

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>MARY A. ROGERS</b>	:	
<b>Complainant</b>	:	
	:	
v.	:	<b>DOCKET NO. F-2013-2378582</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**EXCEPTIONS OF  
OF PECO ENERGY COMPANY**

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Pursuant to 52 Pa Code § 5.533, PECO Energy Company (“PECO”) hereby files its Exceptions to the December 11, 2014, Initial Decision of the Administrative Law Judge (“ALJ”) in the above-referenced matter. In the Initial Decision, the ALJ made twenty-one (21) findings of fact and four (4) conclusions of law. The Initial Decision should be rejected by the Commission because it is based in part on conclusions not supported by substantial record evidence and the testimony of the Complainant’s sole witness who was not credible.

**BACKGROUND AND PROCEDURAL HISTORY**

Mary Rogers initiated this proceeding on behalf of herself by filing a Formal Complaint (“Complaint”) against PECO on or about July 29, 2013 (Ms. Rogers will be referred to herein as “Complainant”). The Complaint contains the following narrative statement:

Inappropriate and unprofessional behavior of PECO technician. The technician attempted to force his way inside my residence, after being told that the person (contractor) did not have authority to allow him inside my home. The technician also discussed account information with the contractor. The Contractor will provide a written account of events.

As relief the Complainant requested “I expect PECO to follow their rule or code of conduct in educating the technician on appropriate and professional behavior.”

PECO filed an Answer to the Complaint on August 22, 2013. In its Answer, PECO denied the Complainant's allegations. PECO stated that the company's technician following proper procedure at the property and acted in a professional manner and did not force his way inside the property. PECO further responded that the technician did not disclose the details of how much the Complainant owed or any other private information to the contractor.

The evidentiary hearing was held in this matter on November 21, 2013. The Complainant offered one witness, Mr. Joel Powell, her contractor, to testify on her behalf and offered no exhibits into the record. The Complainant testified in PECO Energy's case "as on cross". PECO presented the testimony of three witnesses, Senior Regulatory Assessor, Teresa Ferrier; Contract Callers, Inc. technician, German Laboy; and Contract Callers supervisor, Tyrece Lawrence. On December 11, 2014, Administrative Law Judge Conrad A. Johnson ("ALJ Johnson") issued an Initial Decision in which he fined PECO \$500.00. In his Initial Decision, ALJ Johnson stated:

It is not reasonable service to reveal the status of a customer's account to a contractor or employee and to discuss that status in a public area where passersby can hear. 66 Pa.C.S. § 1501.

ALJ Johnson's Initial Decision should be reversed because it is not based on the substantial evidence in the record, but rather, the Decision is based solely on the Complainant's witness, Mr. Joel Powell's testimony who lacked credibility.

**EXCEPTION NO. 1**

**ALJ Johnson's Initial Decision is based solely on the conflicting testimony of Complainant's witness, Mr. Joel Powell who lacked credibility.**

The question presented in the instant case is whether PECO Energy's technician improperly revealed confidential information to a third party and whether the technician

attempted to force himself into the Complainant's residence. These are the two issues raised in the Complainant's formal complaint. ALJ Johnson ruled outside of these two issues and fined PECO because he stated that it is not reasonable to discuss the status of a customer's account in a public area where passersby can hear. However, the Complainant never alleged that PECO Energy's technician discussed her account to passersby. During the hearing, this issue was raised for the first time when the contractor, Mr. Powell said that the technician followed him down the street while discussing the Complainant's termination. (Tr. 21-23). He said the technician followed him up the street from the center of the block and during that time he was speaking to him in a public forum about the repercussions of not giving him entry and the Complainant's account status. Yet, later on cross-examination, Mr. Powell contradicted himself and denied that the technician revealed account information or spoke about the Complainant's account status. Specifically, Mr. Powell testified:

Q: Mr. Powell, other than the technician flashing you this account balance, did he speak it out loud on the porch or in the street? That's a yes or no question.

A: Okay, now that part, no, not that I recall.

Ms. Lee: Thank you. That's all the questions I have Your Honor.

(Tr. 47).

Q: During your discussions when you were walking down the street, did the technician discuss the balance on the account?

A: No, he didn't.

(Tr. 39).

This is clearly a conflict in Mr. Powell's testimony and calls into question the credibility of this witness' testimony. Yet, ALJ Johnson determined in his finding of fact number 21 that "Mr. Powell's testimony that the conversation about the termination of the Complainant's

electricity occurred, in part, in the street, is more convincing than Mr. Laboy's testimony that the entire conversation took place on the porch." See Initial Decision, p. 4.

The Complainant alleges that the technician showed her contractor Mr. Powell confidential account information. There is also conflicting testimony and evidence on this issue. For instance, Mr. Powell testified that PECO's technician flashed a paper to him that showed the Complainant owed a \$400 something dollar balance. (Tr. 24). Yet, PECO Energy's witness, Teresa Ferrier, testified that the technician went to the premises to terminate the service for a past due balance of \$281.03. (Tr. 60-62). Ms. Ferrier testified that \$400 was not owed on the account. (Tr. 62). Accordingly, Mr. Powell got that wrong too. He testified that he saw a \$400 balance on a paper flashed by PECO's technician. Yet, Ms. Ferrier's testimony and PECO's exhibits proved that this was not an amount owed and would not have been on any paper presented by the technician. (See PECO 2).

Mr. Powell then went on to testify that he did not recollect seeing the amount on the paper and further denied that PECO's technician revealed the Complainant's account information to him in the street for passersby to hear as follows:

Q. Okay, but at no time during that conversation did the technician state her balance to you; is that correct?

A. I cannot recollect. All I remember is a figure and I remember the flashing of the paper. I cannot recollect the exact – him actually saying about it, but I do remember – I do remember seeing the paper.

Q. Okay, but I'm talking about in the street. Did the technician....

A. Not in the street.

Q. All right. While you were in the street or at any time when had contact with the technician, did he reveal Ms. Rogers' account number to you?

A. No.

Q. Did he reveal any other type of information, personal information, from her account to you --

A. No.

(Tr. 39-40).

First, Mr. Powell remembers a figure of \$400 something dollars, then he does not recollect the figure. Then he testifies that PECO's technician never revealed the Complainant's account information to him. Mr. Powell also testified that the technician never revealed any account information or details in the street at any time. Mr. Powell testified not once but twice that no information was shared outside of the Complainant's porch. (Tr. 39-40; Tr.47). With this testimony, it defies logic how ALJ Johnson could conclude that PECO's technician discussed the status of the Complainant's account "in a public area where passersby can hear" and fine PECO.

In addition, the Complainant alleged that Mr. Powell told her that the PECO technician attempted to force his way into her home to terminate her electric service. In the report she gave to the Bureau of Consumer Services ("BCS") she stated that PECO's technician was aggressively trying to get into her home. She told the BCS that the technician tried to walk into her home. (Tr. 54-55, PECO 4). The Complainant stated that her contractor, Mr. Powell, relayed this information to her because she was not at the premises when the incident took place. (Tr. 54). However, Mr. Powell denied that PECO's technician attempted to force his way inside the Complainant's home. Specifically, Mr. Powell testified:

Q: Okay. Did he try to force his way into the property?

A: No, he did not.

Q: Did he try to, you know, open the door or push open the door to gain entry?

A: No.

(Tr. 34.)

This is another example of conflicting accounts by the Complainant's witness, Mr. Powell. First, he alleges the technician tried to push his way into the home, then he denies it. Yet, ALJ Johnson ignored the testimony of the technician German Laboy; his supervisor Tyrece Lawrence, Senior Regulatory Assessor, Teresa Ferrier, and determined that Mr. Powell's testimony was more credible. PECO asserts that ALJ Johnson ruled in error and his Initial Decision should be reversed.

### **EXCEPTION NO. 2**

**ALJ Johnson would not permit PECO to properly cross-examine Mr. Powell to establish the witness' bias.**

ALJ Johnson's Initial Decision should be reversed because of his reliance on testimony that was not credible and the fact that he questioned and challenged PECO on the company's attempts to cross-examination Mr. Powell on his bias. During the hearing, PECO sought to elicit testimony from Mr. Powell to establish that the testimony he offered was biased because of a friendship or a personal relationship with the Complainant. ALJ Johnson questioned PECO as to why these questions were being asked and challenged PECO's counsel on this line of questioning, thwarting the company's efforts to establish bias:

Ms. Lee: Yes, Your Honor. It has every bearing. I'm, trying to establish what type of bias the contractor may have in this matter. He could be best friends with Ms. Rogers, as far as we know.

Q. How long have you known Ms. Rogers?

Ms. Rogers: I object.

The Witness: I have....

Ms. Rogers: I object.

Judge Johnson: What is the basis for the objection?

Ms. Rogers: It has no bearing on this situation.

Judge Johnson: Attorney Lee, do you have a response to the objection?

Ms. Lee: Yes, Your Honor. It has every bearing. I'm trying to establish what type of bias the contractor may have in this matter. He could be best friends with Ms. Rogers, as far as we know.

Judge Johnson: Well, why don't you ask that question?

Ms. Lee: Okay.

Q. I asked, how long have....

Judge Johnson: No, why don't you ask the question, are you best friends with Ms. Rogers; do you have a personal relationship with her? Is that what you are asking or trying to find out?

Ms. Lee: And I want to know -- yes, Your Honor. I would like to know how long he has known Ms. Rogers? How many years has he known her?

Judge Johnson: What is the relevancy of that?

Ms. Lee: Well, do we have a contractor who comes out to the premises and just meets the person, or do we have a contractor who you've known for ten, fifteen, twenty years? That is a big difference in the bias level and the credibility of the witness, Your Honor.

Judge Johnson: ....I'm going to sustain the objection. Ask a more specific question.

(Tr. 27-29).

PECO was denied the opportunity to properly establish Mr. Powell's bias. ALJ Johnson questioned PECO's line of questioning and thwarted counsel's efforts to question Mr. Powell in this regard. The depth, length and nature of Mr. Powell's relationship with the Complainant is entirely relevant to this case – particularly as ALJ Johnson finds this witness to be more credible than all of PECO's witnesses. Yet, ALJ Johnson dismissed the testimony of all three PECO witnesses and, without permitting PECO to establish bias, found Mr. Powell's testimony to be the most credible. For this reason alone, ALJ Johnson's Initial Decision should be reversed.

### **EXCEPTION NO. 3**

#### **ALJ Johnson improperly determined that the Complainant met her burden of proof.**

The Complainant presented solely the testimony of Mr. Powell to support her contention that PECO's technician tried to force her way into her home and that he revealed confidential account information to Mr. Powell and to passersby. The Complainant did not meet her burden of proof.

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 technician attempted to force his way into her home or revealed confidential account

information. The only testimony she offered was the conflicting testimony of Mr. Powell who contradicted himself in his testimony and who was simply not credible. Nevertheless, the ALJ concludes that PECO should be fined because “PECO’s representative broadcast the status of the Complainant’s account on the street in front of her house within earshot of her neighbors and people passing by, which no doubt caused her embarrassment.” There is simply no credible evidence that this occurred. ALJ Johnson accepted the testimony of Mr. Powell when Mr. Powell specifically contradicted himself and denied that the technician broadcast account information to passersby. (Tr. 40). Mr. Powell claimed that account information was revealed only on the porch (Tr. 45). Yet, even here, Mr. Powell’s testimony is in conflict because the balance he claims he saw doesn’t match any of the records. (Tr. 60-62). Then, he testifies that he cannot recollect the exact amount. (Tr. 39).

ALJ Johnson ignored the testimony of technician, German Laboy, who was honorably discharged after serving seven years in the United States Army and is now an active reservist. (Tr. 122). Mr. Laboy testified that he did not stick his foot in the door as alleged by the Complainant’s contractor in the report the Complainant gave to the BCS. (Tr. 128-129). He testified that he did not in any way try to push his way into the property and stood four or five feet away from the door. (Tr. 129). Mr. Laboy testified that he left with the contractor, Mr. Powell and had no conversation with him after he left the Complainant’s porch. (Tr. 130). Mr. Laboy testified that the only words spoken to Mr. Powell when he walked away from the Complainant’s porch, was for Mr. Powell to have a good day. (Tr. 131). Mr. Laboy’s testimony is consistent with the Incident Report he wrote on April 3, 2013 presented as PECO Exhibit 5. His testimony never wavered, faltered, contradicted or deflected from the report or any questions posed to him during his testimony by the Complainant, ALJ Johnson or PECO’s counsel. In

converse, Mr. Powell contradicted himself throughout his testimony and Mr. Powell's testimony was in contradiction with the record evidence. Yet, ALJ Johnson chose to ignore Mr. Laboy's consistent testimony in favor of Mr. Powell's contradictory testimony.

There is no credible record evidence that PECO's technician behaved improperly; breached confidentiality or provided unreasonable customer service. As the Complainant failed to submit any credible evidence that the technician behaved improperly or broadcast the Complainant's account status to passersby or the contractor, Mr. Powell, ALJ Johnson's Initial Decision should be reversed.

Respectfully Submitted,



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Dated: January 12, 2015

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Exceptions upon the parties listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

VIA First Class U.S. Mail

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Pennsylvania Public Utility Commission  
Office of Special Assistants  
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400 North Street  
Harrisburg, PA



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Shawane L. Lee, Esquire

DATED: January 12, 2015