

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thomas J. Conway IV	:	
	:	
v.	:	C-2018-2642987
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the formal Complaint of Thomas J. Conway IV because he failed to sustain his burden of proving that PECO Energy Company wrongly transferred an outstanding balance from a closed account belonging to the Complainant to an open account also belonging to the Complainant.

**HISTORY OF THE PROCEEDING**

On January 17, 2018, Thomas J. Conway IV (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 alleged that PECO erred when it transferred an outstanding balance from a closed account belonging to the Complainant to an open account belonging to the Complainant.

On January 23, 2018, PECO filed an Answer to the Complaint. In its Answer, PECO denies all material allegations of fact and conclusions of law in the Complaint. Further,

PECO avers: the Complainant connected service at 339 Carson Street, Philadelphia, PA effective January 31, 2015; the Complainant also connected service at 157 Dupont Street, Philadelphia, PA effective May 30, 2017; the Complainant discontinued service at the 157 Dupont Street address effective October 23, 2017, leaving an unpaid balance in the amount of \$202.51; PECO mailed a final bill to the Complainant at PO Box 366, Ardmore, PA; the Complainant made a payment of \$37.01 to the 157 Dupont Street account on November 2, 2017; and on November 21, 2017, PECO transferred the remaining balance of \$165.50 to the Complainant's 339 Carson Street account, which was still open and active.

By Hearing Notice dated February 2, 2018, this matter was scheduled as part of a call-of-the-docket on Friday, March 30, 2018, at 9:30 a.m.

A Prehearing Order was issued on February 13, 2018, advising the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

On March 27, 2018, I received a request via electronic mail and facsimile from counsel for PECO to remove this case from the call-of-the-docket and reschedule it for a separate in-person hearing, due to the fact that the Complainant alleges incorrect billing and/or balance transfers against PECO. Counsel for PECO represented that Mr. Conway had no objections to this request.

On March 27, 2018, I issued an Order granting the Respondent's requests to remove the case from the call-of-the-docket and to reschedule it for an in-person hearing.

By Hearing Notice dated March 27, 2018, this matter was rescheduled for an in-person hearing on May 30, 2018, at 10:00 a.m.

On May 30, 2018, approximately a half hour before the hearing, the Complainant contacted my office, stating he would not be coming to the hearing and requesting a continuance because he was out of town on business.

The hearing began on May 30, 2018, at 10:00 a.m. as scheduled. Counsel for PECO was present with a witness and was prepared to proceed. The Complainant was not present, but was able to be contacted via telephone. The Complainant made another request for a continuance. Counsel for the Respondent objected to the request as untimely. At that time, I rejected the Complainant's request for a continuance and Respondent's counsel moved that the Complaint be dismissed with prejudice for lack of prosecution. I reserved my decision until receipt of the transcript.

On June 28, 2018, I received a copy of the transcript from the May 30, 2018 hearing. Upon further consideration, I decided to grant the Complainant's request for a continuance. On July 3, 2018, I issued an Order granting the Complainant's request for a continuance and directing that the hearing be rescheduled.

By Hearing Notice dated July 16, 2018, this matter was rescheduled for an in-person hearing on September 10, 2018, at 10:00 a.m.

The hearing convened as scheduled on September 10, 2018. The Complainant appeared *pro se* and testified on his own behalf. The Complainant offered two exhibits, both of which were entered into the record:

Complainant 1: Google definition of "new" (1 page)  
Complainant 2: 12/01/2017 PECO bill for 339 Carson St. (1 page)

The Respondent appeared and was represented by Shawane Lee, Esquire, who presented the testimony of Elsa Leung, a Regulatory Assessor at PECO. During the hearing, the Respondent offered five exhibits, all of which were entered into the record:

PECO 1: 10/23/2017 PECO bill for 157 Dupont St. (2 pages)  
PECO 2: Account activity statement for 157 Dupont St. (1 page)  
PECO 3: Account activity statement for 339 Carson St. (2 pages)  
PECO 4: 12/01/2017 PECO bill for 339 Carson St. (2 pages)  
PECO 5: Collections history for 339 Carson St. (4 pages)

The record closed on September 28, 2018, upon my receipt of the transcript for the hearing held on September 10, 2018.<sup>1</sup>

### FINDINGS OF FACT

1. The Complainant in this case is Thomas J. Conway IV.
2. The Respondent in this case is PECO Energy Company.
3. Effective January 31, 2015, the Complainant connected service at 339 Carson Street, Philadelphia, PA. Tr. 30.
4. Effective May 30, 2017, the Complainant also connected service at 157 Dupont Street, Philadelphia, PA. Tr. 24-25.
5. Effective October 23, 2017, the Complainant discontinued service at the 157 Dupont Street address and left an unpaid balance in the amount of \$202.51. Tr. 25; PECO 1.
6. On October 23, 2017, PECO mailed a final bill for the 157 Dupont Street account to the Complainant at PO Box 366, Ardmore, PA. Tr. 25; PECO 1.
7. Final payment for the 157 Dupont Street account was due on November 14, 2017. Tr. 25; PECO 1.
8. On November 2, 2017, the Complainant made a payment of \$37.01 on the 157 Dupont Street account. PECO 2.
9. On November 21, 2017, PECO closed the 157 Dupont Street account and transferred the remaining balance of \$165.50 to the Complainant's 339 Carson Street account, which was still open and active. Tr. 30.

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<sup>1</sup> All citations to the transcript are citations to the transcript for the hearing held on September 10, 2018.

10. On November 22, 2017, the Complainant attempted to pay the outstanding balance on the 157 Dupont Street account but was informed by PECO that that account was already closed. Tr. 19.

### DISCUSSION

As the party seeking affirmative relief from the Commission, the burden of proof in this case is upon the Complainant, who must establish by a preponderance of evidence that the Respondent violated the Commission's regulations. 66 Pa.C.S. § 332(a); *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); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

The underlying facts in this case are undisputed. On November 21, 2017, the Complainant had at least two accounts with PECO – the 157 Dupont Street account and the 339 Carson Street account. On that same date, PECO closed the 157 Dupont Street account and transferred the remaining balance of \$165.50 to the Complainant's 339 Carson Street account, which was open and active. The Complainant disputes the legality of this transfer.

PECO's position is that its transfer of the balance was legal pursuant to the regulation set forth at 52 Pa. Code § 56.16(b), which states:

#### **§ 56.16. Transfer of accounts.**

(b) In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a **new** residential service account of the same customer.

(Emphasis added). However, the Complainant's position is that the foregoing regulation does not apply to this case because it only authorizes a balance transfer to a "new" account and his 339 Carson Street account was already in existence when the transfer occurred. The Complainant argues that PECO could only transfer the balance if they created a "new" account

for him. Thus, the sole issue in this case is the interpretation of 52 Pa. Code § 56.16(b), and more specifically, the word “new” within this regulation.

When interpreting regulatory provisions, the principles of statutory construction apply. *Pa. Bureau of Liquor Control Enforcement v. Benny Enterprises, Inc.*, 669 A.2d 1018, 1021 (Pa. Cmwlth. 1996), *appeal denied*, 681 A.2d 1344 (Pa. 1996). In interpreting an administrative regulation, as in interpreting a statute, the plain language of the regulation is paramount. *Schappel v. Motorists Mutual Insurance Company*, 934 A.2d 1184, 1187 (Pa. 2007). “Words and phrases shall be construed according to rules of grammar and according to their common and approved usage[.]” 1 Pa.C.S. § 1903(a); see also *Colville v. Allegheny County Ret. Bd.*, 926 A.2d 424, 431 (Pa. 2007). “When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S. § 1921(b); see also *Commonwealth v. Conklin*, 897 A.2d 1168, 1175 (Pa. 2006).

Black’s Law Dictionary defines the word “new” as follows:

As an element in numerous compound terms and phrases of the law, this word may denote novelty, or the condition of being previously unknown or of recent or fresh origin, but ordinarily it is a purely relative term and is employed in contrasting the date, origin, or character of one thing with the corresponding attributes of another thing of the same kind or class.

Black’s Law Dictionary 1042 (6<sup>th</sup> Ed. 1990)(emphasis added). In other words, ordinarily, “new” is construed as synonymous with “another.” For example, in sports, a coach may tell a player that he wants the player to play a *new* position. In this example, the coach does not mean a position he just created, but rather, the coach means *another* position that already exists. Another example would be a person rents a car at the airport, however, when they get to the vehicle, it has a flat tire, so they return to the rental agent. The rental agent may say something along the lines of: “Don’t worry, I’ll rent you a *new* one.” Again, in this example, the rental agent does not mean a brand new car, but rather, *another* rental car they have available.

In this case, based upon the foregoing, I conclude the word “new” should be construed according to its common and approved usage as a purely relative term that is synonymous with “another.” Furthermore, since I find the words of 52 Pa. Code § 56.16(b) are clear and free from ambiguity, there is no need for further examination into the spirit of the regulation. Therefore, based on the plain and unambiguous language of 52 Pa. Code § 56.16(b), I find PECO was permitted to transfer the \$165.50 balance from the Complainant’s 157 Dupont Street account to another one of the Complainant’s accounts, namely his 339 Carson Street account.

Accordingly, I find the Complainant failed to meet his burden of proof that PECO violated the Commission’s regulations and his Complaint shall be dismissed.

#### CONCLUSIONS OF LAW

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

2. The burden of proof in this case is upon the Complainant, who must establish by a preponderance of evidence which is substantial and legally credible that the Respondent violated the Commission’s regulations. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa.Cmwth. 1990), *app. denied*, 529 Pa. 654, 602 A.2d 863 (1992).

3. In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a new residential service account of the same customer. 52 Pa. Code § 56.16(b).

4. When interpreting regulatory provisions, the principles of statutory construction apply. *Pa. Bureau of Liquor Control Enforcement v. Benny Enterprises, Inc.*, 669 A.2d 1018, 1021 (Pa. Cmwth. 1996), *appeal denied* 681 A.2d 1344 (Pa. 1996).

5. In interpreting an administrative regulation, as in interpreting a statute, the plain language of the regulation is paramount. *Schappel v. Motorists Mutual Insurance Company*, 934 A.2d 1184, 1187 (Pa. 2007).

6. “Words and phrases shall be construed according to rules of grammar and according to their common and approved usage[.]” 1 Pa.C.S. § 1903(a); see also *Colville v. Allegheny County Ret. Bd.*, 926 A.2d 424, 431 (Pa. 2007).

7. “When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S. § 1921(b); see also *Commonwealth v. Conklin*, 897 A.2d 1168, 1175 (Pa. 2006).

8. “New” is defined “As an element in numerous compound terms and phrases of the law, this word may denote novelty, or the condition of being previously unknown or of recent or fresh origin, but ordinarily it is a purely relative term and is employed in contrasting the date, origin, or character of one thing with the corresponding attributes of another thing of the same kind or class.” Black’s Law Dictionary 1042 (6<sup>th</sup> Ed. 1990).

9. The Complainant failed to meet his burden of proof that PECO violated the Commission’s regulations.

## ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Thomas J. Conway IV against PECO Energy Company at Docket No. C-2018-2642987 is dismissed; and

