

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|---------------------|---|----------------|
| LaToya Marlyn | : | |
| | : | |
| v. | : | C-2020-3022519 |
| | : | |
| PECO Energy Company | : | |

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s formal Complaint because the Complainant failed to meet her burden of proving that the Respondent erred in transferring the balance from a previous account to her current account. The Complainant did not establish that the Respondent violated the Public Utility Code, a Commission regulation, or an Order with its actions in this matter.

HISTORY OF THE PROCEEDING

On October 15, 2020, LaToya Marlyn (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant contends that there were incorrect charges on her bill. Specifically, the Complainant contends that she did not reside at a certain address and should not be responsible for any outstanding balance from that address.

On November 10, 2020, Respondent filed an Answer denying the material allegations of the Complaint.

By Hearing Notice dated November 12, 2020, an initial telephonic hearing was scheduled for December 22, 2020, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on November 13, 2020. The Prehearing Order directed the parties to comply with various procedural requirements 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 she is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on December 22, 2020. Complainant participated *pro se* and testified. Respondent appeared and was represented by Khadijah Scott, Esq., who presented the testimony of Michael Begley, a regulatory assessor employed by PECO. Respondent offered eight exhibits, which were all entered into the record.

The hearing resulted in a 49-page transcript. The record closed on January 12, 2021, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is LaToya Marlyn, who resides at 4810 North 11th Street, Apartment No. 1, Philadelphia, Pennsylvania 19111 (Service Address). Tr. 7.

2. The Respondent is PECO Energy Company.

3. The Complainant moved into the Service Address on August 1, 2020.
Tr. 15.

4. The Complaint is related to the address of 501 Moore Street, Norristown, Pennsylvania. Tr. 7.

5. The Complainant lived at 19 West Allens Lane, Philadelphia, Pennsylvania address between 2018 to 2019. Tr. 8, 10, 15.

6. The Complainant had PECO service in her name at the Allens Lane address and called to disconnect service in 2019 when she moved out. Tr. 8.

7. The last four digits of the Complainant's Social Security No. are XXX7. Tr. 19.

8. There was a PECO account in the Complainant's name at 501 Moore Street from June 4, 2015 to June 3, 2017. Tr. 30-31; PECO Exh. 1.

9. When the account closed for 501 Moore Street, there was an outstanding balance of \$286.38. Tr. 32; PECO Exh. 1.

10. On February 16, 2017, the Complainant contacted PECO to advise that she had changed her Social Security Number due to an abusive relationship. Tr. 34; PECO Exh. 6.

11. A PECO representative told the Complainant that she would have to provide documentation to support the change at a local ID Exchange vendor. Tr. 34-35; PECO Exh. 6.

12. The Complainant provided the documentation at a local ID Exchange vendor which was verified, and her Social Security number was changed from the number ending in XXX9 to the number ending in XXX7 on April 3, 2017. Tr. 35; PECO Exh. 6.

13. On May 3, 2018, the balance of \$294.92 was transferred to the Complainant's new account at the 19 West Allens Lane address. Tr. 32-33; PECO Exh. 2.

14. On January 25, 2019, the account for 19 West Allens Lane address under the Complainant's name was closed. Tr. 36; PECO Exh. 2.

15. On September 1, 2020, the unpaid balance from West Allens Lane including the balance from 501 Moore Street, in the amount of \$343.69, was transferred to the Complainant's new account at the Service Address. Tr. 36-37; PECO Exh. 3.

16. The outstanding balance also includes \$128.54 in Customer Assistance Program (CAP) arrears. Tr. 36.

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. 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. Unemployment Comp. Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Pa. 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*, 461 A.2d 1234 (Pa. 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).

The Complainant alleges that PECO erred in transferring the balance from a prior account in her name at 501 Moore Street because she claims that she did not live at the address or authorize an account to be opened in her name at that address. The Complainant also insinuated that she may have been a victim of identity theft. PECO maintains that it properly transferred the balance to her account for the Service Address.

Section 1403 of the Public Utility Code defines “Applicant” and “Customer” as follows:

“Applicant.” 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 utility service is requested.

and

“Customer.” 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.

66 Pa.C.S. § 1403.

Section 1407 of the Public Utility Code states in pertinent part:

(d) Payment of outstanding balance at premises. --A public utility may also 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.

(e) Approval. --A public utility may establish that an applicant 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.

The Complainant asserts that she is not responsible for charges from 501 Moore Street because she never lived at the address or authorized an account to be opened in her name at that address. However, the Complainant was listed as customer of record for 501 Moore Street according to PECO records from June 4, 2015 to June 3, 2017. As such, the Complainant fits the definition of a customer under the law. “Mere bald assertions ... do not constitute evidence.” *Pa. Bureau of Corrs. v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power Supply Ass’n of Pa. v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlt. 2000); see also, *Steffy’s Pattern Shop v. Frontier Commc’ns of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000). Complainant has not established a *prima facie* case. The Complainant did not present any evidence to establish her residence elsewhere during the time period at issue, as asserted.

While the Complainant asserts that she may have been a victim of identity theft, the Complainant did not present any evidence that she was the victim of identity theft. The Complainant’s statements alone are not sufficient to meet her burden of proof in this matter. The Commission has no regulations regarding identity theft. *In re: Identity Theft*, Docket No. M-00041811 (Order entered Sept. 21, 2005). It is not unreasonable, however, that PECO requires a customer who alleges that he or she has been a victim of identity theft to provide documentation to establish residency elsewhere to show that he or she is making a good faith

claim of identity theft. *See, MacDougall v. Verizon N. Inc.*, Docket No. F-01339719 (Opinion and Order entered August 23, 2004); *Spancake v. Metro. Edison Co.*, Docket No. C-2012-2337599 (Final Order entered June 19, 2013).

Further, PECO presented evidence that the Complainant changed her Social Security number while she resided at the 501 Moore Street address. On February 16, 2017, the Complainant contacted PECO to advise that she had changed her Social Security Number due to an abusive relationship. Tr. 34; PECO Exh. 6. A PECO representative told the Complainant that she would have to provide documentation to support the change at a local ID Exchange vendor. Tr. 34-35; PECO Exh. 6. The Complainant provided the documentation at a local ID Exchange vendor which was verified, and her Social Security number was changed from the number ending in XXX9 to the number ending in XXX7 on April 3, 2017. Tr. 35; PECO Exh. 6. The Complainant acknowledged that her Social Security Number ends in the last four digits of XXX7. Tr. 19.

PECO also established that on May 3, 2018, the balance of \$294.92 (from 501 Moore Street) was transferred to the Complainant's new account at the 19 West Allens Lane address. Tr. 32-33; PECO Exh. 2. On January 25, 2019, the account for the 19 West Allens Lane address under the Complainant's name was closed. Tr. 36; PECO Exh. 2. The Complainant acknowledged that she lived at the 19 West Allens Lane address and had PECO service in her name. Tr. 8, 10, 15. On September 1, 2020, the unpaid balance from West Allens Lane including the balance from 501 Moore Street, in the amount of \$343.69, was transferred to the Complainant's new account at the Service Address. Tr. 36-37; PECO Exh. 3.

Based on all of the above, it is clear that the Complainant has failed to meet her burden of proof under the law to establish that she was not responsible for the charges that accrued at 501 Moore Street. The Complainant was the customer of record for the service address at 501 Moore Street for the time period at issue according to the PECO records and the Complainant was not able to establish that she resided at another location during the same time period or that she was a victim of identity theft. Therefore, as the Complainant is the customer of record for 501 Moore Street, she is liable for the charges on that account.

In so much as the Complainant is liable for the charges, PECO is permitted to transfer the charges to the Complainant's new service account. Pursuant to 52 Pa.Code § 56.35, transfers of accounts:

(a) A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly.

(b) A public utility may not require, as a condition of the furnishing of residential service, payment for residential service previously furnished under an account in the name of a person other than the applicant, except as provided for in paragraphs (1) and (2).

(1) A public utility may require the payment of an 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, not exceeding 4 years from the date of the service request. The 4-year limit does not apply if the balance includes amounts that the public utility was not aware of because of fraud or theft on the part of the applicant.

(2) A public utility may establish that an applicant 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. Public utilities shall include in their tariffs filed with the Commission the methods, other than those specifically mentioned in this paragraph, used to determine the applicant's liability for any outstanding balance.

52 Pa.Code § 56.35(a), (b)(1)-(2).

The Company was entitled to transfer the balance from the Complainant's prior address at 501 Moore Street to her account for service at the Service Address because she has been found to be responsible for the outstanding balance. It is not unreasonable for PECO to request that the Complainant pay the outstanding balance. There is nothing that the Company has done in this case that is in violation of a Commission rule, regulation, or order. As such, the

Complainant is responsible to pay the outstanding balance from the 501 Moore Street address and her Complaint is 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. A "customer" is defined as 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. 66 Pa.C.S. § 1403.

5. 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 utility service is requested. 66 Pa.C.S. § 1403.

6. A public utility may also 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.

7. A public utility may establish that an applicant 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.

8. A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly. 52 Pa.Code § 56.35(a).

9. The Complainant did not meet her burden of establishing that PECO violated the Public Utility Code, Commission regulations or a Commission Order regarding the transfer of the balance from her prior account for the address in question.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of LaToya Marlyn against PECO Energy Company at Docket No. C-2020-3022519 is denied and dismissed; and

2. That Docket No. C-2020-3022519 be marked closed.

Date: April 5, 2021

_____/s/
Marta Guhl
Administrative Law Judge