

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thomas Baker

v.

PECO Energy Company

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C-2016-2573166

INITIAL DECISION

Before
Christopher P. Pell
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complaint of Thomas Baker against PECO Energy Company because the Complainant failed to meet his burden of demonstrating that PECO provided him with inadequate service.

HISTORY OF THE PROCEEDING

On October 26, 2016, Thomas Baker (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed checkmarks in the boxes indicating “[t]he utility is threatening to shut off or has already shut off my service,” “I would like a payment agreement,” “I am having a reliability, safety or quality problem with my utility service,” and “[o]ther.” In an attached letter, the Complainant indicated that he runs a tanning salon. The Complainant alleged that on an unspecified date, a team of PECO workers came to his tanning salon, refused to provide identification to his counter clerk, and announced to all of his customers that they should leave because there was going to be a fire, causing all of his clients to leave. Additionally, the Complainant alleged that after he arrived on site and intervened to stop the

workers, the PECO employees contacted the police so they could examine his meter, causing him great embarrassment. Lastly, the Complainant alleged that this same situation occurred the very next day. Complainant maintains that PECO's actions caused him to lose business, which ultimately caused him to fall behind on his bills. As relief, the complainant requested compensation for lost business, removal of a deposit requirement, and a letter from PECO stating that there was never any danger of a fire.

On November 17, 2017, Respondent filed an Answer denying all material allegations of fact in the Complaint. Specifically, Respondent denied that PECO technicians announced to the Complainant's customers that there would be a fire.

By Hearing Notice dated December 13, 2016, a hearing was scheduled for January 24, 2017, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on December 14, 2016. The Prehearing Order directed the parties to comply with various procedural requirements. It also explained that the complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

By Order dated January 25, 2017, I granted PECO's Motion for Continuance.

By Hearing Cancellation/Reschedule Notice dated March 21, 2017, the hearing was rescheduled for April 27, 2017 at 10:00 a.m.

The hearing convened as scheduled on April 27, 2017. Complainant appeared *pro se* and testified.¹ In support of his Complaint, the Complainant presented the testimony of the following people: Noel Wilczaa, an employee; Elizabeth Madgin, a customer; Michael R. Vasos, a subcontractor; and Danielle Baker, the Complainant's daughter. Respondent appeared and was

¹ The Complainant was given until May 12, 2017, to submit ledger accounts for the months of May, June and July of 2015 and 2016 as Complainant's late-filed exhibit 1. Complainant never submitted these documents.

represented by Shawane L. Lee, Esq., who presented the testimony of the following people: Dana McCollum, a PECO Regulatory Assessor; Michael Brignola, a PECO Energy Technician; George A. Ludwick, a PECO Emergency Response Department Supervisor; and Dennis Fitty, a PECO Senior Engineer in PECO's Meter Department. Respondent offered fourteen exhibits (PECO Exhs. 1-14) which were all admitted into the record.

The record in this case consists of a 238-page transcript and fourteen exhibits. The record closed on May 31, 2017, when I received a copy of the transcript.

FINDINGS OF FACT

1. The Complainant in this case is Thomas Baker.
2. The Respondent in this case is PECO Energy Company.
3. The Complainant's Complaint concerns a commercial account for electric service to 2525 South Broad street, Philadelphia, PA 19148 (service address). Tr. 17.
4. Complainant operates a tanning salon at the service address. Tr. 17.
5. The electric meter at the service address is located in the back yard. Tr. 18.
6. A hot socket meter alarm occurs when a built-in sensor inside a meter measures a temperature at or about 185 degrees Fahrenheit, indicating that there may be something wrong with a customer's equipment. Tr. 149-150, 198, 229; PECO Exh. 5.
7. If the meter temperature reaches 185 degrees Fahrenheit, there is a concern that the meter board may burn up and disrupt service or cause a fire. Tr. 215.
8. PECO considers a hot socket meter alarm to be an emergency. Tr. 198.

9. When a hot socket meter alarm occurs, an alarm is activated at a PECO site, not through the customer's meter. Tr. 151, 197.

10. When a hot socket meter alarm occurs, PECO's procedure is to investigate the meter within two hours. Tr. 150, 197.

11. If a PECO technician is unable to gain access to a meter when a hot socket meter alarm occurs, PECO's procedure provides for service to be shut off until the meter can be inspected. Tr. 217, 219; PECO Exh. 5.

12. On May 24, 2016, Michael Brignola, a PECO technician, and his partner, Mathew McGinnis, received a radio call that there was a hot meter alarm at the service address. Tr. 151.

13. At approximately 6:38 p.m. on May 24, 2016, Mr. Brignola and Mr. McGinnis, who were both dressed in PECO Uniforms, arrived at the service address to investigate the complainant's meter. Tr. 19-20, 68, 73, 147-149, 153; PECO Exh. 3.

14. Mr. Brignola and Mr. McGinnis parked their PECO vehicle, a two-axle bucket truck, in front of the service address. Tr. 152.

15. Approximately 8 to 10 Beach Tanning Salon Clients were present when the PECO technicians arrived. Tr. 68-69.

16. Mr. Brignola discretely advised the Complainant's counter-person, Noel Wilczaa, that they were responding to a hot meter alarm and that they had to examine the electric meter. Tr. 19-20, 70, 83, 85, 87, 153-154, 157.

17. Mr. Brignola did not raise his voice at any time while at the service address. Tr. 157.

18. Ms. Wilczaa clerk did not know where the electric meter was located. Tr. 83.
19. Ms. Wilczaa informed Mr. Brignola that she could not allow him access to the meter and that she would have to call the owner. Tr. 155.
20. The PECO technicians did not announce to the Complainant's customers why they were on the premises, nor did they tell any customers to wait outside the building. Tr. 85, 87, 154, 171.
21. Ms. Wilczaa called the Complainant to alert him to the situation. Tr. 21, 72, 155.
22. Mr. Brignola spoke with the Complainant on the phone and advised him that they had received a remote heat-generated alarm from his electric meter and that he needed to access and inspect the meter. Tr. 21, 44, 155.
23. Mr. Brignola informed the Complainant of the urgency of the hot meter alarm. Tr. 45.
24. The Complainant informed Mr. Brignola that he was on his way to the service address and that he would arrive in approximately 20 minutes. Tr. 22, 157-158.
25. Mr. Brignola and Mr. McGinnis agreed to wait for the Complainant to arrive. Tr. 72, 158.
26. After this phone call, Ms. Wilczaa asked the PECO technicians to show their identification. Tr. 158.
27. Mr. Brignola then produced his identification. Tr. 158, 164, 177.

28. Mr. Brignola and Mr. McGinnis decided to wait for the Complainant in their work truck. Tr. 158.

29. After waiting approximately 20 minutes, Mr. Brignola and Mr. McGinnis returned to the service address and informed the clerk that they could not wait any longer for the Complainant to arrive. Tr. 75-76, 80, 159.

30. Mr. Brignola and Mr. McGinnis entered the alleyway behind the service address and observed that the electric meter for the service address was located in the backyard. Tr. 160-161.

31. Mr. Brignola observed a cinderblock wall separating the service address and the neighboring property. Tr. 162.

32. Mr. Brignola was in the process of climbing this cinderblock wall in order to place his hand near the meter for a heat test when the Complainant entered his yard through a back door with a Pitbull. Tr. 22, 45, 47-48, 163.

33. The Complainant was enraged as he confronted Mr. Brignola and Mr. McGinnis. Tr. 163-164.

34. Mr. Brignola explained the hot socket meter alarm situation to the Complainant, that he had to inspect this meter, and that he would return with the police. Tr. 164-165.

35. Mr. Brignola returned to his work truck, called his dispatcher, and asked the dispatcher to call the police. Tr. 165, 180.

36. Mr. Brignola moved his work truck approximately three quarters of a block away from the service address and waited for the police to arrive. Tr. 166.

37. The police arrived approximately 10 minutes later. Tr. 166.
38. The police escorted Mr. Brignola and Mr. McGinnis into the service address. Tr. 167, 181.
39. The Complainant then agreed to let the PECO technicians examine his meter. Tr. 24, 183.
40. Mr. Brignola did not find any issues with the Complainant's electric meter. Tr. 24, 50, 168, 183.
41. On May 25, 2016, a PECO representative contacted the Complainant's business and advised Ms. Wilczaa that PECO technicians were going to the service address again to investigate another hot socket meter alarm. Tr. 25, 51.
42. Ms. Wilczaa called the Complainant to notify him about the call she had just received from PECO. Tr. 51.
43. The Complainant contacted PECO and spoke to a representative who confirmed that a crew was coming to his place of business to check a hot meter signal. Tr. 51-52.
44. Mr. Brignola and Mr. McGinnis were again dispatched to the service address. Tr. 25-26, 50-51, 171.
45. Mr. Brignola and Mr. McGinnis arrived at approximately 8:55 p.m.
46. No police were present for this visit to the service address. Tr. 184-185, 193.
47. Mr. Brignola and Mr. McGinnis were granted easy access to the Complainant's meter on this visit. Tr. 174.

48. Mr. Brignola examined the meter and determined that the meter was not hot. Tr. 53, 174.

49. Mr. Brignola determined that the meter should be replaced because of the two false alarms. Tr. 174, 185-186.

50. On May 26, 2016, PECO replaced the meter at the service address. Tr. 27, 53, 113; PECO Exh. 3.

51. There have not been any additional hot socket meter alarms at the service address since the meter was replaced. Tr. 228.

52. PECO never sent the Complainant a termination notice. Tr. 41.

53. Complainant's outstanding balance as of the date of the hearing totaled \$7,455.42. Tr. 134.

54. Complainant is not disputing the amount of his outstanding balance. Tr. 42.

55. Elizabeth Madgin is a customer at the Complainant's tanning salon. Tr. 91.

56. Ms. Madgin was present at the service address on May 24, 2017 in one of the tanning rooms with the door shut when the PECO technicians arrived on site. Tr. 91-92, 95.

57. Ms. Madgin was in a room farthest away from the tanning salon reception area. Tr. 95-96.

58. Ms. Madgin heard Ms. Wilczaa knocking on her door and hollering for her to get out. Tr. 93, 101.

59. Ms. Madgin got dressed and left the service address. Tr. 96.

60. Danielle Baker is the Complainant's daughter. Tr. 122.

61. Ms. Baker was present at the service address when the PECO service technicians arrived on site. Tr. 122.

62. Ms. Baker observed Ms. Wilczaa in a frenzied state after the PECO service technicians arrived. Tr. 123, 127.

DISCUSSION

The Public Utility Code, 66 Pa.C.S.A. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

To establish a sufficient case and satisfy the burden of proof, Complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa.P.U.C. 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 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); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

In his Complaint and during the hearing, the Complainant alleged that on May 24, 2016, PECO's technicians entered his place of business and announced to his employee and his customers that a fire was imminent. Complainant alleged that the behavior of PECO's technicians caused a panic at his salon, resulting in a loss of business. Complainant further alleged that a PECO representative was rude and discourteous to him when he called on May 25, 2016 to confirm that a PECO crew was coming to his place of business to inspect another hot socket meter alarm. Complainant has raised a claim of inadequate service.²

PECO is required by law to provide its customers with adequate, safe and reasonable service with respect to its service. As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa.C.S.A. § 1501 requires public utilities to provide reasonable and adequate, not perfect service. The statute at 66 Pa.C.S.A. § 1501, provides, in relevant part:

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.

Interpreting this provision in *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa.Cmwlth. 1984), the Commonwealth Court stated:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility. (footnote omitted).

² Although Complainant indicated in his written Complaint that he wanted to be reimbursed for lost business as a result of the May 24, 2016 incident, he stated at the outset of the hearing that he understood the Commission could not award this request for damages if he prevails.

478 A.2d at 949.

The statutory definition of “service” is to be broadly construed.³ *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm’n*, 654 A.2d 72 (Pa.Cmwlth. 1995). In applying the facts to the law, the issue becomes whether PECO’s actions as described in the Complaint rise to the level of inadequate service that constitutes a violation of the Public Utility Code.

In the present case, the record demonstrates that PECO technicians did visit the Complainant’s business on May 24, 2017, to investigate a hot socket meter alarm. Although the Complainant asserted that these technicians caused a panic when they visited his tanning salon, the Complainant’s own witnesses’ testimony demonstrated that Ms. Wilczaa, his counter-person at the salon, was walking around the business frantically announcing a potential fire. Moreover, I found Mr. Brignola’s testimony that he calmly and quietly tried to alert Ms. Wilczaa to the potential problem and the need to examine the meter to be credible.

The Complainant also alleged that a PECO Representative was rude to him when he called to confirm that a PECO crew was going to investigate a second hot socket meter alarm at the service address the following day on May 25, 2016. The Complainant testified that the Representative informed him that he was sending a crew to the service address and that he would send the police if the Complainant didn’t allow access to the meter. Complainant further testified that the police were already present when he arrived at the service address on May 25, 2016.⁴ However, contrary to the Complainant’s testimony, Mr. Brignola, who visited the service address on both days, testified credibly that the police were not present at the service address on May 25, 2016.⁵ Since the Complainant’s recollection of the events of May 25, 2016 is clearly inaccurate, I do not find his testimony regarding his interaction with the PECO Representative to be credible.

³ “Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . . 66 Pa.C.S.A. § 102.

⁴ Tr. 25, 51-53.

⁵ Tr. 184-185, 193.

Moreover, considering what transpired at the service address the previous day, I do not find it unreasonable if the Representative had informed the Complainant that the police would be called if he refused to grant access to the meter.

Although the Complainant indicated on his Complaint form that PECO had terminated or had threatened to terminate his service, he acknowledged during the hearing that PECO never sent him a termination notice. Additionally, although the Complainant indicated on his Complaint form that he wanted a payment agreement, he stated during the hearing that he understood the Commission could not grant this request since the account for service at the service address is a commercial account. He explained that he was not seeking a Commission-issued payment agreement. Rather, Complainant explained that he checked off that box since PECO had informed him prior to the hearing that if he did not prevail on his Complaint, they would offer him a payment agreement.

Upon review of the record, I find that PECO's personnel acted appropriately while communicating about, and trying to investigate, the hot socket meter alarms at the service address.

Since the Complainant was unable to meet his burden of demonstrating that PECO provided him with inadequate or unreasonable service, the Complaint is denied.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S.A. § 332(a).

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

4. PECO did not provide the Complainant with inadequate service in violation of 66 Pa.C.S. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Thomas Baker against PECO Energy Company at Docket No. C-2016-2573166 is denied; and

2. That the record at Docket No. C-2016-2573166 be marked closed.

Date: August 23, 2017

/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge