

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Galdo	:	
	:	
v.	:	C-2017-2611739
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

This Initial Decision denies the formal Complaint filed by John Galdo against PECO Energy Company upon finding that Mr. Galdo failed to carry his burden of proving that: (1) he is not responsible for the electricity used at the Service Address during the period March 2013 to December 2016; and (2) PECO violated a Commission statute, regulation or order by failing to terminate service at the Service Address.

**HISTORY OF THE PROCEEDING**

On June 16, 2017, John Galdo (Mr. Galdo or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (Respondent or PECO) with the Pennsylvania Public Utility Commission (Commission) alleging that he had not received the electric service for which he was charged, and averring that PECO failed to mitigate its losses by allowing the balance to accumulate to approximately \$5,500 before attempting to terminate service to his address. As relief, Mr. Galdo requested that PECO remove the outstanding balance from his account or assume responsibility for a portion of it.

On July 17, 2017, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated July 24, 2017, notified the parties that an initial telephonic hearing was scheduled in this matter for Friday, September 8, 2017, at 10:00 a.m.

A Hearing Cancellation/Reschedule Notice dated August 8, 2017, notified the parties that the initial telephonic hearing was rescheduled for Friday, September 22, 2017, at 10:00 a.m.

A Prehearing Order was issued on August 11, 2017, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

The hearing convened as scheduled. Mr. Galdo appeared *pro se* via telephone and testified in support of the Complaint. Shawane L. Lee, Esq. represented the Respondent, and presented the testimony of Michael Begley, who is a regulatory assessor with PECO in charge of reviewing and investigating formal complaints filed with the Commission. The Respondent sponsored eight exhibits (PECO Exhibits 1-4, and 6-9), which were admitted into the record in this matter.

Prior to concluding the hearing, I instructed PECO to submit as a late-filed exhibit documentation regarding the May 18, 2016 field visit to the Service Address. In addition, I requested that PECO submit a new and complete copy of PECO Exhibit 5 into the record. I instructed PECO to submit the late-filed exhibits by no later than September 29, 2017, and instructed the Complainant to file any written objections to those exhibits by no later than October 9, 2017. Tr. 98-101.

By cover letter dated September 26, 2017, PECO submitted PECO late-filed Exhibit 10 and PECO late-filed Exhibit 5. By letter received October 11, 2017, Mr. Galdo indicated that he did not have any objections to the admission of PECO's late-filed Exhibits into

the record in this matter. Consequently, PECO late-filed Exhibits 5 and 10 are admitted into the record in this matter.

Along with his letter indicating his position with regard to PECO's late-filed Exhibits, Mr. Galdo submitted several pictures purporting to show the location of the electric meter on the outside of the Service Address. The submission of these pictures and information was neither requested by the Complainant nor permitted by me. As a result, they are not admitted into the record in this matter.

The record closed on October 23, 2017, upon receipt of my copy of the hearing transcript.

#### FINDINGS OF FACT

1. The Complainant is John Galdo, who resides at 16 Bennetts Lane, Cheyney, PA 19319 (Service Address). Tr. 7.
2. The Respondent is PECO Energy Company.
3. Mr. Galdo established electric service at the Service Address in 1993, receiving electric residential heating service from the Respondent. Tr. 59.
4. Mr. Galdo was incarcerated from March 15, 2013 to December 3, 2016. Tr. 8, 16.
5. Mr. Galdo did not request that PECO terminate service at the Service Address either before or during his incarceration. Tr. 8-9, 18-20, 78-81.
6. Mr. Galdo allowed his son and his daughter to reside at the Service Address after he was incarcerated. Tr. 15, 26-27.

7. Mr. Galdo's son rented the Service Address to numerous individuals during the period March 2013 to December 2016. Tr. 16-18, 26-27, 33-34.

8. On May 14, 2013, Mr. Galdo's account with PECO was enrolled in the Web Billing and Payment service, also known as e-billing or paperless billing. Tr. 62, 64, PECO Exhibits 4 and 5.

9. During the period July 30, 2013, through September 19, 2014, sporadic and untimely payments were made in Mr. Galdo's account with PECO; however, by September 19, 2014, the account was current. PECO Exhibit 1.

10. During the period September 20, 2014, through November 8, 2016, no payments were made in Mr. Galdo's account with PECO. Tr. 60, PECO Exhibit 1.

11. Beginning on January 16, 2015, until October 31, 2016, PECO issued 16 separate 10-day termination notices to the Service Address, with accompanying 72-hour termination notices. Tr. 69-71, PECO Exhibit 3.

12. PECO does not have the ability to terminate service at the Service Address remotely. Tr. 72.

13. A field visit scheduled on May 18, 2016, to terminate service at the Service Address was unsuccessful. Tr. 72-73, PECO Exhibit 4, and PECO late-filed Exhibit 10.

14. By November 8, 2016, an outstanding balance of \$5,102.16 had accumulated in Mr. Galdo's account with PECO. Tr. 60, PECO Exhibit 1.

15. On November 9, 2016, Complainant's brother, Mark Galdo, contacted PECO and made a payment of \$793.36 towards the Complainant's account with PECO. Tr. 20-22, 60, 76, PECO Exhibits 1 and 4.

16. On November 9, 2016, PECO established a payment arrangement on Mr. Galdo's behalf. *Id.*

17. On December 18, 2016, Mark Galdo made a payment of \$1,289.36 towards the Complainant's account with PECO. Tr. 77, PECO Exhibit 1.

18. On March 10, 2017, Mr. Galdo filed an informal Complaint with the Commission's Bureau of Consumer Services (BCS) at BCS Case # 3504989. Tr. 77, PECO Exhibit 6.

19. On April 19, 2017, BCS issued a decision denying Mr. Galdo's informal complaint at BCS Case # 3504989, and concluding that PECO's bills were correct as rendered after finding that Mr. Galdo had failed to request termination of service at the Service Address. Tr. 81, PECO Exhibit 8.

20. The BCS' decision issued on April 19, 2017 established a level one payment arrangement on behalf of the Complainant, which requires him to pay the regular budget billing amount of \$168.00 per month, plus \$63.00 per month towards the arrearages. *Id.*

21. The Commission-issued payment arrangement is active. Tr. 62.

22. As of the date of the hearing, Mr. Galdo's outstanding balance with PECO was \$3,508. Tr. 61-62, PECO Exhibit 1.

## DISCUSSION

In the present formal Complaint, Mr. Galdo alleged that he had not received the electric service for which he was charged, and averred that PECO failed to mitigate its losses by allowing the balance to accumulate to approximately \$5,500 before attempting to terminate service to his address. As relief, Mr. Galdo requested that PECO remove the outstanding balance from his account or assume responsibility for a portion of it.

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.Cmwlt. 2001).

The undisputed facts of this case are as follows. Mr. Galdo established electric service at the Service Address in 1993, receiving electric residential heating service from the Respondent. Tr. 59. He was incarcerated from March 15, 2013 to December 3, 2016. Tr. 8, 16. Mr. Galdo did not request that PECO terminate service at the Service Address or that he be removed as the ratepayer of record. Tr. 8-9, 18-20, 78-81.

Mr. Galdo allowed his son and his daughter to reside at the Service Address after he was incarcerated. Tr. 15, 26-27. Mr. Galdo's son rented the Service Address to numerous individuals during the period March 2013 to December 2016. Tr. 16-18, 26-27, 33-34.

On May 14, 2013, Mr. Galdo's account with PECO was enrolled in the Web Billing and Payment service, also known as e-billing or paperless billing. Tr. 39, 62, 64, PECO Exhibits 4 and 5. Although sporadic and untimely payments were made in Mr. Galdo's account with PECO during the period July 30, 2013 through September 19, 2014, by September 19, 2014, the account was current. PECO Exhibit 1. During the period September 20, 2014, through November 8, 2016, no payments were made in Mr. Galdo's account with PECO. Tr. 60, PECO Exhibit 1. By November 8, 2016, an outstanding balance of \$5,102.16 had accumulated in Mr. Galdo's account with PECO. Tr. 60, PECO Exhibit 1.

Beginning on January 16, 2015, until October 31, 2016, PECO issued 16 separate 10-day termination notices to the Service Address, with accompanying 72-hour termination notices. Tr. 69-71, PECO Exhibit 3. PECO however did not terminate service at the Service Address. PECO does not have the ability to terminate service at the Service Address remotely. Tr. 72. A field visit scheduled on May 18, 2016, to terminate service at the Service Address was unsuccessful. Tr. 72-73, PECO Exhibit 4, and PECO late-filed Exhibit 10.

On November 9, 2016, Complainant's brother, Mark Galdo, contacted PECO and made a payment of \$793.36 towards the Complainant's account with PECO. Tr. 20-22, 60, 76,

PECO Exhibits 1 and 4. On November 9, 2016, PECO established a payment arrangement on Mr. Galdo's behalf. *Id.* On December 18, 2016, Mark Galdo made another payment for \$1,289.36 towards the Complainant's account with PECO. Tr. 77, PECO Exhibit 1.

On March 10, 2017, Mr. Galdo filed an informal Complaint with the Commission's Bureau of Consumer Services (BCS) at BCS Case # 3504989. Tr. 77, PECO Exhibit 6. On April 19, 2017, BCS issued a decision denying Mr. Galdo's informal complaint at BCS Case # 3504989, and concluding that PECO's bills were correct as rendered after finding that Mr. Galdo had failed to request termination of service at the Service Address. Tr. 81, PECO Exhibit 8. The BCS' decision issued on April 19, 2017 established a level one payment arrangement on behalf of the Complainant, which requires him to pay the regular budget billing amount of \$168.00 per month, plus \$63.00 per month towards the arrearages. *Id.* The Commission-issued payment arrangement was active as of the date of the hearing. Tr. 62.

At the time of the hearing, Mr. Galdo's outstanding balance with PECO was \$3,508. Tr. 61-62, PECO Exhibit 1.

**a) Incorrect billing**

In his formal Complaint and during his testimony, Mr. Galdo argued that he should not be held responsible for the outstanding balance accumulated in his account with PECO during the period of time March 2013 through December 2016 when he did not reside at the Service Address. PECO responded by pointing out that Mr. Galdo never requested that PECO terminate service at the Service Address or that he be removed as the ratepayer of record. In addition, PECO argued that pursuant to its Commission-approved tariff any customer, who "wishes to discontinue service from the Company must give the Company at least 7 days' notice to that effect." See PECO Exhibit 9 – PECO Tariff Electric Pa. P.U.C. No. 5, Original Page No. 28, Rule 20.1.

A Commission-approved tariff is prima facie reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316; and *Kossmann v. Pa. Pub. Util.*

*Comm'n*, 694 A.2d 1147 (Pa.Cmwlth. 1997). Where a Complaint involves an existing, Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule is no longer reasonable. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067, 63 Pa.Commw. 238 (Pa.Cmwlth. 1981). In the present case, the Complainant failed to carry his burden of proving why PECO's tariff is unreasonable. Consequently, the portion of the Complaint challenging the accuracy of Mr. Galdo's outstanding balance with PECO is denied.

**b) Failure to terminate service**

At the hearing, Mr. Galdo argued that PECO violated the Commission's statutes, regulations or orders when it failed to mitigate the Complainant's outstanding balance by not carrying out termination proceedings against the account. PECO responded by pointing out that beginning on January 16, 2015 until October 31, 2016, it had issued numerous termination notices to the Service Address. Tr. 69-71, PECO Exhibit 3. When asked why PECO had failed to carry out the termination of service at the Service Address, PECO's witness, Mr. Begley, cited the winter moratorium and PECO's inability to terminate service at the Service Address remotely as reasons for the failure. Tr. 69-72. Mr. Begley further explained that on May 18, 2016, a PECO technician had visited the Service Address for the purpose of physically terminating electricity service at the meter. Tr. 72-73, PECO Exhibit 4, and PECO late-filed Exhibit 10. The field visit however was unsuccessful as the technician failed to gain access to the meter. Tr. 86. PECO late-filed Exhibit 10.

Mr. Galdo challenged the Respondent's testimony with regard to its inability to gain access to the meter serving the Service Address by pointing out that the meter sits outside on the side of the building. Tr. 85-86. Ultimately, PECO failed to explain exactly why its technician had failed to gain access to Complainant's meter on May 18, 2016. See Tr. 86-87, PECO late-filed Exhibit 10. Instead, Mr. Begley testified that PECO does not terminate all the accounts that are eligible for termination: "We don't get to all of these that are eligible for terminations, but I mean, nevertheless your lights were on and your pipes didn't freeze...." Tr. 83.

While there is no Commission statute, regulation or order which requires the utility company to terminate service after a specific number of unpaid bills or after the outstanding balance reaches a specific amount, it is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service<sup>1</sup> and facilities" in conformity with the regulations and orders of the Commission. 66 Pa.C.S. § 1501. Furthermore, the Commission has a long history of encouraging and supporting public utilities' efforts to minimize delinquent and uncollectible customer accounts. *Gillespie*; see, e.g., *Moyer v. United Telephone Co. of Pennsylvania*, Docket No. F 00285590 (Opinion and Order, entered June 4, 1996); *Young v. PECO Energy Co.*, Docket No. C-00956790 (Opinion and Order, entered February 14, 1996).

After carefully considering all of the evidence collected in this matter, I find that PECO's efforts in minimizing Mr. Galdo's delinquent account left a lot to be desired. However, I do not find that its failure to successfully carry out the termination of electric service at the Service Address during the period January 2015 through October 2016 amounts to a violation of 66 Pa.C.S. § 1501, or warrants the imposition of a civil penalty in accordance with the provisions of 66 Pa.C.S. § 3301. In view of the above, the portion of the Complaint regarding PECO's failure to terminate electric service at the Service Address is denied.

John Galdo's formal Complaint against PECO Energy Company at Docket No. C-2017-2611739 is denied with prejudice in its entirety.

#### CONCLUSIONS OF LAW

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

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<sup>1</sup> "The term "service" is [u]sed in its broadest and most inclusive sense, [and] 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...in the performances of their duties..." 66 Pa.C.S. § 102. The statutory definition of "service" is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa.Cmwlth. 1995).

2. The party filing the Complaint bears the burden of proving that he is entitled to relief from the Commission. 66 Pa.C.S. § 332(a).

3. A Commission-approved tariff is prima facie reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316; and *Kossmann v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa.Cmwlth. 1997).

4. Where a Complaint involves an existing, Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule is no longer reasonable. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067, 63 Pa.Comm. 238 (Pa.Cmwlth. 1981).

5. It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" in conformity with the regulations and orders of the Commission. 66 Pa.C.S. § 1501.

#### ORDER

THEREFORE,

IT IS ORDERED:

1. That PECO late-filed Exhibits 5 and 10 are admitted into the record in this matter.

2. That the Complaint filed by John Galdo against PECO Energy Company at Docket No. C-2017-2611739 is dismissed, in its entirety, with prejudice.

