

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Scott Grygo	:	
	:	
v.	:	C-2023-3043229
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This Decision grants the Formal Complaint of Scott Grygo because he successfully carried his burden of proving that PECO Energy Company failed to provide him with safe, adequate and reasonable service in violation of the provisions of 66 Pa.C.S. § 1501.

**HISTORY OF THE PROCEEDING**

On September 25, 2023, Scott Grygo (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the present Complaint, the Complainant alleges that he experienced repetitive power surges at his residence at 776 N. Reeds Road, Downingtown, PA 19335 on June 25, 2023. According to the Complainant, the power surges were related to PECO’s Lyndell substation which caught fire on the evening of June 25, 2023. As relief, the Complainant requests reimbursement for the repair and replacement of electrical appliances at his residence in the amount of \$3,459.45, assurance that the Lyndell substation will be repaired up

to the highest standards or retired, as well as guidance on the safety of the electrical wiring that he cannot see.

On October 11, 2023, the Respondent filed an Answer and New Matter along with a Notice to Plead. In its Answer, PECO admits in part, and denies in part the averments in the Complaint. Specifically, the Respondent admitted that a voltage imbalance to the Lyndell 000 circuit caused the Lyndell substation to catch fire, impacting the Complainant and others in the area. The Respondent averred that the incident resulted from a downed tree and denied that PECO is liable for the damages claimed by the Complainant.

In its New Matter, PECO avers that the Complainant has 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.

Also on October 11, 2023, the Respondent filed a Preliminary Objection to the Complaint. The Respondent seeks dismissal of the Formal Complaint because the Complainant is seeking damages which the Commission lacks authority to award. The Respondent's Preliminary Objection was endorsed with a Notice to Plead, advising the Complainant he had ten days to file a written answer to the objection.<sup>1</sup> The Complainant did not file a response to PECO's Preliminary Objection.

By Motion Judge Assignment Notice dated November 14, 2023, PECO's Preliminary Objection was assigned to me for disposition.

By Interim Order issued December 13, 2023, PECO's Preliminary Objection was granted in part, and the portion of the Complainant's Complaint seeking damages was stricken from the Complaint as impertinent matter. However, the matter was set for an evidentiary hearing to address whether PECO provided reasonable service to the Complainant.

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<sup>1</sup> 52 Pa. Code § 5.101(f)(1) provides that "[a]n answer to a preliminary objection may be filed within 10 days of date of service."

By Hearing Notice dated January 10, 2024, a telephonic hearing was scheduled for March 4, 2024.

On February 7, 2024, I issued a Prehearing Order reminding the parties of the time and date of the hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on March 4, 2024. Scott Grygo appeared *pro se* and testified on his own behalf. Mr. Grygo also presented the testimony of his wife, Teresa Grygo, and sponsored three Exhibits (Grygo Exhibits 1, 2, and 7) which were admitted into the record. Khadijah Scott, Esq. represented the Respondent, and presented the testimony of: Sandy Patel, who is a Reliability Engineer for PECO, covering Delaware and Chester Counties; Ramona Milburn, who is a Regulatory Assessor for PECO; and Edmond Howarth, who is Senior Claims Case Manager for PECO. The Respondent sponsored four exhibits (PECO Exhibits 1-4) which were admitted into the record in this matter.

At the hearing, I directed PECO to provide as late filed exhibits the following: 1) information regarding the emergency order that PECO issued following the Grygos' July 14, 2023 call reporting low voltage at their residence; 2) information regarding PECO's vegetation maintenance on the Lyndell\_000 circuit; and 3) information regarding the repairs to the Lyndell substation. Tr. 69-71. I also directed the Complainant to submit a redacted copy of his exhibits. Tr. 95.

At the request of Counsel, the Respondent was ordered to submit the late-filed exhibits by no later than April 1, 2024, and the Complainant was provided with an additional ten days to file written objections to PECO's late-filed exhibits. Tr. 96-97.

By email dated March 25, 2024, Counsel for PECO requested additional time to gather the late-filed exhibits.

By email dated April 2, 2024, PECO submitted its late-filed Exhibits 5, 6, and 7. Mr. Grygo did not submit a redacted copy of his exhibits and did not object to PECO's late-filed exhibits. Consequently, PECO's late-filed Exhibit 5-7 are admitted into the record in this matter in accordance with the ordering paragraphs below.

The record in this matter closed on April 10, 2024, which was the due date for filing any written objections to the late-filed exhibits.

### FINDINGS OF FACT

1. The Complainant is Scott Grygo who resides at 776 North Reeds Road, Downingtown, PA 19335 with his wife and a three-year old daughter. Tr. 10, 16.
2. The Respondent is PECO Energy Company.
3. Around 6:50 p.m. on June 25, 2023, a thunderstorm caused a tree to fall at 410 Creek Road, Downingtown, PA. Tr. 12-13, 41; PECO Exhibit 2.
4. 410 Creek Road is approximately three miles away from Mr. Grygo's residence. Tr. 20-21.
5. The area around 776 North Reeds Street and 410 Creek Road is served by two PECO circuits: the 34kV Eagle\_342 circuit and the 4kV Lyndell\_000 circuit. Tr. 39-40.
6. The fallen tree at 410 Creek Road caused the wires of the 34kV Eagle\_342 circuit to come into contact with the wires of the smaller 4kV Lyndell\_000 circuit causing power surges and power outages throughout the Lyndell\_000 circuit. Tr. 39-40; PECO Exhibit 2.
7. The Lyndell\_000 circuit serves approximately 150 customers, including Mr. Grygo, who were all impacted by power surges in the evening of June 25, 2023. Tr. 39, 41.

8. On June 25, 2023, around 7:49 p.m., PECO personnel on location confirmed that PECO's Lyndell substation at 801 North Reeds Road was on fire. Tr. 29, PECO Exhibit 2.

9. It was determined that the same surges that impacted the Grygos caused PECO's Lyndell substation to catch fire. Tr. 51.

10. In the aftermath of the outage, the Grygos discovered electrical damage throughout their house. Tr. 11, 14.

11. The Grygos hired electrical contractors to investigate and repair the damage. Grygo Exhibit 7.

12. On or about June 27, 2023, the Grygos hired Mattioni Plumbing Heating and Cooling company to check their HVAC system. Grygo Exhibit 7.

13. Mattioni's technicians suggested that they replace the Air Handler Control Board as well as the Defrost Control Board. Tr. 11; Grygo Exhibit 7.

14. On or about June 26, 2023, the Grygos hired JAMAC, Inc. who did a service call to diagnose and repair the Grygos' generator. Grygo Exhibit 7.

15. JAMAC, Inc. replaced the Grygos' whole house surge protector and four fuses. Grygo Exhibit 7.

16. On July 13, 2023, JAMAC, Inc. did a service call to check voltage on PECO's incoming line and found voltage to be low. Grygo Exhibit 7.

17. In August of 2023, JAMAC, Inc. installed a thermostat for radiant floor heat and replaced the damaged electrical panel. Grygo Exhibit 7.

18. In August of 2023, the Grygos requested JAMAC, Inc. to provide them with a report of the issues identified with their electrical panel. Grygo Exhibit 7.

19. JAMAC, Inc. reported that “the previous surge protector took a larger surge than it was rated for, causing it to smoke profusely as well as damaged the mini-splits and in-floor heating system.” Grygo Exhibit 7.

20. On or about August 26, 2023, the Grygos hired Comtech Home Remodeling company to replace their washing machine rubber boot. Grygo Exhibit 7.

21. During the replacement, the Comtech Home Remodeling technician noticed damage to three braded supply lines supplying water to the washing machine as well as the pedestal washer. Grygo Exhibit 7.

22. The Comtech Home Remodeling technician noted that one of the water supply lines appeared to be burned due to arcing exposing rubber that could have resulted in bursting and flooding the second-floor laundry room. Grygo Exhibit 7.

23. The Grygos’ electrical panel for the house showed signs of fire damage, and their electrical outlets showed soot and smoke damage. Tr. 11; Grygo Exhibits 2, 3.

24. On June 29, 2023, the Grygos filed a damage claim with PECO requesting compensation for the damaged electrical equipment and appliances. PECO Exhibit 1; Grygo Exhibit 4.

25. PECO denied Mr. Grygo’s claim and any liability for the damages that he experienced. PECO Exhibit 3.

26. Mr. Grygo communicated with PECO’s Senior Claims Case Manager, Edmond Howarth, regarding the June 25, 2023 events and the denial of his liability claim. Grygo Exhibit 4.

27. Mr. Grygo requested information regarding the repairs performed to the Lyndell substation. Tr. 35.

28. In an email dated July 12, 2023, and addressed to Mr. Grygo, Mr. Howarth wrote: “The tree fell in the area of 410 Creek Rd. PECO responded on 06/25/23 at approximately 0746 hours. Records requests and Subpoenas can be mailed to PECO Legal Dept.” Tr. 18; Grygo Exhibit 4.

29. Of the 137 PECO customers who were affected by the power surges on June 25, 2023, 30 of them filed property damage claims with PECO. Tr. 78-80; PECO Exhibit 4.

30. PECO denied all property damage claims related the June 25, 2023 event on the Lyndell\_000 circuit. Tr. 78-80; PECO Exhibit 4.

## DISCUSSION

### Legal standard

As the proponent of a rule or order, Mr. Liddy 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, he must demonstrate 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. 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 his 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).

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. Such service also shall be reasonably continuous, without unreasonable interruptions or delay, and in conformity with the regulations and orders of the Commission. *Id.*

### **Safe service**

Scott and Teresa Grygo reside at 776 North Reeds Road, Downingtown, PA 19335 (Service Address). Tr. 10. On the evening of June 25, 2023, the Grygos experienced a power outage while celebrating a family birthday, which had been previously interrupted by a storm. Tr. 11, 14. Mr. Grygo's sister left the party around 7:30 pm and on her way home she drove past a PECO substation that was on fire. Tr. 11; Grygo Exhibit 1. Mr. Grygo's sister called 911 to report the fire because she saw no emergency personnel at the site. Tr. 11; Grygo Exhibit 1. Once the power was restored at the Service Address, the Grygos experienced low voltage "for weeks." Tr. 11, 14. In the aftermath of the outage, the Grygos also discovered electrical damage throughout the house. Tr. 11, 14. Their new HVAC system was destroyed, their electrical panel for the house showed signs of fire damage, and their electrical outlets showed soot and smoke damage. Tr. 11, 16; Grygo Exhibits 2, 3.

The Grygos hired electrical contractors to investigate and repair the damage. On or about June 27, 2023, the Grygos hired Mattioni Plumbing Heating and Cooling company to check their HVAC system. Mattioni's technicians suggested that they replace the Air Handler Control Board as well as the Defrost Control Board. Grygo Exhibit 7.

On or about June 26, 2023, the Grygos hired JAMAC, Inc. who did a service call to diagnose and repair their generator. They also replaced the Grygos' whole house surge protector and four fuses. On July 13, 2023, JAMAC, Inc. did a service call to check voltage on PECO incoming line and found voltage to be low. In addition, JAMAC, Inc. installed a thermostat for radiant floor heat and replaced the damaged electrical panel in August of 2023. Also in August of 2023, the Grygos requested JAMAC, Inc. to provide them with a report of the issues identified with their electrical panel. JAMAC, Inc. reported that "the previous surge protector took a larger surge than it was rated for, causing it to smoke profusely as well as damaged the mini-splits and in-floor heating system." Grygo Exhibit 7.

On or about August 26, 2023, the Grygos hired Comtech Home Remodeling company to replace their washing machine rubber boot. During the replacement, the technician noticed damage to three braded supply lines supplying water to the washing machine as well as the pedestal washer. Tr. 28-29; Grygo Exhibit 7. The technician noted that one of the supply lines appeared to be burned due to arcing exposing rubber that could have resulted in bursting and causing flooding in second floor laundry room. *Id.*

The Grygos believed PECO responsible for the power surges that damaged their electrical equipment and appliances and filed a damage claim with PECO on June 29, 2023. PECO Exhibit 1; Grygo Exhibit 4. PECO denied Mr. Grygo's claim and any liability for the damage that he experienced. PECO Exhibit 3.

In response to the Grygos' testimony, PECO's witness, Sandy Patel testified that on the evening of June 25, 2023, a storm caused a tree to fall on PECO's wires at 410 Creek Road. The incident involved two PECO circuits: Lyndell\_000 and Eagle\_342. The fallen tree caused the wires of the 34kV Eagle\_342 circuit to come into contact with the wires of the smaller

4kV Lyndell\_000 circuit. Tr. 39-40. Mr. Patel explained that the Lyndell\_000 circuit served approximately 150 customers, who were all impacted by the event that saw the much higher load of 34kV go through the 4kV circuit causing a surge. Tr. 41. The Grygos were among those customers. Tr. 39. Mr. Patel further explained that PECO's system was first notified of someone's service being interrupted around 6:47 p.m. Tr. 41. Around 7:49 p.m., PECO personnel on location confirmed that PECO's Lyndell substation at 801 North Reeds Road was on fire. Tr. 29, PECO Exhibit 2. It was determined that the same surges that impacted the Grygos caused PECO's Lyndell substation to catch fire. Tr. 51.

Next, PECO's Senior Claims Case Manager, Edmond Howarth testified with regard to the damage claim filed by the Grygos on June 29, 2023. He testified that 137 PECO customers were affected by the event of June 25, 2023, and 30 of them filed damage claims with PECO. Tr. 78-80. Mr. Howarth testified that PECO denied all 30 claims based on Rule 12.1 of its Electric Tariff which states that "The Company does not guarantee continuous, regular and uninterrupted supply of service" and that "the Company 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." Tr. 78-79; PECO Exhibit 4. According to Mr. Howarth, the 30 claims filed by PECO customers on the Lyndell\_000 circuit, the Grygos' claim included, were denied because the damages were due to causes beyond the Company's control. Tr. 78-79; PECO Exhibit 4.

The Grygos pointed out that their residence is located at 776 North Reeds Road, Downingtown, PA 19335. The Lyndell substation is located only a short distance away at 801 North Reeds Road, whereas the tree falling event occurred at 410 Creek Road. 410 Creek Road is approximately three miles away from their residence. *See* Tr. 20-21. Mr. Grygo questioned PECO's argument that a tree that fell three miles away caused the power surges suggesting instead, that it was the fire at the substation, which was detected approximately one hour after the fallen tree, which caused the surges. Tr. 15, 20-22.

In response, Mr. Patel explained that electricity travels the path of least resistance within the circuit; yet for the present case, he stated,

So there are protection devices placed strategically all over the circuit, and for this scenario at least, we had -- **the substation was the first, I guess, point of protection** and along because it was traveling the other way, and it would hit -- **the surge would hit the customers and then the substation from the location of the event.**

Tr. 87 (emphasis added). When pressed further about the protective measures or devices that PECO has set in place in the Lyndel\_000 circuit to protect its customers from such powerful surges, Mr. Patel, who is PECO's Reliability Engineer for the counties of Delaware and Chester, was unable to explain their location, type or number. Tr. 86-89. When asked about some of the notations listed in one of the exhibits he sponsored (PECO Exhibit 2 – the report from PECO's Outage Management System (OMS) regarding the June 25, 2023 event), Mr. Patel was unable to explain their meaning. In particular, he was asked,

Q. Okay. What is the other one underneath it that says found T102 sources [fuses and battery] to cabinet removed, but **the breaker is in closed position.**

A. So that's another basically automatic switch that's numbered T102, and if I -- if I read, sources [fuses and battery] to cabinet removed, but breaker is in closed position. I'm not sure what exactly they were trying to say there. So yeah, I don't want to try to explain that one to you and be wrong, I guess.

Tr. 67, PECO Exhibit 2 (emphasis added). Next, when asked what measures the Grygos can take to protect themselves and their property from surges like the June 25, 2023 ones, Mr. Patel suggested that they use a surge protector, that they should seek the advice of an electrician, and ultimately stated that it is not his place to guide them. Tr. 90. Realizing that the Grygos have already followed his suggestions, Mr. Patel added, "I believe so that there was nothing, I guess -- **I guess there is no device that we can input in order to prevent something like this from an accident, basically.**" Tr. 91 (emphasis added).

Upon careful consideration of the evidence collected on this issue, I find that PECO has failed to rebut Mr. Grygo's *prima facie* case that the surges, which damaged the electrical equipment and appliances at his property, resulted from PECO's negligence and failure to provide him with safe and adequate service. Throughout this case, PECO has firmly maintained that, because the surges were caused by a weather-related event, i.e., the fallen tree at 401 Creek Road, the Company is impervious from any liability for the damages that the surges caused in their path. However, while the fallen tree may be considered an "act of God" that was outside of the Company's control, the powerful surges which travelled approximately three miles of PECO circuits and equipment (from 401 Creek Road to Mr. Grygo's home at 776 North Reeds Road) without much resistance, scorching everything in their path, do not fall in that category. It is unclear from PECO's testimony in this case whether the Company did not have sufficient protective devices placed throughout the Lyndell\_000 circuit,<sup>2</sup> or whether they were in place but did not work properly. In either scenario, PECO was negligent in its duty to provide Mr. Grygo and his family with safe service. Although there is evidence of reclosers getting engaged by the surges, no fuses or breakers on the Lyndell\_000 circuit were tripped to stop 34kV of electricity from reaching Mr. Grygo's residence three miles away from the source. Despite being in charge of vegetation maintenance, as well as circuit configuration and equipment maintenance, PECO's position in this case would leave the lives and property of its customers to the mercy of weather. In this day of technological advances, it is reasonable to expect a sophisticated and experienced company like PECO to do better. Mr. Grygo has successfully carried his burden of proving that PECO violated the provisions of 66 Pa.C.S. § 1501 when it failed to provide him with safe service.

### **Adequate and reasonable service**

In his Complaint and during the hearing, Mr. Grygo maintained that PECO had not been transparent with him about the events of June 25, 2023, or about the repair work that

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<sup>2</sup> In fact, if we are to rely on Mr. Patel's testimony, there were no protective devices in the three mile stretch between 410 Creek Road and 776 North Reeds Road able to stop the surges. According to him, the substation was the first such device and it was hit by the surges **after** the Grygos' residence was hit. Tr. 86-87, 91.

occurred at the Lyndell substation before and after the fire. Tr. 14, 16-17. Mr. Grygo explained that in his communications regarding the event of June 25, 2023, Mr. Howarth had stated that the surges were the result of a tree falling on PECO's wires at 07:49 in the morning. Tr. 17, Grygo Exhibit 4. This time discrepancy had led Mr. Grygo to believe that the tree falling was not the cause of the power surges which he had experienced in the evening of June 25, 2023, but that the fire at Lyndell substation was the cause. Tr. 17-18.

In his testimony, Mr. Howarth admitted that he had misread the timestamp in PECO's OMS from 7:49 p.m. to 7:49 a.m. Tr. 77; Grygo Exhibit 4. He was apologetic for any confusion that his misstatement caused the Grygos. *Id.* Yet, Mr. Grygo pointed out that PECO had stood by the misstatement despite Mr. Grygo challenging the 11-hour difference between 7:49 a.m. and the power surges and power outage at around 6:50 p.m. Tr. 83-84; *see also* Tr. 14-15. Mr. Howarth and PECO had plenty of time and opportunity to correct the statement but did not do so until the hearing. *Id.*

In addition, Mr. Grygo pointed out that PECO refused to provide him with information about the work done on the substation. Tr. 84-85; Grygo Exhibit 4. Because he believed the substation to be responsible for the power surges he experienced, it was very important to Mr. Grygo that the repairs to the substation be more than adequate to prevent future surges from happening. *See* Tr. 34. However, Mr. Howarth rejected his request, instead instructing him to file a subpoena with PECO's Legal Department. Tr. 84-85; Grygo Exhibit 4. At the hearing, Mr. Grygo testified that based on Company practice, PECO employees are not permitted to disseminate documents regarding their substations or circuits to customers who request them. Tr. 84-85.

I find that PECO's handling of Mr. Grygo's liability claim and request for information was negligent and perfunctory. Mr. Grygo was not *any* PECO customer requesting sensitive information about *any* PECO substation and circuit. He was a PECO customer who had been seriously impacted by the malfunctioning Lyndell substation – as he was led to believe from Mr. Howarth's careless statements. I am hard pressed to believe that no amount of information, or work description, or summary, could have been provided to him to alleviate his

rightful concerns about the future of his family and property, and that filing a subpoena was his only recourse. The unnecessary stonewalling, as well as the unwillingness to carefully address his concerns about the time discrepancy seem to have added insult to injury and has made Mr. Grygo distrustful of PECO. *See* Tr. 17-18. I note that although the issue of the time discrepancy and his concern with the repairs made to the substation feature prominently in Mr. Grygo's Complaint, neither PECO's Answer or New Matter address or respond to those claims. When asked about the repairs done to the substation after the fire, Mr. Patel responded:

I don't have the exact details and to what kind of work was performed postfire at the substation level, but it is a normal configuration, meaning that it is operating -- it is being operated as it was designed previously. So that's -- yeah, that's basically what I have on the repair.

Tr. 52. At the hearing, I requested that PECO provide as a late filed exhibit information regarding the work done to repair the Lyndell substation. Tr. 69-71. On April 2, 2024, PECO submitted PECO late-filed Exhibit 6, which purports to show *inter alia* that following the fire at the substation, a tap changer was reprogrammed, and the damaged unit transformer was replaced with a refurbished unit transformer. PECO late-filed Exhibit 6.

As mentioned above, section 1501 of the Public Utility Code provides that a public utility has a duty to maintain safe, adequate, 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. 66 Pa.C.S. §1501. Section 102 of the Public Utility Code defines "service" as follows,

Used in its broadest and most inclusive sense, ["service"] 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 . . .

66 Pa.C.S. § 102. The statutory definition of "service" is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*,

654 A.2d 72 (Pa. Cmwlth. 1995). A utility's "service" is not merely confined to the distribution of utility service, but also includes "any and all acts" related to that function. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 578 A.2d 75 (Pa. Cmwlth. 1990) (public utility failed to use reasonable means to notify landowner of vegetation removal). For example, inappropriate and unreasonable treatment of customers can be interpreted as inadequate service. *See, Lolly v. Duquesne Light Co.*, Docket No. C-2010-2167824 (Opinion and Order entered May 9, 2011) (citing *O'Toole v. Metro. Edison Co.*, Docket No. C-20030854 (Order entered May 9, 2005)). Quality customer service is expected of all regulated utilities and PECO fell short in this instance. I find that its treatment of Mr. Grygo was inappropriate and unreasonable in violation of section 1501 of the Public Utility Code.

### **Civil Penalty**

Under Public Utility Code Sections 3301(a) and (b), "the Commission may levy a fine of up to \$1,000 per day for continuing violations of the Public Utility Code." 66 Pa.C.S. § 3301. The Commission has set forth, in a policy statement, the factors and standards for evaluating proceedings involving violations of the Public Utility Code for purposes of determining appropriate civil penalty amounts. *See*, 52 Pa. Code § 69.1201(c). These factors and standards are as follows:

- (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.

52 Pa. Code § 69.1201(c). These factors, relative to this proceeding, are examined below.

First, the evidentiary record collected in this matter does not contain sufficient evidence to conclude that PECO's failure to provide Mr. Grygo with adequate, safe, and reasonable service was willfully fraudulent. There is no reason to conclude that the powerful surges that were experienced by Mr. Grygo at his residence on June 25, 2023, were the result of willful fraud. The same must be said about Mr. Howarth's misstatement regarding the time of the incident.

Second, the resulting consequences of the conduct at issue were of a serious nature. Mr. Grygo's property suffered substantial damage when the 34kV line came into contact

with the 4kV line. The intensity or magnitude of the surges was such that they caused PECO's Lyndell substation to catch fire. Mr. Grygo's whole house electrical panel and surge protector burned and showed signs of soot and fire. Smoke and soot came out of his electrical outlets making him fear about the safety of his electrical wiring inside the walls, and ultimately about the lives of his family members. Adding insult to injury, PECO treated his rightful concerns with carelessness bordering on disdain.

Third, the record in this case supports a finding that the violations of section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, resulted from the Respondent's negligence in providing the Complainant with safe, adequate and reasonable service. Despite my questioning Mr. Patel about the protective measures PECO has in place to prevent power surges from damaging customer property, the record remains unclear as to what those measures are. Apart from the substation that caught fire and the vague mentioning of some reclosures, the record is devoid of evidence about the protective devices or measures on Lyndell\_000 circuit, specifically on the three-mile stretch between 410 Creek Road and 776 N. Reeds Road. Similarly, PECO's treatment of Mr. Grygo's liability claim and safety concerns displays a similar level of negligence. It appears that after PECO identified a storm and a fallen tree as the source of the surge, it stopped investigating the matter further.

Fourth, PECO has made no efforts to modify its internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. PECO's firm stance in following its existing internal practices and procedures is apparent in Mr. Howarth's testimony that, although 30 of the 137 PECO customers affected by the June 25, 2023 event had filed damage claims with PECO, PECO had denied all 30 of them. Tr. 78-79. The mentioning of this blanket denial of all 30 claims was probably offered to highlight the unreasonableness of Mr. Grygo's claim for damages. However, it had the effect of highlighting the indifferent manner with which PECO handled those claims, Mr. Grygo's included.

The fifth factor relates, again, to Mr. Howarth's testimony. 137 PECO customers were affected by the events of June 25, 2023 on the Lyndell\_000 circuit. Thirty of them were affected enough to file property damage claims with PECO.

Sixth, the record does not include a history of PECO's past offenses; and seven, the Commission did not conduct an investigation in this proceeding.

The eighth, ninth and tenth factors listed in 52 Pa. Code § 69.1201(c) are inter-related in this case and they are, respectively: the amount of a civil penalty required to deter future violations; prior Commission decisions in similar cases; and the catch-all "other relevant factors."

After reviewing the evidence collected in this matter, I conclude that a civil penalty in the amount of \$5,000.00 is appropriate to deter future violations of this nature and to draw the Company's attention to the need for improved service reliability in the Luyndell\_000 circuit as well as the need for adequate customer service (\$1,000.00 for failing to provide Mr. Grygo with safe service on June 25, 2023, and \$1,000 for each of the four months between June 2023 and the filing of the Formal Complaint in September 2023, during which PECO inadequately handled Mr. Grygo's claims and concerns). *See Berger v. PECO Energy Co.*, Docket No. C-00992680 (Final Order entered May 9, 2000); *Rounce v. PECO Energy Co.*, Docket No. C-2015-2506941 (Opinion and Order entered Dec. 9, 2016).

Within 30 days of the Commission's Final Order in this case, PECO shall pay a civil penalty in the amount of \$5,000.00 by certified check or money order payable to the Commonwealth of Pennsylvania. In addition, PECO shall cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. §§ 101–3316, and the regulations of the Pennsylvania Public Utility Commission, 52 Pa. Code §§ 1.1–1065.1.

Before concluding, it is important to reiterate that, for a complaint against a public utility that seeks monetary damages arising from a failure to provide safe, adequate, reasonable, or efficient service, the Supreme Court has approved of a bifurcated procedure:

The question of the PUC's jurisdiction was before us recently in *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383, A.2d 791 (1977) and *Elkin v. Bell Telephone Co. of Pennsylvania*, 491 Pa.

123, 420 A.2d 371 (1980). In *Feingold*, we held that the courts of common pleas have original jurisdiction to hear suits against public utilities for damages arising from failure to provide adequate service. 477 Pa. at 10, 383 A.2d at 795. See also, *Elkin*, 491 Pa. at 130, 420 A.2d at 375. In *Elkin* we further defined the parameters of our holding in *Feingold*. *Elkin* involved an action challenging the adequacy of a complainant's telephone service, and this Court there approved of a bifurcated procedure for certain situations, whereby **the issue of liability is decided initially by the PUC, after which the court of common pleas considers the issue of damages** where appropriate. *Elkin*, 491 Pa. at 134, 420 A.2d at 377.

*De Francesco v. W. Pa. Water Co.*, 453 A.2d 595 (Pa. 1982) (emphasis added).

Thus, service issues are first decided by the Commission, and then a court of common pleas may consider the issue of damages. *DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595 (Pa. 1982).

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. In a hearing before the Commission, a party has the right of presentation of evidence, cross-examination, objection, motion. 52 Pa. Code § 5.243.
3. As the proponent of a rule or order, the complaint bears the burden of proof. 66 Pa.C.S. § 332(a).
4. To satisfy the burden of proof, the complaint 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. 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).

8. 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.

9. Used in its broadest and most inclusive sense, the definition of "service" 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. 66 Pa.C.S. § 102.

10. The statutory definition of "service" is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995).

11. Under Public Utility Code Sections 3301(a) and (b), the Commission may levy a fine of up to \$1,000 per day for continuing violations of the Public Utility Code. 66 Pa.C.S. § 3301.

12. The Complainant has sustained his burden of proof that Respondent failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities. 66 Pa.C.S. §§ 332(a), 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That PECO Energy Company late-filed Exhibits 5, 6 and 7 are admitted into the record.
2. That the Formal Complaint of Complaint filed by Scott Grygo against PECO Energy Company at Docket No. Docket No C-2023-3043229 is granted.
3. That within 30 days of entry of the Final Order of the Commission, PECO Energy Company shall remit a civil penalty in the amount of \$5,000 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, Office of Administrative Services.
5. That the Bureau of Administrative Services, Assessment Section shall monitor this matter for compliance.
6. That if PECO Energy Company fails to make the civil penalty payment required by Ordering Paragraph No. 3 above, within 30 days of the entry date of the Final Order

