

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jamie Elliott	:	
	:	
v.	:	F-2017-2624569
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision grants, in part, and denies, in part, the Complainant’s formal Complaint because he established that PECO did not provide reasonable and adequate service under Section 1501 of the Public Utility Code. Specifically, the Complainant established that PECO failed to provide a credit for the tracer fee that he had to pay to track a money order payment. However, the Complainant’s request for punitive damages is denied as the Commission does not have the jurisdiction to award monetary damages.

HISTORY OF THE PROCEEDING

On September 11, 2017, Jamie Elliott (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 contended that the Company has violated his 8th and 14th Amendment rights, as well as his due process rights. The

Complainant alleged that PECO failed to properly credit certain payments to his account. The Complainant also requested punitive damages.¹

This matter is an appeal of a final determination from the Bureau of Consumer Services (BCS) at Case Number 3533236 which concluded that the Company had not violated any Commission regulations, orders or statutes and that the Company had properly credited the Complainant's account with his money order payments.

On October 2, 2017, the Respondent filed an Answer denying the material allegations of the Complaint.

By Corrected Hearing Notice dated November 14, 2017,² an initial hearing was scheduled for January 29, 2018, at 9:30 a.m., as part of a call-of-the-docket hearing session, and the matter was assigned to me.

I issued a Prehearing Order on January 24, 2018. The Prehearing Order directed the parties to comply with various procedural requirements and 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.

The hearing convened as scheduled on January 29, 2018. The Complainant participated *pro se*. The Respondent appeared and was represented by Shawane Lee, Esquire., who presented the testimony of Michael Begley. The Respondent offered eight exhibits which were all admitted into evidence at the hearing.

¹ The Complainant indicated on the Complaint form that he had a Protection from Abuse Order. When questioned under oath at the hearing on January 29, 2018, the Complainant indicated that he did not have a current Protection from Abuse Order. Tr. 6-7.

² An initial Hearing Notice was issued on November 13, 2017, but indicated an incorrect hearing date.

The hearing resulted in a 45-page transcript. The record closed on February 9, 2018, when I received the hearing transcript.

FINDINGS OF FACT

1. The Complainant in this case is Jamie Elliott who resides at 2064 McKean Street, First Floor Rear, Philadelphia, Pennsylvania 19145 (Service Address).

2. The Respondent is PECO Energy Company.

3. The Complainant does not have a current Protection from Abuse Order.
Tr. 6-7.

4. The Complainant submitted two money orders towards his PECO account balance. Tr. 7, 11.

5. The first money order, which was undated, was for \$100.00. Tr. 7, 12;
PECO Exh. 4.

6. The second money order, which was dated April 5, 2017, was for \$100.00.
Tr. 8, 15; PECO Exh. 5.

7. Both money orders are difficult to read and do not include the Complainant's correct PECO account number. Tr. 28; PECO Exhs. 4 & 5.

8. The Complainant's PECO account number is 6220954009. Tr. 28.

9. The Complainant's complete street address is not included on either money order. PECO Exhs. 4 & 5.

10. The Complainant contacted PECO in February of 2016 to inquire about a money order he sent to PECO as payment towards his balance. Tr. 30.

11. The Complainant was told to put a tracer on the money order, which tracks the money order and verifies whether it was processed or cashed. Tr. 30.

12. The traces cost the Complainant \$15.00 each. Tr. 11.

13. Once PECO receives the tracer, PECO confirms that it has the payment, which is kept in a suspense account where payments are kept when there is insufficient information to properly credit the payment to a specific account. Tr. 31.

14. PECO credited the Complainant's account with the first money order on June 1, 2016. Tr. 31; PECO Exh. 1.

15. PECO provided the Complainant with a credit for the first \$15.00 trace. Tr. 31; PECO Exh. 1.

16. PECO placed the first money order in the suspense account because the money order did not have an account number or bill stub attached and had an insufficient address. Tr. 31; PECO Exh. 4.

17. On June 7, 2017, the second money order was credited to the Complainant's account, once PECO received the tracer. Tr. 34; PECO Exh. 1.

18. The second money order was placed in the suspense account due to the fact that the money order contained an incorrect account number listed (06609454009), no bill stub, and an insufficient address. Tr. 34; PECO Exh. 5.

19. PECO did not credit the Complainant's account for a tracer on the second money order. Tr. 34; PECO Exh. 1.

20. Once the traces were performed, PECO was able to credit the money orders to the Complainant's account. Tr. 13, 31; PECO Exh. 1.

21. As of the hearing date, the total balance on the Complainant's account is \$1,132.40. Tr. 29; PECO Exh. 1.

DISCUSSION

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

To establish a sufficient case and satisfy the burden of proof, the 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, 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. 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*, 461 A.2d 1234 (Pa. 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).

Inadequate/Unreasonable Service

The Complainant asserts that PECO provided inadequate and unreasonable service with respect to two money orders that he submitted as payments toward his account. Specifically, the Complainant argues that PECO failed to credit these payments to his account and he was forced to pay a tracer fee for both money orders, for PECO to credit the payments on the account. PECO contends that it acted reasonably and did credit the money orders to the Complainant's account. PECO also indicates that the money orders did not have sufficient information to properly credit them to the Complainant's account in the first place.

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. § 1501 requires public utilities to provide reasonable and adequate, not perfect, service. The statute at 66 Pa.C.S. § 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.³ *Country Place Waste Treatment Co., Inc. v. Pa. Pub. 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.

The Complainant testified that he submitted two money orders towards his PECO account balance. Tr. 7, 11. The first money order, which was undated, was for \$100.00. Tr. 7, 12; PECO Exh. 4. The second money order, which was dated April 5, 2017, was for \$100.00. Tr. 8, 15; PECO Exh. 5. The money orders were not initially credited to his PECO account. Tr. 7-8, 11. The Complainant was told to put a tracer on the money orders, which tracks the money order and verifies whether it was processed or cashed. Tr. 30. The tracers cost the Complainant \$15.00 each, which he paid for out of his own pocket. Tr. 11.

PECO presented the testimony of Michael Bagley, regulatory assessor. Mr. Bagley testified that the Complainant contacted PECO in February of 2016 to inquire about a money order he sent to PECO as payment toward his balance. Tr. 30. Mr. Bagley indicated that the Complainant was told to put a tracer on the money order. Tr. 30. Once PECO receives the

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. § 102.

tracer, PECO confirms that it has the payment, which is kept in a suspense account where payments are kept when there is insufficient information to properly credit the payment to a specific account. Tr. 31.

Mr. Bagley also testified that PECO credited the Complainant's account with the first money order on June 1, 2016. Tr. 31; PECO Exh. 1. PECO provided the Complainant with a credit for the \$15.00 tracer. Tr. 31; PECO Exh. 1. PECO placed the first money order in the suspense account because the money order did not have an account number or bill stub attached and had an insufficient address. Tr. 31; PECO Exh. 4.

On June 7, 2017, the second money order was credited to the Complainant's account, once PECO received the tracer. Tr. 34; PECO Exh. 1. The second money order was placed in the suspense account due to the fact that the money order contained an incorrect account number listed (06609454009), no bill stub, and an insufficient address. Tr. 34; PECO Exh. 5. Mr. Bagley acknowledged that PECO did not credit the Complainant's account for a tracer on the second money order. Tr. 34; PECO Exh. 1.

Mr. Bagley testified that both money orders are difficult to read and did not include the Complainant's correct PECO account number. Tr. 28; PECO Exhs. 4 & 5. He also testified that the Complainant's PECO account number is 6220954009. Tr. 28. Further, the Complainant's complete street address was not included on either money order. PECO Exhs. 4 & 5.

While the Complainant has established that PECO did not immediately credit his account with two money orders that he sent for payment, it does not appear that PECO's actions constitute unreasonable and inadequate service. PECO's witness testified that payments with insufficient information to direct them to a specific account are placed in a suspense account. Further, the money orders in question in this matter did not contain sufficient information to apply them to the Complainant's account. First, the writing was hard to read. Also, the Complainant did not write the complete address on the money orders. Lastly, the Complainant

did not provide a correct account number for his PECO account. PECO did not violate any Commission statute, regulation or order in placing these money orders into the suspense account.

The Complainant also contends that PECO should have contacted him, if they were unclear if the money orders were for his account. However, this is not PECO's responsibility. PECO has many customers and cannot possibly be expected to investigate every payment that comes in with insufficient information. Further, there are possibly multiple customers with the Complainant's name, which would make it very difficult to investigate without further information. As such, the Complainant has not met his burden of proof in this regard.

However, the Complainant did have to pay, out of pocket, for the tracer fee to track the money orders in this matter. The Complainant testified that he paid \$15.00 for each trace and PECO did not dispute that. PECO acknowledged that it gave the Complainant a credit to his account for the first tracer fee of \$15.00 but not for the second tracer fee. As such, PECO should provide the Complainant with a credit of \$15.00 to his account for the second tracer fee.

Punitive Damages

The Complainant also requests punitive damages against PECO. PECO contends that the Commission does not have jurisdiction to grant damages in this matter.

The law in Pennsylvania is quite clear that the Commission does not have the jurisdiction to order a public utility to pay monetary damages. See, *DeFrancesco v. Western Pennsylvania Water Company*, 499 Pa. 374, 453 A.2d 595 (1982); *Elkin v. Bell of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980); *Feingold v. Bell of Pa.*, 477 Pa. 1, 383 A.2d 791 (1977). As such, the Commission does not have the authority to order PECO to provide the relief requested by the Complainant. Therefore, the Complainant's request for punitive damages is denied and the Complaint is dismissed in this regard.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 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. The Public Utility Code at 66 Pa.C.S. § 1501 requires public utilities to provide reasonable and adequate service.
5. 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).
6. The Respondent did not provide reasonable and adequate service because it failed to credit the \$15.00 tracer fee paid by the Complainant for the second money order.
7. The Commission does not have the jurisdiction to order a public utility to pay monetary damages. See, *DeFrancesco v. Western Pennsylvania Water Company*, 499 Pa. 374, 453 A.2d 595 (1982); *Elkin v. Bell of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980); *Feingold v. Bell of Pa.*, 477 Pa. 1, 383 A.2d 791 (1977).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Jamie Elliott against PECO Energy Company at Docket No. F-2017-2624569 is granted in part and denied in part;
2. That PECO Energy Company shall credit the Complainant's account with \$15.00, for the second tracer fee;
3. That the Complainant's request for punitive damages is denied and dismissed; and
4. That the record at Docket No. F-2017-2624569 be marked closed.

Date: April 23, 2018

_____/s/
Marta Guhl
Administrative Law Judge