

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Regina Szczesniak	:	
	:	
v.	:	F-2020-3022040
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants the Formal Complaint (Complaint) of Regina Szczesniak (Ms. Szczesniak or Complainant) against PECO Energy Company (PECO or Respondent) upon finding that the Complainant successfully carried her burden of proving that PECO failed to provide her with safe, adequate, and reasonable service.

**HISTORY OF THE PROCEEDING**

On August 30, 2020<sup>1</sup>, the Complainant filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO alleging that PECO failed to perform a proper inspection of the Service Address after a high bill complaint in 2016, and therefore, failed to discover the foreign load that was ultimately found at the Service Address in 2019. The Complainant seeks reimbursement for all bills since the original inspection in 2016.

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<sup>1</sup> The Complaint was served on the Respondent on September 22, 2020.

On October 9, 2020, the Respondent filed an Answer to the Complaint denying all material allegations of fact. In its Answer, PECO alleges that on May 11, 2016, a technician visited the property and was unable to gain access for a foreign wiring check and advised the Complainant that she could call to schedule another visit once access was obtained by the Complainant. PECO further alleges that the Complainant never rescheduled a visit until August 7, 2019, when a foreign load was discovered at the Service Address. PECO requests that the Complaint be dismissed.

By Initial Call-In Telephonic Hearing Notice dated October 16, 2020, a telephonic hearing was scheduled for December 16, 2020, at 10:00 a.m., and the matter was assigned to me. A prehearing order dated November 9, 2020, was issued setting forth various procedural rules that would govern that hearing.

On December 16, 2020, the hearing convened as scheduled. The Complainant appeared *pro se* and testified on her own behalf. PECO was represented by Khadijah Scott, Esquire. PECO presented the testimony of Thomas Lerro, Senior Field Foreman for the High Bill Group, and Dana McCollum, Regulatory Assessor. PECO also offered five exhibits which were entered into the record.

The record closed on January 5, 2021, upon submission of the 82-page transcript to the Commission.

#### FINDINGS OF FACT

1. The Complainant is Regina Szczesniak. Tr. 4.
2. The Respondent is PECO Energy Company. Tr. 5.
3. The Service Address is 210-A, West Bristol Road, Warminster, PA. Tr. 5.

4. The Service Address is one of four units in a large house with a four-bay garage behind it. Tr. 6.

5. The Complainant began leasing the Service Address in October of 2015, and being an existing PECO customer, had her electric service transferred to the new address. Tr. 6-7; PECO Exh. 9.

6. The Complainant called PECO on April 13, 2016 with a high bill complaint and concerns about foreign wiring. Tr. 8; PECO Exh. 9.

7. Margaret (Peg or Peggy) O'Donnell was a high bill field inspector at PECO in 2016. Tr. 41; PECO Exhs. 5, 9.

8. Ms. O'Donnell was a 45-year employee who did nothing but high bills most of her career. Tr. 54.

9. Ms. O'Donnell is now retired and was unable to be contacted for this hearing. Tr. 41-42.

10. Ms. O'Donnell attempted to inspect the Service Address on April 27, 2016, but left without conducting an inspection and recorded her visit as a missed call. Tr. 8, 26; PECO Exh. 9.

11. The Complainant was present at the Service Address and available for the April 27, 2016, attempted inspection, but she saw Ms. O'Donnell already driving away when she answered Ms. O'Donnell's call to her from the driveway. Tr. 8, 26.

12. On May 4, 2016, the Complainant called PECO to reschedule an inspection and requested a different inspector than Ms. O'Donnell. PECO Exh. 9.

13. Thomas Lerro is employed by PECO as a Senior Field Foreman for the High Bill Group. Tr. 33.

14. On May 4, 2016, Mr. Lerro instructed that the inspection be performed by Aaron Saunders and not Ms. O'Donnell. PECO Exh. 9.

15. On May 11, 2016, Ms. O'Donnell returned to the Service Address to perform the high bill inspection. Tr. 10, 35; PECO Exhs. 5, 9.

16. Ms. O'Donnell concluded that she could not check for foreign wiring because she did not have access to the rest of the property. Tr. 11; PECO Exhs. 5, 9.

17. Ms. O'Donnell did not try to gain access to the garages or look at outside lighting. Tr. 11.

18. After the inspection, Ms. O'Donnell informed the Complainant that she had turned fuses off, which would let the Complainant know whether there was foreign wiring because people would complain to the Complainant. Tr. 11.

19. Thereafter, the Complainant's landlord started to complain to the Complainant. Tr. 15.

20. The Complainant contacted PECO on July 20, 2016, and reported that the landlord complained to her about the power being off, as warned by Ms. O'Donnell. Tr. 16; PECO Exh. 9.

21. During the July 20, 2016 conversation, the PECO representative told the Complainant that she must obtain access to the garages from the landlord in order to complete a foreign wiring inspection. Tr. 16; PECO Exh. 9.

22. The landlord refused the Complainant's request for access to the garages and threatened the Complainant with eviction if she called PECO again. Tr. 16-17, 22.

23. On July 31, 2019, the Complainant called PECO again to complain about foreign wiring. Tr. 20; PECO Exh. 9.

24. On August 7, 2019, PECO sent a field technician, Aaron Donald, to inspect the property. Tr. 20; PECO Exhs. 6, 9.

25. Within 15 minutes, Mr. Donald was able to determine there was foreign wiring on the property. Tr. 20, 32; PECO Exhs. 6, 9.

26. Mr. Donald had the same access that Ms. O'Donnell had in 2016. Tr. 20.

27. Mr. Donald used a voltage probe and determined that there was foreign wiring in the Complainant's circuit panel that was attached to a rear outlet, spotlight, and 2<sup>nd</sup> level deck light that were on the outside and accessible to anyone. Tr. 20, 32, 38; PECO Exhs. 6, 9.

28. No access from the landlord was needed to inspect the outlet, spotlight, and deck light located on the outside of the Service Address. Tr. 40-41.

29. On August 26, 2019, PECO transferred the Complainant's balance at the time, \$774.07, to the landlord. Tr. 59; PECO Exh. 9.

30. The Complainant left the Service Address at the end of 2019. Tr. 5.

31. The typical investigation of a foreign wiring complaint involves attempts to gain access to other apartments, looking at outside lighting, attached or detached properties, and attempting to gain access to see if any of those are on the customer's meter. Tr. 34-35.

32. Mr. Lerro has been employed by PECO for 40 years. Tr. 33.

33. In Mr. Lerro’s opinion, the foreign wiring discovered in 2019 was present in 2016. Tr. 55.

34. The Complainant was billed \$3,241.93 between the dates of April 29, 2016 through August 23, 2019. Tr. 68; PECO Exh. 1.

35. At the close of the record, based on a monthly interest rate of 1.5%, the total outstanding interest on the amount billed to the Complainant between the dates of April 29, 2016 through August 23, 2019, is \$1,755.59. See following chart for breakdown of interest:

<b>Bill Date</b>	<b>Amount</b>	<b># of Mos. from bill to close of record</b>	<b>Total interest at 1.5% per month</b>
4/29/2016	65.17	56	\$54.74
5/2/2016	65.61	56	\$55.11
5/27/2016	66.65	55	\$54.99
6/28/2016	62.60	54	\$50.71
7/28/2016	63.21	53	\$50.25
8/29/2016	68.22	52	\$53.21
9/27/2016	67.79	51	\$51.86
10/26/2016	62.68	50	\$47.01
11/28/2016	85.87	49	\$63.11
12/29/2016	114.14	48	\$82.18
1/31/2017	126.16	47	\$88.94
3/1/2017	94.37	46	\$65.12
3/30/2017	83.99	45	\$56.69
4/28/2017	63.72	44	\$42.06
5/30/2017	78.32	43	\$50.52
6/28/2017	66.34	42	\$41.79
7/28/2017	57.78	41	\$35.53

8/28/2017	65.59	40	\$39.35
9/26/2017	54.16	39	\$31.68
10/26/2017	59.24	38	\$33.77
11/27/2017	80.52	37	\$44.69
12/28/2017	86.69	36	\$46.81
1/30/2018	95.77	35	\$50.28
2/28/2018	69.54	34	\$35.47
3/29/2018	65.65	33	\$32.50
4/27/2018	61.79	32	\$29.66
5/29/2018	63.00	31	\$29.30
6/27/2018	62.22	30	\$28.00
7/27/2018	109.45	29	\$47.61
8/27/2018	110.97	28	\$46.61
9/26/2018	100.51	27	\$40.71
10/25/2018	63.86	26	\$24.91
11/27/2018	94.08	25	\$35.28
12/28/2018	100.84	24	\$36.30
1/28/2019	69.72	23	\$24.05
2/26/2019	102.48	22	\$33.82
3/27/2019	87.68	21	\$27.62
4/25/2019	68.59	20	\$20.58
5/24/2019	59.26	19	\$16.89
6/25/2019	67.13	18	\$18.13
7/25/2019	108.65	17	\$27.71
8/23/2019	41.92	16	\$10.06
<b>TOTAL</b>	<b>3,241.93</b>		<b>\$1,755.59</b>

36. After subtracting the balance transferred to the landlord (-\$774.07) and including interest (\$1,755.59), the total amount billed to the Complainant between the dates of April 29, 2016 through August 23, 2019 is \$4,223.45.

### DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990) (Patterson). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa. C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. 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. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa. Super. 1961); and Murphy v. Pa. Dept. of Pub. Welfare, White Haven Cntr., 480 A.2d 382 (Pa. Cmwlth. 1984).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant.

Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa. Cmwlth. 1982).

In this proceeding, Ms. Szczesniak contends that PECO failed to provide reasonable service when they failed to discover foreign wiring at the Service Address during an inspection in May of 2016. The Complainant seeks reimbursement for all bills since the original inspection in 2016, therefore, Ms. Szczesniak bears the burden of proof.

Ms. Szczesniak argues that there was foreign wiring present at the Service Address when it was inspected by PECO on May 11, 2016, and that it was discoverable without special access since the foreign wiring was connected to electrical fixtures located on the outside of the property. Further, Ms. O'Donnell argues that even if special access was required, it should be PECO's responsibility to obtain access since they have rights of access pursuant to the Public Utility Code and their own Tariff.

Conversely, PECO argues that it was impossible to determine if foreign wiring existed in 2016 because the Complainant failed to obtain access to the garages from her landlord.

### Disposition

Pursuant to Section 1501 of the Public Utility Code:

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. In determining whether respondent has violated the provisions of Section 1501, the test to determine the adequacy of a utility's service is that of reasonableness. Scherich

v. Verizon Pennsylvania Inc., Docket No. C-2008-2061244 (Order entered January 28, 2010). I find that PECO failed to provide the Complainant with reasonable service.

In this case, the Complainant moved into the Service Address in October of 2015. The Service Address is one of four units in a large house with a four-bay garage behind it. The Complainant was already a PECO customer and had her electric service transferred to her new address. After a few months, the Complainant became concerned that her electric bills were high. As a result, the Complainant called PECO on April 13, 2016 with a high bill complaint and concerns about foreign wiring.

In response, PECO sent Peg O'Donnell to perform an inspection. It should be noted that Ms. O'Donnell has since retired from PECO and was not presented as a witness. Nevertheless, I found the Complainant's testimony regarding the events that transpired between herself, Ms. O'Donnell, and various other PECO employees, to be very credible. Moreover, PECO's own documentation corroborates the Complainant's testimony as well. See PECO Exh. 9.

Initially, Ms. O'Donnell attempted to inspect the Service Address on April 27, 2016, but left without conducting an inspection and recorded her visit as a missed call. The Complainant credibly testified that she was present and available for the April 27, 2016 attempted inspection, but she saw Ms. O'Donnell already driving away when she answered Ms. O'Donnell's call to her from the driveway. Tr. 8, 26. Thereafter, on May 4, 2016, the Complainant called PECO to reschedule an inspection and specifically requested a different inspector than Ms. O'Donnell. The PECO representative contacted Ms. O'Donnell's supervisor, Thomas Lerro, about what to do. Mr. Lerro instructed that the inspection be performed by Aaron Saunders and not Ms. O'Donnell.

However, despite Mr. Lerro's instruction, Ms. O'Donnell was the one who returned to the Service Address to perform the high bill inspection on May 11, 2016. At the conclusion of her inspection, Ms. O'Donnell stated that she could not check for foreign wiring because she did not have access to the rest of the property. We now know this is simply untrue.

The Complainant testified that Ms. O'Donnell did not try to gain access to the garages or look for and/or test any outside lighting or outlets on the property.

After the inspection, Ms. O'Donnell informed the Complainant that she turned fuses off in the Complainant's breaker, which would let the Complainant know if there was foreign wiring because people would complain to the Complainant if they had no power. Ms. O'Donnell told the Complainant to contact PECO if this occurs. Ms. O'Donnell was correct. Immediately thereafter, the Complainant's landlord started to complain to the Complainant and the Complainant contacted PECO on July 20, 2016. During the July 20, 2016 conversation, the PECO representative again told the Complainant that she must obtain access to the garages from the landlord in order to complete a foreign wiring inspection, which continued to be untrue. When the Complainant asked the landlord for access, he refused and then threatened the Complainant with eviction if she called PECO again. Faced with the threat of eviction, the Complainant did not pursue the foreign wiring complaint with PECO at that time.

Three years later, the Complainant decided to call PECO on July 31, 2019, to complain about foreign wiring again. This time, on August 7, 2019, PECO sent field technician Aaron Donald to inspect the property. Within approximately 15 minutes, Mr. Donald was able to determine there was foreign wiring on the property. Despite having the exact same access that Ms. O'Donnell had in 2016, Mr. Donald was able to determine that there was foreign wiring attached to the Complainant's meter from a rear outlet, spotlight, and 2nd level deck light through the use of a voltage probe<sup>2</sup>. All of these fixtures were on the outside of the Service Address and accessible to anyone; therefore, no access from the landlord was required.

Thomas Lerro is employed by PECO as a Senior Field Foreman for the High Bill Group and has been with PECO for 40 years. Mr. Lerro described a typical investigation of a foreign wiring complaint. He stated that it involves attempts to gain access to other apartments,

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<sup>2</sup> A voltage probe works by attaching the probe to a light socket or outlet and observing whether it goes on and off when the circuit breaker in question is turned on and off. The only access required is to the light socket or outlet and circuit breaker in question. Tr. 38.

**looking at outside lighting, attached or detached properties**, and attempting to gain access to see if any of those are on the customer's meter.

Mr. Lerro described Ms. O'Donnell as a 45-year employee who did nothing but high bills most of her career. Tr. 54. However, despite her experience, it appears Ms. O'Donnell did none of the aforementioned activities during her 2016 inspection of the property. In Mr. Lerro's considerably experienced opinion, the foreign wiring discovered in 2019 was present in 2016. A simple walk around the property, as done by Mr. Donald three years later, would have revealed electrical fixtures that could have easily been tested for foreign wiring without any requests for special access. Simply put, it was not lack of access that prevented Ms. O'Donnell from discovering the foreign wiring at the Service Address in 2016, but rather, her failure to perform a routine inspection of the entire property. I find this does not constitute reasonable service.

Additionally, even though special access was never needed in this case, I find that it should not be a tenant's responsibility to obtain such access when needed. PECO's request of the Complainant to arrange access from her landlord was unreasonable. A tenant does not have the authority, nor is in the position to demand access the way PECO can. Both the Public Utility Code and PECO's Tariff gives them right of access to inspect. Specifically, 66 Pa. C.S. § 1532(d), states:

(d) Denial of access to common areas.--Any landlord ratepayer or an agent or employee who willfully denies an agent or employee of the utility access to common areas of his residential building for any lawful purpose under this title, including, but not limited to, posting, or delivering notices to tenants under this subsection, shall be subject to a civil penalty of not more than \$500 for each day access is denied.

PECO's Tariff Electric Pa. P.U.C. No. 6 states:

10.5 RIGHT OF ACCESS. The Company's identified employees shall have access to the premises of the customer at all reasonable times for the purpose of reading meters, and for installing, testing, inspecting, repairing,

removing, or changing any or all equipment belonging to the Company. In the event of an emergency, the Company shall have the right to access customer owned facilities and equipment for the purpose of restoring electric service, for the purpose of rendering the electric facilities safe and reliable, or for the purpose of reducing the likelihood of damage to the Company's facilities and equipment.

Here, if PECO truly believed it needed access to the garages to inspect for foreign wiring, PECO should have contacted the landlord and arranged for such access. Instead, they put the onus on the Complainant, which resulted in her receiving threats of eviction by her landlord and paying for someone else's electricity for 3 years. That is not reasonable service.

Section 1529.1 of the Public Utility Code governs the payment of utility services in rental properties. This Section reads 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. The Commission has established that the presence of "foreign load" prevents a dwelling unit from being deemed "individually metered" as that term is used in Section 1529.1. David P. Boyce v. Duquesne Light Company, Docket Number Z-00223698 (Opinion and Order entered September 1, 1994).

Here, as result of the second inspection, PECO transferred the Complainant's balance at the time, \$774.07, to the landlord on August 26, 2019. The Complainant was billed \$3,241.93 between the dates of April 29, 2016 through August 23, 2019. The Complainant left the Service Address at the end of 2019.

Based on the foregoing, I find that PECO failed to provide the Complainant with reasonable service, in violation of 66 Pa.C.S. § 1501, when it failed to perform a proper inspection that would have led to the discovery of foreign wiring that existed at the Service Address in 2016. Accordingly, the Complaint shall be granted and the Complainant shall be issued a refund.

The Code states in relevant part:

§ 1312. Refunds.

(a) General rule.--If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment. In making a determination under this section, the commission need not find that the rate complained of was extortionate or oppressive. Any order of the commission awarding a refund shall be made for and on behalf of all patrons

subject to the same rate of the public utility. The commission shall state in any refund order the exact amount to be paid, the reasonable time within which payment shall be made, and shall make findings upon pertinent questions of fact.

66 Pa.C.S. § 1312. Pursuant thereto, 52 Pa. Code § 56.181(3) states: “An amount ultimately determined to have been overpaid by the disputing party shall be reimbursed with interest at the tariff rate filed under § 56.22.” Finally, 52 Pa. Code § 56.22 states:

Every public utility subject to this chapter is prohibited from levying or assessing a late charge or penalty on any overdue public utility bill, as defined in § 56.21 (relating to payment), in an amount which exceeds 1.5% interest per month on the overdue balance of the bill. These charges are to be calculated on the overdue portions of the bill only. The interest rate, when annualized, may not exceed 18% simple interest per annum. 52 Pa. Code § 56.22.

In this case, at the close of the record, based on a monthly interest rate of 1.5%, the total outstanding interest on the amount billed to the Complainant between the dates of April 29, 2016 through August 23, 2019, is \$1,755.59. After subtracting the balance transferred to the landlord (-\$774.07) and including interest (\$1,755.59), the Complainant is entitled to a refund in the amount of \$4,223.45.

Under Public Utility Code Sections 3301(a) and (b), the Commission may levy a fine of up to \$1,000 per day for violations of the Public Utility Code. 66 Pa.C.S. § 3301. The Commission has set forth, in a statement of policy, the factors and standards for evaluating proceedings involving violations of the Public Utility 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 discover foreign wiring during its original inspection was willfully fraudulent or a misrepresentation. Second, the consequences of PECO's failed

inspection did not result in property damage or personal injury. Third, I find the conduct at issue resulted from the Respondent's negligence in not inspecting the entirety of the Service Address. Fourth, PECO's position was that the original inspection was proper, therefore it did not propose any remedial measures. Fifth, only the Complainant was affected by PECO's negligence, however, the Complainant suffered for over three years before PECO's error was eventually discovered. 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. The eighth, ninth and tenth factors listed in 52 Pa. Code § 69.1201(c) 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."

After reviewing the evidence collected in this matter, I conclude that a civil penalty in the amount of \$1,000.00, is appropriate in this proceeding. This amount is apt to deter future violations of this nature and to draw PECO's attention to the need to perform thorough and comprehensive inspections in matters concerning potential foreign wiring.

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.*

Finally, it should be noted that based on the Complainant's testimony in this case, the actions of the landlord may constitute a violation of the Public Utility Code, which states in relevant part:

§ 1531. Retaliation by landlord prohibited.

(a) General rule.--It is unlawful for any landlord ratepayer or agent or employee thereof to threaten or take reprisals against a tenant because the tenant exercised his rights under section 1527 (relating to right of tenants to continued service) or section 1529 (relating to right of tenant to recover payments).

(b) Liability of landlord for damages.--Any landlord ratepayer or agent or employee thereof who threatens or takes such reprisals against any tenant shall be liable for damages which shall be two months rent or the actual damages sustained by the tenant, whichever is greater, and the costs of suit and reasonable attorneys' fees.

66 Pa. C.S. § 1531(a),(b). However, the Complainant did not name her landlord in the instant Complaint and he was not part of this hearing, thus he cannot be held liable under this Complaint.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).
4. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).
5. The offense must be a violation of the Public Utility Code, the Commission's Regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.
6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going

forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. 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. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa.Super. 278, 166 A.2d 96 (1961); and Murphy v. Pa. Dept. of Pub. Welfare, White Haven Cntr., 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

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

10. The Complainant met her burden of proof that PECO failed to provide the Complainant with reasonable service when it failed to discover foreign wiring at the Service Address during an inspection in May of 2016. 66 Pa C.S. §§ 332(a), 1501.

11. A landlord must allow any employee of PECO access to common areas of his residential building for any lawful purpose including inspection for foreign wiring. 66 Pa. C.S. § 1532(d), PECO's Tariff Electric Pa. P.U.C. No. 6 ¶ 10.5.

12. The Complainant met her burden of proof that PECO failed to provide the Complainant with reasonable service when they attempted to delegate their duty to request access to the Complainant. 66 Pa C.S. §§ 332(a), 1501.

13. If the Commission determines that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the Commission, the Commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment. The Commission shall state in any refund order the exact amount to be paid, the reasonable time within which payment shall be made, and shall make findings upon pertinent questions of fact. 66 Pa.C.S. § 1312(a).

14. An amount ultimately determined to have been overpaid by the disputing party shall be reimbursed with interest at the tariff rate filed under § 56.22. 52 Pa. Code § 56.181(3).

15. Every public utility subject to this chapter is prohibited from levying or assessing a late charge or penalty on any overdue public utility bill, as defined in § 56.21 (relating to payment), in an amount which exceeds 1.5% interest per month on the overdue balance of the bill. These charges are to be calculated on the overdue portions of the bill only. The interest rate, when annualized, may not exceed 18% simple interest per annum. 52 Pa. Code § 56.22.

16. 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 Complaint filed by Regina Szczesniak against PECO Energy Company, at Docket No. F-2020-3022040, is granted;
2. That within thirty (30) days of entry of a final order in this matter, PECO shall reimburse the Complainant in the amount of \$4,223.45;
3. 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 in this case to:  
  

Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265
4. 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.*; and
5. That this matter be marked closed.

Date: March 4, 2021

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/s/  
F. Joseph Brady  
Administrative Law Judge