

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|-----------------------------|---|----------------|
| Keith Hartman | : | |
| Rebecca Hartman | : | |
| | : | |
| v. | : | C-2023-3038465 |
| | : | |
| Metropolitan Edison Company | : | |

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint filed by Keith and Rebecca Hartman against Metropolitan Edison Company. Complainants failed to satisfy their burden of demonstrating that Respondent violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff with respect to an electric line damaging their vehicle.

HISTORY OF THE PROCEEDING

On February 23, 2023, Keith Hartman (Mr. Hartman) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Met-Ed, Company, or Respondent). In his Formal Complaint, Mr. Hartman states his car struck an electric line hanging across a road, causing extensive damage to his car. Mr. Hartman claims negligence on the part of Met-Ed to secure the area and use proper traffic control jeopardized public safety resulting in the accident. As relief, Mr. Hartman asked for: compensation for all damages sustained to his vehicle; personal time associated with the claim; vehicle mileage associated with

the claim; lost time at work; lost time due to vehicle inspection delays; and rental vehicle (comparable to his vehicle).

On March 16, 2023, Met-Ed filed an answer and new matter to Mr. Hartman's Formal Complaint. In its answer, Met-Ed admitted or denied the various averments in the Formal Complaint. In particular, Met-Ed denied it is responsible for the alleged damage to Mr. Hartman's personal property. Met-Ed asserts that, consistent with the Company's Tariff Rule 21, Mr. Hartman's claim was denied because there was no evidence that the damage was caused by any improper conduct on the part of Respondent's employees. Met-Ed also denied that Mr. Hartman is entitled to the relief requested, i.e., damages. In its new matter, which included a notice to plead, Met-Ed asserts the Commission does not have jurisdiction to award monetary damages, and that the Public Utility Code does not mandate perfect service.

Also on March 16, 2023, Met-Ed filed preliminary objections to Mr. Hartman's Formal Complaint. In its preliminary objections, which included a notice to plead, Met-Ed argued that the Commission does not have the power to award monetary damages. Therefore, Met-Ed asserts Mr. Hartman's request for monetary damages is impertinent matter and should be stricken from the Formal Complaint, and Mr. Hartman should be prohibited from introducing evidence at a hearing regarding alleged damages.

No response to the new matter or preliminary objections was received.

On April 19, 2023, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for June 21, 2023 at 10:00 a.m. and assigned me as the presiding officer.

On April 25, 2023, I issued an order granting Met-Ed's preliminary objections. The request for money damages was stricken from the Formal Complaint, and Mr. Hartman was prohibited from introducing at an evidentiary hearing any testimony or exhibits for the purpose of recouping alleged monetary damages. Also on April 25, 2023, I issued a prehearing order setting forth various rules that would govern the June 21, 2023 hearing.

On June 16, 2023, I received an e-mail from counsel for Met-Ed, stating that her witness was unavailable for the scheduled evidentiary hearing, and Met-Ed requested a continuance of the June 21, 2023 hearing. Counsel for Met-Ed stated Mr. Hartman opposed the request. After further informal discussions with the parties by e-mail, I stated to parties by e-mail on June 19, 2023, that the June 21, 2023 hearing would be converted to a prehearing conference. On June 20, 2023, the Commission issued a notice that the June 21, 2023 hearing would be converted to a prehearing conference.

Both parties appeared at the June 21, 2023 prehearing conference. Mr. Hartman's wife, Rebecca Hartman (Mrs. Hartman), also participated in the prehearing conference. Among other things discussed, and without objection from the parties or Mrs. Hartman, I agreed that it would be appropriate to add Mrs. Hartman as a complainant in this proceeding. On July 18, 2023, I issued an order, amending the Formal Complaint to include Mrs. Hartman and continuing the hearing to September 8, 2023, beginning at 10 a.m. Also on July 18, 2023, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for September 8, 2023 at 10:00 a.m.

The hearing was held as scheduled on September 8, 2023 at 10:00 a.m. Margaret Morris, Esquire attended on behalf of Met-Ed, along with two witnesses for Met-Ed: Sherry Morgan, Liability Claim Supervisor for First Energy Service Company; and Brian Monk, Troubleshooter in the Line Department for First Energy Service Company. Keith and Rebecca Hartman appeared on behalf of themselves. Met-Ed submitted five exhibits that were admitted into the record. Complainants submitted eight exhibits that were admitted into the record.

The record in this case closed on October 2, 2023, upon the filing of the September 8, 2023 Hearing Transcript with the Commission.

FINDINGS OF FACT

1. The Complainants in this proceeding are Keith and Rebecca Hartman.

2. The Respondent in this case is Metropolitan Edison Company.
3. Mrs. Hartman was driving home at approximately 6:45 p.m. on December 12, 2022 when her vehicle encountered a loose electric line. Tr. 56-57; Hartman Exhibit 8.
4. Mrs. Hartman encountered the loose electric line when she turned right onto Oak Street from PA-932 in Lebanon, PA. Tr. 63.
5. Mrs. Hartman believes that the line that struck her vehicle was originally crossing the road overhead on Oak Street. Tr. 64-67; Hartman Exhibits 2, 3.
6. The encounter caused damage to the Hartmans' vehicle. Tr. 57, 75-77; Hartman Exhibits 9, 10, 11
7. The vehicle is owned by Mrs. and Mr. Hartman. Tr. 73-74.
8. Hartman Exhibit 1 is a November 2021 Google Street View picture of the intersection of PA-934 and Oak Street in Lebanon, PA.
9. Hartman Exhibit 2 is a November 2022 Google Street View picture of Oak Street in Lebanon, PA.
10. Hartman Exhibit 3 is a November 2022 Google Street View picture of Oak Street in Lebanon, PA.
11. Hartman Exhibit 5 is a January 3, 2023 letter from Met-Ed to Mrs. Hartman denying liability for damage to the Hartmans' vehicle.
12. Hartman Exhibit 8 is an Annville Township Police Department report dated December 12, 2022.
13. Hartman Exhibit 9 is a picture from December 13, 2022 of damage caused to the left side of the Hartmans' vehicle.

14. Hartman Exhibit 10 is a picture from December 13, 2022 of damage caused to the front of the Hartmans' vehicle.

15. Hartman Exhibit 11 is a picture from December 13, 2022 of damage caused to the front of the Hartmans' vehicle.

16. Met-Ed Exhibit 1 is a screenshot of the Met-Ed account information for Mrs. Hartman.

17. Met-Ed Exhibit 2 is a notification of a damage claim for the December 12, 2022 incident regarding the Hartmans' vehicle.

18. Met-Ed Exhibit 3 is an opening and closing report for an informal complaint filed by Mr. Hartman with the Commission's Bureau of Consumer Services.

19. Met-Ed Exhibit 4 is Met-Ed's Tariff Rule 21.

20. Met-Ed circuit 715-2 was involved in the December 12, 2022 incident. Tr. 100; Met-Ed Exhibit 2.

21. Met-Ed Exhibit 5 is a one line diagram of Met-Ed circuit 715-2 at the intersection of PA-932 and Oak Street.

22. Met-Ed Exhibit 6 is an event log for December 12, 2022.

23. Met-Ed Exhibit 7 is a January 3, 2023 letter from Met-Ed to Mrs. Hartman denying liability for damage to the Hartmans' vehicle.

24. On December 12, 2022, Met-Ed witness Brian Monk responded to a reported outage for the line coming off circuit 715-2. Tr. 102.

25. Mr. Monk arrived at the fuse switch at 6:31 p.m. on December 12, 2022. Tr. 116; Met-Ed Exhibit 6.

26. Mr. Monk found no cause for the line fuse to be blown after patrolling the line along Oak Street. Tr. 103, 115.

27. Mr. Monk did not identify any hazard that would require blocking off any road or intersections. Tr. 104-105.

28. After finding no cause for the outage, Mr. Monk requested permission to reenergize the fuse at pole 35169-35169, which was granted. Tr. 103-104.

29. When Mr. Monk went to replace the fuse at pole 35169-35169, the fuse blew back, and then Mr. Monk noticed that the line on Oak Street had come loose. Tr. 105-106.

30. Met-Ed determined that the cause of the line falling into the road was that, first, the line had become loose and was laying against a steel pin. Then, when the line was reenergized, the line became loose, and the line fell down onto the road. Tr. 107.

31. The line fell from pole number 35194-35189 along Oak Street. Tr. 110; Met-Ed Exhibit 5.

32. The line laying against the steel pin was not visible to Mr. Monk. Tr. 107-108.

33. Mr. Monk removed the loose line from laying in the street. Tr. 106.

34. When Mr. Monk drove his truck to remove the loose line laying in the street, he noticed a truck parked approximately 100 yards ahead on the road. Tr. 106-107.

35. Mr. Monk did not see the Hartmans' vehicle encounter a loose line and only knew the vehicle had been hit by the line when a police officer informed him. Tr. 107, 121.

36. It was dark outside when Mrs. Hartman encountered the loose electric line. Tr. 57.

37. Mrs. Hartman did not witness the electric line falling before it hit her car. Tr. 57, 63.

38. After submitting a claim, Met-Ed responded to Mrs. Hartman that the incident was the result of the sudden and unforeseeable failure of equipment. Hartman Exhibit 5; Met-Ed Exhibit 7.

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 (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. §§ 332(a), 701.

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, Burlison 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 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).

Public utilities are required by law to furnish and maintain adequate, efficient, safe and reasonable service and facilities for its patrons, employees and the public. Specifically, section 1501 of the Public Utility Code Section states:

§ 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.

Section 1501 does not require perfect or the best possible service and facilities but does require public utilities to provide reasonable and adequate service and facilities. *Id; Tehrani v. Phila. Gas Works*, Docket No. C-2021-3025071 (Opinion and Order entered October 27, 2022).

In this proceeding, Complainants have alleged that Met-Ed violated section 1501 of Title 66 of the Public Utility Code by not maintaining safe facilities. 66 Pa.C.S. § 1501. Specifically, Complainants assert that Met-Ed's electric line struck and damaged their vehicle on the evening of December 12, 2022. Therefore, Complainants have the burden of proof in this proceeding.

Met-Ed has not questioned whether it was Met-Ed's electric line that struck the Hartmans' vehicle. Met-Ed witness Brian Monk testified that the Company determined that the cause of the line falling into the road was that, first, the line had become loose and was laying against a steel pin. Then, when the line was reenergized, the line became loose, and the line fell down onto the road. Tr. 107. Neither of the witnesses who were at the scene of the December 12, 2022 incident (Mrs. Hartman or Mr. Monk) provided testimony that contradicted Met-Ed's determination. Mrs. Hartman stated that she did not witness the electric line falling before it hit her

car. Tr. 57, 63. Mr. Monk stated that he only noticed that the line had fallen on the street after he attempted to replace a fuse. Tr. 105-106.

Although Met-Ed admits that the downed line was caused by an equipment failure (i.e., the line had become loose), I do not find that this incident is a violation of 66 Pa.C.S. § 1501. Although Mr. Monk admitted it was his actions in replacing the fuse that caused the line to fall, there is no basis to find that he acted unreasonably or knew that he would cause the line to fall. To the contrary, the incident occurred at night, and Mr. Monk testified that the line laying against the steel pin was not visible to him. Tr. 107-108. There is also nothing in the record that explains why the line that ultimately fell was resting loose against the steel pin. Therefore, there is no basis to find that Met-Ed acted unreasonably or otherwise in violation of 66 Pa.C.S. § 1501 in relation to the line resting loose against the steel pin and the subsequent line failure.

Additionally, there is no basis to find that Met-Ed acted in violation of 66 Pa.C.S. § 1501 after the line had fallen. Specifically, Mr. Monk testified that he removed the loose electric line from the road once he noticed it had fallen. Tr. 106. Mr. Monk testified that he noticed a truck, presumably the Hartmans' vehicle, parked 100 yards ahead on the road. However, he hadn't seen the Hartmans' vehicle encounter the loose line, and therefore he was unaware of the significance of why the truck had stopped. Tr. 106-107.

For all these reasons, the Hartmans' have not met their burden of providing substantial evidence that Met-Ed acted in violation of Section 1501. Therefore, the Formal Complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter within its regulations 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. 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.

5. "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).

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. Cmwlt. 2001); *see also, Burlason v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlt. 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. Cmwlt. 1984).

9. Utility companies are required to furnish and maintain adequate, efficient, safe and reasonable service and facilities for its patrons, employees and the public. 66 Pa.C.S. § 1501.

10. Section 1501 of Title 66 of the Public Utility Code does not require utility companies to provide perfect service or facilities. 66 Pa.C.S. § 1501; *Tehrani v. Phila. Gas Works*, Docket No. C-2021-3025071 (Opinion and Order entered Oct. 27, 2022).

11. Complainants failed to satisfy their burden to demonstrate that Met-Ed 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 Keith and Rebecca Hartman at Keith and Rebecca Hartman v. Metropolitan Edison Company, docket number C-2023-3038465, is hereby dismissed.

2. That this matter is marked closed.

Date: December 18, 2023

/s/
John M. Coogan
Administrative Law Judge