

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bernard Davis	:	
	:	
v.	:	C-2018-3000402
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Dennis J. Buckley  
Administrative Law Judge

This Initial Decision dismisses the formal Complaint of Bernard Davis (Complainant) against PECO Energy Company (PECO or Respondent) because the Complainant did not prove that PECO has violated any regulation of the Commission or provision of the Public Utility Code (Code).

**HISTORY OF THE PROCEEDING**

On March 9, 2018, Complainant filed a formal Complaint against PECO alleging that he had been overbilled by PECO.

On April 2, 2018, PECO filed an Answer in which it denied any violation of the Public Utility Code or the regulations of the Commission. PECO averred that Complainant had transitioned to the Customer Assistance Program (CAP)-Fixed Credit Option (FCO) on October 19, 2016, in accord with PECO's Universal Services Three Year Plan (2016-2018) previously filed with the Commission. PECO further asserted that its representative had conducted a field visit at Complainant's residence and found that the meter assigned to

Complainant's account was registering Complainant's usage and that no foreign wiring was present. PECO maintained that Complainant had been correctly billed.

On April 5, 2018, a hearing notice was issued setting June 5, 2018 as the date for a telephonic hearing in this case. A standard form prehearing Order was issued on that date.

On June 5, 2018, a telephonic hearing was held in this case originating from the Commission's Harrisburg office. Complainant appeared and testified on his own behalf and offered four electric bills that were received into the record: C-1, a bill dated February 13, 2018; C-2, a bill dated January 9, 2018; C-3, a bill dated December 7, 2017; and C-4, a bill dated November 8, 2017. PECO was represented by Shawane L. Lee, Esquire. As Ms. Lee began the presentation of PECO's case, audio issues with the Complainant's attempt to ride a city bus while participating in the hearing reached a point where it was necessary to continue the hearing.

On June 29, 2018, a hearing notice was issued setting August 16, 2018 as the date for a further telephonic hearing in this matter.

On July 10, 2018, a further prehearing Order was issued.

On August 16, 2018, a telephonic hearing convened with much clearer audio reception. Ms. Lee presented the testimony of Michael Begley, a Regulatory Assessor employed by PECO, and the testimony of Eric Riley, a High Bill Field Technician employed by PECO. PECO offered six exhibits that were received into evidence: PECO-1, an Account Transaction History; PECO-2, a CAP History for Complainant's account; PECO-3, a Collection History; PECO-4, a Residential High Bill Investigation summary; PECO-5, a copy of PECO's Customer Assistance Rider; and PECO-6, a copy of PECO's Universal Service Three Year Plan.

The record in the case closed on September 7, 2018 with the filing of the transcript of the hearing. The record consists of a 92-page transcript and related exhibits. This case is now ready for adjudication.

## FINDINGS OF FACT

1. Complainant is Bernard Davis, who resides at 3017 West Oxford Street, Philadelphia, Pennsylvania, which is the service address.
2. Respondent is PECO Energy Company, a jurisdictional public utility company providing electric distribution service to the Complainant's service address.
3. Complainant lives alone in a one apartment dwelling consisting of three rooms - a kitchen, living room, and bedroom - and a bath. Tr. at 11-12, 18.
4. Complainant has an electric toaster, refrigerator, microwave, and television, and the apartment uses electric heat. Tr. at 20-21.
5. Complainant took up residency at the service address in October, 2014. Tr. at 16.
6. Complainant enrolled in PECO's Customer Assistance Program in January, 2015, and is still enrolled in the program. Tr. at 30-31.
7. Complainant noticed an increase in his electric bills from October, 2017, to March, 2018. Tr. at 15.
8. In October, 2016, PECO's CAP was changed to a fixed credit option (FCO). Tr. at 31, 45.
9. Under the FCO, a yearly energy burden is established, which is a percentage of the customer's gross annual income. If a customer's undiscounted charges are less than the annual energy burden, there is no discount. Tr. at 31.

10. Under the FCO, Complainant is no longer receiving a monthly discount on his bill because his energy burden is greater than his annual undiscounted usage. Tr. at 33.

11. Complainant's annual energy burden is \$1,244.16, or sixteen percent of his gross yearly income; although Complainant is still in the CAP, because his undiscounted usage does not exceed that energy burden figure, there is no discount. Tr. at 34, 45, 47-48, 60; PECO-2.

12. Complainant was previously eligible for and received a discount under PECO's original tiered program. Tr. at 47.

13. PECO estimates that under the FCO approximately 40,000 households that received discounts under the tiered program will not receive discounts under the FCO. Tr. at 51; PECO-6.

14. PECO conducted a field visit at Complainant's residence on March 15, 2018. Tr. at 56; PECO-4.

15. The PECO representative confirmed that the meter assigned to Complainant was reflecting Complainant's usage and that there was no foreign wiring issue. Tr. at 68, 79, 81.

16. A cost estimate is based on a national average of like appliances; each appliance is assigned an average usage number in kilowatt hours based on the national average. Tr. at 70.

17. Based on the appliances seen by the PECO representative during the March 15, 2018 field visit, Complainant has the potential to use 2,627 kilowatt hours during the winter. Tr. at 71.

18. Complainant's usage was lower than the 2,627 kilowatt hour potential. Tr. at 72-75; PECO-1.

### DISCUSSION

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa. C.S.A § 332(a). To satisfy this burden, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (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*, 70 A.2d 854 (Pa. 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*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Complainant has the burden of proving that PECO violated a provision of the Public Utility Code or a regulation of the Commission by overbilling him or by incorrectly billing him. The Complainant has not met this burden.

Complainant was receiving a discount under the original PECO CAP program. In October, 2016, PECO's CAP was changed to a fixed credit option (FCO). The change from the tiered program under which Complainant received a discount to the FCO has increased Complainant's monthly bills. Under the FCO, a yearly energy burden is established, which is a

percentage of the customer's gross annual income. If a customer's undiscounted charges are less than the annual energy burden, there is no discount. Complainant's undiscounted charges are less than his energy burden. Thus, under the FCO, Complainant's energy burden is deemed to be affordable *without* a discount. As a result, Complainant is seeing higher bills for approximately the same amount of usage. PECO estimates that under the FCO approximately 40,000 households that received discounts under the tiered program will not receive discounts under the FCO. Complainant is one of those households.

Complainant produced bills for November, 2017 to February, 2018. These are, of course, winter months, and Complainant has electric heat in addition to his other electric appliances. With electric heat and the loss of the tiered program discount, Complainant is seeing a marked increase in his electric bills, particularly in the winter. As the credible and uncontradicted testimony of PECO's witness established, the meter assigned to Complainant is reflecting Complainant's usage and there is no foreign wiring issue.<sup>1</sup>

At the hearing, Complainant argued anecdotally that other customers he knows have lower bills. While that may be so, Complainant produced no evidence to corroborate these assertions. Mere opinion, without more, is insufficient to meet the Complainant's burden. *Richard Kirby v. PPL Electric Utilities Corporation*, Docket No. C-20066297 (Final Order entered November 16, 2006) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A. 2d 12 (Pa. Cmwlth. 1987)).

As the Complainant has not met his burden of proof demonstrating overbilling or inaccurate billing by PECO, his Complaint must be dismissed.

#### 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> I note that Complainant's bills reflect that he is a PECO generation customer on a fixed rate.

2. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is upon the Complainant.

3. 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. 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 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).

4. A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

5. 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.

6. Substantial evidence has been defined as such relevant evidence as 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 and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

7. The Complainant has not met his burden of proving that he is entitled to relief. 66 Pa. C.S. § 332(a).

