

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Guagenti	:	
	:	
v.	:	C-2019-3014185
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

The Complainant filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) alleging that PECO misapplied budget billing to his account and also that PECO threatened to terminate, or had already terminated, his service. This decision dismisses the budget billing portion of the Complainant’s Complaint because he previously filed a Complaint with the Commission raising the same issue, and the Commission issued an order denying his Complaint and request for relief. This Decision also finds that the Complainant failed to sustain his burden of demonstrating that there are incorrect charges on his bills, or that PECO’s termination notices did not adhere to the regulations regarding termination notices at 52 Pa.Code § 56.91.

HISTORY OF THE PROCEEDING

On November 8, 2019, Michael Guagenti (Complainant) filed a Complaint against PECO Energy Company with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the box indicating “[t]he utility is threatening to

shut off my service or has already shut off my service.” The Complainant alleged that PECO misapplied budget billing to his account. The Complainant further alleged that he received a letter in the mail advising he owed \$262.00 because he was no longer participating in budget billing. The Complainant maintained that he was participating in budget billing. Under the “requested relief” section, the Complainant requested that PECO “make my bill right and give me my discount for my budget billing and my CAP and the \$262.00 goes behind the bill and stop sending me shut off letters.”

On November 27, 2019, the Respondent filed an Answer denying all material allegations of fact in the Complaint. The Respondent further answered: that the Complainant established service at 2544 S. Jessup Street, Philadelphia, PA; that the Complainant first enrolled in PECO’s Customer Assistance Program (CAP) on December 29, 2005 and was last re-enrolled on June 7, 2016; that while he was removed from CAP on July 20, 2018 due to not satisfying CAP recertification requirements, he was re-enrolled in CAP on September 6, 2018; that the Complainant currently has an outstanding balance of \$443.40, comprised in part of CAP arrears; and that he is being charged accordingly and correctly. PECO maintains that the Complainant is responsible for his entire balance of \$443.40.

The Respondent also noted that the Complainant filed a similar Complaint with almost identical allegations in 2018, a matter that was under appeal as of the time of the answer (F-2018-3001891). The Respondent indicated that the Complainant filed a formal Complaint against PECO stating that he would like a payment agreement because his budget billing charges were high, and that Administrative Law Judge (ALJ) Darlene Heep dismissed his Complaint on July 31, 2018.

By Corrected Hearing Notice dated December 9, 2019, a Call-In Telephonic hearing was scheduled for January 27, 2020 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on December 9, 2019. The Prehearing Order also advised the parties of the date and time of the scheduled hearing 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 telephonic hearing convened as scheduled on January 27, 2020. Complainant appeared *pro se* and testified. The Complainant submitted a late filed exhibit which will be admitted into the record through this decision. The Respondent also appeared and was represented by Edward T. Fisher, Esq., who presented the testimony of Elsa Leung, a PECO Regulatory Assessor. The Respondent submitted six exhibits in advance of the hearing, three of which were offered and admitted into the record (PECO Exhs. 1, 3 & 4).

The record consists of a 46-page transcript and four exhibits. The record closed on February 24, 2020 upon my receipt of the hearing transcript.

FINDINGS OF FACT

1. The Complainant in this case is Michael Guagenti.
2. The Respondent in this case is PECO Energy Company.
3. The Complainant is a PECO electric customer. Tr. 18.
4. On August 15, 2019, PECO sent the Complainant a ten-day termination notice for a past-due balance of \$174.49, advising that his service may be terminated on or after August 29, 2019 for non-payment. Tr. 33; PECO Exh. 4.
5. When PECO receives a medical certification form from a customer, the company places a hold on the account to stop collection activity. Tr. 32.
6. On August 26, 2019, PECO received a medical certification form from the Complainant. Tr. 32, 34; PECO Exh. 4.

7. Upon receipt of the August 26, 2019 medical certification form, PECO halted collection activity on the Complainant's account until September 18, 2019. Tr. 32, 34; PECO Exh. 4.

8. The Complainant's medical certificate expired on September 18, 2019. Tr. 34; PECO Exh. 4.

9. On September 18, 2019, PECO sent the Complainant a ten-day termination notice for a past-due balance of \$174.97, advising that his service may be terminated on or after October 2, 2019 for non-payment. Tr. 34-35; PECO Exh. 4.

10. On September 23, 2019, PECO received a second medical certification form from the Complainant. Tr. 32, 35; PECO Exh. 4.

11. Upon receipt of the September 23, 2019 medical certification form, PECO halted collection activity on the Complainant's account until October 23, 2019. Tr. 32, 34-35; PECO Exh. 4.

12. The Complainant's September 23, 2019 medical certificate expired on October 23, 2019. PECO Exh. 4.

13. On October 23, 2019, PECO sent the Complainant a ten-day termination notice for a past-due balance of \$179.97, advising that his service may be terminated on or after November 6, 2019 for non-payment. Tr. 35; PECO Exh. 4.

14. On October 30, 2019, PECO received a third medical certification form from the Complainant. Tr. 33; PECO Exh. 4.

15. Upon receipt of the October 30, 2019 medical certification, PECO halted collection activity on the Complainant's account until November 28, 2019. Tr. 33, 35-36; PECO Exh. 4.

16. The Complainant has exhausted all his medical certificate renewals and is not eligible for another medical certificate extension until he pays his past due balance in full. Tr. 40.

17. Each of the termination notices the Complainant received advised him of steps he could follow to avoid termination of service. Tr. 25.

18. The Complainant currently participates in PECO's Customer Assistance Program (CAP). Tr. 37; PECO Exh. 3.

19. PECO did not issue any bills for \$262 to the Complainant in 2019. Tr. 39; PECO Exh. 1.

20. PECO did issue a bill for \$262.35 to the Complainant on February 23, 2018. Tr. 40; PECO Exh. 1.

21. PECO has not issued any other bills to the Complainant for \$262.00. Tr. 40; PECO Exh. 1.

22. The February 23, 2018 bill for \$262.35 would have been addressed as part of the Complainant's previous Complaint at Docket No. F-2018-3001891. Tr. 40.

DISCUSSION

The Public Utility Code, 66 Pa.C.S.A. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

To establish a sufficient case and satisfy the burden of proof, Complainant must show that the Respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v.*

Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). 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, 602 (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*, 364 Pa. 45, 70 A.2d 854 (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*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, 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*, 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).

Complainant's Exhibit 1

During the hearing, the Complainant referenced a "bill" that he received from PECO that he believed to be incorrect. Regarding the amount of this bill, he alternated between saying it was for \$262.00 and \$266.00. Regardless of the amount, he believed it to be incorrect.

Since the Complainant referenced this bill in his Complaint and continually during the hearing, I advised him that I wanted him to submit a copy of this bill. I advised Mr. Fisher that he would have until February 7, 2020 to submit any objections to the admission of Complainant's Exhibit 1 into the record.

On January 30, 2020, the Complainant faxed to my office his proposed exhibit. The document was not a bill as testified to by the Complainant. Instead, it was a Company Utility Report issued to him by PECO on May 30, 2019.

By letter dated February 7, 2020, Mr. Fisher submitted the following objection to the admission of Complainant's Exhibit 1 into the record:

We represent PECO Energy Company in the above-referenced matter. We write in response to the late filed exhibit sent to you by Complainant. We object to the admission of this exhibit into the record, as Mr. Guagenti referenced a PECO bill during the telephonic hearing that occurred on January 27, 2020, stating that he was going to send a bill to you to be included in the record. Mr. Guagenti did not send a bill, but rather sent a Utility Company Report, and he did not mention this Utility Company Report during the telephonic hearing. Thus, PECO did not have a chance to cross-examine Mr. Guagenti on this Utility Company Report. Therefore, PECO objects to the admission of this exhibit into the record.

PECO February 7, 2020 letter.

While Mr. Fisher is correct that the Complainant did not correctly identify his proposed exhibit during the hearing, the Complainant did offer testimony as to what was included in this document. Mr. Fisher was given the opportunity to cross-examine the Complainant on all his testimony and declined:

The Court: Mr. Fisher anything on cross?

Mr. Fisher: No Your Honor I don't have any questions on cross.

Tr. 27. Mr. Fisher could have asked some questions to elicit additional information regarding what the Complainant claimed was a bill but did not. Moreover, the document did reference a billing amount of \$262.88, as follows:

Your PUC appeal is still pending and will be notified when a decision has been rendered. We have suspended \$262.88 of your billing while this appeal is in progress. You can contact the PUC with your BCS# to get an update on your appeal.

Complainant Exh. 1.

Since the Complainant offered testimony regarding the contents of this document, and because the Respondent was provided an opportunity to cross-examine the Complainant on the testimony he provided regarding this document, and since the document itself was issued to the Complainant by the Respondent, I will overrule Mr. Fisher's objection. The Complainant's Exhibit 1 is admitted into the record of this proceeding.

Budget Billing/Incorrect Billing

The Complainant asserted that PECO billed him inaccurately for service at the service address. The burden of proof for "high bill" complaints has been explained in *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980), and its progeny. In *Waldron*, the Commission adopted the Michigan Public Service Commission's (PSC's) policy announced in *Hallifax v. O & A Electric Co-Op*, Case No. U-5825, May 1979, which stated that, while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Commission stated that it will also consider the following factors: the billing history of the Complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100.

Consistent with the Commission's holding in *Charisse Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010), the *Waldron* Rule allows a Complainant to establish a *prima facie* case in a "high bill" complaint by showing that

the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed or by providing other relevant evidence showing that the disputed bill is unreasonably high. In evaluating a “high bill” complaint, the Commission may consider such evidence as “the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), and any other relevant facts or circumstances that come to light during the proceeding.” *Id.* at 6 (emphasis added); *see also Nehemiah B. Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011) (holding that limiting the *Waldron* Rule to the three factors is too limiting).

In his Complaint and during the hearing, the Complainant argued that PECO billed him incorrectly for \$262.00 after it removed him from budget billing.¹ Tr. 20. The Complainant offered the following testimony in support of his Complaint:

Mr. Guagenti: I get a letter in the mail saying my budget billing went up to two – I mean my bill went up to 266 – it was and I got proof of that here.
So I called up on the phone – spoke to a lady on the phone. Explained to her I didn’t want to get taken off budget billing, I say.

She says well you said yes. No I did not say that. She says we can’t put you on budget billing until you pay the full. I hung up on her.

I waited about two days later because I was frustrated and all. I call the phone. I ask for the supervisor. Supervisor gets on the phone and tells me, who told you that.

I said I don’t recall their name. She says, no, I can put you back on budget billing. I say okay. I waited until I got my next bill in the mail and I seen 262 still.

¹ During the hearing, regarding the amount of the bill, the Complainant alternated between saying it was \$262.00 and \$266.00.

So I called up and I spoke to an operator on the phone for PECO, saying I want to speak to somebody about a dispute.

The lady gets to the phone, very cranky and ignorant, saying I don't see no dispute, what's your problem and all ignorant to me.

She says, oh I don't see no dispute but I'll put you forward but you are not going to get it. She goes – she says what's your problem and I told her would you be happy if I put the 262 on the back of the bill?

I said, well, yeah sure, of course, I goes – make me look bad and my bill is going higher and higher and higher with the late charge and everything else. She puts me in the back of the bill for maybe one or two cycles of my bill, which is two bills.

After that now they start coming for me again. Now they are sending me shut off notices – and I was only allowed to use three doctor notices, which they never told me until the lady got on the phone and said I'm going to be nice.

I told my customers you are only allowed three a year. I said I never knew that. That's where I stand at. I never wanted to get taken off budget billing. The lady made a mistake and took me off.

Tr. 20-22. It was unclear what the Complainant meant by the “back of the bill,” so he offered the following explanation:

The Court: What do you mean by putting 262 in the back of the bill? I don't understand.

Mr. Guagenti: It all goes goes on the back of the bill. It stays on your bill but you don't see it like otherwise. But if I was to call and say I

want to get taken off budget billing that's the money I have to pay back. Like a bank account. Otherwise it's just there. They're helping you otherwise. It's called budget billing.

The Court: So you are referring to the deferred amount?

Mr. Guagenti: Exactly. So I pay my bill constantly on time and the 262 kept coming up. I never wanted to get taken off budget billing. I never said that. I can't afford the 104.

Tr. 22.

In further support of his argument, the Complainant submitted an exhibit that he characterized as a bill. However, the document the Complainant submitted is not a bill. As previously noted, the document is a PECO Utility Report addressed to the Complainant, that provided as follows:

Your PUC appeal is still pending and will be notified when a decision has been rendered. We have suspended \$262.88 of your billing while this appeal is in progress. You can contact the PUC with your BCS# to get an update on your appeal.

Complainant Exh. 1.

The "bill," and the general concerns at the center of the Complainant's Complaint, stem directly from his prior appeal at Docket No. F-2018-3001891. As previously noted, ALJ Heep was the presiding officer in the Complainant's prior appeal, and on November 13, 2018, ALJ Heep issued an Initial Decision that addressed, in part, the Complainant's concerns about being removed from budget billing:

In the Complaint, Mr. Guagenti stated that he was removed from Budget Billing without his request. He testified that he called PECO to say that he could not afford a proposed increase in Budget Billing and was removed from the Budget Billing program although he did not ask to be removed. He also testified that he was told that he had to pay the balance

accumulated when he was not on Budget Billing, about \$200.00, before he could be placed back on Budget Billing. He further testified that he called PECO again a few days later and informed the Company that he was on disability and would like to be placed on Budget Billing. According to the Complainant, a customer service representative placed him back on Budget Billing and informed him that he did not have to pay the \$200.00 balance first. (Tr 8-9; 26-27).

Guagenti v. PECO, Docket No. F-2018-3001891, Initial Decision at 8.

By Initial Decision issued on November 21, 2018, ALJ Heep dismissed the Complainant's Complaint against PECO at Docket No. F-2018-3001891 in its entirety. The Complainant filed Exceptions on December 4, 2018, and PECO filed Reply Exceptions on December 14, 2018. By Opinion and Order entered on December 19, 2019, the Commission denied the Complainant's Exceptions, adopted ALJ Heep's Initial Decision, and dismissed the Complainant's formal Complaint at Docket No. F-2018-3001891. *Guagenti v. PECO*, Docket No. F-2018-3001891 (Opinion and Order entered December 19, 2019).

The Complainant clearly raised the issue of incorrect billing and removal from budget billing previously, and the Commission issued a final Order dismissing his Complaint on this issue. The doctrine of *res judicata* applies to cases brought before the Commission.

O'Toole v. Bell Telephone Company of Pennsylvania, Inc., 77 Pa. PUC 98 (1992).

Res judicata, which is also known as claim preclusion is the concept that a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the same parties. *Hopewell Estates, Inc. v. Kent*, 646 A.2d 1192 (Pa.Super. 1994). For the doctrine of *res judicata* to apply, four conditions must be met: (1) identity of issues, (2) identity of causes of action, (3) identity of persons and parties to the action, and (4) identity of the quality and capacity of the parties suing or sued. *Day v. Volkswagenwerk Aktiengesellschaft*, 474 A.2d 1313 (Pa.Super. 1983).

In addition, to the doctrine of *res judicata*, the Complaint in this case may be barred by 66 Pa.C.S. § 316 which states in part:

Whenever the [C]ommission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review....

Having briefly explained the doctrine of *res judicata* and set forth the statute at 66 Pa.C.S. § 316, and also reviewed the facts set forth in the Complainant's prior Complaint at Docket No. F-2018-3001891, I conclude that the Complainant's Complaint in this case as it relates to his incorrect bill resulting from his removal from budget billing should be barred by *res judicata* because there is identity of issues, identity of causes of action, identity of persons and parties to the action, and identity of the quality and capacity of the parties suing or sued between the proceeding docketed at F-2018-3001891 and the Complaint in this proceeding.

The Complainant's budget billing issues in the proceeding docketed at F-2018-3001891 and the Complaint in this proceeding are identical. The budget billing issues in both proceedings revolve around being removed from budget billing and an approximate \$200 bill PECO asked the Complainant to pay to be placed back on budget billing.

The causes of action are identical since both are Complaints before the Commission involving service to the same address and the Respondent's budget billing program. Similarly, the parties are identical, and the quality and capacity of the parties suing are identical. Since all four of these conditions are met, *res judicata* should apply to bar this portion of the Complainant's Complaint in this proceeding.

The Commission's December 19, 2019 Final Order at F-2018-3001891, dismissing the Complainant's Complaint was a decision in favor of the Respondent and should not be subject to attack in a future proceeding. The Complainant's budget billing claims are barred and dismissed.

Moreover, the Complainant did not offer any other testimony regarding incorrect billing. As such, the Complainant clearly failed to meet his burden of demonstrating that any

bills issued to him by PECO were incorrect. Accordingly, the Complainant's Complaint regarding incorrect billing is denied.

Termination of Service

The Complainant also indicated that PECO has issued him several termination notices, the last of which he testified he received in October 2019. Tr. 24. Although the Complainant did not present a copy of any of these termination notices for my consideration, he did testify that the notices he received advised him of steps he could follow to avoid termination. Tr. 25. The Complainant further testified that PECO never terminated his service because he was able to supply medical certificates and filed a PUC complaint to stop termination. Tr. 24. The Complainant did not offer any additional testimony regarding PECO's termination notices. Based on the limited testimony provided by the Complainant, the Complainant did not meet his burden of demonstrating that PECO improperly issued him any service termination notices, or that the contents of those notices failed to meet the notice requirements set out in 52 Pa.Code § 56.91.

As such, the Complainant's Complaint is denied in its entirety.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).
3. 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.

4. The doctrine of *res judicata* applies to cases before the Commission. *O'Toole v. Bell Telephone Company of Pennsylvania, Inc.*, 77 Pa. PUC 98 (1992).

5. For the doctrine of *res judicata* to apply, four conditions must be met: (1) identity of issues, (2) identity of causes of action, (3) identity of persons and parties to the action, and (4) identity of the quality and capacity of the parties suing or sued. *Day v. Volkswagenwerk Aktiengesellschaft*, 474 A.2d 1313 (Pa.Super. 1983).

6. Whenever the Commission shall make any rule, regulation, finding, determination or order, that rule, regulation, finding, determination or order is *prima facie* evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review. 66 Pa.C.S. § 316.

7. The Complainant's budget billing claims are barred by the doctrine of *res judicata*.

8. The Complainant failed to sustain his burden of demonstrating that there are incorrect charges on his bills.

9. The Complainant failed to sustain his burden of establishing that PECO improperly issued him service termination notices and also failed to demonstrate that PECO's termination notices did not adhere to the regulations regarding the contents of termination notices at 52 Pa.Code § 56.91.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant's Exhibit 1 is admitted into the record;

