

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Wade De Loe	:	
	:	
v.	:	F-2016-2581905
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Katrina L. Dunderdale  
Administrative Law Judge

**INTRODUCTION**

This decision sustains a formal complaint filed with the Pennsylvania Public Utility Commission by Wade De Loe against PECO Energy Company, alleging PECO Energy Company violated termination procedures in October 2016. A civil penalty totaling \$5,000 is imposed for failure to provide notice of a pending termination and failure to reconnect service in a timely manner.

**HISTORY OF THE PROCEEDING**

On December 21, 2016, Wade De Loe (Mr. De Loe or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent). Complainant alleged PECO violated termination procedures in October 2016 when PECO sent termination notices to the wrong address, despite Complainant's explicit instructions, and then terminated electric service, resulting in damage to Complainant's property. Complainant requested the Commission order PECO to reimburse him for the cost of a new refrigerator and the cost of a one-night hotel stay.

PECO filed an answer on January 17, 2017, in which PECO denied it improperly terminated service or that it failed to notify Complainant about a pending shut-off notice. PECO alleged Complainant created the problem because he refused to allow PECO access to its meter inside the service address in order to install a new AMI meter, and all required termination notices were mailed to the correct address.

On March 13, 2017, the Office of Administrative Law Judge scheduled an initial telephonic hearing in this matter for Wednesday, March 29, 2017. On March 15, 2017, the undersigned presiding officer issued a Prehearing Order.

The presiding officer convened the initial hearing on March 29, 2017, at which Mr. De Loe appeared unrepresented. PECO was represented by Shawane L. Lee, Esquire. Complainant presented testimony from himself but did not offer any exhibits. Respondent presented the testimony of two witnesses, and offered eleven exhibits, marked PECO Exhibits 1 through 11, which exhibits were admitted into evidence. PECO Exhibits 3, 4, 5, 6 and 7 were admitted over objections from Complainant because the exhibits were blank PECO forms. Complainant and Respondent issued final statements on the hearing record in lieu of filing briefs.

Upon receipt of the transcript containing 172 pages, the presiding officer closed the hearing record by Interim Order Closing the Hearing Record on May 2, 2017.

#### FINDINGS OF FACT

1. Wade De Loe, Complainant, divides his time between two residences located in New York City, New York and Chester, Pennsylvania. (Tr. 8).

2. Complainant's primary residence is located at 560 West 170<sup>th</sup> Street, New York, New York. (Tr. 9, 74).

3. Complainant resides for less than six months each year at 1020 Elsinore Place, Chester, Delaware County, Pennsylvania (service address), which is a single-family row home he has owned since 2011. (Tr. 8-11).

4. From 2011 until October 2015, PECO provided natural gas and electric services to Complainant at the service address. (Tr. 11; PECO Exhibit 1).

5. From October 1, 2015 until October 18, 2016, PECO provided only electric service at the service address. (PECO Exhibits 1 & 2).

6. Starting in 2013, PECO made numerous attempts to gain access to the service address in order to remove the old electric meter and install a new AMI meter, including telephone calls and correspondence. (Tr. 62, 63, 98-110; PECO Exhibit 2).

7. PECO's tariff, at Section 18.3, permits PECO to terminate service if a customer does not provide access for PECO to install a new meter. (Tr. 63; PECO Exhibit 13).

8. PECO did not leave messages if Complainant did not answer, when PECO made telephone calls to Complainant's telephone number in order to ask Complainant for access to its electric meter inside the service address. (Tr. 62, 112-114; PECO Exhibit 2).

9. Since 2013, PECO sent "friendly" letters to Complainant which explained why PECO was required to install a new AMI meter and requesting Mr. De Loe give PECO access inside the service address in order to complete the installation. (Tr. 62, 67; PECO Exhibit 3).

10. On September 25, 2014, Complainant asked Respondent to send all electric service notices and mailings to his residence in New York City. (Tr. 12, 74, 77, 111; PECO Exhibit 2).

11. All of the notices and mailers PECO sent to Complainant prior to October 1, 2015 were mailed to the correct address. (Tr. 15).

12. The online billing statements Complainant received and paid did not notify or remind Complainant that PECO needed access to Complainant's electric meter. (Tr. 18).

13. On May 22, 2015, Complainant requested paperless billing and Respondent began sending all monthly billing statements to Complainant's email account. (Tr. 18, 37, 38; PECO Exhibit 2).

14. On September 16, 2015, Complainant requested Respondent close his natural gas service account and send a final bill. (Tr. 144, 148, 157; PECO Exhibit 1).

15. On October 1, 2015, Respondent's customer service representative mistakenly listed the service address (Chester, Pennsylvania) as the mailing address on the electric service account instead of using the correct mailing address (New York, New York), when closing the natural gas service account. (Tr. 89, 116, 144-159; PECO Exhibit 1).

16. As a result of the mistake made by the customer service representative, Respondent began sending all notices and mailers to the service address and stopped sending the notices and mailers to Complainant in New York City. (Tr. 15-18, 116, 149).

17. In July 2016, Complainant and PECO unsuccessfully attempted to set up a time when PECO could gain access to the meter. (Tr. 16-18, 22-24, 95, 96).

18. Complainant resided at the service address during the summer of 2016 until he returned to New York for jury duty in September 2016. (Tr. 17).

19. On September 21, 2016, PECO attempted to call Complainant at the telephone number he provided to PECO but no one answered and PECO did not leave a message identifying itself and the reason for the call. (Tr. 96, 112-114; PECO Exhibit 2).

20. On September 22, 2016, PECO attempted to call Complainant at the telephone number he provided to PECO but no one answered and PECO did not leave a message identifying itself and the reason for the call. (Tr. 96; PECO Exhibit 2).

21. On September 23, 2016, PECO mailed a “friendly” letter to the service address asking Complainant to give PECO access to change the electric meter. (Tr. 87, 96; PECO Exhibit 2).

22. On September 28, 2016, PECO mailed a 10-day termination notice to the service address because Complainant had not granted PECO access to its meter. (Tr. 70-74, 96; PECO Exhibit 6).

23. On October 11, 2016, PECO left a 72-hour termination notice at the service address. (Tr. 18, 70-74, 97; PECO Exhibit 7).

24. On October 18, 2016, PECO terminated electric service at the service address. (Tr. 98; PECO Exhibit 2).

25. On October 20, 2016, PECO issued a final bill on Complainant’s electric service account totaling \$67.11 and mailed the final bill to the service address. (PECO Exhibit 1).

26. PECO did not send the “friendly letter,” 10-day termination notice and 72-hour termination notice to the correct address. (Tr. 62-75, 89, 144-157).

27. Complainant did not know the electric service was off at the service address until he returned to the service address from New York late in the day on Friday, October 25, 2016. (Tr. 13, 98; PECO Exhibit 2).

28. When Complainant contacted PECO on October 25, 2016, PECO informed him they terminated service because he ignored the notices PECO sent previously. (Tr. 14, 98).

29. As a result of the termination, Complainant was forced to pay to stay in a hotel each time he returned to the service address until March 25, 2017, and had to replace his refrigerator which was damaged when the electric service was terminated. (Tr. 12, 24).

30. PECO refused to restore electric service or schedule a time to replace the meter until Complainant granted access to the meter inside the service address and paid the \$260 reconnection fee. (Tr. 14, 21, 100-103).

31. Complainant notified PECO on October 25, 2016 that he did not receive the notice of the pending termination at the correct mailing address. (Tr. 14, 98-102).

32. Complainant notified PECO on October 31, 2016 when he filed his informal complaint that he did not receive notice of the pending termination at the correct mailing address. (Tr. 100-108; PECO Exhibit 11).

33. On November 16, 2016, the Bureau of Consumer Services (BCS) denied Complainant's informal complaint at BCS Case #003489472. (Tr. 109; PECO Exhibit 11).

34. Complainant is a disabled individual on a fixed income and was unable to pay the reconnection fee. (Tr. 14, 120).

35. Early in 2017, PECO waived the payment of the reconnection fee but did not restore electric service to the service address until after Complainant granted access to the meter. (Tr. 119-125).

36. In February 2017, Complainant scheduled a time when PECO could replace the meter but during that visit PECO informed Complainant the meter box was the wrong size for the new meter. (Tr. 26).

37. In February 2017, PECO would not install the new meter until Complainant hired an electrician to replace the meter box and obtain a work permit from the local municipality. (Tr. 26).

38. On Saturday, March 25, 2017, PECO reconnected electric service at the service address. (Tr. 12, 152).

39. The service address lacked electric service from October 18, 2016 until March 25, 2017. (Tr. 12, 24, 152).

## DISCUSSION

This formal complaint concerns whether PECO violated termination procedures in October 2016 when PECO terminated service after sending termination notices to the wrong address instead of Complainant's mailing address. In addition, PECO refused to reconnect service immediately after it learned it had mistakenly changed Complainant's mailing address.

### Complainant's Position

Complainant contends Respondent was in error to terminate his service for failure to grant access. Complainant argues he scheduled a time when PECO could change his meter but PECO's employee did not show at the scheduled time. Complainant insists he never received the 10-day notice or the 72-hour notice about a pending termination from PECO

because PECO mailed it to the wrong address. Complainant also avers he never received a voicemail message from PECO in September 2016. Complainant requested the Commission order PECO to reimburse him for lost food during the ten-day period after the electric service was terminated and before Complainant learned of the termination, in addition to pay for the cost to replace the refrigerator and cover the cost of a one-night stay in a hotel because he did not learn about the termination until he returned to the service address late in the day on October 28, 2016. Because he was not notified properly, Complainant argues he sustained financial consequences when his refrigerator was ruined and he had to spend a night in a hotel. Lastly, Mr. De Loe complains PECO did not reconnect electric service for months after it terminated service contrary to the regulations.

#### Respondent's Position

Respondent contends a 72-hour termination notice was issued on October 11, 2016 when Complainant repeatedly failed to grant PECO access to its meter. Respondent contends it mailed numerous letters to Complainant which notices explained why PECO was required to enter the service address and install a new AMI meter. Respondent further contends it made numerous calls to Complainant's telephone but Complainant never returned those telephone calls. PECO blames Complainant for refusing to provide it with access to the meter and refusing to respond to all its attempts at communication. PECO acknowledges it did not restore service until months later because Complainant refused to grant access to the meter. PECO admits it mistakenly changed the mailing address but contends it properly notified Complainant about the pending termination and properly terminated service for failure to grant access to the meter.

#### Respondent's Responsibility

Pursuant to 66 Pa.C.S.A. § 1501:

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. Subject to the provisions of this part and the regulations or orders of the Commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service....

Pursuant to 52 Pa.Code § 56.93, a public utility may not terminate service until it attempts to contact the ratepayer first, either in person or by telephone, so that the ratepayer will have notice of the public utility's intention to terminate service. Utility service is not limited to the provision of the commodity itself and includes "any and all acts" related to that function, including using proper termination procedures. West Penn Power Company v. Pa. Pub. Util. Comm'n, 578 A.2d 75, 76 (Pa.Cmwlth. 1990).

### Burden of Proof

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proving by substantial evidence he is entitled to the requested relief. 66 Pa.C.S.A. § 332(a). To satisfy this burden, Complainant must show Respondent is responsible or accountable for the problem described.<sup>1</sup> Complainant must show this fact to be true by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that evidence presented by the other party.<sup>2</sup> Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial

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<sup>1</sup> Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976).

<sup>2</sup> Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

evidence.<sup>3</sup> Furthermore, more evidence is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>4</sup>

### Reasonable Customer Service

A violation of the Code may occur when a utility company fails to provide reasonable service, such as the failure to correctly notify a customer about a pending termination. The Commission has exclusive jurisdiction to determine the reasonableness, adequacy and sufficiency of a public utility's services and facilities.<sup>5</sup> The term "service" is "used in its broadest and most inclusive sense, includ[ing] any and all acts done, rendered, or performed, and any and all things furnished or supplied...by public utilities...in the performance of their duties under [the Public Utility Code]...."<sup>6</sup> Thus a utility company's practice of how it terminates service and when it may impose a reconnection fee, must be reasonable, adequate and sufficient.

### Termination of Electric Service

Termination of service is an extreme measure. The Commission's rules and procedures necessary to permit a public utility to terminate electric service to a customer are set forth in Section 1406 of the Public Utility Code<sup>7</sup>:

(a) Authorized termination. A public utility may notify a customer and terminate service provided to a customer after notice as provided in subsection (b) for any of the following actions by the customer:

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<sup>3</sup> Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa.Cmwlt. 1982); Edan Transportation Corp. v. Pa. Pub. Util. Comm'n, 623 A.2d 6 (Pa.Cmwlt. 1993); 2 Pa.C.S.A. § 704.

<sup>4</sup> Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Compensation Bd. of Review, 166 A.2d 96 (Pa.Super. 1960); Murphy v. Dep't. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlt. 1984).

<sup>5</sup> Elkin v. Bell of Pa., 491 Pa. 123, 420 A.2d 371 (1980).

<sup>6</sup> 66 Pa.C.S.A. § 102.

<sup>7</sup> 66 Pa.C.S.A. § 1406(a) and (b).

(4) Failure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading.

...

(b) Notice of termination of service.

(1) Prior to terminating service under subsection (a), a public utility:

(i) Shall provide written notice of the termination to the customer at least ten days prior to the date of the proposed termination. The termination notice shall remain in effect for 60 days.

(ii) Shall attempt to contact the customer or occupant, either in person or by telephone, to provide notice of the proposed termination at least three days prior to the scheduled termination, using one or more of the following methods:

(A) in person;

(B) by telephone. Phone contact shall be deemed complete upon attempted calls on two separate days to the residence between the hours of 8 a.m. and 9 p.m. if the calls were made at various times each day, or

by e-mail, text message or other electronic messaging format consistent with the commission's privacy guidelines and approved by commission order.

...

(iv) After complying with paragraphs (ii) and (iii), the public utility shall attempt to make personal contact with the customer or responsible adult at the time service is terminated. Termination of service shall not be delayed for failure to make personal contact.

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## Analysis

The crux of this formal complaint concerns how PECO terminated electric service in October 2016, not why. It was not necessary to determine whether Respondent had grounds or justification to seek termination because it could not gain access to the service address in order to install a new meter. In this proceeding, PECO had justification to seek termination on the sole grounds that Complainant failed to allow access to the meter. However, whether Complainant granted access or refused to grant access to the meter inside his residence at any time over the previous three years is not dispositive in this proceeding.

PECO's argument fails in this proceeding because, though PECO was justified to seek termination, PECO failed to seek termination pursuant to the provisions in 66 Pa.C.S.A. §1406. In addition, PECO's argument also fails in this proceeding because PECO failed to correct the mistake its employee made after Complainant notified PECO that no notice was provided to the correct address. Then, PECO exacerbated the problem by:

- (1) refusing to reconnect service when it knew that its employee had caused the problem;
- (2) allowing this circumstance to continue through the winter months when freezing temperatures might have led to serious property damage;
- (3) waiting until the last moment before informing Complainant to pay for a new meter box and obtain a work permit; and
- (4) only reconnecting service four days before the hearing before the presiding officer.

Each time a company avails itself of the Commission's regulations concerning the termination process, the company must comply with all of the Commission's provisions. The utility must follow the entire procedure from start to finish each time regardless of how many times the utility initiated but did not complete a termination process. When, as here, a utility issues a notice to terminate but elects not to pursue termination, then a subsequent decision to terminate service must start from "square one" again.

Here, regardless of the notices issued previously or the amount of time PECO alleged it had been trying to gain access to its meter, a whole new process began after the failed

attempt to replace the meter in July 2016. The evidence shows PECO took the following actions after the failed attempt:

1. On September 21, 2016 and September 22, 2016, PECO called Complainant's telephone number but did not leave a message identifying itself or the reason for the call.
2. On September 23, 2016, PECO mailed a friendly letter to the wrong address.
3. On September 28, 2016, PECO mailed a 10-day termination notice to the wrong address.
4. On October 11, 2016, PECO left a 72-hour termination notice at the service address requesting access to change the meter.
5. On October 18, 2016, PECO terminated service without access to the meter at the service address.
6. PECO refused to reconnect electric service at the service address until Complainant paid the \$260 reconnection fee.
7. PECO refused to reconnect electric service at the service address until Complainant granted PECO access to the meter.
8. PECO reconnected electric service four days before the hearing.

Therefore, I find substantial evidence exists to prove Respondent failed to provide reasonable and adequate customer service when:

1. PECO failed to mail the friendly letter on September 23, 2016 and failed to mail the 10-day termination notice on September 28, 2016 to the correct address.

2. PECO terminated service on October 18, 2016 without providing written notification to Complainant.

3. PECO did not immediately reconnect service after it learned it sent the termination notices to the wrong address.

4. PECO continued to refuse to reconnect service for a period in excess of five months, knowing its employee caused the problem.

Accordingly, the complaint is sustained in part in the ordering paragraphs below, in that the Respondent did not correctly terminate electric service on October 18, 2016.

### Damages

Complainant requested in the formal complaint that the Commission order PECO to reimburse him for the value of the perishable food, and the refrigerator which he was forced to replace because it was ruined after the electric service was terminated. Complainant also requested the Commission order PECO to pay for the cost of his hotel stay on October 28, 2016 when he arrived late in the day to find his electric service had been terminated.

The Commission lacks the jurisdiction to order Respondent to pay damages to Complainant. The Commission only can consider such matters as are expressly, or by necessary implication, given to it by the legislature. The Public Utility Code, 66 Pa.C.S.A. § 101 *et seq.* does not give the Commission jurisdiction over claims for damages.<sup>8</sup> The remedial and enforcement powers vested in the Commission are designed to allow the Commission to enforce its orders and regulations, but not to empower it to award damages or to litigate a private action

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<sup>8</sup> Behrend v. Bell Telephone Co., 242 Pa.Super. Ct. 47, 363 A.2d 1152 (1976).

for damages on behalf of a complainant.<sup>9</sup> The Courts of Common Pleas retain original jurisdiction over suits for damages.<sup>10</sup>

Accordingly the complaint is sustained in part and denied in part in the ordering paragraphs below, in that the Commission cannot order Respondent to pay damages to Complainant.

### Civil Penalty

When appropriate, due to violation of the Commission's statutes or regulations, Sections 3301(a) and (b) of the Public Utility Code, 66 Pa.C.S.A. § 3301(a) and (b), authorize the Commission to impose a civil penalty for violations of its statutes, regulations and orders. The Commission has adopted certain standards that are to be applied in determining the amount of civil penalties when violations are admitted or determined to have occurred.

There are ten standards which the Commission first articulated in Joseph A. Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company, Docket No. C-00992409 (Order entered February 10, 2000) ("Rosi") and which are now published at 52 Pa.Code § 69.1201(c) in the Commission's Policy Statements and Guidelines. In any case in which a civil penalty is assessed, these ten factors must be considered when calculating the amount of the penalty. The factors are meant to ascertain, in general, how serious was the conduct and intention of the utility, how the individual consumer was affected and how the utility's conduct may bode for similar future situations.

### Review of Factors under 52 Pa.Code § 69.1201(c)

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<sup>9</sup> Elkin v. Bell Telephone Company of Pennsylvania, 491 Pa. 123, 420 A.2d 371 (1980); Poorbaugh v. Pa. Pub. Util. Comm'n, 666 A.2d 744 (Pa.Cmwlth. 1995); and DeFrancesco v. Western Pennsylvania Water Company, 499 Pa. 374, 453 A.2d 595 (1982).

<sup>10</sup> See 66 Pa.C.S.A. § 501; and Fairview Water Company v. Pa. Pub. Util. Comm'n, 509 Pa. 384, 502 A.2d 162 (1985).

The first criterion to consider is whether the violation was of a serious nature or whether it was less egregious, such as an administrative or technical error. Respondent knew Complainant directed all mail to be sent to his address in New York. Despite Mr. De Loe's explicit direction, however, Respondent unilaterally changed the mailing address without informing Mr. De Loe, and then pursued termination proceedings. Respondent fails to show how it was appropriate and consistent with the Commission's provision for terminations when PECO proceeded with the termination. Having been informed by Complainant that PECO sent the notices to the wrong address, PECO continued to refuse to reconnect service for another five months. These behaviors constitute a serious violation. Thus, I conclude this violation is serious in nature and warrants a higher penalty.

The second criterion is whether the resulting consequences of the conduct was of a serious nature, such as personal injury or property damage. The termination resulted in Complainant losing food, losing the use of his refrigerator, losing the ability to heat the service address and being forced to spend one night in a hotel. In addition, prior to March 25, 2017 Complainant had to stay in a hotel each time PECO required Complainant to travel from New York City in order to be present at the service address. Hotel stays became necessary because the termination lasted over the winter months, and the service address required electricity to heat the structure. The consequence of PECO's conduct cost Complainant a notable sum of money in lost food, in replacement costs for a major appliance and for his hotel accommodations every time he had to visit the service address from October 18, 2016 until March 25, 2017. Thus, I conclude the consequence of PECO's conduct warrants a higher penalty.

The third criterion is whether the conduct at issue was deemed intentional or negligent. I conclude the conduct was intentional. Initially, the conduct at issue (mailing the termination notices to the wrong address) was negligent only because it was a mistake made by PECO's employee. However, after Complainant informed PECO that it failed to mail the notices properly, PECO intentionally refused to reconnect service and erroneously insisted Complainant had to pay the reconnection fee and allow access before service would be reconnected. This failure to recognize its error and to risk property damage to the service address during the winter months is

further evidence of PECO's refusal to provide reasonable and adequate customer service. Thus, I conclude the conduct warrants a higher penalty.

The fourth criterion is whether the utility made efforts to modify internal practices and procedures to address the conduct and prevent similar conduct, and the amount of time it took for the implementation of these measures. No evidence was presented that PECO recognized it erred. In fact, Respondent continued to insist Complainant was solely to blame for the termination even after Complainant notified it of the error in October 2016 and even though Respondent presented the testimony of its own employee who explained the mailing address was changed without Mr. De Loe's permission or knowledge. PECO continued to insist it provided written notice to Complainant, despite mailing the notices to the wrong address. Thus, I conclude this criterion does justify a higher penalty.

The fifth criterion is the number of customers affected. According to the record evidence, only Complainant was impacted. No evidence was presented that other similarly situated customers were treated in a similar manner. This criterion works neither to mitigate nor to aggravate the penalty to be imposed.

The sixth criterion is a consideration of Respondent's compliance history. There was sufficient evidence presented that PECO refused to recognize its faulty termination process here. However, no evidence was presented that, outside this proceeding, PECO has a poor compliance record for recognizing a flaw in its termination procedures or in how one arm of the utility communicates to another arm of the utility when discussing a service account with a customer. Accordingly, this criterion works neither to mitigate nor to aggravate the penalty to be imposed.

The seventh criterion is whether the regulated entity cooperated with the Commission's investigation. There was no investigation by the Commission, and therefore this criterion works neither to mitigate nor to aggravate the penalty to be imposed.

The eighth criterion is the amount of the civil penalty or fine necessary to deter future violations, with consideration of the size of the utility. PECO is a large utility with an

extensive territory. PECO failed to recognize the problem, insisted Complainant was solely to blame, and then argued with Complainant for months before waiving the reconnection fee. These actions resulted in a loss of electric service by Complainant for over five months, in addition to the cost of spoiled food, a ruined refrigerator and a one-night stay in a hotel. In addition, PECO should have reconnected service immediately after Complainant called on October 25, 2016 and informed PECO that no termination notice was received. However, instead of recognizing its fault and correcting the mistake, PECO refused to reconnect service until after the worst of the winter season was over – and did not reconnect service until four days before the hearing in this matter. Therefore, in consideration of all relevant factors and the egregious behavior of PECO, I conclude a penalty of \$5,000 is needed to deter future violations.

The ninth criterion is past Commission decisions. No party cited to any prior Commission decisions involving unreasonable customer service in how a utility terminates electric service.<sup>11</sup>

The tenth criterion is other relevant factors, and none have been suggested or considered other than those factors previously discussed.

In this proceeding, PECO's action – to fail to properly notify Complainant about a pending termination – was serious and warrants a penalty. In addition, the resulting consequences from this action were of a serious nature and warrant a penalty. A civil penalty is necessary to deter similar future violations, especially in light of the consequences. Because the evidence presented and taken as a whole proves a civil penalty is necessary, I am assessing a Five Thousand Dollar (\$5,000) civil penalty against Respondent. Accordingly, PECO is ordered to pay a civil penalty in the ordering paragraphs below.

### Conclusion

Accordingly, the complaint is sustained in part in the ordering paragraphs below in that the claim of unreasonable service is sustained and Respondent is ordered to pay a civil

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<sup>11</sup> See Matesic v. Duquesne Light Company, C-2014-2438493 (Opinion and Order entered July 2, 2015) for a discussion about the imposition of a civil penalty due to improper termination procedures by a public utility.

penalty. The complaint is denied in part in that the Commission is without authority to award civil damages.

### CONCLUSIONS OF LAW

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

2. Complainant carries the burden of proving Respondent did not provide reasonable and adequate service. 66 Pa.C.S.A. § 332(a).

3. Respondent failed to provide Complainant with reasonable and adequate customer service in its issuance of termination notices to the service address and in its termination without appropriate notice.

4. Complainant met the burden of proving Respondent did not provide reasonable and adequate service.

5. The Commission is authorized to consider and impose civil monetary penalties against a public utility company. 52 Pa.Code § 69.1201.

6. The Commission does not have jurisdiction to award civil damages to Complainant. 66 Pa.C.S.A. § 501; Poorbaugh v. Pa. Pub. Util. Comm'n, 666 A.2d 744 (Pa.Cmwlth. 1995).

### ORDER

THEREFORE,

IT IS ORDERED:

