

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Hillman	:	
	:	
v.	:	F-2020-3019051
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complainant’s formal Complaint because he failed to sustain his burden of proof to establish that PECO Energy Company did not properly investigate his claims of foreign wiring or foreign load at the Service Address.

HISTORY OF THE PROCEEDING

On February 25, 2020, Michael Hillman (Complainant or Mr. Hillman) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant indicates that there is a foreign load issue at the Service Address which PECO has failed to properly address and resolve. He contends there are billing issues related to the ongoing foreign load issue at the Service Address.

On March 23, 2020, Respondent filed an Answer denying the material allegations of the Complaint.

By Call-In Telephone Hearing Notice dated May 11, 2020, a hearing was scheduled for June 19, 2020, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on May 13, 2020. The Prehearing Order directed the parties to comply with various procedural requirements and also 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.

On June 9, 2020, the Complainant contacted my office regarding his Complaint and requested a continuance in writing. The Respondent did not object to the Complainant's request. I granted the continuance request by Order dated June 16, 2020.

By Telephonic Hearing Cancellation/Reschedule Notice dated June 16, 2020, the matter was rescheduled for an initial call-in telephonic hearing on August 18, 2020, at 10:00 a.m.

The hearing convened as scheduled on August 18, 2020. Complainant appeared *pro se* and testified. The Complainant presented eight exhibits which were entered into the record at the hearing. Respondent appeared and was represented by Khadijah Scott, Esq., who presented the testimony of Mary McQuilkin, David Voigtsberger, and Renee Tarpley. Respondent offered five exhibits which were all admitted into evidence.

The hearing resulted in a 101-page transcript. The record closed on September 10, 2020, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Michael Hillman, who resides at 301 Lincoln Avenue, Apartment No. 1, Collingdale, Pennsylvania (Service Address), where the Complainant receives both electric and gas utility service from the Respondent. Tr. 9.

2. The Respondent in this proceeding is PECO Energy Company.
3. Complainant moved into the Service Address in October 2015. Tr. 13.
4. The Service Address is part of an apartment building with five units on two floors. Tr. 13, 17.
5. The Complainant rents a unit at the Service Address. Tr. 13.
6. On March 27, 2019, PECO sent high bill technician Mary McQuilkin to the Service Address to investigate the Complainant's allegation of foreign piping and foreign wiring. Tr. 53; PECO Exh. 3.
7. Ms. McQuilkin checked the meters and verified the readings on the electric and gas meters. Tr. 54-55; PECO Exh. 3.
8. Ms. McQuilkin dropped the load and idled the meters and found that the motor for the heater and gas usage for the common hallway are connected to the meters for the Complainant's apartment. Tr. 55-56, 57; PECO Exh. 3.
9. Ms. McQuilkin did not perform passing load tests for the electric or the gas service. Tr. 56; PECO Exh. 3.
10. On March 28, 2019, PECO sent a letter to Complainant indicating that the Complainant's gas and electric service accounts were transferred into an account in his landlord's name. Tr. 59; PECO Exh. 3.
11. On April 10, 2019, PECO high bill technician David Voigtsberger visited the Service Address to determine whether the landlord had made repairs to eliminate the foreign wiring and foreign piping. Tr. 64; PECO Exh. 4.

12. Mr. Voigtsberger found that the repairs had been made and the foreign wiring and foreign piping was corrected. Tr. 65; PECO Exh. 4.

13. Mr. Voigtsberger found that the radiator in the common hallway had been removed, capped off and was no longer connected to the Complainant's meter. Tr. 68, 70; PECO Exh. 4.

14. The gas and electric utility service for the Service Address was placed back into the Complainant's name on April 10, 2019. Tr. 68-69, 85; PECO Exh. 4.

15. The Complainant's current account balance is \$1,965.01 Tr. 85; PECO Exh. 2.

16. The Complainant has not made any payments on his account since it was transferred back to his name on April 10, 2019. Tr. 85-86; PECO Exh. 2.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 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. § 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 Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa.P.U.C. 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 Transp. 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. Pa. 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).

Foreign Wiring and Foreign Piping

The present case raises the issue of whether Respondent acted properly in placing the balance of the account for electric and gas service for the Service Address in the Complainant's landlord's name. In doing so, Respondent followed 66 Pa.C.S. § 1529.1(b) of the Public Utility Code, which provides in pertinent part that, "if the mobile home 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." (emphasis added). See also, *Del Vecchio v. PPL Elec. Utils. Corp.*, Docket No. Z-01464793 (Order entered September 13, 2005). In *Del Vecchio*, the Commission found the utility violated

66 Pa.C.S. § 1529.1, because it failed to transfer complainant's electric account to the landlord when it found foreign load on complainant's meter.

Hence, a plain reading of 66 Pa.C.S. § 1529.1 holds a property owner financially responsible for a tenant's entire account once foreign load/shared meter is verified on the tenant's utility service. *Santos v. Metropolitan Edison Co.*, Docket No. C-00967757 (Order entered August 7, 1997). Upon finding foreign load, the utility must list the account, including any arrearage, in the name of the landlord. The landlord bears the responsibility of paying the utility bills until the foreign load is corrected. Once the foreign load is corrected by the landlord and verified by the utility, the utility places the account back in the name of the tenant. However, the arrearage, if any, remains with the landlord. *Ace Check Cashing Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (Order entered May 21, 2010). There is no *de minimus* exception; any dispute between the landlord and tenant regarding the financial responsibilities of the parties is a matter to be resolved in the Court of Common Pleas and is outside this Commission's jurisdiction. *Id.*

While the Complainant contends that the foreign wiring and foreign piping issues at the Service Address have not been resolved, I am not persuaded by his testimony. It is well settled that "[m]ere bald assertions ... do not constitute evidence." *Mid-Atlantic Power Supply Ass'n of Pa. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000)(citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987)); see also, *Steffy's Pattern Shop v. Frontier Commc'ns of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000). The Complainant did not present any evidence beyond his testimony that he believed that there were still foreign wiring and foreign piping issues at the Service Address.

Further, PECO presented the testimony of two high bill technicians who visited the Service Address. First, high bill technician Mary McQuilkin testified that she visited the Service Address on March 27, 2019, to investigate the Complainant's allegation of foreign piping and foreign wiring. Tr. 53; PECO Exh. 3. Ms. McQuilkin checked the meters and verified the readings on the electric and gas meters. Tr. 54-55; PECO Exh. 3. She dropped the

load and idled the meters and found that the motor for the heater and gas usage for the common hallway are connected to the meters for the Complainant's apartment. Tr. 55-56, 57; PECO Exh. 3. Ms. McQuilkin did not perform passing load tests for the electric or the gas service because she had found the foreign wiring and foreign piping. Tr. 56; PECO Exh. 3. On March 28, 2019, PECO sent a letter to Complainant indicating that the Complainant's gas and electric service accounts were transferred into an account in his landlord's name. Tr. 59; PECO Exh. 3.

Then on April 10, 2019, PECO high bill technician, David Voigtsberger, visited the Service Address to determine whether the landlord had made repairs to eliminate the foreign wiring and foreign piping. Tr. 64; PECO Exh. 4. Mr. Voigtsberger found that the repairs had been made and the foreign wiring and foreign piping was corrected. Tr. 65; PECO Exh. 4. Mr. Voigtsberger found that the radiator in the common hallway had been removed, had been capped off, and was no longer connected to the Complainant's meter. Tr. 68, 70; PECO Exh. 4. Consequently, PECO placed the gas and electric utility service for the Service Address back into the Complainant's name on April 10, 2019. Tr. 68-69, 85; PECO Exh. 4.

Ms. Renee Tarpley testified for PECO that the Complainant's current account balance is \$1,965.01 Tr. 85; PECO Exh. 2. Additionally, she noted that the Complainant has made no payments on his account since electric and gas service was transferred back to his name on April 10, 2019. Tr. 85-86; PECO Exh. 2.

Based on all of the above, it is clear that PECO followed the Commission's statute, regulations and orders related to the foreign wiring and foreign piping at the Service Address. When foreign wiring and piping was discovered, the Complainant's account was placed in the landlord's name. Further, when the Company revisited the Service Address, it found that the foreign wiring and piping issues at the Service Address were resolved; therefore, it placed the account for gas and electric service back in the Complainant's name which is what is required by law. *See Ace Check Cashing Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (Order entered May 21, 2010). The Complainant has not presented any substantial evidence to establish his burden of proof in this matter and his Complaint must be dismissed.

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 Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

4. Section 1529.1(b) of the Public Utility Code provides in pertinent part that, "if the mobile home 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." 66 Pa.C.S. § 1529.1(b).

5. The Commission found that a utility violated 66 Pa.C.S. § 1529.1 when it failed to transfer a customer's electric account to the landlord when it found foreign load on the customer's meter. *Del Vecchio v. PPL Elec. Utils. Corp.*, Docket No. Z-01464793 (Order entered September 13, 2005).

6. Once the foreign load is corrected by the landlord and verified by the utility, the utility places the account back in the name of the tenant. *Ace Check Cashing Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (Order entered May 21, 2010).

7. It is well settled, "[m]ere bald assertions ... do not constitute evidence." *Mid-Atlantic Power Supply Ass'n of Pa. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d

