

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Caiqin Yu	:	
	:	
v.	:	F-2019-3012278
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

The Complainant contends that there are incorrect charges on her bill because she is being charged for service used by one of her tenants. This decision dismisses the complaint because the tenant’s charges were properly transferred to the Complainant's account when it was discovered that there was foreign load in the building owned by the Complainant

HISTORY OF THE PROCEEDING

On August 5, 2019, Caiqin Yu (Complainant) filed a Formal Complaint against PECO Energy Company (PECO, Respondent or Company). In her Complaint, Complainant avers that there are incorrect charges on her bill. She is disputing PECO’s finding that a foreign load existed in the building and, therefore, avers that PECO improperly transferred a tenant's bill to her account. This is a timely appeal of a Bureau of Consumer Services’ decision, BCS Case No. 003695366.

PECO filed an Answer on September 24, 2019. PECO denied all material allegations of fact in the complaint. The Company also averred that a PECO technician found foreign load at the service address and that upon discovery of foreign load, PECO was required to list the tenant's account in the name of the landlord in accordance with 66 Pa.C.S. § 1529.1.

A hearing notice dated September 26, 2019 set a telephonic hearing for November 7, 2019. A pre-hearing order setting forth various procedural matters applicable to the hearing was issued on October 3, 2019.

The hearing convened as scheduled. The Complainant represented herself through an interpreter. Seven Complainant exhibits were admitted into the record.

PECO was represented by Edward Fisher, Esquire. Nine PECO Exhibits were admitted into the record.

The record in this matter closed on December 12, 2019 upon receipt of the transcript, which is 73 pages.

FINDINGS OF FACT

1. The Complainant is Caiqin Yu, who is the owner of 4712 Oxford Avenue, Philadelphia, PA. (service address). (Tr. 5, 9).
2. The Respondent is PECO Energy Company.
3. PECO provides electric service to the service address.
4. The service address is a three-story building that has three apartments - two on the 2nd floor and one on the 3rd floor - and a 1st floor space that is rented to a church. (Tr. 9, 12).

5. The service address has five PECO meters. (Tr. 10).

6. There is a meter for each of the three apartments, a meter for the church on the first floor and a meter for the building and basement, hallways, and fire alarms. (Tr. 10-12).

7. A 2nd floor tenant (tenant) moved into the 3rd floor apartment between November 17, 2018 and December 1, 2018. (Tr. 29-31).

8. The Complainant gave the tenant the key to the 3rd floor apartment on November 17, 2018. (Tr. 30).

9. The tenant began PECO service for the 3rd floor apartment on November 20, 2018. (Tr. 31, Tr. 67, PECO Exhibit 3).

10. A Philadelphia Department of Licenses and Inspections (L&I) technician inspected the service address on December 3, 2018. (Complainant Exhibit Image 1).¹

11. On December 5, 2018, L&I issued an "Initial Notice of Violation and Order" to the Complainant, which stated that common halls and stairways needed to be lighted at all times and that lighting was needed in the common area on the first level. (Complainant Exhibit Image 1).

12. On December 12, 2018, the Complainant installed five LED lights in the hallways of the service address. (Tr. 15, 55; Complainant Exhibit Image 6).

13. The Complainant connected the five LED hallway lights that she installed to the PECO service for the 2nd floor rear apartment, which at that time was in the name of the Complainant. (Tr. 15, 23).

¹ Complainant exhibits are referenced herein as pre-marked by the Complainant.

14. On December 26, 2018, the Complainant used a screwdriver to turn off and disable a 3rd floor hallway light switch and the 3rd floor hallway electricity. (Tr. 13-15, Complainant Exhibit Image 1).

15. On February 14, 2019, the tenant contacted PECO about a high bill. (PECO Exhibit 6; Complainant Image 5).

16. In response to the tenant's high bill complaint, PECO high bill Inspector Aaron Saunders conducted an inspection of the service address on February 21, 2019. (Tr. 34, PECO Exhibit 6; Complainant Exhibit Image 5).

17. During the February 21, 2019 inspection, Inspector Saunders dropped the load, i.e., shut off the power to the meter in question, and verified that there was no meter mix up. (Tr. 34-35).

18. Inspector Saunders found that three hall lights were wired to and controlled by the 3rd floor hallway light switch, which was connected to the 3rd floor apartment meter. (Tr. 35).

19. Inspector Saunders also found that the 1st floor and 2nd floor hallway lighting were connected to the 3rd floor apartment electric service. (Tr. 34- 35, PECO Exhibit 6).

20. On February 25, 2019, PECO transferred \$986.91 from the tenant's PECO account to the Complainant's account. (Tr. 60-61, PECO Exhibit 1, PECO Exhibit 3).

21. The \$986.91 transferred to the account of the Complainant was the amount charged to the third-floor tenant while there was foreign load. (Tr. 63-64, PECO Exhibit 3, PECO Exhibit 4, PECO Exhibit 5).

22. The 3rd floor apartment charges transferred to the Complainant were for the period from November 20, 2018 to March 21, 2019. (Tr. 62, PECO Exhibit 3).

23. On March 14, 2019, the Complainant had an electrician rewire the hallway lights to the basement meter. (Tr. 20).

24. Inspector Saunders re-inspected the building on March 22, 2019 and confirmed that the wiring had been corrected to eliminate the foreign load. (Tr. 21).

25. During this inspection on March 22, 2019, Inspector Saunders dropped the load and traced wires to confirm the correction. (Tr. 37).

26. On March 22, 2019, PECO stopped billing the Complainant for the 3rd floor PECO service, created an account to bill the tenant for his 3rd floor apartment service and transferred the tenant's balance from his 2nd floor apartment to the tenant's 3rd floor apartment account. (Tr. 61-63, PECO Exhibits 2, 3 and 4).

DISCUSSION

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant in violation of the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S.A. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal.

If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v.*

West Penn Power Company, 1994 Pa. PUC LEXIS 95 (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing 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.*, 529 Pa. 654, 602 A.2d 863 (1992).

In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

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).

The Complainant owns a multiple unit building on Oxford Street in Philadelphia that receives electric service from PECO. The building has an apartment on the 3rd floor, two apartments on the 2nd floor and a church tenant on the 1st floor. There are five meters at the property, one for each of the three apartments, one for the church and one for common areas and the basement. The Complainant is contesting PECO transferring \$986.91 from the bill of the 3rd floor tenant (tenant) to her bill.

PECO contends that it properly transferred the tenant's balance to the Complainant because there was foreign load. "Foreign load" is defined as a condition where the utility meter for a dwelling unit is registering usage not exclusive to the dwelling unit or its occupants. *See, 1-A Realty v. Pa. Pub. Util. Comm'n*, 63 A.3d 480 (Pa. Cmwlth. 2013), *appeal denied*, 621 Pa. 675, 74 A.3d 1033 (2013). In other words, as noted in *Ed P. Drogaris v. UGI Utilities, Inc.*, 2011 Pa. PUC LEXIS 1626 (Pa. PUC 2011), "'Foreign load' is utility service which is not related to serving a tenant but for which the tenant is being billed." *Drogaris*, citing *Boyce v. Duquesne Light Company*, Docket No. Z-00223698 (Opinion and Order entered

September 1, 1994; *Santos v. Metropolitan Edison Company*, Docket No. C-00967757 (Opinion and Order entered August 7, 1997).

The Public Utility Code addresses foreign load as follows:

§ 1529.1. Duty of owners of rental property.

(a) Notice to public utility.--It is the duty of every owner of a residential building or mobile home park which contains one or more dwelling units, not individually metered, to notify each public utility from whom utility service is received of their ownership and the fact that the premises served are used for rental purposes.

(b) History of account.--Upon receipt of the notice provided in this section, if the mobile home park or residential building contains one or more dwelling units not individually metered, 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. In the case of individually metered dwelling units, unless notified to the contrary by the tenant or an authorized representative, an affected public utility shall list the account for the premises in question in the name of the owner, and the owner shall be responsible for the payment for utility services to the premises.

(c) Failure to give notice.--Any owner of a residential building or mobile home park failing to notify affected public utilities as required by this section shall nonetheless be responsible for payment of the utility services as if the required notice had been given.

66 Pa.C.S. § 1529.1. Under § 1529.1, the owner is responsible for the payment of utility services where there are one or more dwelling units not individually metered. The Commission has determined that the property owner should be "financially responsible for a tenant's entire account, once foreign load is verified on the tenant's service." *Ace Check Cashing, Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (Order entered May 21, 2010) (*Ace*) at 6.

The Complainant questions the foreign load charges in two aspects. Particularly, the Complainant contends: 1) that there should have been no foreign load when PECO conducted its inspection; and 2) that she should not have to pay for amounts billed to the tenant prior to his move to the 3rd floor apartment.

PRESENCE OF FOREIGN LOAD

PECO transferred the tenant's bill to the Complainant after PECO Inspector Saunders discovered foreign load at the service address. The tenant lived in a 2nd floor apartment at the service address before moving into the 3rd floor apartment. At the time that he moved in, a 3rd floor hallway light was connected to the 3rd floor apartment's PECO service. (Tr. 13). The tenant told the Complainant that it was illegal to have a hall light connected to his electric service. (Tr.13-14).

The tenant subsequently contacted the Philadelphia Department of Licenses and Inspections (L&I) and, on December 3, 2018, an L&I technician inspected the service address. On December 5, 2018, an "Initial Notice of Violation and Order" was issued to the Complainant, which noted that common halls and stairway must be lighted at all times and that lighting was needed in the common area on the first level. (Complainant Exhibit Image 1). There was no indication in the L&I violation notice that the 3rd and 2nd floors required lighting.

On December 12, 2018, the Complainant installed five corridor lights, connecting them to the electric service of the 2nd floor rear apartment, which at that time was in the name of the Complainant. (Tr. 15). The Complainant testified that on December 26, 2018, she used a screwdriver and wire cap to disconnect a light switch on the 3rd floor to deactivate the 3rd floor hallway electricity. (Tr. 13-14).

On February 14, 2019, the tenant contacted PECO about a high bill. (PECO Exhibit 6; Complainant Exhibit image 5). Subsequently, the tenant informed the Complainant that PECO was going to send an inspector on February 21, 2019. (Tr. 16).

On February 21, 2019, PECO high bill Inspector Aaron Saunders conducted an inspection at the service address where he discovered foreign load. As described by Inspector Saunders, who has worked as a high bill investigator for 12 years, a foreign load is a load coming from outside of the customer's apartment or control. (Tr. 49). It can include lighting and outlets that are in common areas used by other tenants. (Tr. 49).

During his inspection of the service address on February 21, 2019, Inspector Saunders found two lights in the 2nd floor hallway and one light on the 1st floor connected to the tenant's 3rd floor apartment electric service. (Tr. 34, PECO Exhibit 6). The Complainant disputes this finding.

The Complainant contends that there was no foreign wiring on the 1st and 2nd floors. (Tr. 22-24). The Complainant testified that from December of 2018 until March 14, 2019, the hallway lights consisted of five lights that she installed and connected to the rear apartment on the 2nd floor, a PECO account billed to the Complainant. (Tr. 23, 25; Complainant Exhibit Image 6). She also contends that there were no lights on the first floor. (Tr. 23). However, the evidence weighs towards finding that there was foreign load as described by Inspector Saunders.

The testimony and contemporaneous notes of Inspector Saunders were detailed and specific. He testified that he confirmed that there was foreign load during the inspection by identifying that there is actual power to what is the suspected foreign wiring. He then dropped the load, or shut the main breaker off, to the meter to which it was suspected the foreign load was connected, in this case the 3rd floor apartment. He then checked to see whether the suspected load was affected by shutting off the power to the particular apartment. (Tr. 39).

When Inspector Saunders turned the power off to the 3rd floor meter, he confirmed that the hallway lights were affected, which established foreign wiring. (Tr. 41). Specifically, hallway lights on the 1st and 2nd floors were turned off when the power to the 3rd floor apartment was shut off. (Tr. 41-42). He also found that a switch on the 3rd floor controlled two lights on the 2nd floor hallway and one light in the 1st floor hallway. (Tr. 43, 47).

The Complainant testified that she suspected that the tenant had tampered with the wiring to the switch on the third floor. (Tr. 20, 26-27). Complainant believes that the tenant reconnected the 3rd floor hall light by the time the PECO inspection occurred. (Tr. 20, 26, 27). Based on the testimony, the switch was accessible by the tenant. However, Complainant offered no evidence to prove that the tenant reconnected the 3rd floor light switch. Furthermore, this claim does not negate the landlord's responsibility for foreign load.

A landlord is responsible if there is foreign load on a tenant's service and, once the foreign load is discovered, the utility must list the account for the premises in question in the name of the owner, "forthwith." 66 Pa.C.S. § 1529.1; *Ace* at 6. There are no exceptions regarding why a foreign load exists or how it came to be.

The Complainant also questioned whether Inspector Saunders dropped the load during the inspection. The Complainant introduced Complainant Exhibit Image 3, which contains two photos of the 3rd floor meter during the inspection conducted by Inspector Saunders. (Tr. 54, Complainant Exhibit Image 3). Complainant notes that the meter reading did not change. (*Id.*).

The fact that the meter reading did not change during the inspection does not establish that Inspector Saunders did not drop the load or that there was no foreign load. As Inspector Saunders testified, during his tests, he turned off the meters so they would not register usage during this period. (Tr. 39-40).

Further supporting a finding that there was foreign load is that the Complainant corrected the wiring to eliminate the foreign load. The Complainant acknowledges that on March 14, 2019, she had an electrician rewire the hallway lights to the basement meter. (Tr. 20). Inspector Saunders re-inspected the service address on March 22, 2019 and confirmed that the wiring had been corrected to eliminate the foreign load. (Tr. 21). During this inspection, Inspector Saunders dropped the load and traced wires to confirm the correction. (Tr. 37).

Following confirmation that the foreign load wiring had been corrected, PECO sent a report to the Complainant stating that the foreign load wiring was corrected. (PECO Exhibit 7).

Consequently, the evidence supports a finding of foreign load at the service address. Therefore, the Complainant cannot prevail on this claim.

BILLING FOR FOREIGN LOAD

The Complainant believes that the amount transferred to her account includes charges to the tenant prior to the time the tenant moved into the 3rd floor apartment. The Complainant wants that portion of the charges removed from her account. The record supports a finding that PECO did not transfer to the Complainant charges accrued by the tenant prior to his move to the 3rd floor apartment.

The Complainant gave the tenant the key to the 3rd floor on or about November 17, 2018. He opened a PECO account for the 3rd floor apartment on November 20, 2018. As discussed above, there was foreign load connected to the electric service of the 3rd floor apartment at that time.

PECO testimony and documentation established the following: the tenant's account billing statement for his 2nd floor apartment, PECO account number 1347027311, was for the period from July 10, 2018 to November 23, 2018 (PECO Exhibit 2); that balance was not transferred to the Complainant (Tr. 61, PECO Exhibits 1-4); and that only the tenant's 3rd floor apartment charges, \$986.91 for the period from November 20, 2019 to March 21, 2019, was transferred to the Complainant. (Tr. 62-62, PECO Exhibits 2-3, 5). Once the foreign wiring was corrected, a new PECO account was created for the tenant for his 3rd floor apartment service, PECO account number, 4147013192. The tenant's balance from the 2nd floor apartment was then transferred to his new 3rd floor PECO account, as required. *See Ace, supra.* at 7. (Tr. 63, PECO Exhibit 4).

Consequently, the Complainant was not billed for any charges of the tenant when he lived in the 2nd floor apartment or when there was not foreign load. Therefore, the Complainant cannot prevail on this claim.

CONCLUSIONS OF LAW

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

2. The Complainant has the burden of proof. 66 Pa.C.S. § 332(a).

3. Under 66 Pa.C.S. § 1529.1, the owner is responsible for the payment for utility services where there are one or more dwelling units and those units are not individually metered.

4. The Complainant did not establish by a preponderance of the evidence that there was no foreign load or that PECO incorrectly billed her for the foreign load. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992).

5. The hallway lights connected to the 3rd floor apartment electric services was foreign load. *Boyce v. Duquesne Light Company*, Docket No. Z-00223698 (Opinion and Order entered September 1, 1994); *Santos v. Metropolitan Edison Company*, Docket No. C-00967757 (Opinion and Order entered August 7, 1997).

6. PECO properly billed the Complainant, as landlord, for the period of the foreign load. 66 Pa.C.S. § 1529.1

ORDER

THEREFORE,

IT IS ORDERED:

1. That the claims raised in the Complaint filed by Caiqin Yu against PECO Energy Company at Docket No. F-2019-3012278 are denied.
2. That the Formal Complaint filed by Caiqin Yu against PECO Energy Company at Docket No. F-2019-3012278 is dismissed.
3. That the Secretary mark this docket closed.

Date: March 24, 2020

_____/s/_____
Darlene Heep
Administrative Law Judge

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CAIQIN YU
2617 ELBRIDGE ST
PHILADELPHIA PA 19149
215.554.5622
ACCEPTS E-SERVICE

EDWARD FISHER ESQUIRE
GRIESING LAW LLC
1880 JOHN F KENNEDY BLVD STE 1800
PHILADELPHIA PA 19103
215.501.7846
ACCEPTS E-SERVICE