

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Barbara Pezzuto	:	
	:	
v.	:	C-2024-3046992
	:	
FirstEnergy Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Decision grants the Formal Complaint of Barbara Pezzuto because she successfully carried her burden of proving that First Energy Pennsylvania Electric Company failed to provide her with adequate and reasonable service in violation of the provisions of 66 Pa.C.S. § 1501. This Decision also imposes a civil penalty in the amount of \$8,000.00 for this violation.

HISTORY OF THE PROCEEDING

On February 28, 2024, Barbara Pezzuto (Complainant) filed a Formal Complaint (Complaint) against Metropolitan Edison Company, now FirstEnergy

Pennsylvania Electric Company¹ (Respondent, FE or Company), alleging that she is having a reliability, safety or quality problem with her utility service. In particular, the Complainant avers that she has suffered numerous outages since her electrical service was removed from Henning Road West. As relief, the Complainant requests that the Company place the service line back onto Henning Road West.

On March 20, 2024, Respondent filed an Answer with New Matter along with a Notice to Plead. In its Answer, FE denied all material allegations of fact and conclusions of law in the Complaint, and in its New Matter, the Company requested the matter be referred to the Office of Administrative Law Judge's Mediation Unit.

By Interim Order dated April 23, 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.

A Hearing Notice dated July 15, 2024, notified the parties that an initial call-in telephonic hearing was scheduled for October 2, 2024, at 10:00 a.m.

Due to conflict in my schedule, the October 2, 2024, hearing was cancelled and rescheduled for October 28, 2024.

¹ On January 1, 2024, FirstEnergy's Pennsylvania operating companies (i.e., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company) merged into FirstEnergy Pennsylvania Electric Company. Due to the merger transaction, the affected operating companies' tariffs were consolidated into a single tariff, with each former operating company's rates becoming its own rate district. As such, the customers of the former Metropolitan Edison Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company's tariff.

By email dated August 8, 2024, counsel for Respondent requested a continuance of the hearing because she was summoned for jury duty.

By Hearing Cancellation/Reschedule Notice dated August 12, 2024, the October 28, 2024, hearing was cancelled and rescheduled for November 1, 2024.

By email dated September 10, 2024, counsel for Respondent requested a second continuance of the hearing because a key witness for the Respondent was not available on November 1, 2024. Counsel indicated that the Complainant did not object to the continuance request.

By Hearing Cancellation/Reschedule Notice dated September 10, 2024, the November 1, 2024, hearing was cancelled and rescheduled for November 26, 2024.

A Prehearing Order was issued on October 24, 2024, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

On the morning of November 26, 2024, I received an email from Barbara Pezzuto, sent on behalf of the Complainant, in which the Complainant claimed that she was not feeling well enough to attend the hearing. Ms. Pezzuto requested a continuance of the hearing.

By Hearing Cancellation/Reschedule Notice dated November 26, 2024, the November 26, 2024, hearing was cancelled and rescheduled for February 26, 2025.

A second Prehearing Order was issued on January 29, 2025, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures

applicable to this proceeding, and directing the submission of documents prior to the hearing.

The hearing convened as scheduled on February 26, 2025. Barbara Pezzuto appeared *pro se* and testified in support of the Complaint. She also presented the testimony of her daughter, Brenda Pezzuto (Ms. Pezzuto). Margaret A. Morris, Esq., represented the Respondent, and presented the testimony of Laurie Parker – who is an Advanced Customer Service Compliance Specialist in the Pennsylvania Compliance Department, and Gregory Mervos – who is an Engineering Services Supervisor for FE.

During Mr. Mervos' testimony, the Complainant began feeling unwell and requested a continuance of the hearing. I granted her request and adjourned the hearing.

A Further Hearing Notice dated February 27, 2025, notified the parties that a further call-in telephonic hearing was scheduled for April 16, 2025, at 10:00 a.m.

Due to a conflict in my schedule, the April 16, 2025, hearing was cancelled and rescheduled for April 11, 2025. By Hearing Cancellation/Reschedule Notice dated March 12, 2025, the parties were notified of the change.

The further hearing was convened as scheduled on April 11, 2025. Barbara Pezzuto appeared *pro se*² and sponsored 12 exhibits, which were admitted into the record. Margaret A. Morris, Esq., represented the Respondent, and presented the rest of the

² Prior to the reopening of the record, Complainant indicated that she felt unwell and was unable to attend the further hearing. I encouraged the Complainant to attend the hearing and even offered to allow Ms. Pezzuto to attend the hearing without her mother and without the ability to conduct cross examination. Both Barbara Pezzuto and Brenda Pezzuto initially declined the offer but later decided to attend and participate in the hearing. Tr. 123-24.

testimony of Gregory Mervos as well as the testimony of Cody Heflin, who is a Forestry Specialist at FE. Respondent sponsored 18 exhibits which were admitted into the record.

The record in this matter closed upon receipt of the transcript on May 23, 2025.

FINDINGS OF FACT

1. The Complainant is Barbara Pezzuto who resides at 726 Henning Road, Perkiomenville, PA (Service Address). Tr. 34.
2. The Respondent is FirstEnergy Pennsylvania Electric Company.
3. The FE facilities that provide electric distribution service to the Service Address run overhead up to the Complainant's transformer pole and then are placed underground all the way to her meter. Tr. 87.
4. The conductors that serve the Complainant and her neighbor at 668 Henning Road were installed on Henning Road South in 1937. Tr. 96.
5. The Company was supplying electricity to 668 Henning Road before the Complainant's family established service in 1995. Tr. 97.
6. The Company never relocated the power lines, conductors, or poles that serve the Complainant. Tr. 96-97.
7. The Complainant is served by FE's Bartow substation which is located approximately 9.4 miles from the Complainant's residence. Tr. 87.

8. The Complainant is served by Circuit 706-1, which is approximately 126 miles long and serves approximately 3,000 customers. Tr. 87-88.

9. The Service Address is located at the end of Circuit 706-1 and on the border of Respondent’s service territory. Tr. 88.

10. The end of Circuit 706-1 is radial and has “no tie to any other circuits.” Tr. 88-89, 149.

11. Currently, there is no way to backfeed the Complainant’s circuit from any other source. Tr. 88-89, 149-50.

12. The Tie Project that is part of FE’s long-term infrastructure improvement plan (LTIP) will permit Circuit 706-1 to be backfed from a neighboring circuit, Circuit 703-1, and will greatly decrease the duration of an outage or possibly eliminate the outages altogether. Tr. 89, 148-151.

13. Between January 1, 2022, and April 2, 2025, the Complainant experienced 16 sustained outages:

	Start Date	Duration (minutes)	Weather	Cause
1	3/5/25	55	Fair Sunny	Trees Off ROW ³
2	1/08/25	96	Fair Sunny	Trees Off ROW
3	7/16/24	271	Rain Lightning	Trees Off ROW
4	6/6/24/	12	Fair Sunny	Unknown
5	4/3/24	520	Rain High Winds	Trees Off ROW
6	2/13/24	661	Snow ICE	Trees Off ROW

³ Right-of-way (ROW).

7	8/13/23	2,287	Rain Lightning	Trees Off ROW
8	8/7/23	2,855	Unknown	Unknown
9	7/11/23	69	Fair Sunny	Trees Off ROW
10	3/7/23	61	High Winds	Equipment Failure
11	12/23/22	3,076	Unknown	Unknown
12	9/26/22	524	Rain Lightning	Unknown
13	9/23/22	61	Fair Sunny	Trees Off ROW
14	8/14/22	91	Fair Sunny	Animal
15	7/31/22	59	Fair Sunny	Unknown
16	3/12/22	828	Snow Ice with High Winds	Tree Off ROW

Tr. 101-103; FE Exhibits 6, 15.

14. Between January 1, 2022, and April 2, 2025, the Complainant's neighbors who receive electricity from Henning Road West experienced almost the same outages. Tr. 142; FE Exhibits 7, 16.

15. R. A. Wenner, who resides at 719 Henning Road, experienced 14 of the sustained outages that the Complainant experienced. Tr. 142; FE Exhibits 7, 16.

16. J.P. Coyne, who resides at 720 Henning Road, experienced 15 of the sustained outages. Tr. 142; FE Exhibits 7, 16.

17. D. Asterito, who resides at 729 Henning Road, and M. Langacre, who resides at 739 Henning Road, experienced 13 of the sustained outages. Tr. 142; FE Exhibits 7, 16.

18. Similarly, FE's customers connected to Henning Road South experienced the same outages that the Complainant did, except for one outage that only impacted her and her next-door neighbor at 668 Henning Road. Tr. 157; FE Exhibits 3, 4.

19. The Company has conducted circuit inspection and maintenance patrols every five years but will conduct them every two years starting in 2025. Tr. 147; FE Exhibit 9.

20. Apart from the inspections required by Commission regulation, the Company has also completed additional off-cycle inspections, such as the thermovision or infrared inspection completed in 2018, and several main line overhead inspections completed in 2019 and 2021. Tr. 147; FE Exhibit 9.

21. Recloser and capacitor inspections are completed annually, whereas substation inspections are completed monthly. Tr. 147; FE Exhibit 9.

22. Circuit 706-1 has been on FE's worst performing circuit list since 2022 but was removed from the list for the first quarter of 2025. Tr. 172.

23. The worst performing circuit list includes five percent of the worst circuits and is based on the overall customer outage minutes on each circuit. Tr. 171-72.

24. The Company's list of worst performing circuits is updated quarterly with circuits added or removed from that list depending on their performance. Tr. 172.

25. Weather events, minor storms, equipment problems, vehicle accidents, are types of outages that could place a circuit on the Company's worst performing list. Tr. 172.

26. The objective of the Company's Vegetation Maintenance Program is to maintain safe, reliable electric service through a four-year line clearance schedule. Tr. 191.

27. The goal of the Vegetation Maintenance Program is to create and sustain compatible, stable, low-growing plant community on the ROW while controlling incompatible vegetation which threatens the Company's facilities. Tr. 191.

28. Although the Company does not have legal authority to remove trees that are off its ROW, it can remove vegetation that is dead, diseased, leaning with potential to interfere with the Company's facilities, or dying. Tr. 191-92.

29. In 2020 and 2024, the Company performed vegetation maintenance work in the entirety of Circuit 706-1. Tr. 192.

30. During the 2020 vegetation maintenance cycle, the Company removed 11 trees and trimmed 62 others on the Complainant's and her neighbor's (at 668 Henning Road) properties. Tr. 194.

31. During the 2024 maintenance cycle, the Company removed 1,007 trees off its ROW and 256 trees on the ROW. Tr. 193; FE Exhibit 10.

32. The total number of trees trimmed within the 706-1 Circuit during the 2024 maintenance cycle was 10,899. Tr. 193-94; FE Exhibit 10.

33. During the 2024 vegetation maintenance cycle, the Company treated 84.79 acres with herbicide to control noncompatible brush within its ROW. Tr. 193-94; FE Exhibit 10.

34. During the 2024 vegetation maintenance cycle, the Company performed aerial saw trimming using a helicopter to trim 1.97 miles of hard-to-reach areas. Tr. 193-94; FE Exhibit 10.

35. During the 2024 cycle, the Company removed 31 trees from the Complainant's property and mowed the brush within the ROW. Tr. 194.

36. The 706-1 Circuit and the Service Address are located in a very densely wooded area. Tr. 195.

37. The trees in the Complainant's area are mature, ranging between 50 and 100 years old, and most of them are over 100 feet tall. Tr. 195.

38. In the woods between the Complainant's house and Henning Road West, there are abandoned communication wires on the poles which are not owned by FE. Tr. 209.

DISCUSSION

Burden of Proof

As the party seeking affirmative relief from the Commission, a complainant has the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than that presented by the opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail, and that the offense is a violation of the Public Utility Code (Code), the

Commission's regulations, or order. 66 Pa.C.S. § 701; *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). The burden of proof is comprised of two distinct burdens: (1) the burden of production; and (2) the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Moore v. Nat'l Fuel Gas Distrib.*, Docket. No. C-2014-2458555 (Final Order entered Aug. 25, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party's claim or affirmative defense. *Id.* The burden of production may shift between the parties during a hearing. A complainant may establish a prima facie case with circumstantial evidence. *See, Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a prima facie case, the burden of production shifts to the utility to rebut the complainant's evidence. *See Moore*.

If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant's burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional evidence favorable to the complainant's claim. *See Milkie* at 1220; *see also, Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983) (*Burleson*).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See Milkie* at 1220; *see also, Riedel v. Cnty. of Allegheny*, 633 A.2d 1325 (Pa. Cmwlth. 1993); *Burleson* at 1375. It is entirely possible for a party to carry the burden of production but not be

entitled to a favorable ruling because the party did not carry the burden of persuasion. *See, Moore*. In determining whether a complainant has met the burden of persuasion, the fact-finder may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore* (citing *Suber v. Pa. Comm'n on Crime & Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005)).

Additionally, any decision of the Commission must be supported by substantial evidence in the record; more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. 2 Pa.C.S. § 704; *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

At the hearing, the Complainant testified about her longstanding disputes with the Company stemming from a service relocation that occurred around 2004. Tr. 23. According to her testimony, FE moved her electrical services off Henning Road West many years ago, placing her and her next-door neighbor together as the only two customers who receive service off Henning Road South. Tr. 21; FE Exhibit 3. The Complainant believes this service change is the root cause of her electrical problems, as she explained that when outages occur, she and her neighbor lose power while residents whose service remained on Hanning Road West continue to have electricity. Tr. 24. She testified that she has been dealing with these issues since approximately 2010, with her concerns encompassing both frequent outages and inadequate maintenance of the ROW. Tr. 21.

The Complainant maintained that the frequent power outages have caused significant disruption to her daily life and resulted in substantial financial losses. She testified that outages vary in duration, sometimes lasting a couple of hours but other times extending for days, with one particularly severe incident lasting three days around Christmas of 2022. Tr. 22. These outages have been especially problematic because her

home is entirely powered by electricity, leaving her without water, cooking facilities, or heat during power failures. Tr. 24-25. As a result, she has been forced to stay in hotels during outages, particularly during the Christmas holidays in 2022 and 2023, and has incurred hundreds of dollars in wasted food costs. Tr. 12, 21, 22; Pezzuto Exhibits 6-8.

In addition, the Complainant testified that the electrical service problems have also caused significant appliance damage due to power surges, further compounding her financial burden. She stated that power surges damaged her refrigerator, oven, and hot water tank, rendering these essential appliances inoperable. Tr. 22-23, 27; Pezzuto Exhibits 9-10. To cope with heating issues, she has resorted to using kerosene heaters as supplementary heat and only uses baseboard heating in her bathroom and kitchen to reduce electricity consumption. Tr. 22-23.

Brenda Pezzuto is the adult daughter of the Complainant. She too resides at the Service Address. Tr. 34. She confirmed her mother's testimony that they had lost the refrigerator, the oven and the water heater due to the power outages. Tr. 38. Apart from the appliances, she testified that they had lost hundreds of dollars in spoiled food and had to find hotel accommodation during Christmas time in 2022 and 2023. *Id.* Ms. Pezzuto added that she worked from home until December 31, 2024, so frequent or prolonged power outages negatively impact her ability to work online. Tr. 39, 43-45.

With regard to the outages, Ms. Pezzuto singled out August of 2023 when she and her mother experienced outages on August 7, 8, 9, 13 and 14. Tr. 38. According to Ms. Pezzuto "[T]hat was a really big two weeks there in the month of August 2023 that we did not have electric." *Id.* She also challenged FE's position concerning its vegetation maintenance on its ROW. Tr. 38, 47. Ms. Pezzuto testified that "they've never been out to maintain this right of way. The only reason they came out last summer is because we filed a formal complaint with the PUC. That was the only time they came out here for maintenance." Tr. 38.

In addition, Ms. Pezzuto expressed her dissatisfaction with FE's vegetation maintenance work performed in the summer of 2024. She testified that FE's crew had left a dead tree too close to a pole carrying electric service to the Service Address. Her concern is that the "tree's going to fall and hit the pole and we're going to be knocked out of electric." Tr. 38.

In response, FE's witness, Mr. Mervos testified that the facilities that provide electric distribution service to the Service Address run overhead up to the Complainant's transformer pole and then are placed underground all the way to her meter. Tr. 87. The Complainant is served by FE's Bartow substation which is located approximately 9.4 miles from the Complainant's residence. In addition, Complainant is served by Circuit 706-1, which is approximately 126 miles long and serves approximately 3,000 customers. Tr. 87-88. The Service Address is located at the end of Circuit 706-1 and on the border of Respondent's service territory. Tr. 88. In fact, Mr. Mervos explained that roughly half of the miles from the substation to the Complainant's residence have "no tie to any other circuit" which means that currently there is no way to backfeed the Complainant's circuit from any other source. Tr. 88-89. According to Mr. Mervos, this situation will change as a result of a project that is part of FE's long-term LTIIP. This will permit Circuit 706-1 to be backfed from a neighboring circuit, Circuit 703-1, and will greatly decrease the duration of an outage or possibly eliminate outages altogether. Tr. 89, 148-151. He added that the circuit is already protected by a combination of devices, like fuses, breakers and reclosers. Tr. 89.

Responding to the Complainant's requested relief, Mr. Mervos clarified that the Company can relocate the Complainant's service to connect her to Henning Road West, but the Complainant will be charged for the relocation consistent with the Company's Tariff Rule 4. Tr. 155. Mr. Mervos added that the relocation will not substantially reduce the number of outages for the Complainant. Rather, the LTIIP

projects that the Company has in place for Circuit 706-1 will provide reliable improvement for the Complainant. Tr. 157.

Upon reviewing the Company’s business records, Mr. Mervos testified that the conductors that serve the Complainant and her neighbor at 668 Henning Road were installed on Henning Road South in 1937. Tr. 96. The Company has no record of ever having moved the line or conductors that serves the Complainant from Henning Road West to Henning Road South in order to serve her neighbor at 668 Henning Road. Tr. 96-97. Mr. Mervos explained that the Company was already supplying electricity to 668 Henning Road before the Complainant's family established service in 1995. He reasoned that the Company would have no reason to move the Complainant’s line to serve a customer it was already serving. He added that, if the Complainant were correct about the Company relocating her service, there would be an abandoned recorded easement for the placement of those facilities, clearing of trees, etc., as well as a visible ROW given the density of the vegetation in the area. Tr. 97-98.

Mr. Mervos testified that, between January 1, 2022, and April 2, 2025, the Complainant experienced 16 sustained outages:

	Start Date	Duration (minutes)	Weather	Cause
1	3/5/25	55	Fair Sunny	Trees Off ROW
2	1/08/25	96	Fair Sunny	Trees Off ROW
3	7/16/24	271	Rain Lightning	Trees Off ROW
4	6/6/24/	12	Fair Sunny	Unknown
5	4/3/24	520	Rain High Winds	Trees Off ROW
6	2/13/24	661	Snow ICE	Trees Off ROW
7	8/13/23	2,287	Rain Lightning	Trees Off ROW
8	8/7/23	2,855	Unknown	Unknown

9	7/11/23	69	Fair Sunny	Trees Off ROW
10	3/7/23	61	High Winds	Equipment Failure
11	12/23/22	3,076	Unknown	Unknown
12	9/26/22	524	Rain Lightning	Unknown
13	9/23/22	61	Fair Sunny	Trees Off ROW
14	8/14/22	91	Fair Sunny	Animal
15	7/31/22	59	Fair Sunny	Unknown
16	3/12/22	828	Snow Ice with High Winds	Tree Off ROW

Tr. 101-103; FE Exhibits 6, 15.

Mr. Mervos challenged the Complainant's allegation that her neighbors have not experienced the same outages that she has. He explained that during the same period of time, from January 1, 2022, to April 2, 2025, the Complainant's neighbors who receive electricity from Henning Road West experienced almost the same outages. Her neighbor R. A. Wenner experienced 14 of the sustained outages that the Complainant experienced. Her neighbor J.P. Coyne experienced 15 of the sustained outages, while her neighbors D. Asterito and M. Langacre experienced 13 of the sustained outages. Tr. 142; FE Exhibits 7, 16. Similarly, Mr. Mervos testified that FE's customers connected to Henning Road South experienced the same outages that the Complainant did, except one outage that impacted only the Complainant and her next-door neighbor at 668 Henning Road. Tr. 157; FE Exhibits 3, 4.

Mr. Mervos proceeded to explain the circumstances for the three longest outages that the Complainant experienced in the last three years. He testified that the outage on December 23, 2022, lasted 3,076 minutes, or 51 hours and 26 minutes, and was caused by an off-ROW tree that came into contact with the power lines. This happened during a major event. Mr. Mervos defined a "major event" as one that affects 10 percent

or more of the Company's customer base. According to him, on December 23, 2022, there were multiple outages throughout the service territory due to high winds that left approximately 52,000 customers without power. Tr. 143; FE Exhibit 8.

Next, Mr. Mervos addressed the August 7, 2023, outage which lasted 2,893 minutes, or 47 hours 58 minutes. This was another outage during a storm that was classified by the Company as a “major event” that affected over 67,000 customers throughout the service territory. The Complainant’s service was affected by one span of primary wire being knocked down. Mr. Mervos explained that the topography of the location made it impossible for the Company’s vehicles to access the area for repairs. As a result, the lineman sent to the location had to physically climb the poles to rehang the wire and restore service. Tr. 144; FE Exhibit 8.

Finally, Mr. Mervos testified regarding the outage that occurred on August 13, 2023, and lasted 2,287 minutes, or 38 hours and 12 minutes. According to Mr. Mervos, this outage occurred during a more localized storm which affected approximately 8,700 customers. Again, the Complainant’s service was affected by a span of primary wire being knocked down by a fallen tree off ROW. Interestingly, this was the same span that came down during the August 7, 2023, outage less than a week earlier. Once again, a lineman had to physically climb the pole to rehang the primary wire. Tr. 145; FE Exhibit 8.

Mr. Mervos concluded his testimony on the outages by asserting that the outages experienced by the Complainant were not within the Company’s control as the Company cannot control the weather. According to Mr. Mervos, “[w]e cannot eliminate all off-right-of-way trees or animals from impacting our facilities.” Tr. 145.

Next, Mr. Mervos testified with regard to the Company’s circuit inspection and maintenance patrols. He explained that these patrols are conducted every five years

but will take place every two years starting in 2025. He added that outside of the inspections required by Commission regulation, the Company has also completed additional off-cycle inspections, such as the thermovision or infrared inspection completed in 2018, and several main line overhead inspections completed in 2019 and 2021. Mr. Mervos testified that recloser and capacitor inspections are completed annually, whereas substation inspections are completed monthly. Tr. 147; FE Exhibit 9.

When questioned, Mr. Mervos explained that Circuit 706-1, which serves the Complainant, is one of Respondent's worst performing circuits. Tr. 158. The worst performing circuit list includes five percent of the Company's worst circuits and is based on the overall customer outage minutes on each circuit. Tr. 171-72. According to Mr. Mervos, the list is updated quarterly with circuits added or removed from that list based on their performance. Weather events, minor storms, equipment problems, and vehicle accidents are types of outages that could place a circuit on the worst performing list. He testified that Circuit 706-1 has been on the worst performing circuit list since 2022 but was removed from the list for the first quarter of 2025. Tr. 172.

Mr. Heflin testified with regard to the Company's Vegetation Maintenance Program. According to Mr. Heflin, the objective of the program is to maintain safe, reliable electric service through an effective line clearance schedule. He explained that every four years the vegetation surrounding each power line is assessed and maintained. The program requires the Company to control incompatible vegetation, which generally means removal of all vegetation which will grow tall enough to interfere with the Company's facilities and conductors. The goal of the program is to create and sustain compatible, stable, low-growing plant community on the ROW. Tr. 191.

Mr. Heflin also explained that the Company does not have legal authority to remove trees that are off its ROW. Despite this, he clarified that the Company does

remove vegetation that is dead, dying, diseased, or leaning with potential to interfere with the Company's facilities. Tr. 191-92.

Mr. Heflin testified that, contrary to Complainant's and Ms. Pezzuto's testimony, the Company did perform its vegetation maintenance in the entirety of the 706-1 Circuit in 2020 and 2024. Tr. 192. He provided a breakdown of the tree work performed on the circuit during the 2024 maintenance cycle. He stated that 1,007 trees were removed off the ROW and 256 trees were removed on the ROW. Tr. 193, FE Exhibit 10. In addition, the Company treated 84.79 acres with herbicide to control noncompatible brush within the ROW. Lastly, the Company performed aerial saw trimming using a helicopter to trim 1.97 miles of hard-to-reach areas. The total number of trees trimmed within the 706-1 Circuit during the 2024 maintenance cycle was 10,899. Tr. 193-94; FE Exhibit 10.

Addressing the Complainant's claims specifically, Mr. Mervos testified that during the 2024 cycle the Company removed 31 trees from the Complainant's property. They also mowed the brush within the ROW.

With regard to the 2020 vegetation maintenance, Mr. Heflin testified that the Company removed 11 trees and trimmed 62 others on the Complainant's and her neighbor's (at 668 Henning Road) properties. Tr. 194.

Mr. Heflin further testified that Circuit 706-1 and the Service Address are located in a very dense wooded area. He explained that there's a high density of maple, spruce, oak, ash, and poplar trees. The trees in this area are mature and most of them are over 100 feet tall. They range anywhere from between 50 to 100 years old. Tr. 195.

Addressing some of the Complainant's claims regarding the layout of the Company's facilities around her property, Mr. Heflin explained that in the woods between

the Complainant's house heading towards Henning Road West there are abandoned communication wires on the poles. These poles are not owned by FirstEnergy Pennsylvania. Tr. 209.

Mr. Heflin also testified about an incident that occurred on August 5, 2023, when an FE forester visited the Service Address to get permission from the owner of the property to remove ash trees from outside the Company's ROW. On that occasion, "the woman who answered the door said the property owner would not sign" the permission form although the forester tried to explain that the Company was trying to improve service reliability in the area. Tr. 210; FE Exhibit 12. He pointed out that, following the August 5, 2023 incident, downed trees off the ROW impacted the Complainant's service on five separate occasions. Tr. 211, 220. However, according to Mr. Mervos testimony all of the Complainant's neighbors experienced almost all the same outages, whether they gave permission for ash tree removal or not.

In this case, the Company presented extensive testimony from three witnesses who sponsored 18 exhibits to support its position that it has taken numerous steps to provide reasonable and adequate service to the Complainant. However, this evidence taken in its totality falls woefully short of rebutting the Complainant's evidence of repeated and prolonged power outages. Despite the Company performing the regulatory required circuit inspection and maintenance patrols, despite it completing its vegetation maintenance cycles on time, the fact remains that the Complainant experienced a total of 16 sustained outages in a period of three years, three of which lasted two days or more. No matter how numerous or diligent the measures taken by the Company may have been, the number of outages experienced by the Complainant belies the adequacy, reasonableness or sufficiency of those measures. The gravity of the situation was made evident in FE Exhibit 13 which shows that Complainant contacted the Company 40 times between December 25, 2020, and March 5, 2025, concerning service reliability issues. Tr. 195; FE Exhibit 13. In 21 of those calls the Complainant reported

power outages to the Company. FE Exhibit 13. In addition to averaging more than five sustained outages a year, the Company admitted that the circuit that serves the Complainant has been on its list of worst performing circuits since, at least, 2022.

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. Upon careful consideration of the evidence collected in this case, I find that FE failed in its duty to provide the Complainant with reasonable service in violation of section 1501 of the Public Utility Code.

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 statement of policy, 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 any evidence that FE's failure to provide the Complainant with reasonably reliable service was willfully fraudulent.

However, the resulting consequences of the conduct at issue were of a serious nature and involved property damage. The Complainant and her daughter testified that they had lost several electrical appliances due to electrical surges in the system. Ms. Pezzuto reported losing work because of the unreliable service and they both presented evidence of having to pay for hotel accommodations when staying in their house became impossible due to prolonged lack of electricity. *See* Pezzuto Exhibits 6-8.

Third, I find the conduct at issue to have been negligent rather than intentional. The evidence indicates that FE continuously provided the Complainant with temporary solutions and repairs but never put forth a long-term solution, until the Company included Circuit 706-1 in its latest LTIP Project.

Fourth, FE has included the circuit that serves the Complainant in its latest LTIP Project in order to provide her and other customers on the circuit with a better and more permanent solution to the outages problem. However, it is unclear why Circuit 706-1 was not part of the Company's previous LTIP projects considering that the dense vegetation and the absence of backfeed to the circuit have been long standing issues that threatened power outages to FE's customers.

Fifth, in refuting the Complainant's argument that she was experiencing more outages than her neighbors who received service from Henning Road West or Henning Road South, the Company admitted that other customers on Circuit 706-1 have received the same unreliable service as the Complainant.

Sixth, the record does not include a history of FE'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 \$ 8,000.00 is appropriate to deter future violations of this nature and to draw the Company's attention to the need for improved service reliability for all of its customers (\$500 for each of the 16 outages that the Complainant experienced within a span of three years). *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).

Consequently, below I will order that within 30 days of the Commission's Final Order in this case, FE shall pay a civil penalty in the amount of \$8,000.00 by sending a certified check or money order payable to the Commonwealth of Pennsylvania. In addition, FE shall cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. §§ 101 *et seq.*, and the regulations of the Pennsylvania Public Utility Commission, 52 Pa. Code §§ 1.1 *et seq.*

CONCLUSIONS OF LAW

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

2. As the proponent of a rule or order, the complaint bears the burden of proof. 66 Pa.C.S. § 332(a).

3. 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 Telephone Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

4. 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).

5. 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).

6. 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.

7. 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.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Barabara Pezzuto against FirstEnergy Pennsylvania Electric Company at Docket No. C-2024-3046992 is granted.

2. That within thirty (30) days of entry of the Final Order of the Commission, FirstEnergy Pennsylvania Electric Company shall remit a civil penalty in the amount of \$8,000 payable by certified check or money order to “Commonwealth of Pennsylvania” with the docket number of this proceeding listed and sent to:

Matthew Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

3. That if FirstEnergy Pennsylvania Electric Company fails to make the civil penalty payment required by Ordering Paragraph No. 2 above, within thirty (30) days of the entry date of the Final Order of the Commission in this matter, it is further ordered that the Bureau of Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney General for collection of the total set forth above and appropriate action.

4. That FirstEnergy Pennsylvania Electric Company shall cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. §§ 101 *et seq.*, and the regulations of the Pennsylvania Public Utility Commission, 52 Pa.Code §§ 1.1 *et seq.*

5. That upon payment of the final penalty required by Ordering Paragraph No. 2 above, Docket No. C-2024-3046992 be marked closed.

Date: October 7, 2025

_____/s/
Eranda Vero
Administrative Law Judge