

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pierre-Richard Sampeur	:	
	:	
v.	:	C-2020-3020085
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal Complaint (Complaint) for failure of the Complainant to comply with the Presiding Officer’s Order to schedule a meter inspection in this matter. The Complainant also failed to meet his burden of demonstrating that there is incorrect billing in this case.

HISTORY OF THE PROCEEDING

On April 15, 2020, Pierre-Richard Sampeur (Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission), using the Commission’s Formal Complaint form, against PECO Energy Company (Respondent, Company, or PECO), alleging that there were incorrect charges on his bills.

On June 17, 2020, the Company filed an Answer which denied the material allegations of the Complaint.

On June 23, 2020, an Interim Order was issued by Chief Administrative Law Judge Charles E. Rainey, Jr. which sent the matter to the mediation unit. Mediation was unsuccessful.

On August 26, 2020, an Initial Telephonic Hearing Notice was issued indicating that an initial hearing in the matter was scheduled for October 22, 2020, at 10:00 a.m., and the matter was assigned to me.

On August 27, 2020, I issued a Prehearing Order which set out the procedures for the hearing.

The hearing took place on October 22, 2020. The Complainant appeared *pro se* and testified on his own behalf. The Respondent was represented by Khadijah Scott, Esquire. The Respondent presented two witnesses, Shirley Bandan, unit supervisor for the billing department and Michael Begley, regulatory assessor. The Respondent also presented four exhibits at the hearing.

The Complainant indicated at the hearing that he had not received the Respondent's exhibits. The Complainant also indicated that he wished to present the bills for February and April 2020. I told the parties that I would enter into the record the Respondent's exhibits with the caveat that the Complainant would have until October 29, 2020, to submit any objections to the exhibits in writing to my legal assistant. I also gave the Complainant until October 29, 2020, to submit his late exhibit to my legal assistant. I also directed the Company to conduct meter testing at the service address and requested the Company provide an update by October 23, 2020.

On October 23, 2020, counsel for PECO contacted me and indicated that it had reached out to the Complainant to schedule a meter inspection and was waiting for him to reply.

As of October 29, 2020, the Complainant did not submit any late exhibit or any objections to PECO's exhibits with my office.¹

On December 15, 2020, I emailed counsel for PECO regarding the status of the case. Counsel emailed me on the same date and indicated that she had made multiple attempts to contact the Complainant via email and telephone and the Complainant failed to return any communications. Between October 23, 2020 and December 15, 2020, my office also tried to reach the Complainant via email and was unsuccessful.

On March 4, 2021, I issued an Interim Order which directed the Complainant to contact PECO to schedule a meter inspection. The Order directed the Complainant to contact PECO within ten days of the date of the Order to schedule the meter inspection (or by March 15, 2021) and then required the meter inspection to take place within seven days of the contact.

On April 21, 2021, I followed up with the parties via email to determine whether the Complainant had complied with the March 4, 2021, Interim Order. On the same date, counsel for PECO emailed to indicate that the Complainant had not contacted PECO to schedule a meter inspection.

On April 26, 2021, I issued an Order closing the record because the time had passed in accordance with the March 4, 2021, Interim Order and the Complainant had not contacted the Company to schedule a meter inspection.² The matter is now ripe for decision.

¹ On November 3, 2020, the Respondent submitted a response to the objections that the Complainant had allegedly made to PECO's Exhibits 1 through 4. The Respondent also indicated that it had received a late exhibit from the Complainant. However, the Complainant did not provide these documents to my office as indicated above.

² The Complainant contacted my legal assistant via email on May 10, 2021. His email indicated that he was unaware of the March 4, 2021, Interim Order. The email address on the May 10, 2021, correspondence was the same address listed on the formal Complaint and the email address that all documents were sent to the Complainant from my office. None of the emails sent to the Complainant were returned as being undeliverable by the email server.

FINDINGS OF FACT

1. The Complainant is Pierre-Richard Sampeur, who resides at 240 Beechwood Road, Brookhaven, Pennsylvania 19015 (Service Address).
2. The Respondent is PECO Energy Company.
3. On April 15, 2020, the Complainant filed this Formal Complaint.
4. The Respondent filed an Answer on June 17, 2020.
5. On March 4, 2021, I issued an Interim Order which directed the Complainant to contact PECO to schedule a meter inspection. The Order directed the Complainant to contact PECO within ten days of the date of the Order to schedule the meter inspection (or by March 15, 2021) and then required the meter inspection to take place within seven days of the contact.
6. The Interim Order dated March 4, 2021, was served on the Complainant by electronic mail at the email address listed in the Complaint, pursuant to Commission order related to the COVID-19 pandemic.³
7. The Interim Order indicated that if the Complainant failed to comply with the Order, the Complaint could be dismissed.
8. The Complainant did not contact PECO to complete a meter inspection.
9. On April 26, 2021, I issued an Order closing the record.

³ The Commission issued an Order on March 20, 2020, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency. *See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, M-2020-3019262, at 4 (March 20, 2020).

10. The Complainant is listed at a residential gas heating customer and residential electric customer for PECO. Tr. 50; PECO Exh. 1.

11. The Complainant received two bills with due dates in February 2020 for catch-up billing. Tr. 50; PECO Exhs. 1-3.

12. The two bills were delayed due to processing the changes to the Complainant's account for the solar rate because the Complainant indicated that he had solar panels at his residence. Tr. 32.

13. PECO issued a courtesy credit of \$150.00 to the Complainant towards his PECO bills due to the inconvenience caused by the delayed billing. Tr. 33; PECO Exh. 1.

14. The bill dated January 13, 2020, was for utility service provided at the Service Address between October 17, 2019, to November 15, 2019, in the amount of \$84.57.⁴ Tr. 52; PECO Exh. 2.

15. The bill dated January 14, 2020, was for utility service provided at the Service Address from November 15, 2019, to December 18, 2019, in the amount of \$236.09 which included the balance from the January 13, 2020, bill of \$84.57.⁵ Tr. 52; PECO Exh. 3.

16. PECO issued a catch-up bill because there was an adjustment to the Complainant's account to account for solar billing that should have occurred on the Complainant's billing. Tr. 50-51; PECO Exh. 1.

17. The Complainant was incorrectly billed from May 2019 to October 2019 because he should have been billed on the solar rate. Tr. 53; PECO Exh. 1.

⁴ The breakdown for the bill is \$10.46 for electric service and \$74.11 for gas service. PECO Exh. 2.

⁵ The breakdown for the bill is \$10.46 for electric service and \$104.06 for gas service, plus the balance of \$84.57. Tr. 52; PECO Exh. 3.

18. PECO issued a \$265.06 credit adjustment to the Complainant's account for the incorrect billing. Tr. 51; PECO Exh. 1.

19. The credit adjustment was subtracted from the new charges on November 30, 2019, that left a credit balance of \$232.44, for which the Company generated a refund check to the Complainant. Tr. 51; PECO Exh. 1.

20. The Complainant's bills have been based on actual usage. Tr. 53; PECO Exh. 1.

21. Starting in October 2019, the Complainant was correctly billed on the solar rate. Tr. 53; PECO Exh. 1.

22. As of the hearing date, the Complainant is only receiving one bill per month. Tr. 53; PECO Exh. 1.

23. The Complainant's billing for his gas usage is consistent with winter heating season as the Complainant is a residential gas heating customer. Tr. 55; PECO Exh. 1.

DISCUSSION

Complainant's Objections to PECO's Exhibits

The Complainant failed to provide my office with a copy of his objections to PECO's hearing Exhibit Nos. 1 through 4. However, PECO did submit a response to the Complainant's objections on November 3, 2020. Based on this document, it appears that the Complainant makes an objection to the relevance of the documents that PECO submitted at the hearing on October 22, 2020. However, as PECO noted in its response, the documents are clearly relevant in this matter. They pertain to the Complainant's account with PECO and also his billing. This is the main issue of the Complainant's formal Complaint. As such, I find that

the documents are relevant to this proceeding, that the Complainant's objections are overruled and that PECO's Exhibit Nos. 1 through 4 are entered into the record in this matter.

Complainant's Late Filed Exhibit

The Complainant was to submit his late exhibit (his bills from PECO for February 2020 and April 2020) to my legal assistant by October 29, 2020. Tr. 76. I provided the Complainant with my legal assistant's email address at the time of the hearing. Tr. 75. Moreover, my legal assistant's email was included in the Hearing Notice and Prehearing Order that were issued in this case. The Prehearing Order also included instructions to submit documents to my office. However, the Complainant did not submit any late exhibit to my office. The Respondent stated that it had no objection to the Complainant's exhibits. However, I have no way of reviewing the documents or submitting them to the Secretary's Bureau because the Complainant failed to follow the instructions I provided at the hearing. As such, the Complainant's late exhibit will not be entered into the record.⁶

Complainant's Failure to Comply with Interim Order

A presiding officer's orders must be complied with, and a lack of compliance presents a sufficient basis to dismiss a complaint. *Treffinger v. PPL Elec. Utils. Corp.*, Docket No. C-20027978 (Order entered March 3, 2003); *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Order entered July 31, 2006); *Application of Black Diamond Cab Co.*, Docket No. A-00122566 (Order entered December 1, 1966). Further, Commission precedent is well settled and supports dismissal of the Complaint with prejudice for failure to comply with a presiding officer's order. *Weisenberger v. PECO Energy Co.*, Docket No. C-2010-2182281 (Final Order entered December 22, 2011).

⁶ I would note that PECO Exhibit Nos. 2 and 3 are bills for the Complainant's account with PECO that were issued in February 2020, which is one of the months that the Complainant disputed in his formal Complaint.

During this period of the Governor's Disaster Emergency Declaration in response to the COVID-19 pandemic, the Commission directed service to be electronic. Here, email was the method of delivery of notice for the March 4, 2021, Interim Order, which directed the Complainant to contact PECO by March 15, 2021, to complete a meter inspection. Service was made pursuant to the Commission's Order issued on March 20, 2020, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency. *See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, M-2020-3019262, at 4 (March 20, 2020). Notice electronically served to a party with no notification that service failed is presumed received. *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017) (*Morella*); and *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered December 19, 2019).

While the Complainant contends that he did not receive my Interim Order, I am not persuaded by this allegation. The address from which the Complainant emailed my legal assistant on May 10, 2021, was the same email address that was on file with the Commission for the Complainant, and all other documents sent to the parties by my office were sent to the Complainant at that address. Nothing sent to that email address for the Complainant was returned as undelivered and it is the responsibility of the parties to check their email accounts while the Commission is serving documents electronically due to the pandemic.

The email sent by the Commission to the Complainant with the Interim Order was not returned as being undeliverable. It is therefore deemed that the Complainant had notice that he had to comply with the Interim Order by March 15, 2021. *Zirkel; Morella*. During the hearing on October 22, 2020, I notified the parties that I wanted a meter inspection to take place. Tr. 80. The Complainant failed to contact PECO to schedule a meter inspection. Based on the above, it is clear that the Complainant has failed to comply with the Interim Order dated March 4, 2021. Thus, it is proper for the Complaint to be dismissed in this case.

Incorrect Charges Allegation

Notwithstanding that the Complainant did not comply with the Interim Order dated March 4, 2021, considering the evidence presented at the evidentiary hearing, the Complainant failed to meet his burden of establishing that the Respondent incorrectly charged him in February and April 2020.

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, 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. Unemployment Comp. Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 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.Cmmw. Ct. 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.Cmmw. Ct. 2001).

The Complainant alleges that PECO sent him two bills in February and April 2020. The Complainant believes that the Company is charging him indiscriminately and not based on his usage. The Complainant did not provide specific, separate complaints for his gas and electric usage. PECO acknowledged that it sent the Complainant two bills in February but indicated that they were for different billing periods and that billing had been delayed.

The Complainant indicated that he received two bills in February and April 2020. However, he did not present any evidence to support his claim, beyond his testimony as was noted above. Regardless of how earnestly Complainant believes the Complaint allegations to be true, personal opinions or perceptions do not constitute substantial evidence sufficient to permit him to sustain his burden of proof. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered November 16, 2006), citing *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

Further, PECO presented credible evidence to explain why there were two bills issued in February 2020. PECO's witness, Mr. Begley, testified that the Complainant is listed at a residential gas heating customer and residential electric customer for PECO. Tr. 50; PECO Exh. 1.

Mr. Begley noted that the Complainant received two bills with due dates in February 2020 for catch-up billing. Tr. 50; PECO Exhs. 1-3. The two bills were delayed due to processing the changes to the Complainant's account for the solar rate. Tr. 32. Ms. Bandan

testified that PECO issued a courtesy credit of \$150.00 to the Complainant towards his PECO bills due to the inconvenience caused by the delayed billing. Tr. 33; PECO Exh. 1.

Mr. Begley stated that the bill dated January 13, 2020, was for utility service provided at the Service Address from October 17, 2019, to November 15, 2019, in the amount of \$84.57. Tr. 52; PECO Exh. 2. The bill dated January 14, 2020, was for utility service provided at the Service Address from November 15, 2019, to December 18, 2019, in the amount of \$236.09 which included the balance from the January 13, 2020, bill of \$84.57. Tr. 52; PECO Exh. 3. A catch-up bill was issued because there was an adjustment to the Complainant's account to account for solar billing that should have occurred on the Complainant's billing. Tr. 50-51; PECO Exh. 1.

Mr. Begley and Ms. Bandan both testified that the Complainant was incorrectly billed from May 2019 to October 2019 because he should have been billed on the solar rate. Tr. 29-30, 53; PECO Exh. 1. PECO issued a credit adjustment to the Complainant's account for the incorrect billing in the amount of \$265.06. Tr. 51; PECO Exh. 1. The credit adjustment was subtracted from the new charges on November 30, 2019, that left a credit balance of \$232.44, for which the Company generated a refund check to the Complainant. Tr. 51; PECO Exh. 1.

Mr. Begley testified that the Complainant's bills have been based on actual usage. Tr. 53; PECO Exh. 1. Starting in October 2019, the Complainant was correctly billed on the solar rate. Tr. 53; PECO Exh. 1. The Complainant is only receiving one bill per month, as of the hearing date in October 2020. Tr. 53; PECO Exh. 1. The Complainant's billing for his gas usage is consistent with the winter heating season as the Complainant is a residential gas heating customer. Tr. 55; PECO Exh. 1.

While there does seem to have been an issue with the Complainant's billing, the Company resolved the issue. PECO corrected the Complainant's account so that he was billed at the solar rate. PECO also issued the Complainant an adjustment credit to correct the billing issue. However, the bills were delayed so that the Complainant received two bills in January 2020, which were for different billing periods to adjust for the solar rate. The Respondent

provided the Complainant with another credit of \$150.00 for the inconvenience of the delayed billing. The Public Utility Code at 66 Pa.C.S. § 1501 requires public utilities to provide reasonable and adequate, not perfect service. While the billing issues were inconvenient for the Complainant, the Company has resolved the problem and provided the Complainant with credits to compensate him. As such, the Complainant has not met his burden of proof in this matter and the Complaint must be denied.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. It is well established that the party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a).

3. 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).

4. The burden must be met by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmmw. Ct. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).

5. 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.Cmmw. Ct. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmmw. Ct. 1993); 2 Pa.C.S. § 704.

6. Personal opinions or perceptions do not constitute substantial evidence sufficient to permit Complainant to sustain his burden of proof. *Kirby v. PPL Elec. Utils. Corp.*,

Docket No. C-20066297 (Final Order entered November 16, 2006), citing *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

7. A presiding officer's orders must be complied with, and a lack of compliance presents a sufficient basis to dismiss a complaint. *Treffinger v. PPL Elec. Utils. Corp.*, Docket No. C-20027978 (Order entered March 3, 2003); *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Order entered July 31, 2006); *Application of Black Diamond Cab Co.*, Docket No. A-00122566 (Order entered December 1, 1966).

8. Commission precedent is well settled and supports dismissal of the Complaint with prejudice for failure to comply with a presiding officer's order. *Weisenberger v. PECO Energy Co.*, Docket No. C-2010-2182281 (Final Order entered December 22, 2011).

9. The Complainant failed to comply with the Interim Order of March 4, 2021.

10. The Complainant failed to meet his burden of establishing that PECO Energy Company incorrectly billed him for the months of February 2020 and April 2020.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complainant's Objections to PECO Energy Company's Exhibits Nos. 1 through 4 are overruled.

2. That PECO Energy Company's Exhibits Nos. 1 through 4 are entered into the record.

3. That the Complainant's Late Exhibit is not entered into the record.
4. That the Complaint of Pierre-Richard Sampeur against PECO Energy Company at Docket No C-2020-3020085 is denied.
5. That Docket No. C-2020-3020085 be marked closed.

Date: July 26, 2021

/s/
Marta Guhl
Administrative Law Judge