

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

Public Meeting held June 15, 2023

Commissioners Present:

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

Andrew Ciraolo

C-2022-3034903

v.

PPL Electric Utilities Corporation

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (I.D.) of Administrative Law Judge (ALJ) John M. Coogan, issued on April 7, 2023, in the above-captioned proceeding. Exceptions were not filed in this matter. However, the Commission has exercised its right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code). 66 Pa. C.S. § 332(h). For the reasons stated below, the Commission shall modify the Initial Decision, consistent with this Opinion and Order.

## I. History of Proceeding

On August 24, 2022, Andrew Ciruolo (Mr. Ciruolo or Complainant) filed a Formal Complaint (Complaint) with the Commission against PPL Electric Utilities Corporation (PPL or Company), at Docket No. C-2022-3034903. In the Formal Complaint, the Complainant avers he was experiencing reliability, safety, or quality problems with his utility service noting that he has experienced excessive power interruptions and therefore PPL violated Section 1501 of the Public Utility Code. Complaint at 2. As relief, the Complainant requests that PPL remedy the frequent service interruptions and stop his loss of power “every time we have a storm.” Complaint at 3.

On September 21, 2022, PPL filed an Answer to the Complainant’s Formal Complaint. In its Answer, PPL admits and denies various material allegations of the Complaint. PPL does admit the Complainant has experienced outages. However, PPL avers affirmative steps have been taken to reduce the number of outages, including the installation of new equipment and vegetation maintenance. Answer at 1-5. Consequently, PPL denied that the outages the Complainant has experienced constitute unreasonable or unreliable service. Answer at 2. PPL requests the Commission deny the Complaint. Answer at 7.

On November 7, 2022, the Commission issued an Initial Telephonic Hearing Notice setting a formal call-in telephonic hearing for this matter for January 3, 2023, at 10:00 a.m. with Administrative Law Judge John R. Coogan (ALJ Coogan). ALJ Coogan also issued a Prehearing Order, which informed the parties of the procedures and rules that would govern the telephonic hearing.

The hearing was held on January 3, 2023. Garrett P. Lent, Esquire, attended on behalf of PPL, along with two witnesses for PPL: Gavin Canfield, Reliability Support Engineer for PPL; and Michael Trotta, Regional Forester for PPL. The

Complainant, Andrew Ciruolo, appeared on behalf of himself. PPL submitted seven exhibits that were admitted into the record. The Complainant did not submit any exhibits.

The record in this case closed on January 23, 2023.

The Commission issued the ALJ's Initial Decision on April 7, 2023. The Initial Decision dismissed the Complaint for failure to satisfy the burden of demonstrating that PPL violated the Public Utility Code (Code), a Commission Order or Regulation, or a Commission-approved tariff with respect to the service provided to the Complainant regarding power outages at their service address. I.D. at 1, 9-11, 13.

## **II. Discussion**

### **A. Legal Standards**

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof 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 PPL 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). This 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 (1992).

That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by PPL. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. *Mill v. Pa. PUC*, 447 A.2d 1100

(Pa. Cmwlth. 1982). 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*, 489 Pa. 109, 413 A.2d 1037 (1980).

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 customer shifts to PPL. If the evidence presented by PPL is of co-equal value or “weight,” the burden of proof has not been satisfied. The Complainant now must provide some additional evidence to rebut that of PPL. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of going forward with the evidence 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).

The Code requires each public utility to comply with the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa. C.S. § 1501. The statutory definition of “service” is to be broadly construed. *Kim Betchy v. West Penn Power Co.*, Docket No. C-2018-3000257 (Opinion and Order entered Oct. 8, 2020) (citing *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995)). As defined in the Code:

“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.

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. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995); *Brockway Glass Co. v. Pa. PUC*, 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. PUC*, 594 A.2d 816 (Pa. Cmwlth. 1991), *alloc. denied*, 605 A.2d 335 (Pa. 1992), 66 Pa. C.S. § 316.

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

ALJ Coogan made forty-four Findings of Fact and reached fourteen Conclusions of Law. I.D. at 2-6, 11-13. We shall adopt and incorporate herein by

reference the ALJ's Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

In the Initial Decision, ALJ Coogan dismissed the Complaint for failure of the Complainant to carry his burden of proving, by a preponderance of the evidence, that PPL provided unreasonable service in violation of the code, Commission Regulations, or a Commission Order. I.D. 1, 9-11, 13.

In this Proceeding the Complainant has alleged that PPL violated Section 1501 of the Code regarding reasonable, safe, and quality service. 66 Pa. C.S. § 1501. Therefore, the Complainant bears the burden of proof.

ALJ Coogan's Initial Decision stated that Mr. Ciruolo testified he believed PPL's service had been unreliable, and he was dissatisfied with PPL's service and their responsiveness to his ongoing issues. Tr. at 9-16. Mr. Ciruolo averred his property has experienced seven or eight power outages in the calendar year 2022. Tr. at 9. Consequently, Mr. Ciruolo testified that he wanted "more reliable" service. Tr. at 12. In addition, Mr. Ciruolo also testified as to his belief that PPL's equipment was dated and requested PPL make improvements in infrastructure. Tr. at 15.

PPL submitted testimony and exhibits documenting twelve extended or momentary outages at the Complainant's addresses between August 4, 2020, and August 8, 2022, including five extended outages in the calendar year 2022. I.D. at 8; PPL Exhibit GC-3, Tr. at 72-73. Regarding the twelve extended outages - six of the outages were caused by trees outside of PPL's right of way; four were caused by trees inside PPL's right of way; one was caused by an equipment failure; and one was unable to be explained. PPL Exhibit GC-3, Tr. 53. In addition, during the hearing PPL offered documentation and testimony that showed that between January 1, 2020, and

December 25, 2022, the Complainant experienced thirty (30) monetary outages which included the twelve outages in 2022. I.D. at 8; PPL Exhibit GC-3; Tr. at 72-73.

PPL contends it has taken affirmative steps to resolve the issues impacting Mr. Ciruolo's utility service. PPL's witness stated that the Complainant's service is impacted by the long distance between the substation and the service address as any issues that happen upstream on the would impact service. I.D. at 9; Tr. at 31-32. PPL witness Canfield testified to reliability-based measures in place to prevent or limit outages, including reclosers and fuses. Tr. at 33-34, 43-44. PPL witness Canfield also testified to the nature of the momentary outages experienced by Mr. Ciruolo. PPL witness Canfield testified these outages are defined as outages lasting under five minutes, with momentary outages more typically lasting only seconds, with the only visible sign of the outage being the dimming of lights. Tr. at 36. He noted the protective role these momentary outages play in preventing permanent outages to downstream consumers. Tr. at 41-45. In addition, PPL and PPL witness Trotta detailed specific vegetation management completed in response to Mr. Ciruolo's Complaint and outlined its routine vegetation management along the utility distribution wires servicing Mr. Ciruolo's home. I.D. at 9; Tr. at 92, PPL Exhibits MT-1 and MT-2. However, PPL admits vegetation management and reliability-based measures have not solved the issues causing outages at Complainant's property.

ALJ Coogan noted that 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 April 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 Power took steps to remedy the service concerns and that those steps did lead to fewer outages. I.D. at 9.<sup>1</sup>

The ALJ found the Complainant had experienced twelve extended outages over approximately two years, and thirty momentary outages over approximately three years. Noting the protective measures undertaken by PPL, the ALJ questioned whether the protective measures taken were resulting in a decrease in extended or momentary outages. I.D. at 9. The evidentiary record established the following regarding momentary outages: three occurred in 2020, fifteen occurred in 2021, and 12 occurred in 2022. I.D. at 9, PPL Exhibit GC-3. The Complainant suffered two outages between August 4, 2020, and August 4, 2021, and seven between August 4, 2021, and August 8, 2022. I.D. at 9, PPL Exhibit GC-3.<sup>2</sup> Noting six of the twelve outages were caused by things not within PPL's control, ALJ Coogan found the Complainant failed to establish in the evidentiary record that PPL did not provide reasonable or adequate service in relation to managing the source of the outages. I.D. at 9-10.

The ALJ found that even if fault is assigned to PPL for the five extended outages within PPL's control, Section 1501 of the Code requires reasonable service, not perfect service. 66 Pa. C.S. § 1501, *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super. 1987) (*Elkin*). It is therefore unclear whether the five outages alone constitute unreasonable or inadequate service. PPL also noted that each of these five outages occurred during some sort of weather event. I.D. at 10, PPL Exhibit GC-3.

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<sup>1</sup> The Commission has also found in *Bierkamp, Moyer, Moyer, and Geist v. Metropolitan Edison Company*, Docket Nos. C-2019-3015097, C-2019-3051098, C-2019-3015099, and C-2019-3015100, that forty-six outages did not constitute unreasonable service based on the actions taken by Metropolitan Edison Company to remedy the outages.

<sup>2</sup> There appears to be a typo in the I.D. at page 9. Upon review of the record, the Commission notes seven occurred in the year between August 5, 2021, and August 8, 2022, not the August 5, 2022, date referenced in the I.D.

Regarding the thirty momentary outages, ALJ Coogan found the Commission does not have a brightline rule regarding the number of outages constituting unreasonable service. ALJ Coogan found that even if the thirty momentary outages were found to be *prima facie* unreasonable, PPL successfully rebutted the Complainant by showing the momentary outages were short in duration and served a protective role in preventing or avoiding extended outages. I.D. at 10, 66 Pa. C.S. § 1501, *Elkin*.

As relief, the Complainant argues he should no longer lose service every time his service address experiences a storm. The ALJ determined that the record of this proceeding shows that PPL has taken various steps regarding equipment and vegetation management to improve service to the Complainant. The ALJ further determined that although the annual number of outages does not appear to be clearly decreasing, for the reasons explained above, the record does not contain substantial evidence that PPL is providing unreasonable or inadequate service and therefore violating the Code, a Commission Order or Regulation, or a Commission-approved tariff as it relates to the Complainant's service. Accordingly, the ALJ dismissed the Complainant's Complaint.

### **C. Disposition**

We advise the Parties that, as a preliminary matter, any issue that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. We are 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).

On exercise of our independent review of the Parties' positions and record evidence, we shall modify ALJ Coogan's Initial Decision by referring this matter to the

Commission's Bureau of Technical Utility Services – Reliability Section (TUS Reliability) for further review consistent with this Opinion and Order.

We note the record indicates the Complainant experienced a total of twelve outages from August 4, 2020, to August 8, 2022. Further, the Complainant experienced thirty reclosure events, resulting in momentary interruptions, between January 1, 2020, and December 25, 2022.

The record in this matter also indicates that PPL has devices to improve reliability and prevent outages on the electric line serving Mr. Ciruolo, i.e., reclosers and fuses. PPL also detailed the specific vegetation management it completed in response to Mr. Ciruolo's Complaint, in addition to its routine vegetation management. However, there does not appear to be a clear correlation or reduction in outages following PPL's remedial actions.

Given the apparent good faith efforts of PPL, the presiding ALJ dismissed the Complaint. We concur with this dismissal. As the ALJ posits via Initial Decision, Section 1501 and relevant case law do not require utility companies to provide perfect service. *Elkin*. While the circumstances here do not rise to such a level to support sustaining this Complaint, they do warrant further review by Commission Staff to help ensure continued reliable, safe, and quality service into the future. *Zampatti*. To that end, we find it prudent and necessary to refer this proceeding, and specifically the service interruptions disclosed in the record herein, to TUS Reliability for monitoring and any other appropriate actions deemed necessary, consistent with this Opinion and Order.

### **III. Conclusion**

Upon review of the record, we shall modify the ALJ's Initial Decision and refer this matter to TUS Reliability for such further action, as may be warranted, consistent with this Opinion and Order; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Initial Decision of Administrative Law Judge John M. Coogan, issued on April 7, 2023, is modified, consistent with this Opinion and Order.
2. That the Formal Complaint filed by Andrew Ciruolo on August 24, 2022, at Docket No. C-2022-3034903, is dismissed.
3. That this matter is referred to the Commission's Bureau of Technical Utility Services – Reliability Section for further review, as may be warranted, consistent with this Opinion and Order.
4. That the Commission's Secretary's Bureau provide a copy of this Opinion and Order to the Commission's Bureau of Technical Utility Services – Reliability Section.

5. That this proceeding be marked closed.

**BY THE COMMISSION,**

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

Rosemary Chiavetta  
Secretary

(SEAL)

Order Adopted: June 15, 2023

Order Entered: July 11, 2023