

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Living Being Solomon	:	
	:	
v.	:	F-2020-3019097
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complaint of Living Being Solomon because he failed to prove that the refusal of PECO Energy Company to accept his submitted form of payment was a violation of the Public Utility Code, a Commission regulation or Order. The Complaint is also denied as it relates to the Complainant’s claims of termination of service.

HISTORY OF THE PROCEEDING

On February 29, 2020, Living Being Solomon (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed checkmarks in the boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service,” “[i]ncorrect charges are on my bill,” and “[o]ther.” Under the “requested relief” section of the Complaint, the Complainant provided the following statement to explain his Complaint:

I have proven and explained to PECO that I am the living being and that this corporation (PECO) is sending statements to the living being Solomon who is the Authorized Representative for the MILLER corporation/estate. PECO must send me a true bill as oppose to the statements they have sending. They must do whats (sic) lawful. Also, I sent PECO a letter of credit.

On March 24, 2020, the Respondent filed an Answer denying all material allegations of fact in the Complaint. PECO noted that the Complainant attached a letter of credit, Government Obligations Remittance Coupon to his Complaint to pay his utility bill. PECO averred that the company only accepts cash, certified checks, money orders, and valid bank checks in payment of utility accounts. PECO maintained that it will not apply as credit to any customer account non-negotiable documents, sight drafts, 1040 Forms, Acceptance for Value, UCC Certified Tender of Payments, Promissory Notes or other UCC documents.

PECO further averred: that the Complainant established service at 5357 Belfield Avenue, Philadelphia, PA 19144 (service address) under account number 31972-98028; that on January 30, 2019, the Complainant paid \$1,170.96 via electronic check to PECO Energy; that on February 5, 2019, the Complainant's check was returned for insufficient funds; that on March 26, 2019, the Complainant contacted PECO to dispute charges on his bill that he stated he previously paid; that on April 1, 2019, the Complainant filed an informal Complaint with the Commission's Bureau of Consumer Services (BCS) at case number 003686375, stating that PECO refused to accept his Letter of Credit, Government Obligations Remittance Coupon, Tender of Payment of \$1,000.00; and that on December 20, 2019, the BCS issued a decision dismissing the Complainant's informal complaint. PECO noted that the Complainant's past due balance totaled \$1,315.36, and that it properly refused his non-negotiable documents to pay his electric service charges. PECO maintained that if the Complainant does not pay his bill with an acceptable form of payment and the account goes into the collections process, his service may be terminated.

Lastly, PECO noted that it sent the Complainant a ten-day termination notice on November 6, 2019, for a past due balance of \$90.39, and that it made a 72-hour notice call to the Complainant. PECO indicated that the Complainant's account entered winter protection and that he

does not have a pending termination notice from PECO. PECO requested that the Commission dismiss the Complaint.

By Corrected Call-In Telephone Hearing Notice dated July 6, 2020, a hearing was scheduled for August 5, 2020, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on July 9, 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.

The parties called in for the hearing as scheduled on August 5, 2020. At the outset of the hearing, the Complainant advised that he was in his car on his way to Maryland to visit a relative who was experiencing a medical emergency. The Complainant requested a continuance of the scheduled hearing. Khadijah Scott, Esq., counsel for PECO, advised that PECO did not oppose the requested continuance. I granted the Complainant's request on the record and memorialized it in my Order Granting Complainant's Request for Continuance dated August 5, 2020.

By Call-In Telephone Hearing Notice dated August 5, 2020, a further call-in telephonic hearing was scheduled for October 1, 2020, at 10:00 a.m.

The further call-in telephonic hearing convened as scheduled on October 1, 2020. The Complainant appeared *pro se* and testified. The Complainant offered two exhibits which were submitted after the hearing. They will be admitted into the record through this Initial Decision.¹ The Respondent also appeared and was represented by Khadijah Scott, Esq., who presented the testimony of Renee Tarpley, a PECO Senior Regulatory Assessor. The Respondent submitted five exhibits, all of which were admitted into the record (PECO Exhs. 1-5).

¹ Counsel for PECO was given until October 6, 2020 to object to the admission of the Complainant's exhibits into the record. Counsel for PECO did not object to the admission of these two exhibits.

The record consists of a 55-page transcript and seven exhibits. The record closed on November 12, 2020, when the Transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant in this proceeding is Living Being Solomon.
2. The Respondent in this proceeding is PECO Energy Company.
3. The Complainant's Complaint concerns his PECO account for service at 5357 Belfield Avenue, Philadelphia, PA 19144 (service address). Tr. 11.
4. The Complainant has residential electric service at the service address. Tr. 37; PECO Exh. 1.

Form of Payment

5. On occasion, the Complainant has paid his PECO bills with money orders. Tr. 16-17.
6. On an unspecified date, the Complainant attempted to pay the balance on the account with a "Tender of Payment Offering." Tr. 14; Comp. Exh. 2.
7. PECO does not consider the "Tender of Payment Offering" submitted by the Complainant to be an acceptable form of payment. Tr. 38; Comp. Exh. 2.
8. PECO considers cash, money orders, certified checks, and credit card payments to be acceptable forms of payment. Tr. 38.

9. PECO subsequently sent the Complainant a letter indicating that the Company does not accept “Tender of Payment Offering” documents as a form of payment. Tr. 15-16, 28-29, 32, 38.

Termination of Service

10. On August 1, 2019, PECO issued the Complainant a shut-off notice for a past due amount of \$152.75. Tr. 44; PECO Exh. 5.

11. On August 12, 2019, PECO provided the Complainant with 72-hour notice of the pending termination. PECO Exh. 5.

12. On August 20, 2019, PECO terminated the Complainant’s electric service for non-payment of the \$152.75 past due amount. Tr. 44; PECO Exh. 5.

13. PECO restored the Complainant’s service that same day and his account was removed from collections. Tr. 23; PECO Exh. 5.

Current Balance

14. On February 14, 2020, the Complainant filed a bankruptcy petition. Tr. 18-19.

15. At the time the Complainant filed his bankruptcy petition, his pre-petition debt with PECO totaled \$1,287.92. Tr. 39; PECO Exh. 4.

16. On an unspecified date, the Complainant’s \$1,287.92 pre-petition debt was discharged through his bankruptcy petition, and he is no longer responsible to pay this amount to PECO. Tr. 39; PECO Exh. 4.

17. For the 12-month period prior to the date of the hearing, the Complainant made only two payments towards his account for service that were accepted by PECO: October 10, 2019, for \$104.96 and November 18, 2019, for \$90.39. Tr. 37-38; PECO Exh. 1.

18. The Complainant acknowledged that he is not currently paying his PECO bills. Tr. 17-18.

19. As of the date of the hearing, the Complainant's balance totaled \$752.97. Tr. 37; PECO Exh. 1.

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, the 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, the 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. PUC 196 (1990), *Feinstein v. Phila. 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 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 & W. Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemp't Comp. Bd. of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't of Pub. Welfare, White Haven Cntr.*, 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).

Form of Payment

PECO, like all Commission-regulated public utilities, is mandated to provide reasonable customer service:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501. The Commonwealth Court has cautioned that the Commission may not sustain a complaint pursuant to Section 1501 unless it finds that a utility has violated a duty to render reasonable and reliable service. *W. Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa.Cmwlth. 1984). The Commission has stated that a utility is not mandated to furnish perfect service:

[Section 1501] does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.

Re Metro. Edison Co., 80 Pa. PUC 663, 672 (1993). Thus, the test to determine the adequacy of a utility's service and facilities is that of reasonableness. *Scherich v. Verizon Pa. Inc.*, PUC Docket Nos. C-2008-2061244, C-2008-2068818 (Final Order January 28, 2010). This is also the test to determine the adequacy of a utility's response to customer service complaints, as well as repairs made to its facilities. *Id.*

The Commission's regulations do not specifically address the forms of payment a utility is required to accept from a customer as payment for services rendered. However, the regulations relating to termination note that a customer may avoid termination if "payment in full is tendered in *any reasonable manner...*" 52 Pa.Code § 56.94(1) (emphasis added). Moreover, the Commission has determined that neither Section 1501 of the Code, nor Commission Regulations, require that in order to provide reasonable and reliable service, a utility must accept as payment on an account any and all legitimate or self-proclaimed forms of payment. *Coppedge v. PECO Energy Co.*, Docket No. F-2014-2406180 (Final Order Entered January 29, 2015) (*Coppedge*).

In the present case, the Complainant attempted to pay one of his PECO bills with a "Tender of Payment Offering." The Complainant argued that by providing this "Tender of Payment Offering" to PECO he was actually giving them money because "everything is a government obligation." Tr. 17. The Complainant explained his argument as follows:

Complainant: On this estate – I'm going to explain something to you. On this estate, okay, these aren't bills, these are – these are statements. These are prepaid statements. Okay. So, I've done some research on this stuff, so I know what I'm talking about. You are the Judge, I'm not stepping on your feet, but I've done some research. These aren't bills, they are statements. Those are prepaid statements, statements already been paid. They're double-dipping. That's exactly what – if that's what you call a bill. It's just double-dipping.

And second, I – I’m also a secure party. Okay. This is on the county records, this is on the state and government level at the same time. I’m a secure party. I pay nothing. Okay. These are government obligations, number one. Okay.

These statements are government obligations. How do I know that? Because when you look down at the bottom of the statement, it tells you the date and how much they took from your credit account. Okay. And now that’s double-dipping and that’s what you’re here for, so you have to – they’re double-dipping - .

Tr. 20. The Complainant acknowledged that following his submission of this “Tender of Payment Offering” to pay his bill, PECO issued him a letter advising that they do not accept a “Tender of Payment Offering” as a form of payment. Tr. 15-16.

Additionally, the Complainant testified that his PECO balance was discharged through his bankruptcy petition, though he was not sure how much of his balance was discharged. Lastly, the Complainant acknowledged that he is not currently paying his PECO bills. Tr. 17-18.

PECO’s witness responded that PECO accepts cash, money orders, certified checks, and credit card payments as suitable forms of payment. Tr. 38. PECO’s witness further testified that PECO does not consider the “Tender of Payment Offering” submitted by the Complainant to be an acceptable form of payment. Tr. 38.

Regarding the Complainant’s bankruptcy petition and his current balance, PECO’s witness testified that at the time the Complainant filed his bankruptcy petition, his pre-petition debt with PECO totaled \$1,287.92. Tr. 39; PECO Exh. 4. As a result of the Complainant’s bankruptcy filing, his \$1,287.92 pre-petition debt was discharged, and he is no longer responsible to pay this amount to PECO. Tr. 39; PECO Exh. 4. PECO’s witness explained that for the 12-month period prior to the date of the hearing, the Complainant made only two payments towards his account for service that were accepted by PECO: October 10, 2019, for \$104.96 and November 18, 2019, for \$90.39. Tr. 37-38; PECO Exh. 1. As of the date of the hearing, the Complainant’s balance totaled \$752.97. Tr. 37; PECO Exh. 1.

As previously noted, the Commission determined in *Coppedge* that neither Section 1501 of the Code, nor Commission Regulations, require that in order to provide reasonable and reliable service, a utility must accept as payment any and all legitimate or self-proclaimed forms of payment. Therefore, PECO is not required to accept the Complainant's "Tender of Payment Offering" as a form of payment towards the account for service at the service address. Moreover, the Complainant did not offer anything to demonstrate that PECO's policy of only accepting cash, money orders, certified checks and credit card payments as suitable forms of payment was unreasonable or in violation of the Public Utility Code or any Commission Regulation. The Complainant must submit an acceptable form of payment to PECO to settle his bills or he risks PECO terminating his service for non-payment. Accordingly, the Complainant's Complaint on this issue is dismissed.

Termination of Service

The Complainant also raised termination of service as an issue in his Complaint. During the hearing, the Complainant offered testimony indicating that PECO terminated his electric service for a period of 5-minutes, and that this brief termination was due to a clerical error. The Complainant testified that PECO did issue him a termination notice in advance of this brief termination. However, the Complainant did not present a copy of this termination notice for my consideration, nor did he offer any additional testimony about the termination notice or the brief termination. 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, that the contents of those notices failed to meet the notice requirements set out in 52 Pa.Code § 56.91, or that his brief termination was improper.

Accordingly, 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.A. § 701.

2. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S.A. § 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. Neither Section 1501 of the Code, nor Commission Regulations, require that in order to provide reasonable and reliable service, a utility must accept as payment on an account any and all legitimate or self-proclaimed forms of payment. *Coppedge v. PECO Energy Co.*, Docket No. F-2014-2406180 (Final Order Entered January 29, 2015).

5. The Complainant failed to sustain his burden of demonstrating that PECO's refusal to accept his submitted form of payment was a violation of the Public Utility Code, a Commission regulation or Order.

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant's Exhibits 1 and 2 are admitted into the record of this proceeding;

2. That the Complaint of Living Being Solomon against PECO Energy Company at Docket No. F-2020-3019097 is denied; and

3. That the docket at Docket No. F-2020-3019097 be marked closed.

Date: February 12, 2021

/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge