outside of his home, is unreasonable. After Mr. Tercek moved into his home in September 2018, DLC replaced a pole that failed an inspection with a new pole and new transformers in front of his home in October 2019. Tr. at 9, 10, 54. After the pole was replaced, Mr. Tercek noticed a low humming noise, which is louder in the summer and winter when people are using air conditioning and heating. Tr. at 10, 16-18. Mr. Tercek testified that, even in spring when the noise level is lower, he can hear the humming from inside the house with the windows closed, and he can also hear the transformer noise from inside of his home at 2 A.M. through insulated walls. Tr. at 12, 17. Also, Mr. Tercek testified that he hears the noise when he grills outside and when he goes outside to get his paper or speak to his neighbor. Tr. at 13. Mr. Tercek described the noise level “like I have 1,962 Frigidaire deep freezers in my front yard plugged in all the time.” *Id.*

In addition to Mr. Tercek’s testimony, his next-door neighbors testified that the noise coming from the transformers after the pole was replaced is unreasonable. One neighbor, Ms. Pelligrino, who has lived in her home for twenty years, testified that since the pole and transformer replacement, she has to raise her voice above the noise to speak to neighbors when outside. Although she does not routinely hear the noise from inside

her home, she testified that the noise was louder in the summer and winter. Tr. at 21-24. Mr. Tercek's other neighbor, Mr. Harahus, similarly testified that he hears the transformer noise from outside of his home, as well as when he is on Mr. Tercek's back porch. Mr. Harahus, who has lived in his home for eleven years, stated that he did not hear noise from the transformers before DLC replaced the pole. Tr. at 27-30.

DLC's witness, Mr. Pisano, who is a journey line worker for the Company, stated that he lives near Mr. Tercek's property and sometimes walks through the neighborhood. Mr. Pisano testified that, in his opinion, the transformers near Mr. Tercek's home sound similar to transformers in other areas of the township. Tr. at 79-80.

Regarding the reasonableness of the noise level coming from the transformers on the pole outside of Mr. Tercek's house, we agree with the ALJ's finding that the evidence presented by Mr. Tercek, including the testimony of Mr. Tercek, and his two neighbors, Ms. Pelligrino and Mr. Harahus, was more persuasive than the evidence offered by DLC via the testimony of Mr. Pisano. Mr. Tercek and his two neighbors live closest to the pole and transformer at issue and offered detailed and specific testimony regarding the level of noise coming from the transformers, which became louder after DLC replaced the pole and transformers in 2019. On the other hand, DLC's employee, Mr. Pisano, does not live in the immediate neighborhood and passes through occasionally. We agree with the ALJ that Mr. Pisano's testimony did not sufficiently rebut the specific testimony of Mr. Tercek and his neighbors. *See* I.D. at 11-12. Accordingly, we conclude that DLC failed to sufficiently rebut Mr. Tercek's evidence. As a result, Mr. Tercek has satisfied his burden of proof.<sup>2</sup>

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<sup>2</sup> For example, in a prior, and somewhat similar, case concerning, among other things, the noise level of transformers outside of a customer's home, DLC thoroughly presented detailed evidence to successfully dispute and rebut a complainant's allegations alleging unreasonable noise levels of transformers, by offering the testimony of a noise level expert witness, presenting exhibits with multiple, detailed readings of decibel levels from various locations and times, and including comparisons of decibel

Furthermore, we agree with the ALJ that DLC did not sufficiently challenge or rebut the testimony that the noise described by Mr. Tercek and his neighbors is emitted by the transformers on the pole in front of Mr. Tercek's home. Nor did DLC offer any evidence that the humming noise coming from the transformers was normal for transformers operating correctly or appropriate from an engineering standpoint, or to explain the difference in the noise levels generated by transformers that had been on the prior pole versus the newer transformers on the newly installed pole. *See* I.D. at 12-13. To the contrary, DLC offered the testimony of Mr. Ostrander, an electrical engineer in the lines maintenance program at DLC; however, he did not inspect the transformers themselves or the hardware that connects the transformers to the pole. Tr. at 52, 60. Mr. Ostrander only performed a clearance investigation and determined that the configuration of the pole was consistent with NESC requirements, but he did not testify regarding appropriate noise levels for overhead transformers in residential areas. Tr. at 56, 59-60. Mr. Ostrander did, however, testify that if DLC determines that a transformer is making an unusual noise or not functioning properly, the solution and DLC's policy is to replace the transformer. Tr. at 61.

Additionally, DLC offered the testimony of Mr. Pisano regarding decibel readings he took with a handheld device. We agree with the ALJ that Mr. Pisano's testimony does not support a conclusion that the transformers were operating correctly and emitting a normal level of noise. As the ALJ determined, Mr. Pisano does not have any specific training or education in sound engineering acoustics or a similar field and is not a sound expert. In fact, Mr. Pisano was unable to interpret the measurements he took on the device in any meaningful way, and he did not know what level of noise might cause hearing loss or what a fifty-decibel machine might sound like. Tr. at 71, 86-87. In

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levels of the transformers at issue as compared to the noise level produced by other various items and situations. *See Jones v. Duquesne Light Co.*, Docket No. C-20043760, Initial Decision issued October 18, 2005 (adopted by Final Order entered December 14, 2005).

addition, the ALJ found that the measurements taken by Mr. Pisano are inadmissible and irrelevant. I.D. at 14.<sup>3</sup>

With respect to DLC's objection to the ALJ's refusal to credit the information included in Exh. DLC-8, we agree with the ALJ that the conclusions contained in that exhibit are not admissible. The ALJ concluded that while DLC's records indicate that troubleshooters visited Mr. Tercek's home, none of those troubleshooters testified on behalf of DLC, and without the testimony of the troubleshooters, any conclusions noted by the troubleshooters in Exh. DLC-8 are inadmissible.<sup>4</sup> Therefore, the ALJ correctly disregarded the conclusions in Exh. DLC-8.

Although the ALJ acknowledged that the Commission does not have a Regulation that establishes reasonable noise standards for transformers in residential areas, I.D. at 14, Section 1501 of the Code, however, mandates "reasonable" service. 66

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<sup>3</sup> DLC takes exception to the ALJ's refusal to admit Exh. DLC-1 into the record because it is not a business record. The ALJ did not admit DLC-1, which is a text message from Mr. Pisano sharing several measurements from the handheld device with his supervisor that he recorded in his Notes application on his phone, because it is not a report or an equivalent to a field support for Mr. Pisano's decibel readings. In response to questions from the ALJ, Mr. Pisano stated that this exhibit was prepared for purposes of the hearing, but he did not say that it was a business record. Without any field support going into DLC's system to record the results or any proper authentication or foundation laid for the numbers contained therein, the ALJ determined that Exh. DLC-1 could be a screen shot or text message from anybody's phone going to anybody, and there is nothing there to make it a business record. Tr. at 81-85. We agree with the ALJ's decision not to admit DLC-1 into the record for the reasons outlined by the ALJ. We also note that Mr. Pisano testified to additional measurements that were not included on Exh. DLC-1, further supporting the ALJ's evidentiary ruling on this exhibit.

<sup>4</sup> See *Duquesne Light Co. v. Woodland Hills Sch. Dist.*, 700 A.2d 1038 (Pa. Cmwlth. 1997) (facts stated in a consultant's report were admissible under the business record exception, but the consultant's conclusions and recommendations were not); *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 inadmissible).

Pa. C.S. § 1501. We agree with the ALJ's conclusion that it is not reasonable for a new set of transformers on a newly installed pole to cause a level of noise in a residential neighborhood such that the noise can be heard inside a customer's home with all windows closed or that a customer must raise their voice to speak to a neighbor outside. Upon our review of the record, we further agree with the ALJ that DLC did not offer any evidence to explain why newer, but identical, transformers would cause significant noise when the transformers on the prior pole did not emit noise that disturbed customers in the vicinity, nor did DLC offer any credible evidence which demonstrated that the transformers on the new pole are operating correctly or that the noise from the newer transformers was normal. *See* I.D. at 14-15. For these reasons, we find that Mr. Tercek proved that DLC failed to render reasonable service because the noise emitted from the transformers outside of his home is unreasonable. Therefore, we shall deny DLC's Exception No. 1.

Next, turning to DLC's Exception No. 2, we agree with the ALJ's directive that the Company replace the transformers outside of Mr. Tercek's home because the noise they are emitting is unreasonable. Section 1505(a) of the Code 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 unreasonable, unsafe, inadequate, 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.

66 Pa. C.S. § 1505(a).

As discussed, *supra*, in our disposition of DLC's Exception No. 1, we found that, in this case, DLC failed to render reasonable service because the noise emitted from the transformers outside of Mr. Terecek's home was unreasonable. Therefore, it was appropriate for the ALJ to direct DLC to replace the transformers pursuant to 66 Pa. C.S. § 1505. Moreover, this directive is consistent with DLC's policy, as testified to by Mr. Ostrander, to replace a transformer if it is excessively loud or not functioning properly. Therefore, we find nothing in DLC's Exception No. 2 on this matter that provides a basis to modify the ALJ's decision. Accordingly, we shall deny DLC's Exception No. 2.<sup>5</sup>

#### IV. Conclusion

Based upon our review of the record, as well as the ALJ's Initial Decision and the Exceptions filed thereto, we shall deny DLC's Exceptions and adopt the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE**,

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<sup>5</sup> Inasmuch as DLC's Exceptions did not discuss or object to the portions of the ALJ's Initial Decision regarding DLC's failure to fully investigate Mr. Terecek's Complaint under 52 Pa. Code § 57.12, or the resulting assessment of a Civil Penalty upon DLC, we find that there is no need to address those portions of the ALJ's Initial Decision here.

**IT IS ORDERED:**

1. That the Exceptions of Duquesne Light Company to the Initial Decision of Administrative Law Judge Mary D. Long, filed on November 15, 2022, are denied.
2. That the Initial Decision of Administrative Law Judge Mary D. Long, issued October 26, 2022, is adopted, consistent with this Opinion and Order.
3. That the Formal Complaint of Adam Tercek, filed on April 14, 2022, at this docket, is sustained, consistent with this Opinion and Order.
4. That within thirty (30) days of the date of entry of this Opinion and Order, Duquesne Light Company shall replace the transformers on the pole located on Mr. Tercek's property.
5. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within thirty (30) days the date of entry of this Opinion and Order, Duquesne Light Company shall pay a civil penalty in the amount of Three Thousand Five Hundred Dollars (\$3,500). Said payment shall be made by certified check or money order payable to "Commonwealth of Pennsylvania." The docket number of this proceeding shall be included with the certified check or money order and shall be sent to:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building, 2<sup>nd</sup> Floor  
400 North Street  
Harrisburg, PA 17120

6. That the above-captioned matter shall be marked closed upon receipt of the civil penalty of \$3,500.

**BY THE COMMISSION,**

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

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: March 16, 2023

ORDER ENTERED: March 16, 2023