

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Anthony Peabody

v.

PECO Energy Company

:  
:  
:  
:  
:

C-2019-3014030

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants Anthony Peabody’s formal Complaint against PECO Energy Company upon finding that the Complainant successfully carried his burden of proving that the utility failed to provide him with adequate and reasonable service.

**HISTORY OF THE PROCEEDING**

On October 28, 2019, Anthony Peabody (Mr. Peabody or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO, Respondent, or the Company) alleging that the Company damaged his underground water line when they brought gas service to his property. As relief, Mr. Peabody requests that the Commission order PECO to either repair the damages to his well line or to pay for the repair work.

On November 25, 2019, PECO filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated December 20, 2019, notified the parties that an initial hearing was scheduled for Thursday, February 13, 2020, at 10:00 a.m.

A Prehearing Order was issued on January 14, 2020, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The hearing convened as scheduled on February 13, 2020. Mr. Peabody appeared *pro se* and testified on behalf of the Complainant. He also presented the testimony of Kimberly Marie Peabody, his mother. The Complainant sponsored six exhibits which were admitted into the record. Angela Lorenz, Esq., represented the Respondent, and presented the testimony of Timothy Grow, Senior Claims Case Manager for the Claims Division at PECO; and Kenneth James Marfilus, Senior Distribution Mechanic for PECO, in charge of installing and maintaining gas lines. The Respondent sponsored five exhibits all of which were admitted into the record.

Prior to the conclusion of the hearing, counsel for PECO moved to dismiss the Complaint on the grounds that the Commission lacks subject matter jurisdiction over real property matters. Tr. 141-43. Counsel declined the opportunity to file a legal brief in support of this motion. Tr. 142. A ruling was not made on the motion at the hearing.

The record in this matter closed upon receipt of the hearing transcript on March 13, 2020.

#### FINDINGS OF FACT

1. The Complainant is Anthony Peabody, who resides at 1135 Brintons Bridge Road, West Chester, Pennsylvania, 19382. Tr. 11.
2. The Respondent is PECO Energy Company.
3. Mr. Peabody owns the property at 145 Fox Road, Media, PA. (Service Address). Tr. 12.

4. Mr. Peabody purchased the Service Address in June of 2019. Tr. 47-48, 51.

5. The Service Address is equipped with an underground well located approximately 85 feet away from the house. Tr. 16, 62.

6. At the time of the purchase, the well was delivering water at a good pressure level to the Service Address. Tr. 47, 65-66.

7. On June 5, 2019, Mr. Peabody entered into an agreement with PECO to receive residential natural gas service at the Service Address. Tr. 15-16, PECO Exhibit 1.

8. The agreement called for the installation of natural gas facilities at the Service Address for the provision of gas service to the Complainant after Mr. Peabody had paid the Customer Contribution amount of \$1,292.00. Tr. 15-16, PECO Exhibit 1.

9. In preparation for the installation of the natural gas facilities, PECO instructed Complainant to mark out with paint or flags any privately owned underground facilities like water service, electric dog fence, drain, landscape lighting, septic or oil tanks, sprinklers, propane tank or lines, etc., to avoid damage. Tr. 13, 16, 56, 76, PECO Exhibit 1.

10. PECO's instructions did not specify the color of paint or flags that a customer could use to mark out the privately owned underground facilities. PECO Exhibit 1.

11. Mr. Peabody located the underground sewer line by the vent caps that come out of the ground and its entry into the basement of the Service Address. Tr. 91.

12. Mr. Peabody located the underground water line with the assistance of a friend, who helped him trace the water pump's electric signal underground. Tr. 91-92, 126-27.

13. The water line usually lies about three feet underground. Tr. 38.

14. Mr. Peabody used white paint to mark his underground well line and sewer line. Tr. 16, 22-23, 25, 55-56.

15. The installation of the new gas line for the Service Address took place on August 8-9, 2019. Tr. 78.

16. Kenneth James Marfilus was part of the crew that was assigned to go to the Service Address and install a new gas line. Tr. 95.

17. While at the Service Address, Mr. Marfilus saw some white markings near the driveway of the Service Address. Tr. 100-101.

18. Typically, a PECO representative would visit the new service line installation location and prepare instructions for the installation crew with details on the location and length of the service line, the type of material to be used, etc. Tr. 111.

19. Often the PECO representative who visits the site before the installation of new service marks the location where the installation crew is to put the new line. Tr. 112-13.

20. White paint is used to indicate where PECO's new service is to be installed. Tr. 25-26, 100, 112.

21. The gas line was installed with the use of a backhoe. Tr. 78.

22. Mr. Peabody's new gas line is located/installed one or two feet away from his water line. Tr. 35-36, 39-41-3, Complainant Exhibit 1.

23. When Mr. Peabody returned to the Service Address, he found that the water line from his underground well was ripped out of the ground near the location where PECO contractors had dug for the new gas line. Tr. 16, 32-33, Complainant Exhibit 1.

24. Mr. Peabody repaired the electric feed to the water pump but was unable to receive water from his well. Tr. 57, 63.

25. Mr. Peabody contacted the Respondent to report the damage to his well line using PECO's 1-800 telephone number. Tr. 16-17, 122.

26. On September 3, 2019, John Ostan replied to Mr. Peabody via e-mail apologizing for the inconvenience and offering to pay Mr. Peabody any costs that he incurred due to the incident. Tr. 18, 123, Complainant Exhibit 5.

27. John Ostan is a PECO foreman in charge of overseeing PECO's gas operations crew that worked at the Service Address. Tr. 122-25.

28. On September 5, 2019, Mr. Peabody filed a claim with PECO. Tr. 80.

29. Timothy Grow is a Senior Claims Case Manager for the Claims Division at PECO. Tr. 73.

30. On or about September 10, 2019, Timothy Grow contacted the Complainant and requested pictures of the Service Address and of the damage to his underground water line. Tr. 20-21.

31. On September 10, 2019, Mr. Peabody e-mailed Mr. Grow pictures of the damaged well line. Tr. 28, Complainant Exhibits 1 and 2.

32. On September 10, 2019, Mr. Peabody e-mailed Mr. Grow pictures showing white marks over the underground sewer line. Tr. 79, Complainant Exhibit 2.

33. Mr. Peabody does not have pictures showing his markings over the underground water line. Tr. 24, 79, Complainant Exhibit 2.

34. Mr. Grow informed Mr. Peabody that he had used the wrong paint color to mark his underground utilities. Tr. 22, 92.

35. On September 11, 2019, Mr. Grow concluded his investigation of Mr. Peabody's claim. Tr. 80-81.

36. By e-mail dated September 12, 2019, Mr. Grow informed Mr. Peabody that PECO had denied his claim for damages to his water line because he had failed to properly mark it. Tr. 59, 79-81, PECO Exhibit 1.

### DISCUSSION

In his formal Complaint against PECO, Mr. Peabody alleged that PECO had damaged his underground water line when they were working to install a new gas service line to his property. As relief, Mr. Peabody requests that the Commission order PECO to either repair the damages to his well line or to pay for the repair work.

At the hearing, I instructed the parties that the Pennsylvania appellate courts have repeatedly held that the Commission is without power to award monetary damages to a private litigant. Tr. 49-50; *see, Feingold v. Bell Telephone Co. of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977); *Morrow v. Bell Telephone Co. of Pennsylvania*, 330 Pa.Super. 276, 479 A.2d 548 (1984); *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 104 Pa.Cmwlth. 21, 521 A.2d 75 (1987); *Ostrov v. I.F.T., Inc.*, 402 Pa.Super. 87, 586 A.2d 409 (1991). Therefore, any request for reimbursement of any monetary and/or compensatory damages must be pursued before a Magisterial District Judge or a Court of Common Pleas. The Complainant indicated that he understood the Commission's limitations but still wished to pursue his Complaint against PECO. Tr. 50-51.

Additionally, at the conclusion of both parties' testimony, Respondent's counsel made an oral motion to dismiss the Complaint for lack of jurisdiction. Tr. 141-43. I shall address that motion now.

The Public Utility Code (Code), 66 Pa.C.S. § 101, *et seq.*, vests the Commission with jurisdiction to regulate the rates, service, and facilities of public utilities. The threshold issue for consideration is whether PECO's actions during the installation of Mr. Peabody's gas line constitutes reasonable service under the Code.

Section 102 of the Code, 66 Pa. C.S. § 102, defines "service" as including "any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied" by public utilities "in the performance of their duties under this part to their patrons, employees, other public utilities, and the public". The installation of a new service line is part of the duties of a public utility towards its customers or applicants, and any and all acts done to perform that duty fall under the broad definition of "service" pursuant to Section 102 of the Code. It is for this reason that PECO's own Commission-approved Gas Tariff includes several rules (Rules 3-9) dedicated to the installation of new gas service lines for PECO customers. PECO Energy Company Tariff Gas – Pa. P.U.C. No. 3, Original Pages 10-15, Effective December 8, 2017.

Section 101 of the Code vests the Commission with jurisdiction to regulate PECO's services; therefore, PECO's actions pertaining to the installation of Mr. Peabody's new service line fall within the purview of the Commission's jurisdiction. 66 Pa.C.S. § 101. Consequently, PECO's motion to dismiss Mr. Peabody's Complaint is denied.

Turning to the merits of the Complaint, Mr. Peabody, as the proponent of a rule or order, bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To satisfy this burden, he must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). 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.Cmwlt. 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).

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 to the evidence presented by the Complainant, the Complainant has not satisfied his burden of proof. The Complainant would then 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*, 501 Pa. 433, 461 A.2d 1234 (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).

At the hearing, Mr. Peabody testified that he purchased the Service Address in June of 2019. Tr. 47-48, 51. The Service Address is equipped with an underground well located approximately 85 feet away from the house. Tr. 16, 62. Mr. Peabody and Mrs. Peabody testified that, when the Complainant purchased the property, the well was delivering water at a good pressure level. Tr. 47, 65-66.

On June 5, 2019, Mr. Peabody entered into an agreement with PECO for the installation of natural gas facilities at the Service Address. PECO Exhibit 1. The terms of the agreement required the Complainant to mark out with paint or flags any privately owned underground facilities like water service, electric dog fence, drain, landscape lighting, septic or oil tanks, sprinkles, propane tank or lines, etc., to avoid damage. Tr. 13, 16, 56, 76, PECO Exhibit 1. PECO’s instructions did not specify the color of paint or flags that a customer could use to mark out the privately owned underground facilities. PECO Exhibit 1.

In preparation for PECO’s installation of the new natural gas line to his property, Mr. Peabody located the underground sewer line by the vent caps that come out of the ground

and its entry into the basement of the Service Address. Tr. 91. He testified that the water line usually lies about three feet underground and that he located it with the assistance of a friend, who helped him trace the water pump's electric signal underground. Tr. 38, 91-92, 126-27. Mr. Peabody testified that he used white paint to mark his underground well line and sewer line. Tr. 16, 22-23, 25, 55-56.

The installation of the new gas line for the Service Address took place on August 8-9, 2019. Tr. 78. Mr. Marfilius was part of the PECO crew that was assigned to go to the Service Address and install a new gas line. Tr. 95. Mr. Marfilius explained that typically, a PECO representative would visit the location requesting installation of a new service line and prepare instructions for the installation crew with details on the location and length of the service line, the type of material to be used, etc. Tr. 111. Often, the PECO representative who visits the site before the installation of new service marks the location where the installation crew is to put the new line. Tr. 112-13. Mr. Marfilius explained that white paint is used to indicate where PECO's new service is to be installed. Tr. 25-26, 100, 112.

Mr. Marfilius testified that he saw some white markings near the driveway of the Service Address, towards the front of the house. Tr. 100-101. His initial thought was that the white marks indicated the location where the new gas line was to be installed. According to Mr. Marfilius' testimony, he revised his first impression once he realized that PECO could not install the new gas line on the front of the property. Tr. 101. He maintained that, when the crew checked the back of the Service Address, they saw no markings there. Tr. 102.

The new gas line enters the Service Address from the back. Tr. 101-102. The gas line was installed with the use of a backhoe. Tr. 78. During the excavation, the PECO crew dug up Mr. Peabody's water line and the electric wires for the water pump. Tr. 103-104.

Mr. Peabody testified that, following the installation of the new gas line, the water line lay above ground, the water pipe was bent, the electric wires that served the well pump were ripped off, and the ditch was covered with dirt. Tr. 16, 32-34, 39, Complainant Exhibit 1. PECO installed the new gas line just one or two feet away from his water line. Tr. 35-36, 39-43, Complainant Exhibit 1.

Mr. Peabody testified that he repaired the electric feed to the water pump but was unable to receive water from his well. Tr. 57, 63. He believes that PECO's excavation of his water line cracked and damaged it in two separate places located underground. Tr. 57. Mr. Peabody contacted the Respondent to report the damage to his well line using PECO's 1-800 telephone number. Tr. 16-17, 122. On September 3, 2019, John Ostan, a PECO foreman in charge of overseeing PECO's gas operations crew, replied to Mr. Peabody via e-mail, apologizing for the inconvenience and offering to pay Mr. Peabody any costs that he incurred due to the incident. Tr. 18-19, 122-25, Complainant Exhibit 5.

On September 5, 2019, Mr. Peabody filed a claim with PECO. Tr. 80. On or about September 10, 2019, Timothy Grow contacted the Complainant and requested pictures of the Service Address and of the damaged water line. Tr. 20-21. On September 10, 2019, Mr. Peabody e-mailed Mr. Grow pictures of the damaged well line. Tr. 28, Complainant Exhibit 1. The pictures that Mr. Peabody submitted to Mr. Grow did not show markings at the subject location. Tr. 79.

On September 11, 2019, Mr. Grow concluded his investigation of Mr. Peabody's claim. Tr. 80-81. By e-mail dated September 12, 2019, Mr. Grow informed Mr. Peabody that PECO denied his claim for damages to his water line because he had failed to properly mark it. Tr. 59, 79-81, PECO Exhibit 1.

After carefully reviewing the evidence submitted in this case, I find that Mr. and Mrs. Peabody testified credibly that the underground water line was working prior to PECO's installation of the new gas line at the Service Address, but was not working afterwards. Tr. 35. Mr. Peabody also provided credible evidence that his underground water line and the electric wires feeding the well pump were unearthed and damaged during PECO's installation of the new gas line. Mr. Marfilius' testimony corroborated that of the Complainant's when he explained that PECO's crew dug up some old electric wires at the back of the Service Address and left them exposed believing them to be connected to an old light post. Tr. 103-104. Mr. Marfilius' testimony also corroborated Mr. Peabody's claim that he had marked his underground utilities and that he had used white paint to do so. Tr. 100-101. However, Mr. Marfilius' corroboration only extended to the markings for the underground sewer line in front of the Service Address,

whereas he maintained that there were no markings whatsoever indicating the underground water line at the back of the Service Address. Mr. Marfilius went as far as to claim that there were no markings whatsoever at the back of the Service Address. Tr. 102.

Mr. Peabody challenged Mr. Marfilius' statement regarding the complete absence of markings at the back of the Service Address by pointing out an orange stake that the Complainant claimed was placed there by a PECO representative who visited the property prior to the installation. Tr. 139-141. Mr. Marfilius acknowledged seeing the stake in the ground but did not know who placed it there or for what purpose. Tr. 140.

The above statement by Mr. Marfilius is perplexing in view of his earlier testimony that typically, a PECO representative visits the location requesting installation of a new service line, marks the location where the installation crew is to put the new line, and prepares instructions with details on the location, length, and type of material to be used. Tr. 111-13. Yet, in the present case, Mr. Marfilius was not able to state whether a PECO representative had visited the Service Address before the installation crew. His testimony is devoid of any indication that the crew was following any prior markings made by a PECO representative, and he was unable to state whether the crew had any written instructions on where to locate the new gas line. Tr. 109-13. In fact, the only map and document that PECO produced, depicting the location of the gas service line in relationship to the other utilities and the Service Address, was prepared after the installation of the line. Tr. 105, PECO Exhibit 2.

The absence of markings and instructions by a PECO representative to the gas installation crew, in addition to the fact that Mr. Peabody used white paint to mark his underground utilities and that PECO uses white paint to mark the proposed location of new facilities, leads me to conclude that Mr. Peabody did mark his underground water line in white paint and that PECO's gas operations crew mistook them for the markings of the proposed location for the new line. This conclusion is further supported by PECO's initial stance that Mr. Peabody had used the wrong paint color to mark his underground utilities, as well as the Company's denial of the Complainant's property damage claim on the grounds that the Complainant had failed to "properly mark" the underground water line. Tr. 22, 92, PECO Exhibit 1.

It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" to its customers. 66 Pa.C.S. § 1501. I find that PECO failed to follow its own procedures regarding the installation of a new gas line. This failure led to the damage of Mr. Peabody's underground water line and is tantamount to a failure to render reasonable service to the Complainant in violation of Section 1501 of the Code. The Commission reached a similar conclusion in *Coger v. Duquesne Light Company*, Docket No. C-2013-2346953 (Final Order entered January 8, 2014). In *Coger*, Duquesne Light Company was found in violation of 66 Pa.C.S. § 1501 for failing to follow its procedures when installing a new service line to Ms. Coger's home. This failure resulted in structural damage to Ms. Coger's residence. The Commission levied a civil penalty against Duquesne for its violation of 66 Pa.C.S. § 1501.

Under Sections 3301(a) and (b) of the Code, the Commission may levy a fine of up to \$1,000 per day for continuing violations of the Public Utility Code. 66 Pa.C.S. § 3301(a),(b). The Commission has set forth, in a statement of policy, the factors and standards for evaluating proceedings involving violations of the Code for purposes of determining appropriate civil penalty amounts. See, 52 Pa.Code § 69.1201(c). These factors and standards are as follows:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may

include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa.Code § 69.1201(c). These factors, relative to this proceeding, are examined below.

First, the evidentiary record collected in this matter does not contain sufficient evidence to conclude that PECO's failure to provide Mr. Peabody with adequate, safe and reasonably continuous service was willfully fraudulent or a misrepresentation. 52 Pa.Code § 69.1201(c)(1).

Second, PECO's failure to comply with 66 Pa.C.S. § 1501 had consequences of a serious nature. It resulted in damages to Mr. Peabody's property and warrants a higher penalty. Complainant Exhibits 1 and 4. 52 Pa.Code § 69.1201(c)(2).

Third, the record in this case supports a finding that the violation of Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, resulted from the Respondent's negligence in following its own procedures regarding the installation of new service lines. 52 Pa.Code § 69.1201(c)(3).

Fourth, no remedial measures were mentioned by PECO witnesses. PECO's position in this case is that the damage to Mr. Peabody's water line resulted from his failure to mark it. Tr. 79, 88-90. Therefore, PECO did not offer to repair or pay for the repair of the water line despite written assurance from its crew foreman, John Ostan, that the Company would reimburse Mr. Peabody for the cost of the repairs. Tr. 18-19, Complainant Exhibit 5. PECO entered no evidence on the record indicating that it has modified or is considering modifying its internal practices and procedures to address the offensive conduct at issue to deter and prevent similar conduct in the future. No revisions to customer instructions were considered by PECO even though the record clearly indicates that the use of white paint to mark underground facilities by PECO customers is confusing, or at least distracting, to an experienced crew member like Mr. Marfilius. 52 Pa.Code § 69.1201(c)(4).

Fifth, the record indicates that PECO's failure to follow its own installation practices only affected the Complainant, although the use of white paint to mark both underground utilities as well as the proposed location of new service lines could be problematic for other customers. 52 Pa.Code § 69.1201(c)(5).

Sixth, the record does not include a history of PECO's past offenses; and seventh, the Commission did not conduct an investigation in this proceeding. 52 Pa.Code § 69.1201(c)(6),(7).

The eighth, ninth and tenth factors are inter-related in this case and they are, respectively: the amount of a civil penalty required to deter future violations; prior Commission decisions in similar cases; and the catch-all "other relevant factors." 52 Pa.Code § 69.1201(c)(8)-(10).

After reviewing the evidence collected in this matter, I conclude that a civil penalty in the amount of \$1,000.00 is appropriate to deter future violations of this nature and to draw the Company's attention toward increased adherence to its installation procedures and more clarity in its instructions to the customers. I note that in *Coger, supra*, the Commission assessed a civil penalty in the amount of \$1,000.00 in connection with the utility's failure to render reasonable service by failing to follow its installation procedures.

Within 30 days of the Commission's Final Order in this case, PECO shall pay a civil penalty in the amount of \$1,000.00 by sending a certified check or money order payable to the Commonwealth of Pennsylvania. In addition, PECO shall cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. § 101 *et seq.*, and the regulations of the Pennsylvania Public Utility Commission, 52 Pa.Code § 1.1 *et seq.*

#### 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 Commission is without power to award monetary damages to a private litigant. *Feingold v. Bell Telephone Co. of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977).

3. The Public Utility Code vests the Commission with jurisdiction to regulate service and facilities of public utilities. 66 Pa. C.S. § 1501 *et seq.*

4. It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" to its customers. 66 Pa.C.S. § 1501.

5. Section 102 of the Public Utility Code, defines "service" as including any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities in the performance of their duties under this part to their patrons, employees, other public utilities, and the public. 66 Pa. C.S. § 102.

6. The Complainant had the burden of proof and successfully carried that burden. 66 Pa.C.S. § 332(a).

7. Under Public Utility Code Sections 3301(a) and (b), the Commission may levy a fine of up to \$1,000 per day for continuing violations of the Public Utility Code. 66 Pa.C.S. § 3301.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Anthony Peabody against PECO Energy Company at Docket No. C-2019-3014030 is granted.
2. That PECO Energy Company shall pay a civil penalty in the amount of One Thousand Dollars (\$1,000.00) by sending a certified check or money order payable to the Commonwealth of Pennsylvania, within thirty (30) days from the entry of the Final Commission Order to:

Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

3. That PECO Energy Company shall cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. § 101 *et seq.*, and the regulations of the Pennsylvania Public Utility Commission, 52 Pa.Code § 1.1 *et seq.*

4. That the Secretary mark this docket closed.

Date: July 8, 2020

\_\_\_\_\_  
/s/  
Eranda Vero  
Administrative Law Judge