

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alan High	:	
	:	
v.	:	F-2017-2610816
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Complaint of Alan High because he failed to meet his burden of demonstrating that PECO Energy Company charged him incorrectly for service, or that PECO Energy Company provided him with unreasonable or inadequate service.

**HISTORY OF THE PROCEEDING**

On June 9, 2017, Alan High (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 boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service” and “incorrect charges are on my bill.” Complainant indicated: that his Complaint concerned service provided to 1333 68<sup>th</sup> Avenue, Room B, Philadelphia, PA 19126; that he did not own this property; that he was only renting a room at this address; that the service should have been shut off long ago; and that he never received a bill for service.

On July 11, 2017, Respondent filed an Answer denying all material allegations of fact in the Complaint. Respondent further answered: that PECO records reveal that the Complainant established service at 1333 68<sup>th</sup> Avenue, Apartment B, Philadelphia, PA on August 30, 2013; that on February 2, 2016, PECO terminated his electric service for a past due balance of \$4,759.87; that the Complainant did not meet restoration requirements; and that PECO sent the Complainant a final bill on March 7, 2016, in the amount of \$4,826.03. Additionally, Respondent answered: that on January 27, 2017, the Complainant applied for service at 252 S. Felton Street, Philadelphia, PA; that PECO sent him a service denial notice advising that he may be responsible for an outstanding balance; and that the Complainant is responsible for the balance from this prior address because he benefitted from the service.

By Hearing Notice dated July 21, 2017, a hearing was scheduled for September 26, 2017, at 9:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on July 25, 2017. The Prehearing Order directed the parties to comply with various procedural requirements and 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.

The hearing convened as scheduled on September 26, 2017. Complainant appeared *pro se* and testified. Respondent appeared and was represented by Shawane Lee, Esq., who presented the testimony of Anna May Migliaccio, a Regulatory Assessor. Respondent offered eight exhibits which were all admitted into the record.

The record in this case consists of a 48-page transcript and eight exhibits. The record closed on October 11, 2017, when I received the transcript of the September 26, 2017 hearing.

## FINDINGS OF FACT

1. The Complainant in this case is Alan High.
2. The Respondent in this proceeding is PECO Energy Company.
3. Complainant currently lives with his mother at 6607 N. 21<sup>st</sup> Street in Philadelphia. Tr. 11.
4. Complainant's Complaint concerns electric service in his name at 1333 68<sup>th</sup> Street, Philadelphia, PA 19126 (service address). Tr. 6-8, 13.
5. Complainant initiated electric service at the service address on August 30, 2013. Tr. 14, 17, 25; PECO Exh. 6.
6. Complainant resided at the service address from August 30, 2013 until October 2015. Tr. 7, 19, 22.
7. The Complainant did not make any payments to PECO for electric service while he resided at the service address. Tr. 9, 18.
8. None of the bills issued by PECO to the Complainant at the service address were returned to PECO by the post office. Tr. 25; PECO Exh. 6.
9. The Complainant never contacted PECO to complain that he was not receiving monthly bills while at the service address. Tr. 9, 17.
10. Complainant never contacted PECO to request termination of service when he moved out of the service address. Tr. 9, 19.

11. PECO issued the following termination notices and made the following termination notice telephone calls to the Complainant:

<b>Ten-day Termination Notice</b>	<b>72-hour Telephone Calls</b>
June 24, 2014	June 27, 2014 & July 1, 2014
October 9, 2014	October 14, 2014 & October 16, 2014
March 9, 2015	March 16, 2016 & March 20, 2015
May 4, 2015	May 7, 2015
July 8, 2015	July 15, 2015 & July 17, 2015
September 23, 2015	September 30, 2015, October 5, 2015, October 7, 2015 & October 28, 2015
December 22, 2015	December 31, 2015 & January 5, 2016

Tr. 27-31, 33-34, 39-41; PECO Exhs. 2 & 6.

12. PECO was unable to gain access to the Complainant’s meter to terminate his electric service. Tr. 26-27, 29-30, 42; PECO Exh. 6.

13. PECO was ultimately able to terminate service at the service address on February 2, 2016. Tr. 31; PECO Exhs. 2 & 6.

14. As of October 12, 2015, the balance owed on the account totaled \$4,476.27; the final balance on the account totaled \$4,826.03. Tr. 45; PECO Exh. 1.

15. PECO only seeks payment from the Complainant for charges incurred through October 2015; PECO is not holding him responsible for charges that accrued after he moved out of the service address. Tr. 45.

### 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. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 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, the evidence presented must be 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).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

## Incorrect Charges

In the present case, the Complainant contends that the balance PECO claims he owes is incorrect. Complainant asserted that what PECO is charging him for service at the service address must be incorrect because he only rented one room at the service address.

The burden of proof for “high bill” complaints has been explained in *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980), and its progeny. In *Waldron*, the Commission adopted the Michigan Public Service Commission’s (PSC’s) policy announced in *Hallifax v. O & A Electric Co-Op*, Case No. U-5825, May 1979, which stated that, while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Commission stated that 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.

Consistent with the Commission's holding in *Charisse Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010), the *Waldron* Rule allows a Complainant to establish a *prima facie* case in a “high bill” complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed or by providing other relevant evidence showing that the disputed bill is unreasonably high. In evaluating a “high bill” complaint, the Commission may consider such evidence as “the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), and any other relevant facts or circumstances that come to light during the proceeding.” *Id.* at 6 (emphasis added). See *Nehemiah B. Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011) (holding that limiting the *Waldron* Rule to the three factors is too limiting).

During the hearing, the Complainant argued that what PECO claims he owes must be incorrect because he only rented one room at the service address. However, the Complainant did

not offer anything beyond his opinion to support his claim that his bills were incorrect. No matter how honest and strong the Complainant's assertions are, they cannot form a basis for a finding of fact in his favor. Mere bald assertion, personal opinions or perceptions do not constitute evidence to bolster a claim. *MidAtlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000) citing *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12, 14 (Pa. 1987). The Complainant failed to meet his burden of demonstrating that PECO billed him incorrectly for service.

### Quality of Service

The Complainant acknowledged that, although he initiated service in his name for service at the service address and lived there from August 30, 2013 until October 2015, he did not make any payments to PECO for the services he used. Tr. 7, 9, 14, 17-19, 22. However, Complainant asserted that PECO is at fault because he never received any bills from PECO for service at the service address. The Complainant further alleged that PECO is at fault for this large balance because PECO allowed his service to remain on even though he was not paying his bills. Complainant has raised concerns regarding the reliability, safety or quality of PECO's electric service.

PECO is required by law to provide its customers with adequate, safe and reasonable 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).  
478 A.2d at 949.

The statutory definition of "service" is to be broadly construed.<sup>1</sup> *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.

Although the Complainant alleged that PECO provided him with inadequate service because he never received any bills for service at the service address, the record reflects that none of the bills issued by PECO to the Complainant at the service address were returned by the Postal Service as undeliverable. Tr. 25; PECO Exh. 6. Moreover, the Complainant acknowledged that, even though he claims to have never received a bill, he never contacted PECO to report that he was not receiving any bills even though he was using his electric service. Tr. 9, 17.

Additionally, although the Complainant asserted that PECO should have terminated his service since he was not paying his bill rather than let the bill continue to accumulate, the record reflects that PECO issued multiple termination notices to the Complainant and made multiple telephone calls to him to notify him of the Company's intentions to terminate his service. Tr. 27-31, 33-34, 39-41; PECO Exhs. 2 & 6. The record further reflects that the Complainant's service only remained on because PECO was unable to gain access to terminate his service. Tr. 26-27, 29-

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<sup>1</sup> "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.

30, 42; PECO Exh. 6. Under the circumstances, I cannot conclude that PECO provided the Complainant with inadequate or unreasonable service.

PECO was not able to terminate service at the service address until February 2, 2016. Even though the Complainant moved out of the service address in October 2015, pursuant to Commission regulations at 52 Pa.Code § 56.16(a),<sup>2</sup> he is responsible for charges for any services rendered on that account between October 2015 and February 2, 2016. However, PECO advised during the hearing that it only intends to hold the Complainant responsible for charges he incurred while he actually resided at the service address (through October 2015). Considering that the Complainant utilized PECO's electric service from August 30, 2013 until October 2015 and never paid for his service, this is a reasonable resolution of the Complainant's final bill.

Accordingly, the Complainant's Complaint is denied in its entirety.

#### 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.

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<sup>2</sup> 52 Pa.Code § 56.16(a) provides in pertinent part the following:

A customer who is about to vacate premises supplied with public utility service or who wishes to have service discontinued shall give at least 7 days notice to the public utility and a noncustomer occupant, specifying the date on which it is desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered.

