

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Day	:	
	:	
v.	:	C-2024-3052636
	:	
FirstEnergy Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Decision denies the Formal Complaint of James Day against FirstEnergy Pennsylvania Electric Company because he failed to carry his burden of proving that the utility failed to provide him with safe, adequate and reasonable service.

HISTORY OF THE PROCEEDING

On December 20, 2024, James Day (“Complainant” or “Mr. Day”) filed a Formal Complaint (“Complaint”) against FirstEnergy Pennsylvania Electric Company (“FirstEnergy,” “FE,” “the Company” or “Respondent”) with the Pennsylvania Public Utility Commission (“Commission”). In his Complaint, Mr. Day alleged that he is experiencing service outages caused by the Respondent’s failure to perform preventative vegetation maintenance. As relief, Mr. Day requests that the Commission order FirstEnergy

to honor its legal responsibilities and perform proper maintenance on all of the circuit that serves his property, as opposed to only the right-of-way on his property.

On January 9, 2025, the Respondent filed an Answer with New Matter. In its Answer, FirstEnergy denied all material allegations of fact and conclusions of law in the Complaint, whereas in its New Matter FirstEnergy requested that the Complaint be dismissed with prejudice in its entirety because 66 Pa.C.S. § 1501 mandates that the Respondent provide reasonable and adequate service, not perfect service.

On January 21, 2025, Mr. Day filed a Reply to New Matter in which he argued that eight outages in 24 months is excessive and constitute unreasonable service.

An Initial Call-in Telephonic Hearing Notice dated February 12, 2025, notified the parties that an initial call-in telephone hearing was scheduled for April 8, 2025, at 10:00 a.m., and that the matter was assigned to me.

On March 12, 2025, 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 April 8, 2025. Mr. Day appeared *pro se* and testified in support of the Complaint. Margaret A. Morris, Esq., represented FirstEnergy and presented the testimony of Laurie Parker, who is an Advanced Customer Services Compliance Specialist for First Energy; Corina Hagerup, who is employed by FirstEnergy as a Reliability Engineer; and Matthew Sharpless, who is the Supervisor of Regional Operations in Respondent's Forestry Department. The Respondent sponsored 11 exhibits which were admitted into the record.

The record in this matter closed on May 6, 2025, upon receipt of the further hearing transcript.

FINDINGS OF FACT

1. The Complainant is James Day, who resides at 1206 Station Hill 21 Road, Nicholson, Pennsylvania 18446 (Service Address). Tr. 9.
2. The Respondent is FirstEnergy Pennsylvania Electric Company.
3. The Service Address is located on Mr. Day's 53-acre property. Tr. 16.
4. Approximately two-thirds of Mr. Day's property consist of wooded areas. Tr. 12.
5. About 1,000 feet of Mr. Day's property borders FE's right-of-way. Tr. 12.
6. The Service Address is located in Respondent's Montrose District. Tr. 31.
7. The Montrose District has 1,747 circuit miles which cover an area of approximately 300,000 acres and serve a total of 27,525 customers. Tr. 31.
8. The Service Address is served by FE's Nicholson substation. Tr. 31.
9. Overhead facilities provide electric distribution service from the substation to Mr. Day's residence. Tr. 31.

10. The Nicholson substation is approximately 4.6 miles away from the Complainant's house. Tr. 31.

11. The Service Address is served by Circuit 00288-65, which is approximately 14.8 miles long with primary and secondary wiring that serves approximately 170 customers. Tr. 31-32.

12. Circuit 00288-65 is protected by a combination of fuses and auto circuit breakers at the substation. Tr. 32-33; FE Exhibit 4.

13. During the period from March 21, 2022, through March 24, 2025, a total of eight sustained outages has impacted Mr. Day's electric service: two in 2022, two in 2023, four in 2024, and none in 2025:

Start Date	Duration (minutes)	Customers Affected (Montrose District)	Weather	Cause
4/19/22	3681	133	Snow-Ice with high winds	Ice
4/26/22	11	326	Fair Sunny	Equipment Failure
7/02/23	365	6	Fair Sunny	Unknown
9/07/23	1131	35	Rain with Lightning	Tree off right-of-way
4/13/24	142	160	Rain with High Winds	Line Failure
6/22/24	59	27	Fair Sunny	Equipment Failure
7/15/24	1281	34	Rain with Lightning	Lightning
11/22/24	3287	35	Snow-ice with high winds	Ice

Tr. 35-36; FE Exhibits 5-6.

14. The outages with the longest duration (April 19, 2022, and November 22, 2024) occurred during ice storms that impacted many customers in FE's

service territory and presented hardship conditions for the Company's remedial teams. Tr. 35-36; FE Exhibits 5-6.

15. In 2017, FE performed an overhead inspection of Mr. Day's circuit recording abnormal conditions of overhead circuit equipment and supporting structures like poles, pole hardware, dying grounds and pole-mounted distribution equipment. Tr. 43.

16. In 2018, the Company performed another overhead inspection using infrared technology to identify line issues that are not visible to the human eye. Tr. 43; FE Exhibit 7.

17. Following the overhead circuit inspections of 2017 and 2018, FE repaired any items identified in the inspections. Tr. 44.

18. In 2023, FE completed another overhead inspection including hot line clamps.¹ Tr. 43; FE Exhibit 7.

19. The Company performs substation inspections monthly, looking at everything within the substation, including the auto circuit breakers. Tr. 42-43; FE Exhibit 7.

20. In July 2022, FE replaced all old or damaged poles along the circuit as part of its Long-Term Infrastructure Improvement Program ("LTIIIP"). Tr. 44.

¹ A hot line clamp is a piece of equipment that allows the line crew to work on energized lines. Tr. 43.

21. Circuit 00288-65 has not been one of the Company's worst performance circuits in the recent past. Tr. 46-47, 49.
22. The objective of the Company's vegetation and maintenance program is to maintain safe, reliable electric service through effective line clearance. Tr. 75.
23. FE's vegetation and maintenance program requires the Company to control incompatible vegetation by removing all vegetation which can grow tall enough to interfere with its facilities and the conductors. Tr. 75.
24. The Company has limited ability to enter private property and remove vegetation outside its right-of-way. Tr. 76.
25. The Company has the ability to remove dead, diseased, or dying trees outside the right-way along with any incompatible vegetation that could interfere with its facilities. Tr. 76.
26. Consistent with its vegetation maintenance plan, the Company has performed vegetation maintenance on Circuit 00288-65 every five years. Tr. 78.
27. The Company performed routine cycle tree trimming on Circuit 00288-65 in 2019 and in 2024. Tr. 44.
28. Vegetation maintenance was performed on Circuit 00288-65 in February of 2022 as part of FE's effort to remove ash trees and fight the Emerald Ash Borer infestation. Tr. 15, 76-77, 85, 87; FE Exhibit 10.

29. In February 2022, the Company removed 56 ash trees located outside of its right-of-way in a two-mile portion of Circuit 00288-65, which included part of Mr. Day's property. Tr. 77; FE Exhibit 10.

30. Vegetation work performed in 2024 resulted in the trimming of 1,124 trees and the removal of 106 trees. Tr. 78; *see also* Tr. 11-13.

31. Mr. Day has filed three formal complaints against FE challenging the reliability of his electric service: one in 2022 and two in 2024, including the present Complaint. Tr. 23; FE Exhibit 2.

32. On March 21, 2022, Mr. Day settled the 2022 Formal Complaint at Docket No. C-2022-3030531 (“2022 Complaint”) stating that FE’s 2022 off-cycle tree work performed at the Service Address satisfied his Formal Complaint. Tr. 23; FE Exhibit 2.

33. No Objection was filed to the Certificate of Satisfaction for Mr. Day’s 2022 Complaint. Tr. 23; FE Exhibit 2.

34. On September 30, 2024, Mr. Day settled his 2024 Formal Complaint against FE at Docket No. C-2024-3050611 (“first 2024 Complaint”), after leaving a voice mail message for Mediator Lehman saying that his Formal Complaint was satisfied and that the Company had cleared all problem trees from his property. Tr. 24; FE Exhibit 3.

35. No Objection was filed to the Certificate of Satisfaction for Mr. Day’s first 2024 Complaint. Tr. 24; FE Exhibit 3.

DISCUSSION

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 Public Utility Code (Code), 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 (*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).

At the hearing, Mr. Day testified that he has lived at the Service Address for over 50 years. Approximately two-thirds of Mr. Day's property consist of wooded areas and about 1,000 feet of it borders FE's right-of-way. Mr. Day testified that he is aware that FE uses a five-year cycle of vegetation maintenance. He described FE's vegetation maintenance efforts through the years as "token cuttings of trees and limbs... on their right-of-way." Tr. 12. It was only in 2024 that FE sent a group of 15 to 20 men to his property to cut down trees and remove branches. Mr. Day explained that FE's employees were on his property for two or three days removing branches and grinding them to small pieces. Mr. Day saw the extensive work as a sign of "how lax [FE] had been in the past." *Id.* He further explained that the circuit he is on follows 11 miles of FE's right-of-way. He expressed doubts that FE worked to clear vegetation on the entire 11 miles of their right-of-way. He stated that, if FE had failed to do that, it may result in future losses of power to him and other FE customers. Mr. Day testified that, in his experience, the Company has failed to provide its customers with reliable service. As relief, he requests that the Company perform "more frequent, thorough vegetation removal." Tr. 11-13.

In response, FE presented the testimony of Laurie Parker, who is an Advanced Customer Services Compliance Specialist for FirstEnergy. Ms. Parker explained that Mr. Day has filed three formal complaints against FE challenging the reliability of his electric service: one in 2022 and two in 2024, including the present Complaint. Tr. 23; FE Exhibit 2. According to Ms. Parker, Mr. Day settled the 2022

Formal Complaint at Docket No C-2022-3030531 (“2022 Complaint”) stating that FE’s 2022 off-cycle tree work performed at the Service Address satisfied his Formal Complaint. No Objection was filed to the Certificate of Satisfaction. Tr. 23; FE Exhibit 2. Mr. Day also settled his prior 2024 Formal Complaint against FE at Docket No. C-2024-3050611. Ms. Parker testified that Mr. Day left a voice mail message for Mediator Lehman saying that his Formal Complaint was satisfied and that the Company cleared all problem trees from his property. No Objection was filed to the Certificate of Satisfaction. Tr. 24; FE Exhibit 3.

Next, Corina Hagerup, employed by FirstEnergy as a reliability engineer, testified that the Service Address is located in Respondent’s Montrose District. She explained that the Montrose District has 1,747 circuit miles, which covers an area of approximately 300,000 acres and serves a total of 27,525 customers. Tr. 31. The Service Address is served by FE’s Nicholson substation. *Id.* Overhead facilities provide electric distribution service from the substation to Mr. Day's residence. The Nicholson substation is approximately 4.6 miles away from the Complainant's house. *Id.* Additionally, Ms. Hagerup explained that the Service Address is served by Circuit 00288-65, which is approximately 14.8 miles long with primary and secondary wiring that serves approximately 170 customers. Tr. 31-32. The circuit is protected by a combination of fuses and auto circuit breakers at the substation. Tr. 32-33; FE Exhibit 4.

Ms. Hagerup reiterated that Mr. Day’s 2022 Complaint was satisfactorily resolved in March of 2022. She testified that during the period from March 21, 2022, through March 24, 2025, a total of eight sustained outages has impacted Mr. Day’s electric service: two in 2022, two in 2023, four in 2024, and none in 2025. She further explained that two of the outages were caused by ice on the lines, three were caused by equipment or line failure and one was caused by an off-right-of-way tree, one outage had an unknown cause, and one outage was caused by lightning. Tr. 35-36.

Start Date	Duration (minutes)	Customers Affected (Montrose District)	Weather	Cause
4/19/22	3681	133	Snow-Ice with high winds	Ice
4/26/22	11	326	Fair Sunny	Equipment Failure
7/02/23	365	6	Fair Sunny	Unknown
9/07/23	1131	35	Rain with Lightning	Tree off right-of-way
4/13/24	142	160	Rain with High Winds	Line Failure
6/22/24	59	27	Fair Sunny	Equipment Failure
7/15/24	1281	34	Rain with Lightning	Lightning
11/22/24	3287	35	Snow-ice with high winds	Ice

Tr. 35-36; FE Exhibits 5, 6.

Ms. Hagerup testified that the outages with the longer duration occurred during ice storms. They impacted many customers in FE’s service territory and presented hardship conditions for the Company’s remedial teams. Tr. 35-36; FE Exhibits 5-6. According to Ms. Hagerup, the eight outages experienced by the Complainant between March 2022 and March 2015 were outside of the Company’s control as FE cannot control the weather, outside right-of-way trees or equipment failure. Tr. 40-41. She further testified that the Company has an inspection, maintenance, repair and replacement program for its distribution facilities. Tr. 41. Consistent with the Commission’s directive, beginning in 2025, the visual inspection of Company facilities and equipment will occur every two years, instead of every five years. This includes reporting of abnormal conditions, including but not limited to overhead circuit equipment, conductors, wires and cables, supporting structures, like wood poles, pole hardware, dying grounds and pole-mounted distribution equipment. She explained that poles are inspected every ten years, underground facilities are inspected every five years, and substations are inspected every month. *Id.*

Ms. Hagerup testified that the Company has complied with its maintenance and inspection policy for the circuit providing service to Mr. Day. Tr. 41. She explained that in 2017, FE performed an overhead inspection of Mr. Day's circuit, which involved recording of abnormal conditions, including overhead circuit equipment, supporting structures like poles, pole hardware, dying grounds and pole-mounted distribution equipment. Then in 2018, the Company did another overhead inspection using infrared technology to identify line issues that aren't visible to the human eye. In 2023, FE completed another overhead inspection including hot line clamps. Lastly, the Company has completed substation inspections monthly, looking at everything within the substation, including the auto circuit breakers. Tr. 42-43; FE Exhibit 7.

Regarding the reliability enhancement that the Company has carried out on Mr. Day's circuit, Ms. Hagerup testified that, in 2017, FE repaired any items identified by the overhead circuit inspection that were needed for repair. Tr. 44. The same was done in 2018. The Company performed routine cycle trimming in 2019 and in 2024, and in July 2022, FE replaced all old or damaged poles along the circuit as part of its LTIP. *Id.*

During cross-examination, Ms. Hagerup clarified that Circuit 00288-65, which serves Mr. Day's property, has not been on the Company's worst performance circuit list in the recent past. Tr. 46-47, 49.

Next, Matthew Sharpless testified as Supervisor of Regional Operations in FE's Forestry Department. Mr. Sharpless explained that the objective of the Company's vegetation and maintenance program is to maintain safe, reliable electric service through an effective line clearance. The program requires the Company to control incompatible vegetation by removing all vegetation which can grow tall enough to interfere with FE's facilities and the conductors. Tr. 75. According to Mr. Sharpless, FE's goal is to create and sustain a compatible, stable and low-growing plant community on the right-of-way. *Id.*

As part of the vegetation management in its right-of-way, the Company makes sure that incompatible vegetation is removed from the right-of-way and what is left does not have the ability to grow back and endanger the structural integrity of the circuit. Tr. 75. Mr. Sharpless testified that the Company has limited ability to enter private property and remove vegetation outside of its right-of-way. It does, however, have the ability to remove dead, diseased or dying trees outside its right-of-way, as well as trees that have the potential to grow to a height that interferes with FE's facilities and potentially cause an outage. Tr. 76.

The last cycle maintenance was performed on the Complainant's circuit in 2024, whereas the vegetation maintenance that was performed on the circuit in February of 2022 was part of FE's effort to remove ash trees. Tr. 76-77; FE Exhibit 10. On that occasion, the Company removed 56 ash trees located outside of its right-of-way in a two-mile portion of the circuit, which included part of Mr. Day's property. Tr. 77; FE Exhibit 10. Vegetation work performed in 2024 resulted in the trimming of 1,124 trees and the removal of 106 others. Sixty-three of the removed trees were on FE's right-of-way and 43 were outside of it. Out of the 106 trees that were removed, 47 were ash trees. Tr. 78.

Mr. Sharpless concluded his testimony by stating that the Company has performed vegetation maintenance on Circuit 00288-65 every five years, consistent with its vegetation maintenance plan. He maintained that the Company has provided reasonable and adequate service regarding the vegetation maintenance on the circuit. Tr. 78; FE Exhibit 11.

As a public utility, FE is required by law to provide the Complainant with adequate and reasonable service under Section 1501 of the Code, which provides, in relevant part:

§1501. Character of service and facilities

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501. While the statutory definition of “service” is to be broadly construed, this section does not require utility companies to provide perfect service. 66 Pa.C.S. § 102; *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995); *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super. 1987).

Interpreting Section 1501 of the Code, the Commonwealth Court stated:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer’s complaint, to require any action by the utility.

West Penn Power Co. v. Pa. Pub. Util. Comm’n, 478 A.2d 947, 949 (Pa. Cmwlth. 1984) (footnote omitted).

Applying the facts of this case to the law, I find that Mr. Day has failed to carry his burden of proving that FE has violated the provisions of 66 Pa.C.S. § 1501 with regard to its vegetation management duties. It is undisputed that Mr. Day experienced two service interruptions in 2022, two in 2023 and four in 2024, with two of these power

outages lasting more than two days. However, FE put forth credible evidence that shows the majority of the outages were caused by the impact of severe weather conditions on FE's equipment and not from lax vegetation maintenance practices. In fact, only one of the outages that Mr. Day experienced between March of 2022 and March of 2025 was caused by a fallen tree. That tree was located outside of FE's right-of-way and fell under rain and lightning conditions. Furthermore, I disagree with Mr. Day's conclusion that the extensive work performed by FE in 2024 with regard to vegetation maintenance indicates the Company's failure to perform the required work in the past. On the contrary, Company testimony shows that FE not only performed timely routine trimming in 2019 and in 2024, in accordance with its five-year cycle, but also performed vegetation maintenance, as needed, between the cycles. The evidence collected shows that FE vigorously addressed the emerald ash borer problem plaguing ash trees in the region, and that Mr. Day was satisfied with its vegetation maintenance work in 2022 and 2024. Mr. Day did not provide any evidence that FE failed to perform similar work on the rest of the Circuit 00288-65.

Although Mr. Day only challenged the adequacy of FE's vegetation practices, the Company put forth testimony concerning its inspection, maintenance, repair and replacement program for its distribution facilities. It performed overhead inspections of the Circuit 00288-65 in 2017, 2018 and 2023 and repaired or replaced its equipment as needed.

In view of the above, I find that Mr. Day failed to show by a preponderance of the evidence that FE has failed to provide him with reasonable, safe and adequate service. Consequently, Mr. Day's present Formal Complaint against FE will be denied.

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).

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. Pub. Util. Comm’n*, 578 A.2d 75 (Pa. Cmwlth. 1990).

6. While the statutory definition of “service” is to be broadly construed, this section does not require utility companies to provide perfect service. 66 Pa.C.S. § 102; *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995); *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super. 1987).

