

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Yelena Gerasimenko	:	
	:	
v.	:	C-2023-3039248
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint (Complaint) of Yelena Gerasimenko (Ms. Gerasimenko or Complainant) against PECO Energy Company (PECO or Respondent) upon finding that the Complainant did not carry her burden of proving that PECO failed to provide safe, adequate, and reasonable service.

HISTORY OF THE PROCEEDING

On March 15, 2023, Ms. Gerasimenko filed a Formal Complaint against PECO with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant alleged that on December 13, 2022, she sustained property damage to her house heater as a result of two power outages that occurred at her home. As relief, the Complainant requested reimbursement for the repair and replacement of her damaged heater.

On April 17, 2023, PECO filed an Answer with New Matter (Answer) along with a Notice to Plead. In its Answer, PECO admitted in part and denied in part various material allegations of the Complaint. Specifically, PECO denied that it is responsible for the damages claimed by the Complainant. In its New Matter, PECO averred that the Complainant failed to state a claim upon which relief may be granted because, to the extent that the Complainant seeks an award of monetary damages against PECO, such relief is beyond the jurisdiction of the Commission. PECO requested that the Complaint be dismissed.

Also on April 17, 2023, PECO filed a Preliminary Objection to the Complaint, along with a Notice to Plead. In its Preliminary Objection, PECO reiterated their argument that the Commission lacks jurisdiction to award monetary damages.

The Complainant's Answer to PECO's Preliminary Objection was due no later than May 1, 2023. 52 Pa. Code §§ 5.101(f)(1), 1.56(a)(1) and (b), 1.12(a). The Complainant did not file an Answer to PECO's Preliminary Objection.

By Motion Judge Assignment Notice dated May 20, 2023, PECO's Preliminary Objection was assigned to me for disposition.

By Hearing Notice dated May 22, 2023, an Initial Call-In Telephonic Hearing was scheduled for July 20, 2023.

On June 15, 2023, an Order was issued sustaining PECO's Preliminary Objection, striking the Complainant's request for relief in the form of monetary damages from the Complaint as impertinent matter, and directing that the hearing scheduled for July 20, 2023, proceed solely to address whether PECO provided reasonable service to the Complainant.

A Prehearing Order was issued on June 27, 2023, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On July 20, 2023, the hearing convened as scheduled. The Complainant appeared *pro se*, testified on her own behalf, and did not offer any exhibits for the record. Khadijah Scott, Esquire, appeared on behalf of PECO and presented the testimony of two witnesses: Robert Nickens, a Senior Claims Case Manager at PECO, and Zachary Jones, a General Engineer at PECO. Mr. Nickens sponsored two exhibits, which were admitted into the record without objection. Mr. Jones sponsored one exhibit, which was admitted into the record without objection.

The record closed on September 14, 2023, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Yelena Gerasimenko.
2. The Respondent is PECO Energy Company, an electric utility under the jurisdiction of the Pennsylvania Public Utility Commission.
3. The Complainant receives electric service from PECO at 11622 Gifford Street, Philadelphia, Pennsylvania (Service Address). Tr. 8.
4. On or around December 21, 2022, the Complainant filed a claim with PECO for an alleged service outage on December 13, 2022. Tr. 9, 14; PECO Exh. 1.
5. PECO did not record any outages in its Outage Management System (OMS) for the Service Address on December 13, 2022. Tr. 15.
6. PECO recorded a recloser on the Complainant's circuit opening and closing at 4:14 pm on December 13, 2022. Tr. 22-24.

7. The Complainant's service was interrupted for ten seconds on December 13, 2022, as a result of the recloser being activated. Tr. 22-24.

8. The ten second interruption by the recloser is by design and not out of the ordinary. Tr. 24-25.

DISCUSSION

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 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A complainant can meet that burden if he presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "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).

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 the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

In this case, Ms. Gerasimenko originally filed the Complaint against PECO seeking reimbursement for damages to her house heater that she alleged were the result of two power outages on December 13, 2022. However, it is well settled law that the Commission does not have jurisdiction to award monetary damages. *See, DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Poorbaugh v. Pa. Pub. Util. Comm'n*, 666 A.2d 744 (Pa. Cmwlth. 1995). Accordingly, I issued an Order sustaining PECO's Preliminary Objection to the Complainant's request for monetary damages and striking that portion of the Complaint as impertinent matter. I also Ordered that the hearing scheduled for July 20, 2023, proceed to address whether PECO provided "adequate, efficient, safe, and reasonable service" to the Complainant in accordance with 66 Pa.C.S. § 1501.

Section 1501 of the Public Utility Code provides, in relevant 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 commission.

66 Pa.C.S. § 1501. Interpreting this provision in *W. Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984), the Commonwealth Court stated:

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

478 A.2d at 949. The statutory definition of "service" is to be broadly construed.¹ *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995).

In determining whether PECO violated the provisions of 66 Pa.C.S. § 1501, it must be understood that "[n]either the Public Utility Code nor the Commission's regulations require that public utilities provide flawless service." *A-Rize-N Mgmt. Co., LLC v. Pa. Am. Water Co.*, Docket No. C-2009-2119162 (Final Order entered Aug. 5, 2010). Section 1501 only requires public utilities "to provide reasonable and adequate, not perfect, service." *Id.*; *see also Biason v. Metro. Edison Co.*, Docket No. C-00004450 (Opinion and Order entered Dec. 19, 2001).

Finally, it must be recognized that 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. *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Pa. Elec. Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995).

Tariff provisions approved by the Commission are *prima facie* reasonable. 66 Pa.C.S. § 316; *see also Lynch v. Pa. Pub. Util. Comm'n*, 594 A.2d 816 (Pa. Cmwlth. 1991).

¹ "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.

PECO's Electric Service Tariff enjoys all of these legal presumptions. Consistent with section 12.1 of PECO's Tariff, PECO cannot guarantee continuous uninterrupted service. Section 12.1 of PECO's Commission approved tariff provides:

12.1 LIMITATION ON LIABILITY FOR SERVICE INTERRUPTIONS AND VARIATIONS. The Company does not guarantee continuous, regular, and uninterrupted supply of service. The Company may, without liability, interrupt or limit the supply of service for the purpose of making repairs, changes, or improvements in any part of its system for the general good of the service or the safety of the public or for the purpose of preventing or limiting any actual or threatened instability or disturbance of the system. The Company is also not liable for any damages due to accident, strike, storm, riot, fire, flood, legal process, state or municipal interference, or any other cause beyond the Company's control.

In all other circumstances, the liability of the Company to customers or other persons for damages, direct or consequential, including damage to computers and other electronic equipment and appliances, loss of business, or loss of production caused by any interruption, reversal, spike, surge or variation in supply or voltage, transient voltage, or any other failure in the supply of electricity shall in no event, unless caused by the willful and/or wanton misconduct of the Company, exceed an amount in liquidated damages equivalent to the greater of \$1000 or two times the charge to the customer for the service affected during the period in which such interruption, reversal, spike, surge or variation in supply or voltage, transient voltage, or any other failure in the supply of electricity occurs. . . .

See, Section 12.1 of PECO Energy Co. Tariff Electric Pa. P.U.C. No. 7.

Here, the Complainant did not present any evidence in support of her Complaint other than her own opinion that PECO should be held responsible for the power outages she experienced. Tr. 10. To the contrary, PECO demonstrated that they conducted an investigation into the Complainant's claims and were unable to find anything out of the ordinary on the date in question. Robert Nickens, a Senior Claims Case Manager at PECO, testified that PECO did not record any outages in its Outage Management System (OMS) for the Service Address on December 13, 2022. Tr. 15. Zachary Jones, a General Engineer at PECO, testified that PECO

did record a recloser on the Complainant's circuit opening and closing at 4:14 pm on December 13, 2022. Tr. 22-24. The recloser was activated by an outage on a different section of the Complainant's circuit. Tr. 23. Mr. Jones explained that this would result in the Complainant's service being interrupted for approximately ten seconds. *Id.* Mr. Jones further explained that this ten second interruption by the recloser is by design. Tr. 24-25. Mr. Jones could not find any other evidence of a service interruption on that date. *Id.*

Based on the foregoing, I find the service provided to the Complainant by PECO to be safe, adequate, and reasonable. Thus, the Complainant failed to carry her burden of proving that PECO violated the Code, a Commission Regulation or Order, or its own Commission-approved tariff. Accordingly, the Complaint shall 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 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.

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

10. Under 66 Pa.C.S. § 1501, a public utility is not required to provide flawless or perfect service, but rather, only reasonable, and adequate service. *A-Rize-N Mgmt. Co., LLC v. Pa. Am. Water Co.*, Docket No. C-2009-2119162 (Final Order entered Aug. 5, 2010); *see also* *Biason v. Metro. Edison Co.*, Docket No. C-00004450 (Opinion and Order entered Dec. 19, 2001).

11. The Respondent does not guarantee continuous, regular, and uninterrupted supply of service and is not liable for any damages due to accident, strike, storm, riot, fire, flood, legal process, state or municipal interference, or any other cause beyond the Company's control. Section 12.1 of PECO Energy Co. Tariff Electric Pa. P.U.C. No. 7.

12. Absent proof by a preponderance of the evidence that the Respondent violated the provisions of 66 Pa.C.S. § 1501, the Commission has no authority to require any action by Respondent. *W. Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984).

13. The Complainant failed to meet her burden of proving that the Respondent violated the Public Utility Code, a Commission regulation, or a Commission order. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Yelena Gerasimenko at Yelena Gerasimenko v. PECO Energy Company, Docket No. C-2023-3039248 is dismissed.
2. That Docket No. C-2023-3039248 be marked closed.

Date: December 13, 2023

/s/
F. Joseph Brady
Administrative Law Judge