

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Cheryl Stango	:	
	:	
v.	:	C-2022-3037065
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Darlene Heep  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision finds that there is not substantial evidence to support a finding that actions by PECO Energy Company (1) caused water to leak into the service address or (2) caused the devaluation of Ms. Stango’s real property. The Complaint will be dismissed.

**HISTORY OF THE PROCEEDING**

On November 28, 2022, Cheryl Stango (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO). In the Complaint, Ms. Stango challenged PECO’s installation of an above ground transformer on her property, which she asserts negatively affected the value of her home. She also stated that PECO’s installation of the transformer caused water to leak into her property.

PECO filed an Answer with New Matter on December 19, 2022. In the Answer, PECO denied all material allegations.

In the New Matter, PECO asserted that any request for monetary damages should be denied. PECO also averred that on November 1, 2021, the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services requesting that a padmount transformer be placed in a different location other than her front lawn. PECO further averred that the matter was closed on December 7, 2021 when the Company agreed to move the transformer. Attached to the Answer was a copy of BCS Decision #0038111081.

Also on December 19, 2022, PECO filed a Preliminary Objection seeking dismissal of any claims for damages.

The hearing convened on March 22, 2023, as scheduled. Ms. Stango appeared *pro se* and testified on her own behalf. PECO was represented by Khadija Scott, Esquire.

During the hearing, Ms. Stango stated that she had forwarded to PECO and the undersigned a video pertaining to water leakage and photos showing the location of the transformer installed by PECO. The video and photos had not been received. The hearing was adjourned to schedule a further hearing and allow the Complainant to forward the video and photos to the Commission and counsel for PECO. Tr. 10-11.

On March 22, 2023, an Order was issued sustaining in part and overruling in part the Preliminary Objection filed by PECO. The Order dismissed any claims for monetary damages in the Complaint, acknowledging that the Complainant stated during the March 22, 2023 hearing that she was not really looking for monetary damages and noting that claims for monetary damages may be brought in a Court of Common Pleas or Municipal Court. The order also stated that no later than April 3, 2023, Ms. Stango was to send copies of photos and the video referenced during the hearing to counsel for PECO and the undersigned and gave PECO until five days prior to any Further Hearing date to respond.

Also on March 22, 2023, a Further Telephonic Hearing Notice was issued, setting the hearing for May 9, 2023. A prehearing order was issued on April 6, 2023.

The May 9, 2023 Further Hearing convened as scheduled. Ms. Stango again appeared *pro se* and testified on her own behalf. PECO was again represented by Khadija Scott, Esquire and Timothy Grow, PECO Senior Claims Case Manager, testified on behalf of PECO. The Complainant presented 20 Exhibits and PECO presented three exhibits. All exhibits offered were admitted into the record.

The Complainant filed a Reply to New Matter on May 11, 2023. In the reply, Ms. Stango stated that she believes that she is getting water in her basement under where PECO moved its transformer, would like the problem fixed and that she does not want monetary damages. Attached to the Reply were receipts, a cancelled check, and photos.<sup>1</sup>

The record in this matter closed on June 7, 2023, upon receipt of the transcript of the Further Hearing.

#### FINDINGS OF FACT

1. Complainant is Cheryl Stango, who resides at 629 West Saint Andrews Drive, Media, Pennsylvania 19063 (service address) since 2001. Tr. 6,7.
2. Respondent is PECO Energy Company.
3. The service address is an end unit townhome. Tr. 8.
4. Ms. Stango contacted the Commission to have PECO move a PECO-installed above-ground transformer away from the wall of her home. Tr. 7.

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<sup>1</sup> The Reply filed by the Complainant was untimely. The Answer and New Matter were filed on December 19, 2022. The Reply to the New Matter was filed on May 11, 2023. Title 51 Pa. Code § 5.63 provides that a Reply to a New Matter is to be filed within 20 days after date of service of the Answer. As Ms. Stango is acting *pro se*, this technical defect was waived. 52 Pa. Code § 1.2(c)

5. After PECO moved the above-ground transformer, Ms. Stango began to see water in her downstairs utility closet and floor. Tr. 7.

6. A water pipe at the service address was leaking at the time that the Complainant found water on the floor and in a closet of the service address. Tr. 44-47.

7. Between May and September of 2022, the Complainant contacted three plumbers to address a water pipe leak at the service address. Complainant Exhibits 7, 12, 13; Tr. 44-49, 54-56.

8. When PECO Senior Claims Case Manager Timothy Grow visited the service address in August of 2022, there was a leaking water pipe. PECO Exhibit 3.

### DISCUSSION

As the proponent of a rule or order, Ms. Stango bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To satisfy this burden, she must demonstrate that the PECO was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. This must be shown by a preponderance of the evidence. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

In addition, 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. A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 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 Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight to the evidence presented by the Complainant, the Complainant has not satisfied her burden of proof. The Complainant would then 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).

Pursuant to Section 1501 of the Code, a public utility has a duty to maintain “adequate, efficient, safe, 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. *See* 66 Pa.C.S. § 1501. Section 1501 of the Code provides, in pertinent part, as follows:

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 and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

The term “service” is defined broadly under Section 102 of the Code, and states in relevant part:

“Service.” Used in its broadest and most inclusive sense, includes all acts done, rendered, or performed, 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, as well as the interchange of facilities between two or more of them[.]

66 Pa.C.S. § 102.

Ms. Stango contends that PECO moving the company’s above-ground transformer to its current location resulted in water leaking into her home. PECO had previously installed an underground transformer in the breezeway on common ground between the Complainant’s home and the neighboring property. Tr. 9; Complainant Exhibit 1. At some later date, PECO installed an above-ground transformer close to the wall of the service address. Complainant Exhibit 2. Ms. Stango contacted the Commission and PECO moved the transformer farther away from her residence. Tr. 6-7; Complainant Exhibit 3. Ms. Stango also testified that after PECO moved the transformer, she began to see water in her downstairs utility closet. Tr. 6-7, 12, 30-32.

Ms. Stango said that she had a water leak, for a very long time, which she described as a slight leak in a hose bib valve. Tr. 3, 47. She described the hose bib valve as a valve that you can turn off and on for a water source outside where you can connect a hose. Tr. 47. Due to water leakage, a ceiling tile on the lower floor of the service address fell, which Ms. Stango had replaced. Tr. 46-47, 64; Complainant Exhibit 9. In May of 2022, Ms. Stango contacted and engaged a Plumbing and Heating Contractor to repair the leak. Tr. 48; Complainant Exhibit 12.

In August of 2022, Ms. Stango contacted SERVPRO, a restoration service, after she noticed that insulation in the ceiling of the closet was turning black, causing her to become concerned about mold. Tr. 43. Water and mold were found in the area. Tr. 44, 54-56; Complainant Exhibits 7, 11, 17-20. During the SERVPRO visit, Ms. Stango realized that the hose bib valve was not repaired by the plumber in May of 2022. Tr. 48-49; Complainant Exhibits 9, 12.

Later that month, on or about August 31, 2022, Ms. Stango engaged another plumbing service. Complainant Exhibit 13. That plumber replaced the leaking hose bib valve. Tr. 49, Complainant Exhibit 13.

At the time of the hearing, Ms. Stango testified that she no longer had a leak. Tr. 47. She also stated that she had her drainage pipe extended so that water would drain farther out from her home.<sup>2</sup> Tr. 51-53; Complainant Exhibit 15;16.

During the hearing, PECO presented Timothy Grow, a Senior Claims Case Manager at PECO, who handles property damage and company damage claims. Tr. 69. PECO records show that on May 10, 2022, Ms. Stango submitted a claim registration form to PECO, wherein she claimed that a company-installed transformer was causing water damage to her property. Tr. 71. PECO Exhibit 2.

As part of his investigation of the claim, Mr. Grow visited the service address on August 26, 2022. Tr. 71-72. While at the Complainant's home, Mr. Grow inspected the areas where Ms. Stango stated that there was water and damage. Ms. Stango pointed out a ceiling tile she had replaced and stated that she had a plumber look at a water pipe in that area. After removing the ceiling tile, Mr. Grow saw a cold-water pipe and a shut-off valve that was leaking, seeping water from the ceiling bay. Tr. 71-73; PECO Exhibit 3. He also noticed while at the residence that there was no water intrusion through the foundation wall or under the flooring. Tr. 72.

Mr. Grow testified that in his experience, moving a transformer would not create a leak at a customer's property. Tr.74; PECO Exhibit 1. He also noted that the earth outside the service address had a "proper slope" from the foundation away from the wall and he did not see

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<sup>2</sup> During the hearing, Ms. Stango testified that she did not want PECO to do anything at that time because she was not getting the water anymore. She wanted PECO to be on notice in case the water began again. (Tr. 57-58). On July 28, 2023, Ms. Stango sent a photo dated June 27, 2023, showing water on a floor surface. The Complainant was advised that the record in this matter closed on June 7, 2023 and that she could file another Complaint, should she choose to do so.

any evidence of ground settlement. Tr. 75. In his report, Mr. Grow stated that the transformer was installed more than 12 feet from the service address. PECO Exhibit 3.

The evidence does not support finding for the Complainant. Ms. Stango asserted in her Complaint that installation of an above-ground transformer decreased the value of her home. When reminded during the hearing that the Commission could not award monetary damages,<sup>3</sup> she stated that she was not interested in money and just wanted PECO to fix any damage. Tr. 4-5. Even as a question of reasonableness, there is no record evidence of a decreased home value due to installation of the above-ground transformer.

Also, the record does not contain evidence that would support finding that moving the PECO transformer, or any other action by PECO, was the cause of water seeping into the service address. The record supports a finding that, more likely than not, a faulty water pipe and apparatus at the service address were the source of the water leakage.

None of the plumbers who visited the service address concluded that the cause or source of the water was the PECO transformer. Tr. 60. Also, the Complainant testified that she had a slow leak in her ceiling for some time. Tr. 61.

Although Ms. Stango credibly testified that she did not notice the water leakage until after the transformer was moved, there was not substantial evidence presented that established a causal connection between the two events. The Complainant is not sure when the leak began because she does not frequently check the area where there was a leak, and she did not really notice the leak until she called SERVPRO. Tr. 62-63, 65.

Additionally, both the Complainant and Mr. Grow testified there was a water pipe and valve in the ceiling that leaked. Also, Ms. Stango testified that after the second plumber made repairs, the leaking stopped and there was no leak at the time of the hearing. Moreover, there was no evidence presented that linked the water in the service address to the location or moving of the transformer.

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<sup>3</sup> The March 22, 2023, Order dismissed any claims for damages for lack of jurisdiction.

The Complaint will be dismissed.

### CONCLUSIONS OF LAW

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

2. As the proponent of a rule or order, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

3. It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" to its customers. 66 Pa.C.S. § 1501.

4. To satisfy the burden of proof, the Complainant must demonstrate by the preponderance of the evidence that the respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

5. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

6. 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. A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

7. There is not substantial evidence in the record to support a finding that any action by PECO involving the transformer caused water intrusion or leaks at the service address. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

