

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Fincourt Shelton	:	
	:	
v.	:	C-2017-2609366
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision denies Fincourt Shelton’s formal Complaint against PECO Energy Company at Docket No. C-2017-2609366 because he failed to carry his burden of proving that PECO failed to give proper notice of termination of service.

HISTORY OF THE PROCEEDING

On June 14, 2017, Fincourt Shelton (Complainant or Mr. Shelton) filed a formal Complaint against PECO Energy Company (Respondent or PECO), at Docket No. C-2017-2609366. In his Complaint, Mr. Shelton alleged that PECO had improperly terminated electric service to Complainant’s multi-tenant building. Mr. Shelton alleged that PECO failed to provide notice of termination or opportunity to pay the outstanding balance of the tenants of the building. As relief, Mr. Shelton requested that PECO restore electric service to the service address and pay reparations and punitive damages for violating the Commission’s statutes, regulations or orders.

On June 21, 2017, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated July 6, 2017, notified the parties that an initial hearing was scheduled for Wednesday, August 2, 2017 at 10:00 a.m.

A Prehearing Order was issued on July 10, 2017, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on August 2, 2017. Zainab Khadija Ali, Esq. represented the Complainant and presented the testimony of Fincourt Shelton. The Complainant sponsored four exhibits (Complainant Exhibits 1, 2, 3A, and 3B), which were admitted into the record. Shawane Lee, Esq. represented the Respondent and presented the testimony of Renee Tarpley, who is a senior regulatory assessor for PECO; the testimony of Thomas Lerro, who is the field and meter services high bill foreman for PECO; and the testimony of John Senkow, who works in PECO's corporate security department. The Respondent sponsored ten exhibits, which were admitted into the record.

The record in this matter closed upon receipt of the hearing transcript on September 6, 2017.

FINDINGS OF FACT

1. The Complainant is Fincourt Shelton, who resides at 1129 Hedgerow Drive, Garnet Valley, PA 19060. Tr. 13-14.
2. The Respondent is PECO Energy Company.
3. The Complainant owns the property at 883 Main Street, Darby, PA 19023 (Service Address). Tr. 15, 236.

4. Complainant purchased the Service Address on March 10, 2005. Tr. 40-41, 236.

5. The Service Address is divided into six residential units and two commercial units. Tr. 15.

6. All the residential units are individually metered. Tr. 171.

7. There is a studio apartment or loft at the rear of the Service Address. Tr. 32.

8. In 2012, PECO placed the electric service for the studio apartment in Mr. Shelton's name after he moved his law practice into the apartment. Tr. 17.

9. The commercial units at the Service Address are rented by a barber shop and a hardware store. Tr. 15, 16.

10. The hardware store is rented and occupied by Darby Borough Hardware Incorporated, which is also owned by the Complainant and his wife. Tr. 15-16, 45, 46.

11. Electric service at the hardware store was established on March 4, 2005. Tr. 106.

12. In 2005, PECO did not allow Darby Borough Hardware Incorporated to place electric service for the hardware store in its name because electric service to the common areas of the Service Address was on the meter serving the hardware store. Tr. 16, 17, 40-43, 45.

13. The electric service for the hardware store was placed in the Complainant's name instead of the corporation's name. Tr. 16.

14. The common areas at the Service Address consist of the camera security system and the interior hallway lights for the three levels of the building. Tr. 20, 150.

15. A public lighting account provides electric service to common areas within a building, which are not under the exclusive control of any single tenant. Tr. 107.

16. It is the property owner's duty to notify PECO that a public lighting account is needed for a multi-unit property. Tr. 108, 149-53, 155.

17. The property owner must have an electrician track down all the wires serving common areas and place them on an individual meter socket. Tr. 151, 154

18. The property owner requesting a public lighting account must complete a service meter application and have a meter installed by PECO to ensure electricity usage in the common areas of the building. Tr. 108.

19. Mr. Shelton never requested a public lighting account for the Service Address from PECO. Tr. 106-107, 109.

20. No balances from a residential tenant were transferred to the hardware store's account, which is a commercial account. Tr. 130-31.

21. On August 16, 2012, Mr. Shelton filed a Chapter 11 bankruptcy petition in the Eastern District court of Pennsylvania (Case # 12-177799). Tr. 131, PECO Exhibit 3, page 1.

22. On January 30, 2014, the outstanding balance of \$39,806.51 in Mr. Shelton's PECO account for the hardware store was discharged by the Chapter 11 bankruptcy case. Tr. 131-33, PECO Exhibit 3, page 1.

23. By January of 2014, Mr. Shelton had accumulated a post-bankruptcy balance of \$7,285.56 in his PECO account for the hardware store. Tr. 130-31, PECO Exhibit 4.

24. Mr. Shelton made no payments towards his hardware store account with PECO in 2014. Tr. 134, PECO Exhibit 4.

25. Mr. Shelton made seven payments towards his hardware store account with PECO in 2015. Tr. 135, PECO Exhibit 4.

26. By January of 2016, Mr. Shelton had accumulated an outstanding balance of \$14,054.26 in his PECO account for the hardware store. *Id.*

27. On February 23, 2016, PECO sent a “Commercial Disconnect Notice” for non-payment of the outstanding balance in Mr. Shelton’s account for the hardware store. PECO Exhibit 3.

28. On March 9, 2016, PECO left a 72-hour termination notice at the hardware store. Tr. 120, PECO Exhibit 3.

29. On March 15, 2016, PECO terminated service to the hardware store for nonpayment of the outstanding balance. Tr. 119, 227-28, PECO Exhibit 7.

30. On March 16, 2016, PECO’s DataRaker System began receiving readings from PECO’s meter serving the hardware store. Tr. 227-28, PECO Exhibit 7.

31. Also on March 16, 2016, Mr. Shelton contacted PECO and informed the Company that he had restored electric service at the hardware store on his own because he deemed the earlier termination by PECO to have been illegal. Tr. 120-21. PECO Exhibit 7.

32. On March 31, 2016, PECO employees from the revenue protection department visited the Service Address and found that the Complainant had illegally restored electric service to the hardware store by using jumpers to bypass the meter. Tr. 122, 229-30, PECO Exhibit 3.

33. The PECO employees sealed the meter and removed the jumpers. Tr. 122, 230.

34. On April 15, 2016, PECO applied a \$350 tampering fee against Mr. Shelton's account for the hardware store for illegal restoration of service. Tr. 122, 230, PECO Exhibit 4.

35. PECO employees from the revenue protection department, along with Mr. Senkow from PECO's security department, returned to the Service Address on May 6, 2016, upon information that electric service was again restored illegally. Tr. 122.

36. On May 6, 2016, Mr. Shelton refused to give PECO employees access to the meter. Tr. 123, 231-32.

37. PECO employees visited the property again on July 15, 2016, and noted that the hardware store was open and operational although electric service had been terminated on March 31, 2016. Tr. 124.

38. On August 15, 2016, PECO issued a 72-hour termination notice for the gas service at the hardware store. Tr. 124, 144-45.

39. On February 20, 2017 PECO mailed a 10-day termination notice to the Service Address and the studio for nonpayment of outstanding balance. Tr. 114, PECO Exhibit 2.

40. On February 28, 2017, PECO issued a 72-hour termination notice for electric service to the studio apartment. Tr. 115.

41. On March 1, 2017, PECO delivered a 48-hour notice of termination of electric service to the studio apartment. Tr. 116, PECO Exhibit 2.

42. On March 9, 2017, PECO remotely terminated electric service to the studio apartment. Tr. 113, 117, 118, PECO Exhibit 2.

43. In April of 2017, PECO visited the Service Address but was denied access to the basement where the PECO meters were located. Tr. 125.

44. On June 1, 2017, PECO employees from its revenue protection unit visited the Service Address, but they were again denied access to the basement where the PECO meters were located. Tr. 126.

45. On June 7, 2017, PECO's high bill field investigator, Dave Voitzburger, was assigned to investigate a gas high billing dispute filed with PECO by the residential tenant at Apt. # 2C of the Service Address. Tr. 157-58.

46. Because in the past PECO had experienced difficulties in gaining access to the meters located in the basement of the Service Address, Mr. Voitzburger was accompanied in his field visit by his supervisor, Thomas Lerro, and by PECO's revenue protection foreman, Keith Stager. Tr. 152, 158-59, PECO Exhibit 6.

47. Prior to visiting the Service Address PECO contacted the Darby Police Department and requested that a police officer accompany the employees during the field visit. Tr. 160.

48. During the June 7, 2017 field visit at the Service Address, PECO employees noted that electricity was on at the hardware store, the common areas, and the studio apartment. Tr. 170.

49. When PECO employees gained access to the basement of the Service Address on June 7, 2017, they saw evidence of meter tampering and of illegal restoration of electric service for both the hardware store and the rear studio apartment. Tr. 162, 164, 208, 212-14, PECO Exhibits 7 and 8.

50. The electric meter boards for the meters serving the hardware store and the studio apartment were pried open. Tr. 166, 179-80, 183, 217-18, PECO Exhibits 7, and 8.

51. The meters were not removed, but were found hanging from their sockets.
Id.

52. There were illegal jumpers inside the jaws and evidence of high voltage sparks or flashes inside the sockets. Tr. 166, 179-80, 183, 217-18, PECO Exhibits 7, and 8.

53. The illegal jumpers were fashioned from pieces of metal stuck vertically where the meter should have been. Tr. 167-68, 178-82, PECO Exhibit 8.

54. While a PECO electric meter has a safety system in place which opens the circuit and stops the flow of electricity in cases of surges or shorting, the illegal jumpers did not provide any safety measures. Tr. 168.

55. The situation found at the Service Address on June 7, 2017 was deemed too dangerous for the PECO employees on site to work on, so additional technicians were called in to address the problem. Tr. 166, 169.

56. The police officer on site informed the Darby Township's building inspector of the conditions at the Service Address. Tr. 170.

57. The building inspector allowed PECO employees to remove the electric meters for the hardware store and the studio, remove the jumpers, lock the meter boards, and secure the building. Tr. 171, 219-20.

58. After PECO employees left the Service Address on June 7, 2017, the electric service for the hardware store, the common areas and the studio was left off. Tr. 171, 184.

59. The studio apartment was vacant on June 7, 2017. Tr. 171.

60. The electricity service of Mr. Shelton's residential tenants at the Service Address was not affected by PECO's termination on June 7, 2017. Tr. 171.

61. On or about June 15, 2017, PECO noticed that electric service was restored illegally at the hardware store. Tr. 186, 187, 195.

62. In June of 2017, PECO filed a complaint against Mr. Shelton in the municipal court for theft of electric service at the hardware store. Tr. 185, 234-35.

63. On July 26, 2017, Mr. Shelton failed to appear before the municipal court and the municipal court judge issued a bench warrant for his arrest and ordered PECO to terminate the illegal services at the Service Address. Tr. 186, 187, 233.

64. On July 26, 2017, PECO returned to the Service Address and found that the old meter boards for the hardware store and the studio were removed, and new meter boards were installed. Tr. 189.

65. The new meter boards were covered by pieces of cardboard, which hid illegally installed jumpers. Tr. 189-90, 192, 234.

66. Mr. Shelton had used pieces of thin gauge wire as illegal jumpers to feed the hardware store, the common areas, and the rear studio apartment. Tr. 191, 193-96, PECO Exhibit 8.

67. The illegal jumpers consisted of low voltage wires, very thin to be carrying the load for the hardware store, the common areas and the studio apartment. Tr. 220-21.

68. On July 26, 2017, representatives from Darby Township posted yellow stickers on the building announcing hazardous conditions at the property. Tr. 65-66, 198, PECO Exhibit 8.

DISCUSSION

In the present formal Complaint, Mr. Shelton alleged that PECO had improperly terminated electric service to Complainant's multi-tenant building. Mr. Shelton alleged that PECO failed to provide notice of termination or opportunity to pay the outstanding balance of the tenants of the building. As relief, Mr. Shelton requested that PECO restore electric service to the service address and pay reparations and punitive damages for violating the Commission's statutes, regulations or orders.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S.A. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95 (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of

the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

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).

The record collected in this matter reveals the following: Mr. Shelton has owned the Service Address since March 10, 2005. Tr. 15, 40-41, 236. The Service Address is divided into six residential units and two commercial units. Tr. 15. All the residential units are individually metered. Tr. 171.

The commercial units at the Service Address are rented by a barber shop and a hardware store. Tr. 15, 16. The hardware store is an incorporated business, Darby Borough Hardware Incorporated, and is owned by the Complainant and his wife. Tr. 15-16, 45, 46. Electric service at the hardware store was established on March 4, 2005. Tr. 106.

In 2005, PECO refused to place electric service for the hardware store in the name of Darby Borough Hardware Incorporated because electric service to the common areas of the Service Address was on the meter serving the hardware store. Tr. 16, 17, 40-43, 45. PECO informed Mr. Shelton of this decision and placed electric service for the hardware store in the name of the Complainant as the landlord and property owner. *Id.* The common areas at the

Service Address consist of the camera security system and the interior hallway lights for the three levels of the building. Tr. 20, 150.

PECO witnesses explained that a public lighting account provides electric service to common areas within a building which are not under the exclusive control of any single tenant. Tr. 107. It is the property owner's duty to notify PECO that a public lighting account is needed for a multi-unit property. Tr. 108, 149-53, 155. The property owner must have an electrician track down all the wires serving common areas and place them on an individual meter socket. Tr. 151, 154. Next, the owner requesting a public lighting account must complete a service meter application and have a meter installed by PECO to ensure electricity usage in the common areas of the building. Tr. 108. Mr. Shelton never requested a public lighting account for the Service Address from PECO. Tr. 106-107, 109.

The total balance in Mr. Shelton's account for the hardware store is \$17,956.42. Tr. 130, PECO Exhibit 4. No balances from a residential tenant were transferred to the hardware store's account, which is a commercial account. Tr. 130-31. On August 16, 2012, Mr. Shelton filed a Chapter 11, bankruptcy petition in the Eastern District court of Pennsylvania (Case # 12-177799). Tr. 131, PECO Exhibit 3, page 1. On January 30, 2014, the outstanding balance of \$39,806.51 in Mr. Shelton's PECO account for the hardware store was discharged through the Chapter 11 bankruptcy case. Tr. 131-33, PECO Exhibit 3, page 1.

By January of 2014, Mr. Shelton had accumulated a post-bankruptcy balance of \$7,285.56 in his PECO account for the hardware store. Tr. 130-31, PECO Exhibit 4. In 2014, Mr. Shelton made no payments towards his hardware store account with PECO. Tr. 134, PECO Exhibit 4. In 2015, Mr. Shelton made seven payments towards his hardware store account with PECO. Tr. 135, PECO Exhibit 4. By January of 2016, Mr. Shelton had accumulated an outstanding balance of \$14,054.26 in his PECO account for the hardware store. *Id.*

On February 23, 2016, PECO sent a "Commercial Disconnect Notice" for non-payment of the outstanding balance in Mr. Shelton's account for the hardware store. PECO Exhibit 3. On March 9, 2016, PECO left a 72-hour termination notice at the hardware store.

Tr. 120, PECO Exhibit 3. On March 15, 2016, PECO terminated service to the hardware store for nonpayment of the outstanding balance. Tr. 119, 227-28, PECO Exhibit 7. On March 16, 2016, PECO's DataRaker System began receiving readings from PECO's meter serving the hardware store. Tr. 227-28, PECO Exhibit 7. Also on March 16, 2016, Mr. Shelton contacted PECO and informed the Company that he had restored electric service at the hardware store on his own because he deemed the earlier termination by PECO to have been illegal. Tr. 120-21. PECO Exhibit 7. PECO informed Mr. Shelton of the requirements for turning electric service back on. Tr. 121.

On March 31, 2016, PECO employees from the revenue protection department visited the Service Address and found that the Complainant had illegally restored electric service to the hardware store by using jumpers to bypass the meter. Tr. 122, 229-30, PECO Exhibit 3. The PECO employees sealed the meter and removed the jumpers. Tr. 122, 230. On April 15, 2016, PECO applied a \$350 tampering fee against Mr. Shelton's account for the hardware store for illegal restoration of service. Tr. 122, 230, PECO Exhibit 4.

PECO employees from the revenue protection department, along with Mr. Senkow from PECO's security department, returned to the Service Address on May 6, 2016, upon information that electric service was again restored illegally. Tr. 122. Mr. Shelton refused to give PECO employees access to the meter. Tr. 123, 231-32. PECO employees visited the property again on July 15, 2016, and noted that the hardware store was open and operational although electric service had been terminated on March 31, 2016. Tr. 124.

On August 15, 2016, PECO issued a 72-hour termination notice for the gas service at the hardware store. Tr. 124, 144-45. In April of 2017, PECO visited the Service Address but was denied access to the electric meter serving the hardware store. Tr. 125. On June 1, 2017, PECO employees from its revenue protection unit visited the Service Address but they were again denied access to the electric meter serving the hardware store. Tr. 126.

On June 7, 2017, PECO's high bill field investigator, Dave Voitzburger, was assigned to investigate a high billing dispute filed by one of the residential tenants at the Service

Address. Tr. 157-58. Because in the past PECO had experienced difficulties in gaining access to the meters located in the basement of the Service Address, Mr. Voitzburger was accompanied in his field visit by his supervisor, Thomas Lerro, and by PECO's revenue protection foreman, Keith Stager. Tr. 152, 158-59, PECO Exhibit 6. In addition, prior to visiting the Service Address PECO contacted the Darby Police Department and requested that a police officer accompany the employees during the field visit. Tr. 160.

During the June 7, 2017 field visit at the Service Address, PECO employees noted that electricity was on at the hardware store, the common areas of the building, as well as at a studio apartment located at the rear of the Service Address, whose electric service was in Mr. Shelton's name until it was terminated for nonpayment on March 9, 2017.¹ Tr. 113, 117, 118, 170, PECO Exhibit 2. At first, Mr. Shelton denied PECO employees access to the PECO meters, which were located in the basement of the Service Address. Tr. 160, 162. It was only after the intervention of the police officer that he gave PECO employees access to the basement of the property. Tr. 160-61.

When PECO employees gained access to the basement of the Service Address on June 7, 2017, they saw evidence of meter tampering and of illegal restoration of electric service for both the hardware store and the rear studio apartment. Tr. 162, 164, 208, 212-14, PECO Exhibits 7 and 8. The electric meter boards for the meters serving the hardware store and the studio apartment were pried open. Tr. 166, 179-80, 183, 217-18, PECO Exhibits 7, and 8. The meters were not removed, but were found hanging from their sockets. *Id.* There were illegal jumpers inside the jaws and evidence of high voltage sparks or flashes inside the sockets. Tr. 166, 179-80, 183, 217-18, PECO Exhibits 7, and 8. The illegal jumpers were fashioned from pieces of metal stuck vertically where the meter should have been. Tr. 167-68, 178-82, PECO Exhibit 8. Mr. Lerro described them as "pieces of strap used to hold up piping ... they are not even electrical equipment. This is plumbing equipment or safety equipment for straps." Tr. 220-21. While a PECO electric meter has a safety system in place which opens the circuit and stops

¹ At the hearings both parties provided testimony with regard to a stairwell light serving the rear of the Service Address connected to the electric meter for the rear studio apartment. After some discussion, the parties mutually agreed that the stairwell light strictly serves the studio and is not considered common area. Tr. 172-73.

the flow of electricity in cases of surges or shorting, the illegal jumpers did not provide any safety measures. Tr. 168.

The situation found at the Service Address on June 7, 2017, was deemed too dangerous for the PECO employees on site to work on, so additional technicians were called in to address the problem. Tr. 166, 169. The police officer on site informed Darby Township's building inspector of the conditions at the Service Address. Tr. 170. The building inspector suggested that service be terminated for the entire building which would necessitate evacuating the tenants from the Service Address. Tr. 170, 183. In addition, turning off the electric service to the entire Service Address would involve digging up the underground line servicing the property, which ran under SEPTA's trolley tracks on Main Street. Tr. 170.

Mr. Lerro suggested that PECO secure the safety of the property and of its tenants by removing the dangerous jumpers, but this process would leave the common areas at the Service Address without lighting. The building inspector approved the procedure suggested by Mr. Lerro and PECO employees proceeded to remove the meters, remove the jumpers, lock the meter boards, and secure the building. Tr. 171, 219-20.

After PECO employees left the Service Address on June 7, 2017, the electric service for the hardware store, the common areas and the studio was left off. Tr. 171, 184. The studio apartment was vacant on June 7, 2017. Tr. 171. The electricity service of Mr. Shelton's residential tenants at the Service Address was not affected by PECO's termination on June 7, 2017. Tr. 171.

On or about June 15, 2017, PECO noticed that electric service was restored illegally at the hardware store. Tr. 186, 187, 195. In June of 2017, PECO filed a complaint against Mr. Shelton in the municipal court for theft of electric service at the hardware store. Tr. 185, 234-35. On July 26, 2017, Mr. Shelton failed to appear before the municipal court and the municipal court judge issued a bench warrant for his arrest and ordered PECO to terminate the illegal services at the Service Address. Tr. 186, 187, 233. On July 26, 2017, PECO returned

to the Service Address and found that the old meter boards for the hardware store and the studio were removed and new meter boards were installed. Tr. 189.

The new meter boards were covered by pieces of cardboard, which hid illegally installed jumpers. Tr. 189-90, 192, 234. Mr. Shelton had used pieces of thin gauge wire as illegal jumpers to feed the hardware store, the common areas, and the rear studio apartment. Tr. 191, 193-96, PECO Exhibit 8. Mr. Lerro described them as low voltage wires, too thin to be carrying the load for the hardware store, the common areas and the studio apartment. Tr. 220-21.

After PECO employees removed the illegal jumpers and secured the building, representatives from the Darby Township posted yellow stickers on the building announcing hazardous conditions at the property. Tr. 65-66, 198, PECO Exhibit 8.

At the hearing, Complainant maintained that PECO had illegally and improperly terminated electricity service at the hardware store and the studio apartment on March 15, and March 31, 2016. According to Mr. Shelton these alleged violations on the part of PECO entitled him to resort to “self-help” in the form of illegal restoration of services. Tr. 21, 49, 75, 76, 83-84. In particular, Mr. Shelton claimed that PECO had failed to notify the tenants of the Service Address that electric service to the landlord was being terminated. In addition, he claimed that PECO failed to allow the tenants to apply to have service continued or resumed. See Tr. 5, 22, and 285-87. Essentially, Mr. Shelton’s contention is that, by not following proper termination procedures, PECO had deprived the tenants of the Service Address from securing electric service in the common areas by applying to have the electric service for the common areas and the hardware store (a tenant business owned by Mr. Shelton), as well as the studio placed in their names. *Id.*

The Commission is given jurisdiction over public utilities by the Public Utility Code, 66 Pa.C.S. § 101 et seq. Furthermore, a complaint against a public utility must allege a violation of the Public Utility Code or a regulation or Order of the Commission. 66 Pa.C.S. § 701. Public Utility Code, Sections 1521-1533, regulates the discontinuance of service to leased premises. 66 Pa.C.S. §§ 1521-1533.

Section 1523 of the Public Utility Code (regarding Notices before service to landlord terminated) reads in pertinent part,

§ 1523. Notices before service to landlord terminated.

(a) *Nonpayment of charges.* --

Except when required to prevent or alleviate an emergency as defined by the commission or except in the case of danger to life or property, before any termination of service to a landlord ratepayer for nonaccess as defined by the commission in its rules and regulations or nonpayment of charges, a public utility shall:

(1) Notify the landlord ratepayer of the proposed termination in writing as prescribed in section 1525 (relating to delivery and contents of termination notice to landlord) at least 37 days before the date of termination of service....

(3) Notify each dwelling unit reasonably likely to be occupied by an affected tenant of the proposed termination in writing as prescribed in section 1526 (relating to delivery and contents of first termination notice to tenants) at least seven days after notice to the landlord ratepayer pursuant to this section and at least 30 days before the termination of service. If within seven days of delivery or mailing of the notice to the landlord issued pursuant to this section the landlord ratepayer files a complaint with the commission disputing the right of the utility to terminate service, the notice shall not be rendered until the complaint has been adjudicated by the commission, but the landlord ratepayer shall continue to pay the undisputed portion of current bills when due pending the final decision of the complaint....

(c) *Rights of tenants.* --

Under the voluntary relinquishment discontinuance procedures of subsection (b)(3) the tenants shall have all of the rights provided in section 1527 (relating to right of tenants to continued service) through section 1531 (relating to retaliation by landlord prohibited).

66 Pa.C.S. § 1523. (Emphasis added). Section 1527 of the Public Utility Code (regarding Right of tenant to continue service) reads in pertinent part,

§ 1527. Right of tenants to continued service.

(a) *Application for continued service.* --

At any time before or after service is terminated by a public utility on account of nonpayment of charges by the landlord ratepayer, the affected tenants may apply to the utility to have service continued or resumed.

(b) *Payment of charges by tenants.* --

A public utility shall not terminate service or shall promptly resume service previously terminated if it receives from the tenants an amount equal to the bill for the affected account of the landlord ratepayer for the billing month preceding the notice to the tenants. Thereafter, the utility shall notify each tenant of the total amount of the bill for the second and each succeeding billing month and, if the tenants fail to make payment of any bill within 30 days of the delivery of the notice to the tenants, the utility may commence termination of service, except that no termination may occur until 30 days after each tenant has been furnished notice of the proposed termination as prescribed in section 1528 (relating to delivery and contents of subsequent termination notice to tenants). The tenant or tenants shall make payment to the utility on account of nonpayment of charges by the landlord ratepayer by check or money order drawn by the tenant to the order of the utility or by cash. In all cases, the tenant shall provide, upon request, reasonable identification to the utility. For the purposes of this section, "reasonable identification" shall include, but not be limited to, a driver's license, photo identification, medical assistance or food stamp identification or any similar document issued by any public agency which contains the name and address of the tenant.

66 Pa.C.S. § 1523(a) and (b).

In addition, the Public Utility Code, Chapter 15, Subchapter B on Discontinuance of Service to Leased Premises. 66 Pa.C.S. §§ 1521-1533 defined "Landlord ratepayer" as follows,

"Landlord ratepayer." --One or more individuals or an organization listed on a gas, electric, steam, sewage or water utility's records as the party responsible for payment of the gas, electric, steam, sewage or water service provided to one or more residential units of a residential building or mobile home park of which building or mobile home park the party is not the sole

occupant. In the event the landlord ratepayer is not the party to a lease between the landlord ratepayer and the tenant, the term also includes the individual or organization to whom the tenant makes rental payments pursuant to a rental arrangement.

66 Pa.C.S. § 1521. This section also defines “tenant” as follows,

"Tenant." --Any person or group of persons who are contractually obligated to make rental payments to the landlord ratepayer pursuant to a rental arrangement, including, but not limited to, an oral or written lease with the landlord ratepayer for a dwelling unit in a residential building or mobile home park which is provided gas, electric, steam, sewer or water as an included service under the rental agreement and who are not the ratepayers of the utility which supplied the gas, electric, steam, sewer or water service.

Id. (Emphasis added).

As it can be gleaned from the language quoted above, the provisions of 66 Pa.C.S. §§ 1521-1533 offer specific rights and protections to residential tenants of multi-unit buildings in which the landlord is the ratepayer of record. The same rights and protections are not afforded to commercial or industrial tenants of multiunit buildings. According to Mr. Shelton, PECO acted improperly when it failed to notify the tenants of the Service Address, both commercial and residential, that the Respondent was terminating electric service to the studio apartment and the hardware store which were both in Mr. Shelton’s name.

a) Termination of electric service to the hardware store for nonpayment of outstanding balance

The hardware store is a commercial tenant and is the only unit at the Service Address that is not individually metered. During his testimony, Mr. Shelton stated repeatedly that when he first purchased the Service Address in 2005 PECO had not allowed him to place electric service at the store in the name of Darby Borough Hardware Incorporated because the common areas of the Service Address were found to be connected to the hardware store’s meter. Instead, PECO placed electric service for the hardware store and the common areas in Mr. Shelton’s name as the landlord and owner of the Service Address. The evidence in this case

contains no record that Mr. Shelton challenged PECO's 2005 action either formally or informally before this Commission. Because the hardware store is a commercial tenant it does not fall under the purview of 66 Pa.C.S. §§ 1521-1533.

The hardware store has commercial gas and electric accounts with PECO. By August 16, 2012, Mr. Shelton's PECO account for the hardware store had accumulated an outstanding balance of \$39,806.51, which was discharged through a Chapter 11 bankruptcy filing. By January of 2014, Mr. Shelton had accumulated a post-bankruptcy balance of \$7,285.56 in his PECO account for the hardware store. By January of 2016, the outstanding balance had grown to \$14,054.26.

On February 23, 2016, PECO sent a "Commercial Disconnect Notice" for non-payment of the outstanding balance in Mr. Shelton's account for the hardware store. PECO Exhibit 3. On March 9, 2016, PECO left a 72-hour termination notice at the hardware store. On March 15, 2016, PECO terminated service to the hardware store for nonpayment of the outstanding balance.

With regard to termination of service to non-residential customers, the Commission's regulation at 52 Pa.Code § 55.2 states in pertinent as follows,

§ 55.2. Personal contact before utility service discontinued

(a) A public utility service, as defined in this chapter, which is not subject to the requirements of Chapter 56 (relating to standards and billing practices for residential utility service), shall conform with the following:

(1) Except when required to prevent or alleviate an emergency or upon request of a customer, a public utility may not discontinue service without making personal contact with the customer at least 3 days prior to the discontinuance, in addition to providing other notice of discontinuance specified by the properly filed tariff of the public utility or as otherwise required by the Commission.

52 Pa.Code § 55.2 (a)(1). Personal contact is defined as contact in person, by telephone, or in writing. 52 Pa. Code § 55.1. In addition, emergency is defined as an unforeseen combination of circumstances requiring temporary discontinuance of service to effect repairs or maintenance or to eliminate an imminent threat to life, health, safety or property. 52 Pa. Code § 55.1.

I find that PECO gave the Complainant proper notice of the March 15, 2016 termination of electric service at the hardware store and common areas. It is important to note that, while the termination affected the electric service of the common areas at the Service Address, it did not affect the electric service to any of the residential tenants at the Service Address, whose units were individually metered.

b) Termination of electric service to the hardware store and the studio due to hazardous conditions and theft of service.

Mr. Shelton admitted that he illegally restored electricity service to the hardware store on March 16, 2016, on or about June 2016, and again between June 7, 2017 and July 26, 2017. Tr. 21, 49, 75, 76, 83-84, see also Tr. 254-55. Mr. Shelton illegally restored electricity service to the studio, on or about June 2016, and again between June 6, 2017 and July 26, 2017. PECO terminated electric service to the hardware store and the studio following each of the illegal restorations, more specifically on March 31, 2016, June 7, 2017, and July 26, 2017. In each of these occasions, PECO found that the illegal restoration of service had created hazardous conditions at the property. No prior termination notice was required in any of these instances. See 52 Pa.Code § 55.2 (a)(1). Because both accounts in question serve commercial tenants², no post-termination notice was required. See 52 Pa.Code § 55.1-55.6. More importantly, because Mr. Shelton or one of his employees was needed to give PECO access to the meters located in the basement of the Service Address, Mr. Shelton had actual notice of the last three terminations listed above.

After carefully reviewing the record collected in this matter, I find that the Complainant has failed to prove by a preponderance of the evidence that the Respondent violated

² The last tenant of the studio apartment was Mr. Shelton's law firm. Tr. 17, 116.

the Commission's statutes, regulations or orders. Mr. Shelton's formal Complaint against PECO is dismissed in its entirety.

PECO is encouraged to pursue more effective measures in preventing future illegal restoration of service at the Service Address.

CONCLUSIONS OF LAW

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

2. The Complainant had the burden of proof. 66 Pa.C.S. § 332(a).

3. The provisions of 66 Pa.C.S. §§ 1521-1533 offer specific rights and protections to residential tenants of multi-unit buildings in which the landlord is the ratepayer of record.

4. Except when required to prevent or alleviate an emergency or upon request of a customer, a public utility may not discontinue service without making personal contact with the non-residential customer at least 3 days prior to the discontinuance, in addition to providing other notice of discontinuance specified by the properly filed tariff of the public utility or as otherwise required by the Commission. 52 Pa.Code § 55.2 (a)(1).

5. Personal contact is defined as contact in person, by telephone, or in writing. 52 Pa. Code § 55.1.

6. Emergency is defined as an unforeseen combination of circumstances requiring temporary discontinuances of service in order to effect repairs or maintenance, or to eliminate an imminent threat to life, health, safety or property. 52 Pa. Code § 55.1.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Fincourt Shelton against PECO Energy Company at Docket No. C-2017-2609366 is dismissed in its entirety.
2. That the Secretary mark this docket closed.

Date: December 15, 2017

/s/
Eranda Vero
Administrative Law Judge