

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAT'S GOURMET DELI, INC.	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2013-2394437
	:	
PECO ENERGY COMPANY	:	
	:	
Respondent	:	

**PECO ENERGY COMPANY'S RESPONSE TO
COMPLAINANT, PAT'S GOURMET DELI'S MAIN BRIEF**

And Now, pursuant to 52 Pa. Code § 5.501 and the Briefing Order issued in this proceeding, comes PECO Company ("PECO") and responds to Complainant's Main Brief as follows:

The question presented in the instant case is whether PECO improperly terminated the Complainant's service, in violation of its tariff, after the company could not gain access to the Complainant's meter. The Complainant's representative, Robert Holton, claims that he made himself available to give access and PECO did not show up for scheduled appointments or showed up after hours. PECO asserts that the company went out to the property several times to gain access to the meter; however, the Complainant's employees had no key to the locked basement where the meter was located. PECO also asserts that the Complainant created the meter maintenance issue giving rise to the termination because he was tampering with the meter.

To answer the question of whether PECO improperly terminated service, the Commission must determine whether the Complainant provided sufficient evidence to conclude that PECO

did not show up for scheduled appointments; showed up after hours; or did not sufficiently contact the Complainant to obtain access. PECO respectfully submits that the Complainant has not submitted sufficient evidence for the Commission to reach this conclusion.

The party filing the Complaint bears the burden of proving that he or she is entitled to relief from the Commission. 66 Pa.C.S. § 332(a). Meeting the “burden of proof” requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. Se-Ling Hosiery, Inc. v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950). To satisfy the burden of proof against a utility, the Complainant must show that the utility is responsible or accountable for the problem described in the Complaint, Feinstein v. Philadelphia Suburban Water Company, 50 Pa. P.U.C. 300 (1976); Patterson v. Bell Telephone Company of Pennsylvania, 72 Pa. PUC 196 (1990); Feinstein, 50 Pa. PUC 300 (1976), or that the utility has violated either its duty under the Public Utility Code or the orders or regulations of the Commission. 66 Pa. C.S. § 701. Any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. Mill v. Commw., Pa Pub. Util. Comm’n, 67 Pa. Commw. 597, 447 A.2d 1100 (1982); Edan Transportation Corp. v. Pa. Pub. Util. Comm’n, 154 Pa. Commw. 21, 623, A.2d 6 (1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk and Western Ry. V. Pa. Pub. Util. Comm’n, 489 Pa. 109, 413 A.2d 1037 (1980).

Here, the Complainant failed to offer *any* credible evidence to demonstrate that PECO’s technicians did not show up for scheduled appointments or arrived at the premises after hours. The Complainant failed to offer any evidence that Pat’s Gourmet Deli gave the company access to the meter at all reasonable times. Further, the Complainant could not rebut the fact that Mr. Holton caused the meter maintenance issue by tampering with the meter.

Conversely, PECO demonstrated through company records that the company began receiving sporadic meter readings from the Complainant's electric meter. (Tr. 15, Tr. 64, Tr. 67, Tr. 178-179. PECO presented evidence through a Hyperion Report reflecting that Grid One made a total of six field visits to 2621 Sepviva Street. (Tr. 121) (PECO Exhibit 7). Five visits were to gain access to the electric meter and one visit was to terminate service. (Tr. 121-128) (PECO Exhibit 7). Throughout this entire time, the Complainant was operating a delicatessen with freezers, refrigerators and lighting for a business open to the public from 6:00 a.m. to 6:00 p.m. (Tr. 12, Tr. 53-54). However, somehow, when the company received actual meter readings, the majority of the Complainant's electric bills averaged \$40.00 per month (less than the usage for a small apartment for one person).

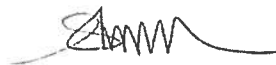
Through its case, PECO was able to demonstrate through DataRaker reports and the testimony of analyst, Daniel Heine, that the Complainant had been tampering with the meter in order to steal electric service. As such, the Complainant created the meter maintenance issue giving rise to the termination. The Complainant argues that PECO did not present direct evidence of the meter tampering. To the contrary, PECO presented DataRaker reports and the testimony of analyst, Daniel Heine that showed a pattern of tampering at the premises. The meter was pulled for most of the month and placed back in for a few days around the billing date to deliver a reading to the company. (Tr. 149, 150). The meter tampering, through pulling the meter, caused PECO not to receive signals from the electric meter. (Tr. 150, 153). The Complainant presented no evidence to rebut PECO's evidence.

The evidence and testimony revealed that Pat's Gourmet Deli's electric meter is located in a locked basement and there are no employees who have a key to the basement. (Tr. 14-15). After the company could not gain access, PECO properly terminated service pursuant to Sections

18.3 and 18.4 of PECO's tariff as access to the electric meter was obstructed. The Complainant presented no records, no documentation, no video surveillance as testified to; no witnesses; but solely Robert Holton's self-serving testimony that he was there and gave access to the meter and PECO did not show up. PECO rebutted Mr. Holton's testimony with proof through its company records that Grid One technicians showed up to the property several times and that the company had dropped several notices and made several telephone calls to gain access. The Complainant argues that PECO's records are "sloppy" but at least the company presented records. The Complainant presented nothing at all. No records – nothing. The Complainant's case must fail because Pat's Gourmet Deli has not met its burden of proof that PECO violated its tariff or provided unreasonable service. Complainant failed to sustain its burden of establishing that PECO provided inadequate, unreasonable or unsafe service; therefore, the Complaint must be dismissed.

WHEREFORE, for all of the reasons stated above, PECO respectfully requests that this Complaint be dismissed with prejudice.

Respectfully submitted,



Shawane L. Lee

Dated: January 12, 2015

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

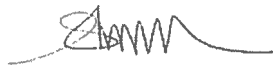
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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January, 2015, a copy of the foregoing Response to Complainant's Main Brief has been served upon the persons listed below via First Class Mail in accordance with the requirements of 52 Pa. Code Sections 1.54 and 1.55.

Craig A. Sopin, Esquire
601 Walnut Street
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Administrative Law Judge Angela T. Jones
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
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DATE: January 12, 2015

Shawane L. Lee