

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

STEVE ATUAHENE :
Complainant

v. : C-2012-2299868

PECO ENERGY COMPANY :
Respondent

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COMPLAINANT'S EXCEPTIONS

Complainant Pro Se STEVE ATUAHENE hereby submits as his EXCEPTIONS TO THE INITIAL DECISION of the Office of Administrative Law Judge Honorable Eranda Vera the following:

FACTS

Complainant at least since January 26, 2008 has had problem with high Bill, unnecessary and unwarranted service disruptions and interruptions. On October 18, 2011 the Respondent, PECO Energy Company ("PECO") without any notice terminated complainant's service at the meter. On or around April 12, 2012 Complainant received ~~attached~~ PECO's Ten Day Shut off Notice, see attachment to complaint. As a result Complainant filed this Complaint dated April 16, 2012 which the Commission docketed officially on April 20, 2012 stating that:

- 1) his electricity bills are too high due to faulty meter operation;
- 2) there are unnecessary disconnection of service to the building

and 3) his electric service was shut off without requisite notice even though he was hospitalized for two major surgeries and had to wait for a week to get it restore or back. As a relief, the complainant requested that the meter serving his residence be tested by an independent professional engineer with requisite testing experience, and that the Commission ordered PECO to send shut off notices via certified mail, with return receipt, 30 days prior to termination. At the trial on September 26, 2012 it was established that: The complainant and his wife have been the sole occupants of the service address since 2005. Trs 8, 42, 43; The complainant was hospitalized from September 29 to October 1, 2011 Tr. 44 and that at the day of termination of service on October 18, 2011 he was recuperating in the house; and that PECO failed to inform complainant of the termination or interruption of service; The complainant's electricity usage from September 2008 to August 2012 were as follows:

PERIOD	AMOUNT
1. September 2008 to August 2009	= \$ 1119.95
2. September 2009 to August 2010	= 728.79
3. September 2010 to August 2011	= 612.72
4. September 2011 to August 2012	= 706.94

According to PECO's own record "the complainant's property experienced 12 service outages and that 11 of the outages lasted 23 minutes to 4 hours and 24 minutes while the remaining one lasted 28 hours and 10 minutes. PECO classifies the worst performing circuits as "top priority circuits" and completes any remedial work on them within five months. The circuit that serves the complainant's property was classified by PECO as a "top priority circuit" in early 2011. In effect there was unnecessary interruption and disruption at complainant's residence. And there is no evidence of compliance with due process. Hence instant complaint.

FACTUAL ERRORS IN THE INITIAL DECISION

The following statements in the initial decision are incorrect.:

1. In paragraph 22 under findings of fact the initial decision stated: "The complainant was at a doctors appointment when his electric service was terminated. Tr. 10" on October 18, 2011. In fact ~~was~~ in the DISCUSSION section on the Initial Decision on page 23 paragraph 2 Judge Vero wrote:

"The complainant also argued that PECO failed to satisfy the 72-hour termination notice requirement on October 11 and 12, 2011, because he was at home recovering from his medical condition at the time in question and would have known if PECO had called to inform him on the impending termination."

In fact complainant was so ill to have visited his doctor on October 18, 2011 when his electric service was terminated.

2. The Initial Decision's statement under findings of fact paragraph 11 stating that: "The complainant's electricity usage and corresponding bills were higher before 2010, than after 2010 underscores the fact that Judge Vero ~~did~~ completely misunderstood complainant's complaint. To be abundantly clear complainant's position is that he has been over-charged since the service was installed and the fact that in September 2008 to August 2009 he was charged \$1119.95 but in September 2010 to August 2011 he was charged \$612.72 and that PECO failed to explain how come the difference demonstrated that he has proved his case under his first complaint which states that (1) his electricity bills are too high due to faulty meter operation.

3. The last error created by Judge Vero's Initial Decision relates to credibility in relation to the lack of requisite pre-termination notice. On page 22 of the Initial Decision Judge Vero wrote:

"Mr Atuahene was emphatic in his position that PECO had not mailed the ten-day termination notice to him on October 4, 2011. Tr 138-40. He went on to deny having received three of the four ten-day termination notices that PECO issued on October 4, 2011, February 20, 2012, April 9, 2012 and July 6, 2012 respectively. Tr 169-71. His credibility on this issue was undermined by the fact that one of the ten-day termination notices that Mr Atuahene denied receiving was attached to his complaint. Tr. 189-92."

First Judge Vero did not cite the alleged document that undermined the complainant's credibility on the issue of notice and constitutional due process. Judge Vero's failure to support her conclusion on the issues as important as credibility vis a vis notice, the underlying issue of constitutional due process is unfortunate. Judge Vero's impartiality in this case is seriously undermined and such determination constitute gross abuse of discretion in this case.

secondly, the termination issue before the court is October 18, 2011 and the notice at ~~the~~ issue is October 4, 2011. The notice attached to complaint is dated April 9, 2012. And other notices cited by Judge Vero are all date in the year 2012 and not 2011 and so have no relevancy to the issue at hand.

lastly complaint attached the April 9, 2012 notice to his complaint because a) the complaint was filed on April 16, 2012 and b) the complaint was filed to prevent potential termination as indicated by the April 9, 2012 notice:

HIGH BILLING DISPUTE

On April 20, 2017 STEVE ATUATTENE filed his Complaint with the Pennsylvania Public Utility Commission against PECO Energy Company alleging that:

- 1) His electricity bills are too high due to faulty meter operation;
- 2) There is unnecessary interruption in his building;
- 3) His electric service was shut off without proper notice forcing him to wait one week for his service to be restored.

As a relief, the Complainant requested that the meter serving his residence be tested by an independent professional engineer with requisite testing experience, and that the Commission order PECO to send shut off notices via certified mail, with return receipt, 30 days prior to termination" See para 1, page 1 of Initial Decision.

The first issue raised by Atuatene's complaint is high billing due to faulty billing meter. In *Waldron v. Philadelphia Electric Company*, 54 Pa. P.U.C. 98 (1980) the Commission adopted the Michigan Public Services Commission's ("PSC's") policy which essentially stated that:

1. While the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion.
2. It will also consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or

circumstances that are brought to light during the complaint proceeding. Waldron at 100. Thus, a complainant in a high bill case has the opportunity to present any other relevant evidence which, if sufficient to establish a prima facie case, can be used to sustain burden of proof.

In its discussion of the high bill issue this is how Judge Vero in pertinent part summarize the facts:

"At the hearing, Mr. Atuahene provided for the first time a timeframe for his billing dispute. He testified that he began receiving electric service from PECO at the Service Address in 2005...

Mr. Atuahene also testified that the Service Address is a single, five-bedroom house. The Complainant and his wife have been the sole occupants of the Service Address since 2005. The Complainant testified that he was hospitalized from August 4th to October 1st of 2011. Tr 9. He stated that during this period of time his wife remained by his side at the hospital. Id. Mr. Atuahene claimed that "the electricity stayed the same, though there was no usage during that period." Id.

PECO's witness, Ms. Leung, responded to Mr. Atuahene's testimony by stating that his account history with PECO from 2009 to the present did not contain any bills that were 'out of the norm'. Tr 123, 126. "see page 17-19 of Initial Decision. In fact, "Ms. Leung compared the December bills that the Complainant received in the years 2009, 2010 and 2011 by pointing out that he was charged \$64.62, \$49.84, and \$67.54 for each respective year. Tr 123-125."

First PECO's Ms Leung testimony was false and calculated to deceive the Commission, especially Ms Leung's testimony that complainant's account history with PECO from 2009 to present did not contain any bills that were 'out of the norm'. Tr 123, 126 when Ms Leung knew very well and had in her possession contrary evidence. Paragraph 7 of page 7 through paragraph 11 of page 9 of the Findings of Fact Section of Initial Decision completely contradict Ms Leung's testimony. A look of the months of December through March makes things clear:

	<u>SEPT. 2008 - AUG 2009</u>	<u>SEPT 2009 - AUG 2010</u>	<u>SEPT 2010 - AUG 2011</u>	<u>SEPT 2011 - AUG 2012</u>
	A	B	C	D
DECEMBER =	128.33	64.62	49.84	67.54
JANUARY =	175.88	110.91	77.36	87.09
FEBRUARY =	143.42	94.19	71.22	83.43
MARCH =	128.13	88.09	57.25	64.98
12 MONTHS TOTAL =	<u>1119.95</u>	<u>728.79</u>	<u>612.72</u>	<u>706.94</u>

If we consider A and C it is abundantly clear that Ms Leung's testimony was highly deceptive and completely false. In A the January bill was \$175.88 compared to ~~C's~~ C's \$77.36. Again the cumulative 12 months total for A was \$1119.95 compared to C's \$612.72. This clearly demonstrates that there was overbilling and that there was high billing in the period September 2008 through 2009.

Secondly, Judge Vero's conclusion that Complainant has failed to carry his burden of proving that his PECO bills post-2010 were abnormally higher than his electricity bills pre-2010 is misplaced. In his Complaint, Atwuhere did not demarcate the period of his high bill issue. To quote the Complaint this is exactly what Atwuhere stated with reference to HIGH BILLING DISPUTE:

"First, the billing is too high. This is due to the faulty meter operation."

Here, it should be recalled that Complainant stated that he had been using service since 2005 and that there has been over-billing. The issue of over-billing and/or high billing has been supported by PECO's own record which they tried to hide.

As stated in the Conclusions of Law section of the Initial Decision the Complainant seeking affirmative relief from the Commission has the burden of proving the Complaint allegations by producing evidence which establishes material facts by a preponderance of the evidence. 66 Pa. C.S.A. § 332(a). Unsubstantiated assertions, personal opinions or perceptions do not constitute evidence. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (1987). In this case PECO's own documented record demonstrated high bill in 2009 without any explanation which supports Complainant allegation of high bill at his service residence.

Hence the ~~Commission~~ Commission should find in favor of Complainant.

TERMINATION OF SERVICE

The 5th and 14th Amendment to the United States Constitution provide that "No person shall... be deprived of... property without due process of law." The Pennsylvania Supreme Court in *Soja v. Pennsylvania State Police*, 500 Pa 188, 455 A. 2d 613 (1982) defined due process as follows:

"The essential elements of due process are 'notice in an orderly proceeding adapted to the nature of the case before a tribunal having jurisdiction of the cause. *Goldberg v. Kelly*, 25 L. Ed 2d 287, 90 S Ct 1101, 1021 (1970)."

A fundamental requirement of due process is "the opportunity to be heard," *Grannis v. Orlean*, 234 U.S. 385, 394 (1914). It is an opportunity which must be granted at a meaningful time and in a meaningful manner. It is under this scope that the notice required before termination should be renewed and understood.

The Commission's statute at 66 Pa C.S.A. § 1406 governs the ~~is~~ issue of notice in relevant part states that

(b)(4)(i): Prior to terminating service... a public utility:
"shall provide written notice of the termination to the customer at least ten days prior to the date of the proposed termination..."

Mr Athahene testified that he had received no prior notice from PECO, either by mail, telephone or in person, with regard to the termination. Ms Henry, whose credibility has been undermined with her testimony on high charge when she claimed that Mr Athahene's account history were not

'out of the norm' Tr 123, 126 which in fact was not true. testified that on October 4, 2011, PECO's automated system issued a ten-day termination notice to complainant for past due of \$442.23. No evidence was introduced to establish that a) in fact said notice was mailed and b) said notice was received by complainant.

In her biased analysis Judge Vero attacked complainant credibility without any basis but failed to do same to Mrs Leung whose own document contradicted her testimony on the issue of over billing. Judge Vero claimed that Atwahere's credibility on the issue of not receiving notice "was undermined by the fact that one of the ten-day termination notices that Mr Atwahere denied receiving was attached to his complaint. Atwahere, ~~At~~ Judge Vero wrote, "was emphatic in his position that PECO had not mailed the ten day termination notice to him on October 4, 2011. Tr 138-40." The burden is on PECO to prove that they did in fact mailed said notice and that Atwahere received it. Judge Vero comment that "termination notice was mailed to Service Address, and was not returned back to PECO as undeliverable by the postal service" is not supported by the evidence or by common practice. There was no testimony from the postal service that indeed it received such mail from PECO and delivered it to the service address. So for the commission to conclude that notice was sent to service address is overreach. This test does not meet the due process mandate that require 'notice in an orderly proceeding' to provide the opportunity to be heard.

PECO failed to provide requisite due process notice before termination. The burden is on PECO to establish that it did meet such a test, no such evidence exist. Atwahere was denied pre-termination notice and therefore termination was illegal!

SERVICE INTERRUPTION AND DISRUPTION.

In its discussion of Service Interruption Judge Veno, inter alia, stated:

"The complainant testified that during the last two years he has experienced a high number of service interruptions. He testified that there had been five service interruptions in 2010, four in 2011 and three in 2012. He stated that the interruption of electric service has caused food to spoil in his refrigerator and his electric equipment to malfunction or break. Tr 8-9. According to the Complainant, 'it reached a point that it was unbearable' Tr 8.

The Company's witness, Mr Adler agreed with Mr Atuahene's testimony on the number of service outages that he has experienced since 2010 Tr 59... Mr Adler explained that of the 12 recorded outages, five were caused by uprooted trees or broken tree branches that took the primary wire down, and three were intentional outages, both scheduled and unscheduled, which were initiated by the Company in order to allow for tree trimming in the area. One of the outages were caused by a 'primary customer's' faulty equipment. One outage occurred when an aerial wire connection failed over Indian Creek, and the remaining two outages that occurred in August and October of 2010 were internated and were caused by underground cable failures.

Mr Adler testified that the Company's average service

interruption lasts between 75-80 minutes. Tr 70.
However, out of the 12 outages that Mr Atuahene experienced ten lasted longer than the company's. See PECO Exhibit 2... One of the outages lasted 28 hours and 10 minutes, and it was caused by a short, high-gust wind and a rain and lightning storm.

PECO classifies the worst performing circuits as "top priority circuits" and completes any remedial work on them within five months. Mr Adler explained that the circuit which serves the complainant's property was classified by PECO as a "top priority circuit" following the five interruption in 2010.

Mr Atuahene's claim of service interruption falls within Section 1501 of the Public Utility Code, 66 Pa. C.S.A. § 1501, which states that public utilities are required to provide adequate, efficient, safe, and reasonable service and facilities. Section 1501 of the Public Utility Code states as follows in pertinent part:

' Such service also shall be reasonably continuous and without unreasonable interruptions or delay.
66 Pa. C.S.A. § 1501 (Emphasis added) "

In this case PECO's own admission established that Atuahene service was "top priority circuits" yet completes any remedial work on them within five months. Secondly one disruption took 28 hour and 10 minutes to correct.

Thirdly, between a period of three years there were 12 interruptions. Clearly, PECO policy guidelines in this regard violate the mandate of 66 Pa. C.S.A. §1501. PECO's policy in this regard violated clearly established policy of this Commission and Atuahene's ~~property~~ property right and as such Atuahene is entitled to reasonable relief for property loss.

While the Commission may not have the requisite ^{power} to award monetary damage with regard to PECO unreasonable interruptions resulting in monetary damages and property loss to Complainant the least that Commission can do is to find in favor of Complainant with respect to his complaint of service interruption as PECO, like any public utilities in Pennsylvania, is required to provide adequate, efficient, safe and reasonable service and facilities. 66 Pa. C.S.A. Section 1501. and that such service also shall be reasonably continuous and without unreasonable interruptions or delay but PECO failed to honor this simple mandate to the suffering and detriment of Complainant Pro Se.

CONCLUSION

Judge Vera failed to understand that the over billing did not refer to post 2010 but to period from 2005 to present and that Atuahene's complaint is based on overbill at that period. Secondly, PECO failed to comply with due process pretermination notice and that Atuahene has been wrong. The termination was completely illegal. Lastly, PECO's own record and Mr. Adler testimony amply concludes that there were unnecessary interruptions which violates the mandate to provide adequate, efficient, safe and reasonable service and facilities as provided by 66 Pa. C.S.A. §1501.

RESPECTFULLY SUBMITTED
STEVE ^{AD} ATUAHENE

CERTIFICATE OF SERVICE

I, STEVE ATUAHENE, hereby certify that a true and correct copy of the foregoing motion/petition and accompanying papers, was served on the below listed addresses by first-class United States mail, postage pre-paid on 5-13-13 (date).

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Address: 2301 MARKET STREET/S23-1
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Name: Hon. Evanda Vero
Address: Office of Administrative Law Judge
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City, State, zip: Phila PA 19107

Dated: 5/13/13

By: SA

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