

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Luz Lopez	:	
	:	
v.	:	F-2020-3021732
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

This Initial Decision sustains the formal complaint, finding that the Complainant, Luz Lopez, is not responsible for the bills for PECO service incurred at the home of her mother. PECO will be ordered to correct its error by reversing the transfer of the balance to the Complainant’s account, but no fine will be imposed.

HISTORY OF THE PROCEEDING

On July 25, 2020, Luz Lopez (Mrs. Lopez or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO, Respondent, or the Company) alleging that the Company improperly transferred to her account a balance from a residence where she has never lived.¹ The Complaint was served on PECO on September 3, 2020.

¹ This formal complaint is a timely appeal from a determination of Complainant’s informal complaint by the Bureau of Consumer Services (BCS) at BCS No. 3706206 dated March 10, 2020.

On September 16, 2020, PECO filed an Answer denying the material allegations of the Complaint. PECO also contended that the Complainant is responsible for the balance because her name was on the account.

On September 17, 2020, an Initial Telephonic Hearing Notice was issued setting the hearing for November 17, 2020. A Prehearing Order was issued on September 24, 2020.

The hearing convened as scheduled on November 17, 2020. Mrs. Lopez appeared *pro se*. She testified on her behalf and presented her husband, Diego Lopez (Mr. Lopez), as a witness. Khadijah Scott, Esq., represented the Respondent and presented the testimony of Anna Mae Migliaccio, PECO Regulatory Assessor.

PECO and the Complainant were given until December 1, 2020 to provide additional documentation and until December 11, 2020 to respond to the documentation received. Both parties filed additional information.

Exhibits admitted into the record are as follows:

Complainant Exhibits

- No. 1 Copy of Torres Checks Payments to PECO
- No. 2 Cover letter with dates of documentation in No. 3
- No. 3 Documentation of Residence from 1996
- No. 4 Copy of Driver's License
- No. 5 PECO Payment Due Notice and letter

PECO Exhibits

- No. 1 Account Activity 34 – Statement for 12802 Cliffe Drive
- No. 2 Account Activity 35 – Statement for 5444 Bingham Street
- No. 3 Case Detail Report, 40 – Case No. 3706206
- No. 4 BCS Decision Report, 41 – Case No. 3706206

No. 5	Case Detail Report, 42 – Case No. 3752907
No. 6	BCS Decision Report, 43 – Case No. 3752907
No. 7	Account Activity 2016 to transfer Account No. ...201
No. 8	Account Activity Statement from 2013 Account Number ...924
No. 9	Account Activity Statement from 2004 Account Number ...160

The record closed on December 11, 2020, the date when responses to the late-filed exhibits were due.

FINDINGS OF FACT

1. The Complainant is Luz Lopez.

2. Since 1992, the Complainant has resided with her husband, Diego Lopez, at 12802 Cliffe Drive, Philadelphia, PA 19154 (Cliffe). (Tr. 7, 19).

3. Mr. and Mrs. Lopez receive PECO service on Cliffe, PECO Account No. ending in 056, and have had PECO service at that address since September 29, 1992. (Tr. 34).

4. When another customer applied for service in 2013 for Cliffe, PECO erroneously assigned another customer the same account number as the Lopezes. (Tr. 53-54).

5. Following the account number error, PECO assigned the Lopezes the current account number ending in 056. (Tr. 53-54).

6. The Complainant's mother resided at 5444 Bingham Street, Philadelphia, Pennsylvania (Bingham or service address). (Tr. 7-8).

7. The Complainant's mother received PECO service at Bingham, PECO account number ending in 201. (Tr. 35).

8. The Complainant's mother lived on Bingham for about ten years. (Tr. 9).
9. The Complainant's mother passed away in October of 2016. (Tr. 15).
10. At the time of the hearing, PECO account number ending in 201 listed the Complainant as the customer of record. (Tr. 35-36, PECO Exhibit 2).
11. The Complainant has never resided at Bingham. (Tr. 8, Complainant Exhibits 3,4).
12. The Complainant did not pay the Bingham PECO bills. (Complainant Exhibit 1; Tr. 60).
13. PECO terminated service at Bingham on September 13, 2017. (Tr. 37).
14. On March 9, 2019, PECO transferred a balance of \$983.84 from Bingham to the Complainant's Cliffe account. (Tr. 25).
15. PECO erroneously assessed the Bingham account \$197.90 in late charges after the account was finalized. (Tr. 36)
16. After subtracting the late fees charged in error, PECO is now seeking \$785.94 from the Complainant for charges at Bingham. (Tr. 36)
17. PECO did not transfer the balance to the Complainant until 2019 because of a "system error." (Tr. 59)
18. The Complainant's mother spoke Spanish and very little English and the Complainant would help her when English was needed, such as communication with various companies. (Tr. 8-9, 13, 20).

19. The Complainant never signed up for, nor requested, PECO service at Bingham and did not authorize PECO to place her name as the customer of record. (Tr. 9-10, 13).

DISCUSSION

The Pennsylvania Public Utility Code (“Code”) requires each public utility to provide the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501. The Complainant contests PECO transferring charges for the Bingham address to her account. The Complainant bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. Therefore, the Complainant must prove by a preponderance of the evidence that she is not responsible for the balance transferred to her account from the service address. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990).

Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission’s decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere “trace of evidence or a suspicion of the existence of a fact” is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight to the evidence presented by the Complainant, the Complainant has not satisfied his burden of proof. The Complainant would then be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

PECO contends that the Complainant applied for service at the address in question and was the customer of record. An "applicant" is defined as "[a] natural person not currently receiving service who applies for residential service provided by a public utility or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential public utility service is requested." 66 Pa.C.S. § 1403. A "customer" is a natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested. *Id.*

Pursuant to the Section 1407(d) of the Public Utility Code, "[a] public utility may . . . require the payment of any outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there." 66 Pa.C.S. § 1407(d). Also, a public utility may establish that an applicant who previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the commission. 66 Pa.C.S. § 1407(e). The regulations also provide:

(b) In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a new residential service account of the same customer.

52 Pa. Code § 56.16(b). None of these provisions allows PECO to transfer the balance from the Bingham service address to the Complainant here. Further, based on the evidence presented, the transfer is not reasonable service under 66 Pa.C.S. § 1501.

The Complainant credibly testified that she never lived at the service address, never applied for service at the service address and only spoke with PECO representatives about the service address on behalf of her mother, who spoke very little English. (Tr. 7-9,15). In addition to the Complainant's testimony, her husband testified that he and his wife have lived at another address since 1992. The Complainant established a *prima facie* case.

In rebuttal, PECO presented testimony that the Complainant was the customer of record on the service address account since 1997. (Tr. 36). PECO also presented records that bore the Complainant's name as the record customer. (PECO Exhibits 2, and 9). However, these records do not appear to be direct printouts from the PECO computer system and are, rather, a compilation. Further, evidence of the various errors that occurred with respect to the service address account – wrong address changes in customer number, late transfer, late fee charges – weigh against the reliability of the PECO records for the accounts in question. (FOFs 4 -5, 15, 17).

The Complainant presented evidence that outweighed that of PECO. Numerous documents showed that the Complainant lived elsewhere since at least 1996. These documents include mortgage papers, insurance forms and an invoice as well as banking and payroll records. (Complainant Exhibit 3). The Complainant also provided copies of checks showing that the bills for the service address were not paid by the Complainant. (Complainant Exhibit 1). PECO presented no documents to the contrary.

The preponderance of the evidence – the Complainant's documentation of her residence and payments, and the credible testimony of the Complainant and her husband that

they have lived at Cliffe since 1992 and that the Complainant never authorized or requested service in her name at Bingham - support a finding that the Complainant is not responsible for the balance that was transferred from the Bingham account.

It is not reasonable service under 66 Pa.C.S. § 1501 to hold the Complainant responsible for the Bingham balance. An order will be issued in favor of the Complainant.

Given that the errors in PECO records appear to have been accidental, and that PECO will be ordered to remove the charges for the service address from the Complainant's bill, a civil penalty will not be imposed upon PECO. *See* 52 Pa. Code § 69.1201.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties of this proceeding. 66 Pa.C.S. § 701.
2. The party filing the Complaint bears the burden of proving by a preponderance of the evidence that he is entitled to relief from the Commission. 66 Pa.C.S. § 332(a).
3. A Commission decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere “trace of evidence or a suspicion of the existence of a fact” is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 489 Pa. 109, 413 A.2d 1037 (1980).
4. A public utility may require the payment of any outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there. 66 Pa.C.S. § 1407(d).

5. Transferring PECO charges for the Bingham address to the Complainant's PECO account is not reasonable service under 66 Pa.C.S. § 1501.

6. The Complainant has established by a preponderance of the evidence that she should not be held responsible for the service address PECO balance. *See Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlt. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the relief sought in the Complaint filed by Luz Lopez against PECO Energy Company at Docket No. F-2020-3021732 is granted.

2. That within thirty (30) days of the entry of a final order in this case, PECO Energy Company shall remove from the Complainant's PECO Energy Company account any charges or balance transferred from 5444 Bingham Street, Philadelphia, Pennsylvania, and any associated fees or interest.

3. That the Secretary mark this docket closed.

Date: March 5, 2021

_____/s/
Darlene Heep
Administrative Law Judge