

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Glenn DeHaven

v.

PECO Energy Company

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C-2017-2585680

INITIAL DECISION
ON REMAND

Before
Joel H. Cheskis
Administrative Law Judge

INTRODUCTION

This decision sustains a complaint filed by a consumer against his electric distribution company. The consumer complained that the company incorrectly placed charges on his account from his tenants' usage after foreign load was found. The complaint is sustained, and the amount transferred to the complainant's account is reduced by \$1,602.80 because the reduced amount represents a past due balance owed by the tenants that was accrued at the tenants' prior service address and not the service address owned by the complainant. The amount was improperly transferred to the complainant after foreign load was discovered.

HISTORY OF THE PROCEEDING

On January 11, 2017, Glenn DeHaven filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO), Docket Number C-2017-2585680. In his complaint, Mr. DeHaven averred that PECO billed him for \$1,800 of electric usage that was accrued by his tenants because foreign load was found at the service address. Mr. DeHaven added that he is not responsible for the bill because

electric usage is part of the lease and the disputed usage is associated with a barn, a low voltage dog containment system and a small koi pond. This usage, according to Mr. DeHaven, amounts to approximately \$50 per month. Mr. DeHaven requested a thorough investigation regarding how the tenants' usage can be assigned to the landlord's account. Mr. DeHaven attached various documents to his complaint in support of his position that he is not responsible for the foreign load.

The formal complaint was served on PECO electronically by the Commission's Secretary.¹

On February 3, 2017, PECO filed an answer to Mr. DeHaven's complaint. In its answer, PECO affirmed or denied the various averments Mr. DeHaven made in his complaint. In particular, PECO stated that Mr. DeHaven's tenants complained of high bills and possible foreign wiring at the service address. As a result, a PECO technician visited the property and found foreign wiring in a rear barn, fish pond and trough heater connected to the tenants' meter. The tenants' balance of \$1,893.52 was then transferred to Mr. DeHaven's account. PECO provided several attachments to its answer and concluded that the complaint should be dismissed.

Also on February 3, 2017, PECO filed a preliminary objection in response to Mr. DeHaven's complaint. In the preliminary objection, which was accompanied by a notice to plead, PECO argued that the Commission has found that a landlord must pay the utility for any account balance, including arrearages, once a foreign load or wiring has been found. PECO added that, once the foreign load is corrected by the landlord and verified by the utility, the utility will place the account back in the name of the tenant and the arrearage, if any, will remain the landlord's responsibility with any dispute regarding the financial responsibility of the parties being a matter to be resolved in the Court of Common Pleas, not the Commission. PECO provided significant legal argument in support of its position and concluded that the complaint

¹ PECO has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702, and has agreed to electronic service instead under the Commission's Waiver of 702 program. Service is listed in the Audit History of the Commission's docketing system for this case as having been effected on January 25, 2017.

should be dismissed as a matter of law because it relates to a dispute about the assignment of financial responsibility for a foreign load in a building owned by the complainant. PECO attached a copy of Mr. DeHaven's complaint to its preliminary objection in support of its position that the complaint should be dismissed.

On February 7, 2017, Mr. DeHaven wrote on a copy of the notice to plead that accompanied PECO's preliminary objection that he denies PECO's preliminary objection. Mr. DeHaven provided no other answer to PECO's preliminary objection.

On March 29, 2017, a motion judge assignment notice was issued informing the parties that I was assigned as the Presiding Officer and responsible to resolve any issues which might arise during the preliminary phase of this proceeding. By Initial Decision dated April 27, 2017, PECO's preliminary objections were granted and Mr. DeHaven's complaint was dismissed.

On May 12, 2017, Mr. DeHaven filed exceptions to the Initial Decision. On May 18, 2017, PECO filed replies to Mr. DeHaven's exceptions.

On March 23, 2018, the Commission entered an Opinion and Order granting in part and denying in part Mr. DeHaven's exceptions and adopting in part and reversing in part the Initial Decision. The Commission then remanded the proceeding back to the Office of Administrative Law Judge for a hearing and fact finding consistent with the order, as discussed further below.

As a result, on March 27, 2018, a call-in telephone hearing notice was issued establishing an initial call-in telephonic hearing for Wednesday, May 23, 2018 and assigning me as Presiding Officer. A prehearing order dated April 12, 2018 was issued setting forth various rules that would govern the hearing.

The hearing convened on May 23, 2018 as scheduled. Mr. DeHaven appeared pro se and presented oral testimony. Shawane Lee, Esquire, appeared on behalf of PECO and

presented one witness who sponsored four exhibits that were admitted into the record. A transcript of 45 pages was created.

The record in this case closed on June 18, 2018 when the transcript was submitted to the Commission. Mr. DeHaven's complaint is now ready for disposition. For the reasons discussed below, Mr. DeHaven's complaint will be granted and PECO will be directed to credit Mr. DeHaven's account \$1,602.80.

FINDINGS OF FACT

1. The Complainant in this case is Glenn DeHaven.
2. The Respondent in this case is PECO Energy Company.
3. The service address is 184 Hibernia Road, Coatesville, PA.
4. The service address is a single-family home on Mr. DeHaven's property that he rented to Jenny and Andy Address. Tr. 7.
5. In exchange for a reduced rent, Mr. and Mrs. Address agreed to take care of horses on the property. Tr. 7-8.
6. Mr. and Mrs. Address called PECO because they believed there was foreign wiring with regard to the barn and a fish pond on the property. Tr. 9.
7. The entire balance for Mr. and Mrs. Address was transferred to Mr. DeHaven's account. Tr. 10.
8. Elsa Leung is a regulatory assessor at PECO; she reviews customer accounts when a formal or informal complaint is filed in preparing testimony and exhibits. Tr. 15.

9. PECO Exhibit Number 3 is a Field Report dated January 4, 2017 indicating that foreign wiring was found at the service address. Tr. 16; PECO Exh. No. 3.

10. PECO Exhibit Number 4 is a letter from Tim Fisher of Customer Field Operations for PECO to Mr. DeHaven dated January 5, 2017 indicating that foreign wiring was found at the service address. Tr. 17; PECO Exh. No. 4.

11. PECO Exhibit Number 1 is the account statement for Jenny Munson for service provided at the service address from March 11, 2016 to January 6, 2017. Tr. 18; PECO Exh. No. 1.²

12. PECO transferred \$1,602.80 from Ms. Munson's prior account at a different service address to her new account at the service address. Tr. 18-19, 28-29, 33; PECO Exh. No. 1.

13. Ms. Munson did not make payments in full to cover all the charges that were owed at the service address; therefore, she accrued an outstanding balance each month. Tr. 19; PECO Exh. No. 1.

14. When a customer makes a payment, PECO first applies the payment to the oldest balance. Tr. 19, 33.

15. A total of five payments were made on the account at the service address from March 2016 to January 2017. Tr. 20; PECO Exh. No. 1.

16. PECO found the foreign wiring on January 4, 2017. Tr. 20.

17. On January 6, 2017, PECO transferred the balance of \$1,893.52 from Ms. Munson's account to Mr. DeHaven's account. Tr. 21-23, 25; PECO Exh. No. 1; *see also*, PECO Exh. No. 2.

² It is presumed that Munson is Mrs. Andress' maiden name.

18. Ms. Munson made a total of \$986.69 in payments to the account at the service address. Tr. 24; PECO Exh. No. 1.

19. PECO Exhibit Number 2 is the account statement for Mr. DeHaven's account at the service address from January 6, 2017 to May 4, 2018. Tr. 25; PECO Exh. No. 2.

20. Ms. Munson was enrolled in PECO's customer assistance program (CAP). Tr. 27.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosier v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Mr. DeHaven complained that he is being charged \$1,800 for an amount that is his evicted tenants' responsibility. Mr. DeHaven argued that he should not have to pay that amount. Mr. DeHaven, therefore, has the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant.

Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

In addition, the decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth. 1984).

In this case, an initial decision granting PECO's preliminary objections and dismissing Mr. DeHaven's complaint was issued on April 27, 2017. The initial decision found that the Commission lacked jurisdiction over disputes between landlords and tenants. On March 23, 2018, however, the Commission reversed the initial decision and remanded the matter for hearing and fact finding. DeHaven v. PECO Energy Co., Docket Number C-2017-2585680 (Opinion and Order entered March 23, 2018) (March 23, 2018 Order). The Commission found that Mr. DeHaven should not be billed by PECO for usage which did not accrue at his premises. The Commission held that Mr. DeHaven's exception "raises, for the first time in this proceeding, an issue about a balance being transferred from the tenants' previous service address," an issue which "involves the standard utility practice of transferring customer account balances when a customer changes residences." March 23, 2018 Order at 16. In discussing Section 1529.1 of the Public Utility Code regarding foreign load as applied to this case, the Commission noted that subsection (b) provides: "an affected public utility shall forthwith list *the account for the premises in question* in the name of the owner, and the owner shall thereafter be responsible for the payment *for the utility services rendered thereunto*." Id. at 17 (emphasis supplied).

The Commission added:

"[T]he account for the premises in question" clearly refers to the account for the premises where the foreign load is discovered.

"[F]or the utility services rendered thereunto" clearly makes the landlord responsible for payment for utility services rendered to

the account for the premises where the foreign load is discovered. This phrase makes the landlord responsible for the payment for utility services rendered to the foreign load-affected premises. Thus, to hold the landlord responsible for payment for utility services rendered to *another* premise would appear to contravene the plain language of Subsection (b). 1 Pa. C.S. § 1921(b).

Moreover, logic dictates that a tenant's prior debt associated with utility usage at another premise is usage which is wholly unrelated to the landlord's property, usage which was not at all affected by the electric wiring of the landlord's property, and therefore, usage for which the landlord bears no responsibility. To hold the property owner financially responsible for the tenant's balance from another service address leads to an inequitable result in that it: (1) is overly punitive for the property owner because it would make the owner financially responsible for prior debts of the tenant incurred at another service address; and (2) creates a windfall for the tenant by relieving the tenant of prior debts incurred by the tenant at another service address. Such an illogical and inequitable result is unreasonable, and the Legislature is presumed not to have intended an unreasonable result in its enactment of a statute. 1 Pa. C.S. § 1922(1).

Therefore, the reasonable statutory construction of Section 1529.1(b) is the one that makes the landlord responsible for payment of the current balance and arrearages *only* for utility services rendered to the foreign load-affected premises, but not for utility services rendered to the tenant at a former address.

Id. at 18 (emphasis in original). The Commission concluded: "When the utility lists the foreign load-affected account in the name of the property owner in accordance with Subsection (b), it should only include the current balance and any arrearage accrued since the tenant established service at the foreign load-affected premises." Id. at 21.

Therefore, this decision does not address whether foreign load is present or the Commission's jurisdiction over landlord/tenant issues. Such a discussion is irrelevant in light of the March 23, 2018 Order. The only issue to be addressed in this decision is how much from Mr. DeHaven's tenants' account should be transferred to Mr. DeHaven's account as a result of the finding of foreign load at the service address. As the Commission stated, "a hearing is required

for fact finding regarding the amount of the tenants' arrearage not related to the Complainant's property." Id. at 24.

Substantial record evidence in this proceeding demonstrates that \$1,602.80 was transferred to Ms. Munson's account at Mr. DeHaven's premises from her old account at a different premises and therefore did not accrue at Mr. DeHaven's premise. Mr. DeHaven should not be billed for that amount as a result of the finding of foreign load, pursuant to the March 23, 2018 Order.

In his complaint, Mr. DeHaven averred that the amount in issue was \$1,800. During the hearing, Mr. DeHaven did not provide any evidence regarding this issue. In response to questioning, however, Mr. DeHaven stated:

JUDGE: What is the amount that the – the total amount that was sent – you were held responsible for, and the amount that you believe that you should not be held responsible for that's attributable to the prior tenants' [address]?

THE WITNESS: I don't believe I am responsible for any of it, that's the problem here. I should not be responsible for any of this.

* * * * *

So I know that these people came, they had \$1,600 in electric charges that they brought with them. I didn't know until all this started.

Tr. 12-13.

In addition, PECO witness Leung testified regarding this matter during the hearing. As Ms. Leung testified during direct examination, \$1,602.80 was transferred from Ms. Munson's prior account to her account at the service address:

Q. Okay. So when Ms. Munson established the account on – effective March 10th, 2016, did she bring a balance with her from another address?

A. Yes. So you'll see that on the same date that there's issues. There – the second column on that sheet there says transferred from Account Number 4494726086.

That represents an account that Ms. Munson had prior to coming to this address. And that amount at the time was \$1,602.80. So that was brought over to her new account, where we established the service in her name.

Tr. 18-19. Later during the hearing, Ms. Leung also testified: “we know that she started out with a balance transferred to the account of \$1,602.” Tr. 28-29. Finally, Ms. Leung also testified:

JUDGE: I'm looking at PECO Exhibit 1. And I'm looking at the second line. April 11th, 2016 is the amount transferred from her prior account of \$1,602. And I think what you're saying is that was accrued by Ms. Munson at the prior service address where she lived?

THE WITNESS: Yes, that's correct.

Tr. 33. Therefore, record evidence demonstrates that \$1,602.80 of Ms. Munson's account did not accrue at the property owned by Mr. DeHaven.

In addition, Ms. Leung also provided testimony regarding other charges related to Ms. Munson's account that accrued while she was at the service address. These charges, however, are irrelevant to answering the Commission's question in the March 23, 2018 Order regarding “the amount of the tenants' arrearage not related to the Complainant's property.”

For example, Ms. Leung testified that PECO's practice is to apply payments to the oldest balance. Therefore, with regard to the \$1,893.52 transferred to Mr. DeHaven comprised of electric service charges that were billed to Ms. Munson's account from March 10th, 2016 through January 4th, 2017, Ms. Leung testified that the payments that Ms. Munson made during that time “were not applied for charges on her current account, because she had an older arrearage on the account, which is where her payments were applied for.” Tr. 29-30. This fact, however, does not change the fact that Ms. Munson accrued \$1,602.80 at an address different than the service address. To allow

PECO to apply payments to her prior account that Ms. Munson made while living at the service address, and then transfer that total amount to Mr. DeHaven when foreign load is found, would make Mr. DeHaven responsible for more of the amount remaining on Ms. Munson's bill at the time the foreign load was found than he otherwise should be under the March 23, 2018 Order.

To do so "is overly punitive for [Mr. DeHaven] because it would make [him] financially responsible for prior debts of the tenant incurred at another service address; and ... creates a windfall for the tenant by relieving the tenant of prior debts incurred by the tenant at another service address. Such an illogical and inequitable result is unreasonable." March 23, 2018 Order at 18. PECO's decision to apply payments made to Ms. Munson's past arrearage does not change how much Ms. Munson accrued while living at the service address and how much accrued at the prior service address. The \$1,602.80 that accrued by Ms. Munson at her prior address and transferred to her new account at the service address should not be transferred to Mr. DeHaven's account as a result of the finding of foreign load under the March 23, 2018 Order.

Similarly, Ms. Leung also provided significant testimony regarding late payment charges on Ms. Munson's account, as well as issues related to Ms. Munson's enrollment in PECO's customer assistance program (CAP). These other issues related to Ms. Munson's account are also irrelevant to determining "the amount of the tenants' arrearage not related to the Complainant's property." All these charges accrued while Ms. Munson was living at the service address.

As a result, PECO will be directed to credit Mr. DeHaven \$1,602.80. Substantial record evidence demonstrates that \$1,602.80 was transferred from Ms. Munson's prior account to her account at the service address. Mr. DeHaven should not have to pay that amount pursuant to the Commission's decision in its March 23, 2018 Order. The usage and other charges and payments Ms. Munson accrued while living at the service address are irrelevant to this proceeding.

CONCLUSIONS OF LAW

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

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

4. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

5. The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v.

Unemployment Comp. Bd. of Review, 194 Pa.Super. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwlt. 23, 480 A.2d 382 (1984).

9. When a utility lists the foreign load affected account in the name of the property owner in accordance with subsection (b) of Section 1529.1 of the Public Utility Code, it should only include the current balance and any arrearage accrued since the tenant established service at the foreign load-affected premises. DeHaven v. PECO Energy Co., Docket Number C-2017-2585680 at 21 (Opinion and Order entered March 23, 2018).

10. Mr. DeHaven has satisfied his burden of demonstrating that he should not be charged \$1,602.80 as a result of the finding of foreign load at his property.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Glenn DeHaven against PECO Energy Company at Docket Number C-2017-2585680 dated January 11, 2017 is sustained.

2. That PECO Energy Company shall credit Glenn DeHaven's account in the amount of \$1,602.80.

3. That this matter be marked closed.

Date: August 31, 2018

/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge