

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|---------------------|---|----------------|
| Minerva Mendoza | : | |
| | : | |
| v. | : | C-2021-3024069 |
| | : | |
| PECO Energy Company | : | |

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

This decision grants in part, and denies in part, a Complaint filed by a customer of PECO Energy Company. This decision finds that the Complainant did not establish that she was billed for service used at an address other than her own. The decision also finds that PECO’s failure to investigate the Complainant's concerns about a possible meter mix-up and incorrect charges for several months was unreasonable service under 66 Pa.C.S. § 1501. However, a fine is not warranted.

HISTORY OF THE PROCEEDING

On January 28, 2021, Minerva Mendoza, Complainant, filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission” or “PUC”) against PECO Energy Company (“PECO”). The Complaint is an untimely appeal of the dismissal of an informal complaint filed with the Commission's Bureau of Consumer Services, Case Number 3771021.

In her Complaint, Ms. Mendoza alleges that there are incorrect charges on her bill and that she is having a reliability, safety or quality problem with her utility service. She also states that there is an irregularity to her billing and fraud. In the Complaint, the Complainant states that her current address is on Rittenhouse Street in Philadelphia, Pennsylvania but the Complaint concerns her previous residence and service address, 4617 Longshore Avenue, Apt A in Philadelphia, Pennsylvania.

On February 23, 2021, PECO filed an Answer to the Complaint. In the Answer, PECO denies all material allegations of fact in the Complaint. PECO admits that the current address of the Complainant is on Rittenhouse Avenue. PECO denies, however, that PECO service was provided to the Complainant at 4617 Longshore Avenue. PECO asserts that service was provided to the Complainant at 4615 Longshore Avenue.

PECO further states in the Answer that on September 30, 2020, a high bill investigation was conducted to verify the Complainant's meter accuracy. PECO avers in the Answer that the high bill investigation determined that there was no problem with the meter, there was no meter mix-up, and that the Complainant was properly billed for usage.

On February 25, 2021, an Initial Telephonic Hearing Notice was emailed to all parties, setting a hearing for March 31, 2021 beginning at 10:00 a.m. The hearing notice advised as follows:

The Public Utility Commission offers a free eFiling Subscription Service, which allows users to automatically receive an email notification whenever a document is added, removed, or changed on the PUC website regarding a specific case. Instructions for subscribing to this service are on the PUC's website at http://www.puc.pa.gov/Documentation/eFiling_Subscriptions.pdf.

A Prehearing Order was also emailed to all parties on February 25, 2021. The Prehearing Order advised as follows:

**THE COMMISSION PRESENTLY DOES NOT HAVE ACCESS TO
REGULAR MAIL BECAUSE OUR OFFICES ARE CLOSED DUE TO THE**

COVID-19 PANDEMIC. THEREFORE, ALL PARTIES ARE ENCOURAGED TO SIGN-UP FOR eFILING and eSERVICE. PLEASE VISIT THE COMMISSION'S WEBSITE AT www.puc.pa.gov FOR INSTRUCTIONS.

On March 23, 2021, Edward T. Fisher, Esquire, filed a Notice of Appearance on behalf of PECO.

The hearing began as scheduled at 10:00 a.m. on March 31, 2021. Mr. Fisher appeared for the hearing on behalf of PECO. The Complainant was not present. A recess was taken to allow the Complainant time to appear. When the hearing resumed at 10:15 a.m., the Complainant was not present and counsel for PECO moved the matter be dismissed for failure to prosecute. The motion was taken under advisement.

On April 1, 2021, it was discovered that the Complainant had left a voicemail at the Harrisburg Office on the afternoon of March 31, 2021, stating that she was unable to call in to the telephonic hearing due to illness. The matter was returned to scheduling for a new hearing date.

On April 5, 2021, a Call-in Telephonic Hearing Notice set a Further Call-in Telephonic Hearing for May 6, 2021, at 10:00 a.m. The May 6, 2021 hearing was held as scheduled. Ms. Mendoza appeared for the hearing *pro se*. Attorney Fisher appeared on behalf of PECO. He presented seven exhibits and witnesses Wanda Rucker, a PECO Regulatory Assessor, and Andrew Leake, a PECO High Bill Field Investigator.

During the hearing, Mr. Fisher stated that the Complainant had informed him that she had mailed exhibits to the Secretary's Bureau through the United States Postal Service ("USPS"). Neither PECO nor I had received these exhibits and a short recess was taken to locate them. The exhibits were not found at that time. However, following the hearing, I was notified that a copy of the documents sent by the Complainant were located at the Secretary's Bureau in Harrisburg.

By email dated May 25, 2021, the Complainant and PECO were sent a copy of the scanned documents and were advised that a further hearing would be set and that the Complainant would be given the opportunity to present her exhibits at that time.

On May 25, 2021, a Further Telephonic Hearing Notice was issued setting a hearing for June 30, 2021. A Prehearing Order was issued on May 26, 2021. Also, given that the documents submitted by Ms. Mendoza were in part written in Spanish, an interpreter was requested for the hearing.

On June 7, 2021, an Order was issued instructing both parties to submit photos of the addresses at issue with markings indicating the location of the service address no later than June 28, 2021, and to be prepared to testify regarding this additional information at the hearing set for June 30, 2021. PECO provided photos on June 23, 2021. The Complainant did not submit photos.

The Further Hearing convened as scheduled on June 30, 2021. Attorney Fisher represented PECO and presented a set of eight photographs (identified herein as PECO Exhibit 8) and one witness, Thomas Lerro, PECO High Bill Field Forman. Also present at the hearing was Maribel Pintado-Espiet, Interpreter. PECO Exhibit 8 was admitted into evidence.

The Complainant did not appear for the hearing. None of the emails sent to the Complainant was returned as undeliverable, including the Prehearing Order and Hearing Notices that advised the Complainant to submit exhibits electronically. However, given that the Complainant appeared *pro se* at the May 6, 2021 hearing and that her exhibits were sent to the Secretary's Bureau prior to the May 6 hearing, they will be admitted in the Order below as Complainant Exhibit 1.¹

¹ The Complainant Exhibit 1 referenced in the Findings of Fact are affirmed by PECO Exhibits (*See e.g.*, Complainant Exhibit 1 (Photo) and PECO Exhibit 8 (Photos #7 and #8)). A presiding officer or the Commission may disregard an error or defect of procedure or waive a requirement that does not adversely affect a substantive right of a party, particularly in proceedings involving *pro se* litigants. 52 Pa. Code § 1.2(a),(c),(d).

The record closed on July 5, 2021, after it was determined that the Complainant had not called in, not left a voicemail message at one of the Commission's Offices regarding her absence from the hearing on June 30, 2021, nor sent photos by USPS in response to the June 7, 2021 order.

The record consists of an 88-page transcript and the following exhibits admitted into the record:

Complainant Exhibit 1 (Photo of Longshore Avenue residence, Pennsylvania Human Relations Commission questionnaire, primary elections street address list).

PECO 1 - account activity statement, 4615 Longshore Avenue
PECO 2 - account activity statement, Current address
PECO 3 - high bill field follow-up sheet
PECO 4 - 9/18/20 letter to complainant
PECO 5 - 10/5/20 letter to complainant
PECO 6 - case details report
PECO 7 - BCS decision report
PECO 8 - Packet containing 8 photographs

FINDINGS OF FACT

1. The Complainant is Minerva Mendoza.
2. The Respondent is PECO Energy Company.
3. From January 15, 2019, to August 4, 2020, the Complainant lived at 4617 Longshore Avenue, Apartment A, Philadelphia, Pennsylvania, the address given to her by her landlord ("service address"). Tr. 15.
4. The service address is the second-floor apartment of a building on Longshore Avenue with the address number 4617 on the building. Complainant Exhibit. 1 (Photo); PECO Exhibit 8 (Photos #7 and #8).

5. PECO bills sent to the Complainant were in the Complainant's name with the address 4615 Longshore Avenue. Tr. 15, 19.

6. PECO bills sent in the Complainant's name for 4615 Longshore Avenue were placed in the Complainant's 4617 Longshore Avenue mailbox by the United States Postal Service. Tr. 20.

7. The mailing address provided by the Complainant to PECO was 4617 Longshore. Tr. 36-37; PECO Exhibit 1.

8. The PECO meter assigned to 4617 Longshore Avenue, Apartment A, is identified as address 4615 Longshore Avenue in the PECO customer information system. Tr. 17, 18, 27-28; PECO Exhibit 5.

9. From February 5, 2019, until August 12, 2020, the Complainant was a PECO customer with Account No. ending in 066 at address 4615 Longshore Avenue, second floor. Tr. 23-24; PECO Exhibit 1.

10. PECO records show that the Complainant contacted PECO by telephone or went to the PECO offices on 12/27/19, 1/6/20 and 2/18/20 to discuss her concern about being billed for another address. Tr. 32-33.

11. On August 11, 2020, the Complainant requested that her service be moved to her current address. Tr. 24 - 25; PECO Exhibit 2.

12. The Complainant's PECO service was transferred from 4615 Longshore Avenue to her current address on Rittenhouse Street in Philadelphia. Tr. 25; PECO Exhibit 2.

13. The Complainant filed an informal complaint with the Commission on September 8, 2020, asserting that she lived at 4617 Longshore but shared a meter with 4615 Longshore Avenue. PECO Exhibit 6.

14. On September 30, 2020, Andrew Leake, PECO High Bill Field Investigator, visited the service address to check the meter for which the Complainant was billed and found no evidence of a meter mix-up or foreign wiring. Tr. 29,45; PECO Exhibit 3; PECO Exhibit 5.

15. The Investigator verified the meter for the service address and found that when dropping the electric load and disconnecting the meter for which the Complainant was billed, only the apartment where the Complainant had lived, the service address, was affected. Tr. 28-29; PECO Exhibit 3, PECO Exhibit 5.

DISCUSSION

As the proponent of a rule or order, 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 Public Utility Code or a regulation or Order of the Commission.

The Pennsylvania Public Utility Code requires each public utility to provide reasonable service as follows:

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 statutory definition of “service” is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa.Cmwlt. 1995). The Code defines “service” as:

Service, used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them.

6 Pa.C.S.A. § 102.

To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent public utility violated either its duty under the Public Utility Code or the orders or regulations of the Commission, 66 Pa.C.S. § 701, or that the utility is responsible or accountable for the problem described in the Complaint. *Griggs v Phila. Gas Works*, Docket Number F-2020-3021754 (Order entered July 21, 2021) (citing *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 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); 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.Cmwlt. 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.Cmwlt. 2001).

The Complainant contends that she was billed for service used at an address other than her own. Specifically, Ms. Mendoza contends that she lived at 4617 Longshore Avenue, Apartment A, but was billed for 4615 Longshore Avenue. During the hearing on May 6, 2021, the Complainant also questioned why PECO did not send someone to inspect her meter and charges until September 2020, after she filed a complaint with the Commission and moved, even though she had contacted PECO on several occasions in 2019 and earlier in 2020.

Billing

The Complainant lived in a building numbered 4617 Longshore Avenue, Apartment A, from January 15, 2019, to August 4, 2020. Complainant Exhibit 1 (Photo); PECO Exhibit 8, (Photos # 7 and #8); Tr.15. During that time, Ms. Mendoza received PECO bills in her name for the address 4615 Longshore Avenue. Tr. 15, 19. The Complainant filed this Complaint because she was concerned that PECO charged her for service used at an address other than her own. Substantial evidence and the record support a finding that Complainant was billed for her usage only.

Thomas Lerro, PECO High Bill Field Forman with over 30 years of experience, testified on behalf of PECO. Mr. Lerro stated that the building that now has the address 4617 Longshore Avenue was originally constructed as three separate buildings with the addresses 4615, 4617 and 4619. Tr. 83; PECO Exhibit 8 (Photo #7). Mr. Lerro also testified that the PECO

meter assigned to 4617 Longshore Avenue, Apartment A, is identified as address 4615 Longshore Avenue, second floor, in the PECO customer information system. Tr. 78.²

Additionally, on September 30, 2020, Andrew Leake, PECO High Bill Field Investigator, visited the service address to check the meter that recorded the usage for which the Complainant was charged. Tr. 41,43; PECO Exhibit 3, PECO Exhibit 5. During the inspection, Investigator Leake verified the meter for the service address, meter number 119814392,³ and found that when dropping the electric load and disconnecting the meter associated with the Complainant's account, only the apartment where the Complainant used to live, the service address, was affected. Tr. 28-29; PECO Exhibit 3, PECO Exhibit 5. There was no evidence that the Complainant was billed for service used at an address other than her own. Also, no meter mix-up or foreign wiring was found during the inspection. Tr. 29,45; PECO Exhibit 3; PECO Exhibit 5. The Complainant cannot prevail on this claim.

Investigation

During the hearing, the Complainant also questioned why PECO did not send someone to inspect her meter and provide an explanation of the disputed charges and possible meter mix-up until September 2020, after she filed a complaint with the Commission. The Complainant, whose account with PECO has remained current, was concerned that her benefits would be affected by the address issue, and eventually moved from Longshore Avenue to her current address. Tr. at 17, 32, 42.

The Complainant credibly testified that she frequently contacted PECO by telephone or in person about her concerns. Tr. 17. The Complainant testified that she contacted PECO "every month." Tr. 32. PECO records show that the Complainant contacted PECO on at least three occasions: December 27, 2019; January 6, 2020; and February 18, 2020. Tr. 17; 36.

² Mr. Lerro also noted that the buildings are now numbered 4613 followed by 4617 Longshore Avenue and that there is no building marked 4615. *See* PECO Exhibit 8 (photo #1); Tr. 79.

³ Records verify that this was Complainant's meter when she lived at the service address. *See* PECO Exhibit 1 (Meter Equipment Cd) and PECO Exhibit 3, page 4 (Electric Meter Number).

Nothing in the record provides an explanation as to why an on-site investigation was not conducted when the Complainant first began to contact PECO about her concerns.

Another fact that should have prompted an investigation is that PECO records show a service address of 4615 Longshore but a mailing address of 4617 Longshore Avenue. PECO Exhibit 1. The PECO representatives with whom the Complainant spoke did not refer this matter for an investigation until September 2020, nine months after her first recorded contact with PECO about the billing and address issue. This is unreasonable service in violation of 66 Pa.C.S. § 1501.

Penalties may be imposed where violations of the Code and Commission Regulations or a Commission Order are found. *See* 52 Pa. Code § 69.1201; *See also Rosi v. Bell-Atl. Pa., Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The factors to be considered are:

- (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.

In view of these factors, a fine is not called for here. There was no fraud or misrepresentation or evidence of intentional misconduct, only one customer was affected and there was no injury caused. PECO eventually sent out a field investigator who completed a thorough investigation and it was determined that the bills issued to the Complainant were correct. Therefore, no penalty will be imposed. *See Rahman v Verizon Pa.*, Docket Number C-2016-2564338, (Order entered June 14, 2018).

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 “trace of evidence or a suspicion of the existence of a fact” is insufficient. *HIKO Energy, LLC v. Pa. Pub. Util. Comm’n*, 163 A.3d 1079, 1094 (Pa.Cmwlt. 2017) (quoting *Lyft*,

Inc. v. Pa. Pub. Util. Comm'n, 145 A.3d 1235, 1240 (Pa.Cmwlth. 2016)), *aff'd*, 209 A.3d 246 (Pa. 2019).

4. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities and such service and facilities shall be in conformity with the regulations and orders of the commission. 66 Pa.C.S. § 1501.

5. A preponderance of the evidence supports a finding that it was unreasonable service in violation of 66 Pa.C.S. § 1501 that PECO Energy Company did not promptly investigate the Complainant's concerns regarding a possible meter mix-up or billing error.

6. Complainant failed to meet her burden of demonstrating that PECO billed her for service at the wrong address. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982).

7. Although penalties *may* be imposed where violations of the Code and Commission Regulations or a Commission Order are found, in view of the factors in 52 Pa. Code § 69.1201 to be considered, a penalty is not warranted here. *See Rosi v. Bell-Atl. Pa., Inc.*, Docket No. C-00992409 (Order entered March 16, 2000); *Rahman v. Verizon Pa.*, Docket Number C-2016-2564338, (Order entered June 14, 2018).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant Exhibit 1 is admitted into the record.

