

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

Public Meeting held February 22, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Keith Hartman and Rebecca Hartman

C-2023-3038465

v.

Metropolitan Edison Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) John M. Coogan, issued on December 18, 2023, in the above-captioned proceeding. No Exceptions have been filed. However, we have exercised our 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, we shall reverse the Initial Decision, and grant, in part, and deny, in part, the Formal Complaint

(Complaint) filed by Keith and Rebecca Hartman,¹ consistent with this Opinion and Order.

History of the Proceeding

On February 23, 2023, Keith Hartman (Mr. Hartman) filed the Complaint with the Commission against Metropolitan Edison Company (Met-Ed or Company). In his 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: (1) compensation for all damages sustained to his vehicle; (2) personal time associated with the claim; (3) vehicle mileage associated with the claim; (4) lost time at work; (5) lost time due to vehicle inspection delays; and (6) rental vehicle (comparable to his vehicle). Complaint at 3.

On March 16, 2023, Met-Ed filed an Answer and New Matter to the Complaint. In its Answer, Met-Ed admitted or denied the various averments. 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, the Hartmans' claim was denied because there was no evidence that the damage was caused by any improper conduct on the part of Met Ed's employees. Met-Ed also denied that the Hartmans are 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 Code does not mandate perfect service.

¹ Mr. Hartman filed the Complaint on February 23, 2023. By the ALJ's Order dated July 18, 2023, Mrs. Hartman was added as a Complainant to the proceeding.

Also on March 16, 2023, Met-Ed filed preliminary objections to the Complaint. In its preliminary objections filing, which included a notice to plead, Met-Ed argued that the Commission cannot award monetary damages. Therefore, Met-Ed asserts the Hartmans' request for monetary damages is impertinent matter and should be stricken from the Complaint, and they 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 June 21, 2023 and assigned ALJ Coogan as the presiding officer.

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

On June 16, 2023, counsel for Met-Ed sent the ALJ an email, stating that her witness was unavailable for the scheduled June 21, 2023 hearing and requested a continuance of the hearing. Counsel for Met-Ed noted that the Hartmans opposed the request. The ALJ conducted further informal discussions with the Parties via e-mail, and by a June 19, 2023 email he informed the Parties that the scheduled hearing would be converted to a prehearing conference. On June 20, 2023, the Commission issued a notice confirming that the originally scheduled hearing would be converted to a prehearing conference.

All of the Parties appeared at the June 21, 2023 prehearing conference. Among other things discussed, and without objection from the Parties or Mrs. Hartman, the ALJ agreed it would be appropriate to add Mrs. Hartman as a complainant in this proceeding. On July 18, 2023, the ALJ issued an order, amending the Complaint to include Mrs. Hartman and continuing the hearing to September 8, 2023 and on that same day, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing regarding this matter for September 8, 2023.

The hearing was held as scheduled on September 8, 2023. 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. The Complainants submitted eight exhibits that were admitted into the record.

The record in this case closed on October 2, 2023.

On December 18, 2023, the Commission issued the Initial Decision of the ALJ in which he dismissed the Complaint on the grounds that the Complainants failed to satisfy their burden of demonstrating that Met-Ed violated the Code, a Commission order or regulation, or a Commission-approved tariff with respect to an electric line damaging their vehicle.

Discussion

As a preliminary matter, any issue or argument that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. It is well settled that we are not required to consider expressly or at length

each contention or argument raised by parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

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 the Company 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). Such a 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 the Company. *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).

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. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burleson v. Pa. PUC*, 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. PUC*, 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 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).

The Commission is authorized to issue civil penalty for violations under the Code.

- (a) General rule.--If any public utility, or any other person or corporation subject to this part, shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect, or refuse to perform any duty enjoined upon it by this part; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the commission, or any order of the commission prescribing temporary rates in any rate proceeding, or to comply with any final judgment, order or decree made by any court, such public utility, person or corporation for such violation, omission, failure, neglect, or refusal, shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000, to be recovered by an action of assumpsit instituted in the name of the Commonwealth. In construing and enforcing the provisions of this section, the violation, omission, failure, neglect, or refusal of any officer, agent, or employee acting for, or employed by, any such public utility, person or corporation shall, in every case be deemed to be the violation, omission, failure, neglect, or refusal of such public utility, person or corporation.
- (b) Continuing offenses.--Each and every day's continuance in the violation of any regulation or final direction, requirement, determination, or order of the commission, or of any order of the commission prescribing temporary rates in any rate proceeding, or of any final judgment, order or decree made by any court, shall be a separate and distinct offense. If any interlocutory order of supersedeas, or a preliminary injunction be granted, no penalties shall be incurred or collected for or on account of any act, matter, or thing done in violation of such final direction, requirement, determination, order, or decree, so superseded or enjoined for the period of time such order of supersedeas or injunction is in force.

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66 Pa. C.S. § 3301(a)-(b).

At the outset we note that since the ALJ refrained from assessing a civil penalty in this case, the Initial Decision does not contain an explanation of how to apply the ten standards established by the Commission in *Joseph A. Rosi v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Opinion and Order entered March 16, 2000) (*Rosi*), that served as the model for the Commission's *Policy Statement* at 52 Pa. Code § 69.1201 and established the Commission's criteria (*Rosi* criteria) that are considered and applied to determine the amount of a civil penalty for any violation by a public utility under the Commission's jurisdiction.

We find that the record in this case supports finding one violation of 66 Pa. C.S. § 1501, namely, the failure to observe the loose wire that fell onto the Complainants' vehicle on December 12, 2022. Consequently, we shall apply the *Rosi* criteria in determining the appropriate civil penalty for such violation of the Code.

We shall consider the following ten *Rosi* standards:

(c) The factors and standards that will be considered by the Commission include the following:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been

deemed intentional, the conduct may result in a higher penalty.

- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.
- (5) The number of customers affected and the duration of the violation.
- (6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.
- (7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.
- (8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.
- (9) Past Commission decisions in similar situations.
- (10) Other relevant factors.

Rosi at 10; 52 Pa. Code § 69.1201(c)(1)-(c)(10)

ALJ's Initial Decision

ALJ Coogan made thirty-eight (38) Findings of Fact and reached eleven (11) Conclusions of Law. I.D. at 3-7, 9-11. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law except as reversed or modified by this Opinion and Order, either expressly or by necessary implication.

Following a telephonic hearing noted *supra*, the ALJ issued an Initial Decision dismissing the Complaint. In his Initial Decision, the ALJ dismissed the Complaint because the Complainants failed to satisfy their burden of proof that Met-Ed violated the Code, a Commission Order or Regulation, or a Commission-approved tariff with respect to an electric line damaging their vehicle. I.D. at 1; 8-9.

Disposition

On exercise of our independent review of the record in this matter and upon review of the pleadings and the applicable law, we shall reverse the Initial Decision, and grant, in part, and deny, in part, the Hartmans' Complaint, consistent with this Opinion and Order.

The record in this matter reflects that a Met-Ed employee responded to a reported outage for a line coming off circuit 715-2.² The employee arrived at the fuse switch at approximately 6:31 p.m. on December 12, 2022,³ and after finding no cause for the outage, the employee reenergized the line upon receiving permission to do so.⁴ When

² Tr. at 102.

³ Tr. at 116.

⁴ Tr.at 103-4.

the line was reenergized, it fell onto the road.⁵ Mrs. Hartman testified that her vehicle encountered the line at approximately 6:45 p.m.⁶ The Met-Ed employee removed the loose line laying in the street⁷ and when doing so, observed the Complainants' vehicle parked on the road.⁸ However, the employee did not realize that the Complainants' vehicle had been hit by the line until a police officer informed him.⁹

Met-Ed determined that the cause of the line falling into the road was that the line was laying loosely against a steel pin and when reenergized, fell down.¹⁰ Although Met-Ed admits that the line became loose, i.e., there was an equipment failure, the Initial Decision finds that Met-Ed did not violate 66 Pa. C.S. § 1501 (requiring public utilities to furnish and maintain adequate, efficient, safe and reasonable service and facilities).

Based on the record, we disagree that Met-Ed provided safe and reasonable service in this incident on December 12, 2022. The Complainants established a prima facie case of unsafe and unreasonable service through Mrs. Hartman's testimony that their vehicle struck wires, which may have been energized, when driving on the road.¹¹ The burden of going forward then shifted to Met-Ed to rebut the Complainants' evidence.¹² We find that Met-Ed did not sufficiently rebut the Complainants' evidence.

⁵ Tr. at 107.

⁶ Tr. at 56-7.

⁷ Tr. at 106.

⁸ Tr. at 106-7.

⁹ Tr. at 107-121.

¹⁰ Tr. at 107.

¹¹ Tr. at 56-57.

¹² *Milkie v Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

Met-Ed's own testimony demonstrates that sometime prior to energizing the line the wire had already become loose and was lying against a steel pin.¹³ The act of energizing the line ultimately caused it to fall onto the roadway.¹⁴ The Met-Ed employee who responded to the outage did not observe the loose wire when he patrolled the area prior to energizing the line.¹⁵ In our view, Met-Ed did not satisfactorily explain why the failure to observe the loose wire was reasonable. Therefore, we find that the Complainants met their burden of proof by establishing by a preponderance of the evidence¹⁶ that Met-Ed was responsible for providing unreasonable, unsafe, and inadequate service in violation of Section 1501 of the Code on December 12, 2022.¹⁷

Based on Section 3301 of the Code,¹⁸ the Commission is authorized to impose a civil penalty not to exceed \$1,000 per violation for each day's continuation of the violation. Noting the challenges that pro se individuals face when proving technical and/or engineering violations, the record in this case supports finding one violation of 66 Pa. C.S. § 1501, namely, the failure to observe the loose wire that fell onto the Complainants' vehicle on December 12, 2022. Accordingly, the statutory maximum civil penalty for this violation is limited to \$1,000.

In this case, the *Rosi* factors and standards used by the Commission to evaluate violations of the Code support the imposition of a civil penalty in the amount of \$750.00.¹⁹ The conduct at issue was of a serious nature and the consequences of the

¹³ Tr. at 107.

¹⁴ *Id.*

¹⁵ Tr. at 105.

¹⁶ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Patterson v Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990).

¹⁷ 66 Pa. C.S. § 1501.

¹⁸ 66 Pa. C.S. § 3301(a)-(b).

¹⁹ 52 Pa. Code § 69.1201.

fallen wire resulted in property damage.²⁰ Both of these factors support the imposition of a greater penalty. The fallen wire was not an intentional action – it was negligent – and the Met-Ed employee removed the wire shortly after it fell and struck Complainants’ vehicle.²¹ One member of the public was impacted by the violation and the duration of the violation as demonstrated in the record before the Commission was short, lasting approximately twenty minutes.²² These are mitigating factors. The sixth factor considers Met-Ed’s compliance history.²³ No evidence was presented that Met-Ed has a poor compliance record. However, we take note that the Commission imposed a \$1,000,000 civil penalty against Met-Ed in 2021 in connection with a fallen overhead conductor that resulted in a fatality and property damage.²⁴ This is an aggravating factor. The seventh factor considers whether the regulated entity cooperated with the Commission’s investigation.²⁵ There was no investigation by the Commission and therefore this factor does not mitigate or aggravate the penalty. The eighth factor considers the amount of the civil penalty necessary to deter violations.²⁶ Again, we note that the civil penalty amount here is limited to the record presented by the pro se Complainants who do not have expertise in this area of law or electric safety standards. Noting the significant safety issues raised in this matter, it is appropriate to refer the matter to the Commission’s Bureau of Investigation and Enforcement (I&E), Electric Safety Division for further review. Nonetheless, the combination of a \$750.00 civil penalty and referral to I&E should be sufficient to alert Met-Ed and deter future violations. This civil penalty is based only on the evidence as presented thus far regarding the single Section 1501

²⁰ 52 Pa. Code § 69.1201(c)(1)-(2).

²¹ 52 Pa. Code § 69.1201(c)(4)-(5).

²² 52 Pa. Code § 69.1201(c)(5).

²³ 52 Pa. Code § 69.1201(c)(6).

²⁴ *Pa. PUC, Bureau of Investigation and Enforcement v. Metropolitan Edison Company*, Docket No. C-2019- 3011675 (Order entered February 4, 2021).

²⁵ 52 Pa. Code § 69.1201(c)(7).

²⁶ 52 Pa. Code § 69.1201(c)(8).

violation occurring on December 12, 2022, and does not encompass other potential regulatory violations such as those involving electric safety standards. Previous Commission decisions²⁷ in situations involving fallen electric facilities support the imposition of a greater civil penalty.²⁸

Additionally, we are referring this matter to the I&E Electric Safety Division to review: (a) the alleged unsafe and unreasonable service issues raised by the Complainants besides the singular violation of 66 Pa. C.S. § 1501 on December 12, 2022; and (b) Met-Ed's practices and procedures as they relate to operating and maintaining unsecured wires or lines resting loose, as well as Met-Ed's practices and procedures for re-energizing lines, and to take whatever further action may be deemed warranted.

Conclusion

Based on the foregoing, we shall reverse the Initial Decision of ALJ Coogan; and grant, in part, and deny, in part the Complaint of Keith and Rebecca Hartman; Metropolitan Edison Company shall pay a civil penalty in the amount of \$750.00 within thirty (30) days of entry of a final Opinion and Order; and that the matter be referred to the Commission's Bureau of Investigation and Enforcement Electric Safety Division for review and such further action as deemed warranted, consistent with this Opinion and Order; **THEREFORE**,

²⁷ 52 Pa. Code § 69.1201(c)(9).

²⁸ *See, Pa. PUC, Bureau of Investigation and Enforcement v. Metropolitan Edison Company*, Docket No. C-2019- 3011675 (Order entered February 4, 2021); *Pa. PUC, Bureau of Investigation and Enforcement v. West Penn Power Company*, Docket No. C- 2012-230724 (Order entered January 9, 2014).

IT IS ORDERED:

1. That the Initial Decision of Administrative Law Judge John M. Coogan, issued on July 17, 2023, at Docket No. C-2023-3038465, is reversed, consistent with this Opinion and Order.

2. That the Complaint filed by Keith and Rebecca Hartman on February 23, 2023, at Docket No. C-2023-3038465, is granted, in part, and denied, in part, consistent with this Opinion and Order.

3. That within thirty (30) days of the entry date of a final Order in this matter, Metropolitan Edison Company shall remit \$750 payable by certified check or money order, to “Commonwealth of Pennsylvania” with the docket number of this proceeding listed, and sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

4. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.

5. That a copy of this Opinion and Order shall be served upon the Bureau of Investigation and Enforcement for review and such further action as deemed warranted.

6. That the above-captioned matter shall be marked closed upon receipt of payment of the civil penalty by Metropolitan Edison Company in compliance with Ordering Paragraph No. 3 above.

BY THE COMMISSION,

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

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: February 22, 2024

ORDER ENTERED: March 18, 2024