

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Dube	:	
	:	
v.	:	F-2019-3007365
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of James Dube against PECO Energy Company because he failed to sustain his burden of proving that PECO Energy Company billed him incorrectly or wrongfully terminated his electric service.

HISTORY OF THE PROCEEDING

On January 19, 2019, James Dube (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission or PUC). In the Complaint, the Complainant placed checkmarks in boxes indicating: “The utility is threatening to shut off my service or has already shut off my service,” and “Incorrect charges are on my bill.” The Complainant requested that PECO stop violating unfair debt collection, billing, and trade practices.

On January 31, 2019, PECO filed an Answer to the Complaint denying all material allegations of fact. Further, PECO averred it terminated service to the Complainant on

October 31, 2018, after proper notice, for a past due balance of \$2,484.59. PECO averred the Complainant must pay this outstanding balance before it will restore service. PECO requested that the Complaint be dismissed.

By Hearing Notice dated February 4, 2019, a hearing was scheduled for March 19, 2019, and the matter was assigned to me.

I issued a Prehearing Order on February 5, 2019. The Prehearing Order directed the parties to comply with various procedural requirements and 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 on March 19, 2019, as scheduled. The Complainant appeared *pro se*, but offered no testimony and declined to be sworn in.

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 eight exhibits, all of which were entered into the record.

The record closed on April 11, 2019, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant in this case is James Dube.
2. The Respondent in this case is PECO Energy Company.
3. The Complainant did not present any evidence. Tr. 13-21.

4. Elsa Leung is a Regulatory Assessor for PECO whose duties include reviewing customer complaints or accounts from customers who filed informal and formal complaints with the PUC. Tr. 21-22.

5. Prior to December 5, 2017, the Complainant had an active account (old account) with PECO for electric service at 4771 Tacony Street, Philadelphia, PA 19137 (Service Address). Tr. 24; PECO 1.

6. On July 20, 2017, PECO set aside the Complainant's outstanding balance of \$2,328.49 pursuant to the Complainant filing for bankruptcy. Tr. 25-26; PECO 1.

7. On December 5, 2017, PECO closed the old account and issued a final bill in the amount of \$414.14.¹ Tr. 25; PECO 1.

8. On February 8, 2018, the Complainant opened a new account with PECO at the same Service Address. Tr. 28; PECO 2.

9. On February 9, 2018, PECO transferred the outstanding balance of \$350.55² from the Complainant's old account to his new account. Tr. 28-29.

10. On May 18, 2018, PECO received notification that the Complainant's bankruptcy was dismissed. Tr. 27; PECO 1.

11. On May 25, 2018, PECO transferred the outstanding balance of \$2,328.49 that was set aside due to the bankruptcy proceedings from the Complainant's old account to his new account. Tr. 27; PECO 1 and 2.

¹ This amount does not include the \$2,328.49 set aside due to the Complainant's bankruptcy proceedings.

² \$414.14 (Final Bill) - \$75.00 (Payment) + \$11.41 (Late Payment Charges) = \$350.55 (Outstanding Balance).

12. PECO received two payments on the new account – one on May 2, 2018, in the amount of \$413.79 and one on June 22, 2018, in the amount of \$35.70. Tr. 34; PECO 2.

13. On September 21, 2018, PECO mailed a 10-day termination notice to the Complainant for non-payment. Tr. 34-35; PECO 4.

14. On October 2, 2018 and October 3, 2018, PECO attempted to give 72-hour termination notices by telephone, but the Complainant did not answer the phone and PECO left voicemail messages. On October 31, 2018. Tr. 37; PECO 4.

15. On October 31, 2018, PECO terminated service to the Complainant for a past due balance. Tr. 37; PECO 4.

16. As of the date of this hearing, the Complainant's outstanding balance is \$2,801.85. Tr. 42; PECO 2.

17. The entirety of the Complainant's outstanding balance is comprised of Customer Assistance Program (CAP) arrears. Tr. 40, 42-43.

DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving that he is entitled to the requested relief. 66 Pa.C.S. § 332(a). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, 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.*, 602 A.2d 863 (Pa. 1992); *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. 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).

In this case, the Complainant appeared at the hearing but declined to testify or present any evidence to support his Complaint. In fact, as evidenced by the following exchange, the Complainant became recalcitrant when informed by the undersigned Administrative Law Judge (ALJ) that he has the burden of proof in this case:

ALJ: This is how we're going to do it. Judicially, this is how we do the case. Okay. You have the burden of proof, you go first. I'll swear you in. You testify to why you think your bill is incorrect, and the termination of service. Okay?

MR. DUBE: Okay. Well, that's kind of useless. So, we're not going to do that. Okay?

ALJ: You don't want to go forward with your case?

MR. DUBE: No. What I'm saying to you is I'm the executor and beneficiary of the services you are providing. I'm asking for you to set aside this bill.

ALJ: You're throwing all these words out there. I don't know what that means.

MR. DUBE: Okay. That means I'm the boss. Okay? That means I'm in charge. We the people means we the people.

Tr. 13-14.

In addition, although under no obligation to do so, PECO presented credible testimony and evidence demonstrating the Complainant was billed correctly and his service was properly terminated for non-payment.

Elsa Leung is a Regulatory Assessor for PECO whose duties include reviewing customer complaints or accounts from customers who filed informal and formal complaints with the PUC. Through Ms. Leung's testimony and exhibits, PECO showed that prior to December 5, 2017, the Complainant had an old account with PECO for electric service at the Service Address. On July 20, 2017, PECO learned that the Complainant filed for bankruptcy. By then, the Complainant had accumulated an outstanding balance of \$2,328.49. As a result, PECO set aside the Complainant's outstanding balance.

On December 5, 2017, PECO closed the account and issued a final bill in the amount of \$414.14, which the Complainant had accumulated after the bankruptcy filing. On February 8, 2018, the Complainant opened a new account with PECO at the Service Address and PECO transferred the outstanding balance from his old account to his new account. On May 18, 2018, PECO received notification that the Complainant's bankruptcy was dismissed. As a result, on May 25, 2018, PECO transferred the outstanding balance of \$2,328.49 that was set aside due to the bankruptcy proceedings from the Complainant's old account to his new account.

Unfortunately, PECO only received two payments on the new account – one on May 2, 2018, in the amount of \$413.79 and one on June 22, 2018, in the amount of \$35.70. Therefore, as a result of non-payment, PECO mailed a 10-day termination notice to the Complainant on September 21, 2018. On October 2nd and 3rd of 2018, PECO attempted to give 72-hour termination notices by telephone, but the Complainant did not answer the phone and

PECO left voicemail messages. On October 31, 2018, PECO terminated service to the Complainant for a past due balance.

As of the date of this hearing, the Complainant's outstanding balance is \$2,801.85, with the entirety being comprised of CAP arrears.

The Complainant presented no evidence, or arguments to refute the foregoing facts averred by PECO. By failing to proffer any evidence to support his Complaint, I find the Complainant failed to meet his burden of proof to establish that PECO 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. Accordingly, the Complaint shall be dismissed with prejudice.

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. As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof. 66 Pa.C.S. § 332(a).
3. By failing to proffer any evidence to support the Complaint, the Complainant has failed to meet his burden of proving that he is entitled to the relief that he seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint of James Dube against PECO Energy Company at Docket No. F-2019-3007365 is dismissed with prejudice; and
2. That Docket No. F-2019-3007365 be marked closed.

Date: June 18, 2019

/s/
F. Joseph Brady
Administrative Law Judge