

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Roberts	:	
	:	
v.	:	C-2022-3036821
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Chad L. Allensworth
Administrative Law Judge

INTRODUCTION

This decision denies the Formal Complaint of a customer who requested his electric distribution company be directed to remove a tree from his property that he believed posed a danger or hazard. The Formal Complaint will be denied because the customer has failed to carry his burden of demonstrating that the company violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff because the utility has no obligation to remove a tree from private property where no danger or service interruption exists.

HISTORY OF THE PROCEEDING

On November 12, 2022, Michael Roberts (“Complainant” or “Mr. Roberts”) filed a Formal Complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against PECO Energy Company (“PECO,” “Company” or “Respondent”).¹ In his Complaint, Mr. Roberts alleged that PECO was unwilling to remove a large dead oak tree

¹ Complainant initially filed an Informal Complaint on this matter with the Commission’s Bureau of Consumer Services at No. 003867377 on September 26, 2022 that was dismissed on November 2, 2022. (Answer ¶ 4).

(“vegetation”) located on the front of his property that encircles electric wires and is dropping branches on the street thereby creating a danger or hazard. (Complaint ¶ 5).

As relief, the Complainant seeks an order from the Commission directing Respondent to remove the vegetation. (Complaint ¶ 5). Complainant also asserts that private contractors are unable to remove the vegetation due to its proximity to the electrical wires. (Complaint ¶ 5).

On December 6, 2022, Respondent filed a timely Answer in which it denied the material allegations of the Complaint. Specifically, PECO avers that the vegetation did not meet PECO’s vegetation corrective maintenance requirements thereby establishing that no work was required on the vegetation. (Answer ¶ 4). Respondent further asserted that Complainant was advised to hire a private contractor to perform the desired work on the vegetation and that there were no “unreasonable” issues at the Complainant’s service address. (Answer ¶ 4).

On March 3, 2023, the Commission issued an Initial Telephonic Hearing Notice (“Hearing Notice”) assigning this case to the undersigned and scheduling a hearing on April 19, 2023. On March 6, 2023, I issued a Prehearing Order addressing various procedures that would govern the hearing.

On April 19, 2023, the hearing was held as scheduled. The Complainant appeared and represented himself. The Complainant testified in support of the Complaint and sponsored one exhibit that was 13 pages in length consisting of a compilation of photographs, and emails between Mr. Roberts and the Company along with a letter addressing his Informal Complaint. The exhibit was admitted into the record without objection. The Respondent was represented by Attorney Khadijah Scott, who presented one witness who sponsored two exhibits consisting of a photograph of a tree and description of PECO’s tree trimming assistance program that were admitted into the record without objection.

The record closed on May 8, 2023, when the 65-page hearing transcript was received by the Commission.

FINDINGS OF FACT

1. The Complainant in this case is Michael Roberts.
2. The Respondent in this case is PECO Energy Company.
3. Mr. Roberts' address is 517 East Moreland, Willow Grove, Pennsylvania 19090 ("service address"). (Tr. 10).
4. In July 2020, a tree on the rear portion of Mr. Robert's property ("rear tree") had branches that were hanging over utility lines and dropping branches onto those lines. (Tr. 10).
5. Following the filing of an informal complaint, PECO's Vegetation Management Department ("Vegetation Management") agreed to remove the rear tree based on the health of the tree and the type of utility wire next to the tree. (Tr. 10-11, 31, 38).
6. The utility wire next to the rear tree could not withstand a lot of "vegetation-related conflict." (Tr. 31).
7. The rear tree was removed by PECO's contractor, Asplundh Tree Expert, LLC ("Asplundh"), on September 14, 2021. (Tr. 11).
8. The debris from the rear tree was cut and stacked on Mr. Robert's property by Asplundh. (Complainant's Exhibit 1).
9. Mr. Roberts was able to remove the debris of the tree from his property. (Tr. 15).

10. In July 2022, Mr. Roberts contacted Vegetation Management about having a tree in the front yard of his property (“front tree”) removed that was allegedly overhanging and/or encircling wires and dropping limbs onto the utility wires. (Tr. 12, 27).

11. PECO has a four-year cycle where they inspect trees for conflict with utility wires, which can result in trimming branches away from utility wires or removing dead/dying trees. (Tr. 36, 41).

12. Vegetation Management previously trimmed the front tree several times. (Tr. 12).

13. PECO offers property owners that may have a tree conflicting with or in close proximity to utility wires the opportunity to request that Vegetation Management provide clearance from the utility wires or “de-energize” the utility wires to allow for private contractors to work on a tree. (Tr. 36-37, PECO’s Exhibit No. 2).

14. Kshitiz Bhandari (“Mr. Bhandari”) is a certified arborist, utility specialist and works as senior program manager for Vegetation Management. (Tr. 29-30).

15. On January 6, 2023, Mr. Bhandari inspected the front tree and did not find any significant safety concerns with the front tree despite the tree dropping some limbs. (Tr. 32; Complainant’s Exhibit 1, p.2).

16. The utility wires near the rear tree previously removed from Mr. Robert’s property were different than the utility wires near the front tree. (Tr. 38).

17. The utility wires next to the front tree are “Hendrix wires,” which consist of three wires bundled together with a clamp that are constructed to withstand “tree pressures” and “vegetation-related conflict.” (Tr. 32).

18. The rear tree that was previously removed from Mr. Robert's property was in a state of decay that was not similar to the status of the front tree. (Tr. 40).

19. A tree can have parts or limbs rot without meaning that the whole tree is compromised as trees have a natural mechanism to fight rot and decay. (Tr. 40).

20. Vegetation Management advised Mr. Roberts that the front tree did not qualify for removal under PECO's maintenance program based on the health of the tree and type of wires in proximity to the tree, but they offered Mr. Roberts a "courtesy clearance" for the front tree that involved trimming the tree limbs to bring them below and away from the utility wires. (Tr. 12, 33, 36, 44).

21. Mr. Roberts accepted the offer to clear part of the front tree because he was advised that was what PECO was willing to do. (Tr. 23).

22. The "courtesy clearance" was performed in February 2023 and resulted in removal of the upper half of the tree that hung above the utility wires thereby allowing a private contractor to safely remove the remainder of the front tree. (Tr. 34, PECO Exhibit No. 1).

23. The wires still in proximity to the front tree are communication wires that do not belong to PECO. (Tr. 41).

24. The debris from the front tree was left in large pieces with limbs up to ten feet in length and the largest piece weighing approximately 1500 lbs. (Tr. 15, 21).

25. Mr. Roberts paid \$400 to a party to remove all but the two largest pieces of debris from the front tree before Asplundh returned to remove the debris. (Tr. 21-22).

26. Asplundh returned and removed the two largest pieces of debris from the front tree. (Tr. 22).

27. The lower portion of the front tree is still standing on the property. (Tr. 25).

28. Mr. Roberts has not had a private contractor come to his property to remove or work on the front tree since the “courtesy clearance” was performed. (Tr. 25).

29. PECO never advised Mr. Roberts that they were planning to completely remove the front tree. (Tr. 50).

DISCUSSION

Legal Standard

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. § 701. In this proceeding, Mr. Roberts alleged that PECO failed to provide reliable, safe or quality utility service regarding a tree located on the front of his property. *See* 66 Pa.C.S. § 1501. Therefore, Mr. Roberts has the burden of proof in this proceeding with respect to the service that PECO provided to him regarding the front tree.

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).

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 Rev.*, 166 A.2d 96 (Pa. Super. 1960). A complainant cannot establish a case merely by stating their 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).

Utility companies are required by law to provide the public with adequate and reasonable service.² Section 1501 of the Public Utility Code states, in part:

§ 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 [C]ommission.

66 Pa.C.S. § 1501. It is axiomatic that vegetation maintenance is part of a utility's service that is subject to regulation. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 578 A.2d 75 (Pa. Cmwlth. 1990); *PECO Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996 (Pa. Cmwlth. 2007)

² "‘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 ... in the performance of their duties under this part to their patrons, employees, other public utilities, and the public[.]” 66 Pa.C.S. § 102.

(Commission possesses the sole authority to regulate a public utility's vegetation management practices in its service territory) and *Popowsky v. Pa. Pub. Util. Comm'n*, 653 A.2d 1385 (Pa. Cmwlth. 1985) (vegetation maintenance constitutes a utility service and must be performed in a safe, adequate, reasonable and efficient manner). However, the statute does not require utility companies to provide perfect service. *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super. 1987).

Analysis

Mr. Roberts testified that a large oak tree located in the front of his property was overhanging and/or encircling utility wires and was dropping rotted limbs onto utility wires. (Tr. 12, 27). The trunk of the front tree was in "close" proximity to the road with the crown of the tree spanning the street. (Tr. 12). Mr. Roberts believed that that front tree was dangerous to the neighborhood's electric supply, passing traffic and passing pedestrians based on limbs from the tree falling onto the street and utility wires. (Tr. 13, 27). Mr. Roberts further averred that he contacted private contractors about the front tree, but they refused to remove the front tree due to the size of the tree, its proximity to the electric wires and the condition of the tree. (Tr. 13). As a result, Mr. Roberts contacted PECO about having the front tree removed in July 2022. (Tr. 12, 27). Mr. Roberts previously had PECO's contractor remove an unhealthy tree in the rear of his property that was in close proximity to utility wires, and he believed that the same result was warranted with the front tree. (Tr. 11).

On January 6, 2023, Mr. Bhandari, a certified arborist and utility specialist from PECO, inspected the front tree and did not find any significant safety concerns with the front tree despite the tree dropping some limbs. (Tr. 29-30, 32; Complainant's Exhibit 1, p.2). To the contrary, Mr. Bhandari testified that even rotten limbs falling from a tree do not indicate that the entire tree was dead or dying because trees have an ability to fight rot and decay. (Tr. 40). Mr. Bhandari further elaborated that the type of wires that were in proximity to the front tree were made to withstand "tree pressures" and "vegetation-related conflict." (Tr. 32).

Accordingly, PECO advised Mr. Roberts that the front tree did not qualify for removal based on the positive health of the tree and type of wires in proximity, but PECO offered Mr. Roberts a “courtesy clearance” for the tree that involved trimming tree limbs to bring them below and away from the utility wires. (Tr. 12, 33, 36, 44). Mr. Roberts accepted the offer of a “courtesy clearance” to remove the upper portion of the front tree. (Tr. 23). The “courtesy clearance” was performed by PECO’s contractor, Asplundh, in February 2023 resulting in removal of the upper portion of the front tree. (Tr. 34, PECO Exhibit No. 1). PECO never advised Mr. Roberts that they were planning to completely remove the front tree. (Tr. 50).

Following the clearance, Asplundh initially left debris from the front tree in large pieces with limbs up to ten feet and the largest piece weighing approximately 1500 lbs. (Tr. 15, 21). While still in communication with PECO about removal of the front tree debris, Mr. Roberts paid a private party to cut and remove all but the two biggest pieces of debris. (Tr. 21-22). Asplundh subsequently returned and removed the two largest pieces of debris from the front tree at no cost to Mr. Roberts. (Tr. 22). As will be discussed below, Complainant’s decision to hire a private party to remove debris while still discussing removal of the debris with PECO does not constitute unreasonable service by PECO.

Additionally, the lower portion of the front tree is still standing on the property. (Tr. 25). There are still some limbs from the front tree that are in proximity to utility lines, but the lines in question are communication wires that do not belong to PECO. (Tr. 41). Mr. Roberts has not had a private contractor come to his property to work on the front tree since the “courtesy clearance” was performed and therefore he is unable to state that a private contractor would now be unwilling to work on the front tree. (Tr. 25).

I find the testimony of PECO’s witness, Mr. Bhandari, credible. There is no evidence in the record that establishes that the front tree was a hazard or otherwise posed a danger. Moreover, there is no evidence in the record upon which to find that PECO was responsible for maintaining the front tree or failed to properly address the situation with the front tree. PECO has not failed to provide reasonable service.

The evidence of record reflects that PECO had a vegetation maintenance schedule for inspection of trees for potential conflict with utility wires in a four-year cycle. (Tr. 36, 41). As part of this schedule, PECO trimmed the front tree several times in the past. (Tr. 12). Upon being contacted by Mr. Roberts about a potential hazard posed by the front tree in this situation, PECO's arborist inspected the front tree and determined that the tree was healthy and did not pose a hazard/danger despite dropping some limbs. (Tr. 32; Complainant's Exhibit 1). Although PECO advised Mr. Roberts that the front tree did not qualify for removal under their standards, PECO offered and performed a "courtesy clearance" of the tree that removed those limbs close to electric wires to make it safe for a private contractor to remove the tree. (Tr. 12, 32-33, 36, 44). In addition to the option of a "courtesy clearance," PECO had a process that allowed Mr. Roberts to request that the electric lines in proximity to the front tree be de-energized. (PECO's Exhibit 2).

Mr. Roberts accepted the offer for PECO to perform a "courtesy clearance" of the front tree, but he remained dissatisfied with PECO's service based on the size of the debris from the tree left on his property and his belief that PECO should remove the tree the same way they did a prior tree on the rear of his property. (Tr. 15, 21, 26). In regard to the removal of the debris from the front tree, PECO's contractor did not initially remove the debris from the "courtesy clearance" of the front tree. (Tr. 15, 21). However, PECO's contractor ultimately returned and removed the debris of the front tree. (Tr. 22). The delay in removal of the wood debris was due, in part, to the parties discussing who was responsible for removal of the wood. (Tr. 21). Although Mr. Roberts may have been dissatisfied with the delay in removing the debris and chose to pay to have a portion of the wood debris removed, there is no basis to find that the limited delay constitutes unreasonable service.

There is no evidence in the record to prove that the front tree was a hazard or danger. 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). Moreover, mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence. *Mid-Atl. Power Supply Assoc. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196 (Pa. Cmwlth. 2000); *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). As such, Mr. Roberts personal belief that

the front tree was dead or dying does not qualify as reliable evidence. Furthermore, the photographs submitted by Mr. Roberts do not show anything that supports a finding that the front tree was dead or dying. (Complainant's Exhibit 1). It is also noted that Mr. Roberts did not offer any testimony from an expert on the health of the front tree. To the contrary, PECO presented the testimony of a certified arborist who testified that the front tree was still healthy even though it dropped some rotted limbs and this did not mean the whole tree was dead or dying. Thus, Mr. Roberts failed to carry his burden of proof.

A complainant must establish by a preponderance of the evidence that a utility has violated a provision of the Public Utility Code or an order or regulation of the Commission. 66 Pa.C.S. §§ 332(a), 701; *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). In this case, Mr. Roberts did not meet his burden of showing that PECO violated any laws or regulations in connection with the front tree on his property, and there is no evidence in the record to prove that PECO provided unreasonable service to Roberts. 66 Pa.C.S. § 1501.

Accordingly, for the reasons stated above, the Complaint will be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. 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. "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).

5. The act or failure to act 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.

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); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

9. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence. *Mid-Atl. Power Supply Assoc. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196 (Pa. Cmwlth. 2000); *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

10. Utility companies are required to provide reasonable service. 66 Pa.C.S. § 1501.

11. Vegetation maintenance is part of a utility's service that is subject to regulation. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 578 A.2d 75 (Pa. Cmwlth. 1990);

PECO Energy Co. v. Twp. of Upper Dublin, 922 A.2d 996 (Pa. Cmwlth. 2007); *Popowsky v. Pa. Pub. Util. Comm'n*, 653 A.2d 1385 (Pa. Cmwlth. 1985).

12. Section 1501 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.

13. PECO provided reasonable service consistent with Section 1501 of Title 66 of the Public Utility Code. 66 Pa.C.S. § 1501.

14. Mr. Roberts failed to satisfy his burden of demonstrating by a preponderance of the evidence that PECO violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Michael Roberts in Michael Roberts v. PECO Energy Company at Docket No. C-2022-3036821 is hereby dismissed.
2. That the matter at Docket No. C-2022-3036821 be marked closed.

Date: July 28, 2023

_____/s/
Chad L. Allensworth
Administrative Law Judge