

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Colleen Hicks

v.

PECO Energy Company

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C-2024-3048178

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Decision denies the Formal Complaint of Colleen Hicks against PECO Energy Company because she failed to carry her burden of proving that the utility failed to provide her with safe, adequate and reasonable service concerning the event of August 11-12, 2023.

HISTORY OF THE PROCEEDING

On April 4, 2024, Colleen Hicks (“Complainant” or “Ms. Hicks”) filed a Formal Complaint (“Complaint”) against PECO Energy Company (“PECO” or “Respondent”) with the Pennsylvania Public Utility Commission (“Commission”). In her Complaint, Ms. Hicks alleged that PECO dumped tree debris onto her property without her permission or knowledge. In the process, Ms. Hicks claims that PECO’s crew damaged her

driveway. As relief, Ms. Hicks requests that the Commission order PECO to: (1) reimburse her for the cost of having to remove the debris from her property; (2) contribute to the cost of repairing her driveway; and (3) stop using her driveway without her permission.

On April 25, 2024, the Respondent filed an Answer with New Matter. In its Answer, PECO denied all material allegations of fact and conclusions of law in the Complaint, whereas in its New Matter PECO requested that the portion of the Complaint seeking monetary damages be dismissed because the Commission lacks authority to award them.

On May 15, 2024, Ms. Hicks filed a Reply to New Matter.

By Interim Order dated May 21, 2024, Chief Administrative Law Judge, Charles E. Rainey, set the matter for resolution conference. The parties were unable to reach a resolution on the matter.

An Initial Call-in Telephonic Hearing Notice dated July 8, 2024, notified the parties that an initial call-in telephone hearing was scheduled for September 12, 2024, at 10:00 a.m., and that the matter was assigned to me.

On August 12, 2024, I issued a Prehearing Order. The Prehearing Order directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing and provided instructions for calling in to the hearing.

The hearing was convened as scheduled on September 12, 2024. Ms. Hicks appeared *pro se* and PECO appeared represented by Khadijah Scott, Esq. PECO's counsel requested additional time to review the numerous exhibits that Ms. Hicks submitted at the outset of the hearing. PECO's request was granted, and the hearing was adjourned.

By Further Call-In Telephonic Hearing Notice dated September 12, 2024, a further telephonic hearing was scheduled for November 15, 2024.

On October 23, 2024, I issued a second 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 further hearing was convened as scheduled on November 15, 2024. Ms. Hicks appeared *pro se* and testified in support of her Complaint. She presented the testimony of her neighbor, Kevin Gosselin, and sponsored 22 exhibits, 20 of which were admitted into the record (Complainant Exhibits 1-5, 7-13, 15-22). Khadijah Scott, Esq. represented PECO and presented the testimony of Timothy Grow, who is the Senior Claims Case Manager at PECO, and Cori Indelicato, who is the Senior Program Manager for PECO's Distribution Corrective Maintenance Program. The Respondent sponsored three exhibits (PECO Exhibits 1-3), which were admitted into the record.

The record in this matter closed on December 18, 2024, upon receipt of the further hearing transcript.

FINDINGS OF FACT

1. The Complainant is Colleen Hicks, who owns the property at 810 Roberts Way, Kennett Square, PA 19348 (Service Address).
2. The Respondent is PECO Energy Company.
3. Kevin Gosselin is Ms. Hicks' next-door neighbor at 812 Roberts Way, Kennett Square, PA 19348. Tr. 118.

4. There are no tall trees on Ms. Hicks' or Mr. Gosselin's properties.
Tr. 122.

5. There are between 20 and 40 very large white pine trees lining the 500 foot boundary between the properties of Ms. Hicks and Mr. Gosselin and that of a third neighbor at 1480 Marlboro Road. Tr. 121, 126-28.

6. The white pine trees are approximately 80-100 feet tall and are privately owned by the neighbor whose property is located directly behind Ms. Hicks' and Mr. Gosselin's lots. Tr. 128.

7. The white pines trees line not only the boundary between properties but also a wire fence and the entire length of PECO's power line that crosses their lots. Tr. 128; Complainant Exhibits 12, 13.

8. The white pine trees have damaged PECO's power lines 3-4 times in the last 20 years Mr. Gosselin has owned his property. Tr. 127.

9. A storm occurred on the evening of August 11, 2023, and caused branches from two or three of the pine trees to fall on PECO's power lines and interrupt electrical service in the area. Tr. 121.

10. The branches from one of the trees fell in Mr. Gosselin's yard and branches from two other trees fell on Ms. Hicks' yard. Tr. 121.

11. Mr. Gosselin is a volunteer firefighter and was on duty until 9 or 10 o'clock at night on the evening of August 11, 2023. Tr. 121.

12. When Mr. Gosselin returned to his home on August 11, 2023, he saw Asplundh trucks being winched off his backyard after getting stuck in the mud due to the heavy rain. Tr. 121.

13. Mr. Gosselin did not see the Asplundh crew cutting down the branches or moving them, because he arrived as they were trying to leave his property.

14. The Asplundh crew left deep tire marks where they worked in his yard as well as in the yard of Ms. Hicks. Tr. 121-122, 124.

15. The pattern of the tire marks indicated that the Asplundh crew had entered his property and had worked along the pine tree line/property line onto Ms. Hicks' property. Tr. 122.

16. On the morning of August 12, 2023, Mr. Gosselin walked to the back corner of Ms. Hicks' property and saw that all the branches that had fallen onto the power line had been put into Ms. Hicks' retention basin. Tr. 122-23, 133.

17. Following the August 11, 2023 storm, Mr. Gosselin paid \$500 to have the fallen branches removed from his yard. Tr. 128-29.

18. Mr. Gosselin pays for the removal of tree debris every time a storm breaks the branches off his neighbor's pine trees and they fall onto his yard. Tr. 129.

19. The 60-foot-long white pine branches that fell on Ms. Hicks' yard took PECO's power lines down with them. Tr. 123.

20. The white pine branches fell into a narrow area between the fence and a retention basin in the corner of Ms. Hicks' property. Tr. 135-36.

21. The narrow area between the wire fence and Ms. Hicks' retention basin is referred to as the alleyway and is approximately 15 feet wide. Tr. 129, 135-36.

22. Ms. Hicks' retention basin has some small trees growing in it. Tr. 136; Complainant Exhibit 4.

23. About two hours after the Asplundh crew left, PECO's crew arrived at the scene using Ms. Hicks' driveway to get close to the downed power line. Tr. 123.

24. Ms. Hicks driveway is 150-200 feet long and has a flat area which is approximately 75 feet away from the power lines. Tr. 123.

25. Tire marks on the ground indicated that PECO's trucks entered Ms. Hicks' yard using the flat area of her driveway in order to repair the power lines. Tr. 123, Complainant Exhibit 12, 13.

26. PECO's crew was in the area for one or two hours before they were able to restore service. Tr. 123.

27. Two days later, PECO sent a contractor who repaired Mr. Gosselin's and Ms. Hicks' lawns. Tr. 134-35,140.

28. Pursuant to PECO policy, for emergent or unscheduled jobs, the removal of tree debris left over from the service restoration process is the customer's responsibility. Tr. 91; PECO Exhibit 3.

29. PECO's policy recommends that, if the customer is unable to remove the debris herself, they hire a private contractor to do so. Tr. 91; PECO Exhibit 3.

30. After a storm, PECO will pay for tree debris removal if the fallen tree is owned by PECO, i.e. it is planted on PECO property. Tr. 91.

31. If the downed tree is privately owned, the removal of the tree debris is the responsibility of the customer on whose property it fell. Tr. 91.

32. On September 4, 2024, SealMaster company provided Ms. Hicks with an estimate for work to be performed on 3,589 square feet of driveway. Complainant Exhibit 22.

33. The estimate quoted to Ms. Hicks was \$2,150 for sealing, coating the driveway with oil base sealer material and labor.

34. The estimate quoted to Ms. Hicks for only fixing the cracks in the driveway was \$900. Complainant Exhibit 22.

DISCUSSION

In her Formal Complaint, Ms. Hicks alleged that PECO had dumped tree debris onto her property without her permission or knowledge. Ms. Hicks claims that, in the process of dumping tree debris, PECO's crew had damaged her driveway. As relief, Ms. Hicks requests that the Commission order PECO to: (1) reimburse her for the cost of having to remove the debris from her property; (2) contribute to the cost of repairing her driveway; and (3) stop using her driveway without her permission.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof. 66 Pa.C.S. § 332(a). In *Waldron v. Philadelphia Electric Co.*, 54 Pa.P.U.C. 98 (1980) (*Waldron*), the Commission explained the process for initially

meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Co.*, 1994 Pa.P>U.C. LEXIS 95 (1994) (*Poorbaugh*). 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. 2 Pa.C.S. § 704; *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, the complainant has not satisfied her burden of proof. The complainant would 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).

Tree Debris

At the hearing, Ms. Hicks testified that she has owned the property at 810 Roberts Way in Kennett Square for 20 years and has been a customer of PECO for the same amount of time. She explained that a storm came through the area on August 11-12, 2023, and interrupted electric service in her neighborhood. Tr. 31. Ms. Hicks testified that she has no trees on her property and that, while performing storm restoration activities in August of 2023, PECO and its contractor dumped a large amount of her neighbor's tree debris on her property without her permission. Tr. 11, 33. She also testified that during the restoration process, PECO used large bucket trucks, damaging her residential driveway. Tr. 11. Ms. Hicks explained that she was not at the Service Address at the time. Tr. 31. In fact, she returned to the Service Address on August 13, 2023. Tr. 31. Ms. Hicks stated that her next-door neighbor at 812 Roberts Way informed her of the activities of PECO's crews on her property while she was away. Tr. 31.

In support of her position, Ms. Hicks presented the testimony of Kevin Gosselin, who is her next-door neighbor at 812 Roberts Way. Tr. 118. He testified that his property is adjacent to Ms. Hicks' and there are no trees on his property or on that of Ms. Hicks, "just open grass for the better part of an acre and a half." Tr. 122. However, he did testify that there are between 20 and 40 very large white pine trees lining the 500 foot boundary between Ms. Hicks' and Mr. Gosselin's properties and that of a third neighbor at 1480 Marlboro Road. Tr. 121, 126-28. The pine trees in question tower approximately 80-100 feet each and are privately owned by this third neighbor whose property is located directly behind Ms. Hicks' and Mr. Gosselin's properties. Tr. 128. Mr. Gosselin explained that these white pines line not only the boundary between properties but also the entire length of PECO's power line that crosses their lots. Tr. 128. According to Mr. Gosselin, the white pine trees are beautiful to look at, but they are also

notoriously weak during storms. Tr. 127. He explained that these same pine trees have damaged PECO's power lines 3-4 times in the last 20 years he has owned his property. Tr. 127.

Mr. Gosselin testified that the storm that occurred on the evening of August 11, 2023, caused branches from two or three of the pine trees to fall on PECO's power lines interrupting service. Tr. 121. The branches from one of the trees fell in Mr. Gosselin's yard and branches from two other trees fell on Ms. Hicks' yard. Tr. 121. He is a volunteer firefighter and was on duty until 9 or 10 o'clock that evening. *Id.* When he returned to his home, he saw Asplundh trucks being winched off his backyard after getting stuck in the mud due to the heavy rain. Tr. 121. He testified that he did not see the Asplundh crew in action, cutting down the branches or moving them, because he arrived as they were trying to leave his property. However, he explained that the Asplundh crew left deep tire marks where they had worked in his yard as well as in the yard of Ms. Hicks. Tr. 121-122, 124. Based on the evidence of those tire marks, Mr. Gosselin surmised that the Asplundh crew had entered his property and had worked along the pine tree line/property line onto Ms. Hick's property. Tr. 122. In particular, "they had done a lot of work in the back corner of Ms. Hick's property." Tr. 122. Mr. Gosselin testified that on the morning of August 12, 2023, he walked to the back corner of Ms. Hick's property and saw "that all of the trees that had fallen onto the power line had been put into her retention basin. So, her retention basin is a large unit, but all the debris was thrown into [it]." Tr. 122-23, 133.

With regard to the tree debris that fell on his property, Mr. Gosselin described it as a 60-foot branch that the wind blew onto his property. Tr. 128. He testified that following the storm he had to pay \$500 to have it removed from his yard. Tr. 128-29. He explained that it costs him money to remove the tree debris every time a storm breaks the branches off his neighbor's pine trees. Tr. 129.

As for the tree debris that fell on Ms. Hicks' property, Mr. Gosselin described it as 60-foot-long branches falling straight down from two of the pine trees flanking Ms. Hicks' yard and taking PECO's power lines down with them. They fell into a narrow area between the property fence and the retention basin in the corner of Ms. Hicks' property. Tr. 135-36. This narrow area is referred to as the alleyway as it is approximately 15 feet wide from the fence to the basin. Tr. 129, 135-36. Mr. Gosselin further explained that Ms. Hicks' retention basin has some small trees growing in it. Complainant Exhibit 4; Tr. 136. Mr. Gosselin surmised that, working in the dark and the rain, the Asplundh crew must have taken the retention basin for a patch of woods and took the tree debris there after cutting up the branches to make way for the PECO crew to repair the downed power lines. Complainant Exhibit 4; Tr. 135-37.

Mr. Gosselin added that about two hours after Asplundh left, PECO's crew arrived at the scene using Ms. Hicks' driveway to get close to the downed power line. He explained that Ms. Hicks has a long driveway which goes on for about 150 - 200 feet before it reaches a flatter spot that is approximately 75 feet away from the power lines. PECO entered Ms. Hicks' yard at this spot and then proceeded to repair the power lines. Mr. Gosselin testified that PECO's crew was there for one or two hours before they were able to restore service to the area. He explained that he was unable to observe when they left but it must have been sometime in the early morning hours on August 12, 2023. Tr. 123. Mr. Gosselin added that the whole process had caused a great amount of damage to his lawn, but two days later, PECO sent a contractor who worked for two additional days to fully repair it. Tr. 134-35. Ms. Hicks confirmed that PECO had her lawn repaired as well. Tr. 140.

In response to Ms. Hicks' and Mr. Gosselin's testimonies, PECO presented the testimony of Cori Indelicato who is the Senior Program Manager for PECO's Distribution Corrective Maintenance Program. Ms. Indelicato's testimony confirmed that of Mr. Gosselin with regard to the date and time of the power outage, tree removal and

restoration of power. Tr. 91-92. She explained that PECO received an emergency tree crew request at 6:54 pm on August 11, 2023. Tr. 91; PECO Exhibit 2. She also testified that, pursuant to PECO policy, for emergent or unscheduled jobs, the removal of tree debris left over from the service restoration process is the customer's responsibility. Tr. 91; PECO Exhibit 3. PECO recommends that, if the customer is unable to remove the debris herself, they hire a private contractor to do so. Tr. 91; PECO Exhibit 3. After a storm, PECO will pay for the tree debris removal at the customer's property if the fallen tree is a PECO-owned tree, i.e. it is planted on PECO property. Tr. 91. However, if the tree is privately owned, the removal of the tree debris is the responsibility of the customer on whose property it fell. Tr. 91.

Ms. Indelicato further explained the process by clarifying that in situations like the power outage that occurred on August 11, 2023, the safety of the crew and the public is PECO's first priority. Tr. 98. Its tree clearing crews aim to work safely and efficiently to clear the power lines from tree debris as quickly as possible, so that PECO's other crews can then repair facilities and restore service. *Id.* Because the work is time sensitive, PECO asks the tree clearing crews to leave the debris behind on the site, "so that they're not wasting time clearing, chipping and then having to stop the chip trucks in between jobs." Tr. 98.

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. PUC*, 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. PUC*, 578 A.2d 75 (Pa. Cmwlth. 1990). The definition of "service" does include the handling and disposal of tree debris by PECO crew or PECO contractor following a storm and a power outage.

After carefully considering the record collected in this case, I find that Ms. Hicks has failed to carry her burden of proving by a preponderance of the evidence that PECO failed in its duty to provide her with safe, adequate, and reasonable service when it moved the tree debris less than 15 feet to her retention basin. Ms. Hicks failed to prove her claim that PECO's crew dragged tree debris from other locations and dumped it onto her property. On the contrary, the testimony of her own witness, Mr. Gosselin established that the tree debris in question came from privately owned trees abutting her property, whose branches fell on the ground in her backyard. Considering the location of the trees in question in relation to Ms. Hick's property line, fence, and retention basin, I agree with Mr. Gosselin's logical conclusion that the Asplundh crew at the site cut the tree branches where they fell into Ms. Hick's property and moved them to her retention basin, which has other small trees growing around it. The entire relocation of tree debris was a matter of less than 15 feet and was done to allow PECO crew access to the downed power lines in the dark and stormy weather.

Driveway Damage

During the further hearing, Ms. Hicks testified that she had a new driveway put in at the Service Address approximately two years ago. Tr. 141. She explained that

she drives a very small car, a Honda Civic. *Id.* However, when she returned to the Service Address on August 13, 2023, she noticed that her driveway was cracked at or near the spot where the muddy tire marks indicated that the PECO crew had used her driveway to enter her lawn to clear and repair the power lines. Tr. 141-42, 144; Complainant Exhibits 12, 13. Ms. Hicks stated that her driveway is not built to withstand PECO's and Asplundh's heavy commercial trucks and therefore was damaged by their use. Tr. 142.

During cross-examination, PECO counsel pointed out that some of the cracks in her driveway "have grass growing up through them, as if they already preexisted the August 2023 date." Tr. 144; Complainant Exhibit 2. After this, Ms. Hicks conceded that cracks might have happened at the edges of her driveway from normal activity like mowing the lawn. Tr. 144.

After reviewing Ms. Hicks' testimony and the exhibits that she sponsored, I find it hard to believe that the driveway in the photos depict a driveway that is approximately one year old.¹ The driveway depicted in the pictures in Complainant Exhibits 2, 12, and 13 shows extensive signs of wear and tear, especially around the edges where cracks are numerous and obvious, some with grass growing through them. In addition, Ms. Hicks sponsored Complainant Exhibit 22 which includes, *inter alia*, an estimate from SealMaster company for work to be performed on 3,589 square feet of driveway. The estimate quoted in Complainant Exhibit 22 is \$2,150 for sealing, coating the driveway with oil base sealer material and labor. The estimate quoted for just fixing the cracks in the driveway is \$900. Complainant Exhibit 22. I find that Ms. Hicks'

¹ At the further hearing on November 13, 2024, Ms. Hicks testified that her driveway was approximately two years old. In other words, her driveway was approximately one year old on August 13, 2023.

argument that a one-year-old driveway needs to be replaced or repaired in its entirety² due to a single incident where it was used by commercial trucks is not credible. Similarly, her claim that the damage resulted from repeated use by PECO trucks belies her claim that her driveway was one year old, especially considering Mr. Gosselin's testimony that the neighboring pine trees have caused power outages 3-4 times in the 20 years he has resided in his property. In view of the above, I find that Ms. Hicks has failed to carry her burden of proving that PECO's equipment is responsible for the damage caused to her driveway.

Consequently, Ms. Hicks' Formal Complaint against PECO is denied in its entirety for failure to carry the burden of proof.

CONCLUSIONS OF LAW

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

2. The Complainant seeking affirmative relief from the Commission has the burden of proving the Complaint allegations by producing evidence which established material facts by a preponderance of the evidence. 66 Pa.C.S. § 332(a).

3. 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. 2 Pa.C.S. § 704; *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

² Ms. Hicks testified that her driveway is approximately 200 feet long. Tr. 123. Multiplying the length of her driveway by approximately 10-15 feet of width is approximately 3,000 square feet of driveway.

4. 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.

5. 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. PUC*, 578 A.2d 75 (Pa. Cmwlth. 1990).

6. The Complainant failed to carry her burden of proof with regard to her claims against the Respondent. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Colleen Hicks in *Colleen Hicks v. PECO Energy Company* at Docket No. C-2024-3048178 is denied.

2. That the Secretary's Bureau mark this matter closed.

Date: March 17, 2025

_____/s/
Eranda Vero
Administrative Law Judge