

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alvin Dunlap, Jr.

v.

PECO Energy Company

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C-2021-3027767

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

The formal complaint of an electric service customer is sustained because he proved that the utility did not provide him with reasonable customer service.

HISTORY OF THE PROCEEDINGS

On August 6, 2021, Alvin Dunlap, Jr. (Complainant) filed a formal complaint against PECO Energy Company (PECO) with the Pennsylvania Public Utility Commission (Commission). In his complaint, Mr. Dunlap stated that he should not be responsible for certain charges that were transferred to his account. PECO filed an answer denying the material allegations of his complaint on August 17, 2021.

By notice dated August 23, 2021, this dispute was assigned to me and scheduled for a hearing by telephone for October 14, 2021.

On September 17, 2021, PECO filed a motion for a continuance of the scheduled hearing on the grounds that counsel was scheduled to attend another hearing at the same time. By interim order entered September 20, 2021, I granted PECO's motion. The hearing was rescheduled for Wednesday, November 10, 2021.

The hearing convened as scheduled. Mr. Dunlap appeared and represented himself. Khadijah Scott, Esquire, appeared and represented PECO. Mr. Dunlap testified. Ms. Scott presented the testimony of Renee Tarpley, Senior Regulatory Assessor, and introduced five exhibits, which were admitted into the record. The record closed on November 23, 2021 following the receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Alvin Dunlap, Jr. He resides at 25 South Lunenburg Drive, New Castle, Delaware. (Tr. 7)
2. PECO Energy Company, the Respondent, is a jurisdictional public utility.
3. Mr. Dunlap owns a house on 2720 North Marvine Street, Philadelphia, Pennsylvania, where he received residential electricity service from PECO. (Tr. 7-8)
4. Mr. Dunlap has owned 2720 North Marvine Street since 2006. (Tr. 8)
5. Sharon Wallace, Mr. Dunlap's aunt, was residing at 2720 North Marvine Street in 2020.¹
6. Mr. Dunlap contacted PECO in February 2020 and requested a determination by PECO that he would be eligible to have the electricity account put into his name at 2729 North Marvine Street after he evicted Sharon Wallace. (Tr. 11; PECO Ex. 4)

¹ Sharon Wallace is also known as Sharon Thompson. Tr. 52.

7. Mr. Dunlap explained to the PECO representative that he did not want the electricity service placed in his name until the eviction process was complete and he took possession of the property. (Tr. 11)

8. A PECO representative contacted Mr. Dunlap a few days later and notified him that he had been approved for service. (Tr. 11, 19)

9. During that conversation, Mr. Dunlap again told the PECO representative that he did not want service placed into his name until he took possession of the property. (Tr. 11, 19-20)

10. Mr. Dunlap told PECO that he would contact PECO when he was ready to have electricity service placed in his name at 2720 North Marvine Street. (Tr. 11, 12)

11. Mr. Dunlap did not pay a security deposit in February 2020. (Tr. 11-12)

12. Mr. Dunlap provided PECO with his mailing address in Delaware where he lives. (Tr. 12)

13. PECO placed electricity service in Mr. Dunlap's name on February 5, 2020. (Tr. 24; PECO Ex. 2)

14. The first bill for the 2720 North Marvine Street account in Mr. Dunlap's name was not issued until April 24, 2020. (PECO Ex. 2)

15. Mr. Dunlap collected mail from 2720 North Marvine Street in April or May 2020 and discovered a PECO bill with the account in his name. (Tr. 13)

16. Mr. Dunlap had not taken possession of the property in April or May 2020 because his aunt was still living there. (Tr. 13)

17. Mr. Dunlap immediately contacted PECO to switch the account back to his aunt's name because she was still residing at the property. (Tr. 13)

18. The PECO representative told Mr. Dunlap that the account had been returned to his aunt's name. (Tr. 14)

19. Mr. Dunlap took possession of 2720 North Marvine Street in June 2020 and contacted PECO to put the electricity in his name. (Tr. 14)

20. Service for electricity at 2720 North Marvine Street was removed from Mr. Dunlap's name on June 18, 2020. (Tr. 25)

21. When Mr. Dunlap received a PECO bill after June 2020, he discovered that a portion of his aunt's balance had been transferred to his account. (Tr. 14)

22. Mr. Dunlap contacted PECO several times to remove the charges accrued by his aunt from February 2020 to June 2020, but was told that PECO could not transfer the balance because his aunt no longer had an electricity account. (Tr. 15)

23. Mr. Dunlap admits that he is responsible for the charges on the account beginning in June 2020. (Tr. 16)

24. The final bill for electricity service at 2720 North Marvine Street from February 2020 until June 2020 is \$991.54. (Tr. 35; PECO Ex. 2)

25. A new account for 2720 North Marvine Street was placed in Mr. Dunlap's name on September 30, 2020. (PECO Ex. 1)

26. The balance of \$991.54 was transferred to Mr. Dunlap's new account on September 30, 2020. (PECO Ex. 1)

27. Renee Tarpley, a Senior Regulatory Assessor for PECO, reviewed the records related to 2720 North Marvine Street when her department received a copy of the formal complaint for investigation. (Tr. 24)

28. It is not typical for PECO to approve a customer for service at a future date. (Tr. 29)

DISCUSSION

Burden of Proof

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about anything done or not done by a public utility in violation of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.² A person seeking affirmative relief from the Commission has the burden of proof.³

Mr. Dunlap is the party asking the Commission to direct PECO to remove charges from his account; therefore, he has the burden of proof. This means, that Mr. Dunlap must establish facts which support his claim by a preponderance of the evidence.⁴ The term “preponderance of the evidence” means that Mr. Dunlap’s evidence must be more convincing, by even the smallest amount, than the evidence presented by PECO.⁵ Relief can only be granted if Mr. Dunlap proves facts which show that PECO violated the Public Utility Code or Commission regulations.

² 66 Pa.C.S. § 701.

³ 66 Pa.C.S. § 332(a).

⁴ *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040 (Pa. 2007) (*Popowsky*); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁵ *Popowsky*.

Other Legal Standards

Section 1501 of the Public Utility Code,⁶ requires that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. Upon finding that the service or facilities of a public utility are unreasonable, unsafe, or inadequate, the Commission may prescribe, by regulation or order, the reasonable, safe, and adequate service, or facilities that a public utility must furnish or employ.⁷

The Commonwealth Court has cautioned that the Commission may not sustain a complaint based on Section 1501 unless it finds that a utility has violated a duty to render reasonable and reliable service.⁸ Further, the Commission has stated that a utility is not mandated to furnish perfect service:

[Section 1501] does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.⁹

This standard of reasonableness is the test to determine the adequacy of a utility's response to customer service complaints, as well as repairs made to its facilities.¹⁰

Mr. Dunlap's Claim

Mr. Dunlap claims he is not responsible for electricity charges accrued at 2720 North Marvine Street before June 2020. He testified that he contacted PECO in January or

⁶ 66 Pa.C.S. § 1501.

⁷ 66 Pa.C.S. § 1505.

⁸ *W. Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984).

⁹ *Re Metro. Edison Co.*, 80 Pa. PUC 663, 672 (1993).

¹⁰ *Thurby v. W. Penn Power Co.*, Docket No. C-2011-2254048 (Final Order April 4, 2013).

February 2020, but only for a predetermination that his application for an electric account would be approved. He wanted to know if he would qualify for an electricity account after he evicted his tenant/aunt because he had not had a PECO account for several years. Mr. Dunlap says that he explained to the PECO representative that he did not want the electricity service placed in his name until the eviction process was complete and he took possession of the property.

A PECO representative contacted Mr. Dunlap a few days later and notified him that he had been approved for service. Mr. Dunlap stated that he again told the PECO representative that he did not want service placed into his name until he took possession of the property. Mr. Dunlap told PECO that he would contact PECO when he was ready to have electricity service placed in his name at 2720 North Marvine Street. Mr. Dunlap also provided PECO with his mailing address in Delaware, where he resides. Despite Mr. Dunlap's clear instructions, PECO placed electricity service in Mr. Dunlap's name on February 5, 2020.

Mr. Dunlap collected mail in his name from 2720 North Marvine Street in April or May 2020. He discovered that PECO had placed the electricity account in his name in February 2020. He and his aunt contacted PECO. Mr. Dunlap testified that the PECO representative told him that the account had been taken out of his name and placed in his aunt's name.

Mr. Dunlap took possession of 2720 North Marvine Street in June 2020. Mr. Dunlap contacted PECO to place the electricity account in his name. When he received his first bill, he discovered that the charges accrued by his aunt before June 2020 had been placed on his account. Mr. Dunlap contacted PECO several times and asked PECO to remove the charges accrued by his aunt before June 2020. Mr. Dunlap testified he was told that PECO could not transfer the balance because his aunt no longer had an electricity account.

I find Mr. Dunlap's testimony credible. Although he could not pinpoint the exact dates when he contacted PECO, his testimony is largely consistent with the PECO business records that were admitted into evidence. He testified consistently, even when cross-examined by PECO's counsel, that he repeatedly told a PECO customer service representative that he did

not want an electricity account established in his name until he took possession of 2720 North Marvine Street following the eviction of his tenant.

The Commission has held that customers are entitled to rely on oral communication from its agents.¹¹ The Commission has also held that customer service representatives are required to provide accurate and complete information to customers.¹² Mr. Dunlap testified that he contacted PECO to see if he would qualify for an electricity account and explained to the PECO representative that he did not want the account placed in his name until the eviction of his tenant. Had the PECO representative informed him that PECO could not make a determination on his ability to qualify for service without a connection date, it is likely that Mr. Dunlap would not have proceeded with the application process at that time.

Mr. Dunlap's testimony is consistent in that he did not want to take responsibility for the electricity charges accrued by his aunt, and in that he told a PECO representative at least twice that he did not want an electricity account in his name until he took possession of the property.

Despite Mr. Dunlap's clear instructions, PECO initiated service in his name prior to him requesting that they do so. I find that Mr. Dunlap is not responsible for the electricity charges placed in his name from the initiation of service on February 5, 2020 until June 18, 2020.¹³

¹¹ *E.g., Herp v. Respond Power, LLC*, C-2014-2413756 (Opinion and Order entered January 28, 2016)(a supplier is responsible for the failure of sales agents to provide accurate information and is a violation of Commission marketing rules).

¹² *Maisch v. PECO Energy Co.*, Docket C-2009-2118649 (Opinion and Order entered May 19, 2011)(failure to provide a clear explanation of a customer's billing is unreasonable service); *Brickner v. PPL Elec. Utils. Corp.*, Docket C-2009-2105583 (Opinion and Order entered May 21, 2010)(failure to notify a customer of a pending rate change when the customer called for information).

¹³ Ms. Tarpley did not explain why PECO failed to generate a bill until April 24, 2020 or why the bill was not sent to Mr. Dunlap's address in Delaware when Mr. Dunlap, a landlord, provided his Delaware address to PECO.

Mr. Dunlap has met his burden of proving that PECO failed to provide him reasonable customer service in violation of Section 1501 of the Public Utility Code. PECO failed to provide reasonable customer service when it placed the electricity account in his name even though he told the PECO representative that he did not want to be responsible for the charges accrued by the tenant. PECO also failed to provide reasonable customer service because PECO representatives failed to adequately explain to him that if he provided documentation to apply for service that his request for service would not be deferred to a later date.

PECO's Evidence

PECO provided evidence through the testimony of Renee Tarpley. Ms. Tarpley's testimony was based upon her review of PECO records. Ms. Tarpley authenticated certain PECO business records which were presented as PECO Exhibits 1-5. Ms. Tarpley explained that PECO Exhibits 1 and 2 consisted of account statements for 2720 North Marvine Street which were in Mr. Dunlap's name. She created these exhibits by exporting PECO billing information into an Excel spreadsheet.

PECO Exhibits 4 and 5 consisted of selected customer contact records. Ms. Tarpley testified that she reviewed the customer contacts from PECO Customer Information System (CIMS), selected records she viewed as relevant, copied screenshots of these records into a Word document to create PECO Exhibits 4 and 5.¹⁴ PECO Exhibit 4 consists of a list of contacts for the account of Sharon E. Wallace from February 3, 2020 through February 17, 2020. The exhibit also includes the content of three contacts on February 3, 2020 and two contacts on February 4, 2020. PECO Exhibit 4 also includes a screenshot of one contact from September 28, 2020 and a list of "Support Team Review" notes dated September 22, 2020 through September 28, 2020. PECO Exhibit 5 includes a screen shot of accounts associated with 2720 North Marvine Street.¹⁵

¹⁴ Tr. 41.

¹⁵ The notes on the bottom half of the page were excluded from evidence because Ms. Tarpley stated that they were transcribed from business records but were not the business records themselves.

None of the admissible evidence presented by PECO rebuts the credible testimony of Mr. Dunlap. Ms. Tarpley testified that Mr. Dunlap contacted PECO on January 30, 2020 and that he requested service effective February 7, 2020¹⁶. However, none of the customer contact records provided in PECO's exhibit support this statement. There are no records of contact admitted into the record for January 30, 2020. Further, the screenshot on the second page of PECO Exhibit 4 states that PECO initiated service in Mr. Dunlap's name on February 4, 2020, not February 7, 2020.

Ms. Tarpley also testified that Mr. Dunlap did not contact PECO to place service in his name in June 2020, but that Sharon Wallace contacted PECO to place service in her name so that she could qualify for a LIHEAP grant¹⁷. No records from June 2020 were offered to support her testimony.

Ms. Tarpley testified that her knowledge of the facts of the complaint was based upon her review of the records. She has no personal knowledge of the customer contacts. Therefore, her testimony of contacts not appearing in the Company's records is hearsay and cannot provide the basis for a finding of fact unless corroborated.

The Commission recently explained hearsay and the proper use of testimony based on business records in *Williams v. Pittsburgh Water and Sewer Authority*:

As an administrative agency, the Commission follows the *Walker* [*v. Unemployment Compensation Bd. Of Rev.*, 367 A.2d 366 (Pa. Cmwlth. 1976)] rule, which provides that hearsay evidence, properly objected to, is not competent evidence to support a finding of the agency. Hearsay evidence admitted without objection, will be given its natural probative effect and may support a finding of an agency if it is corroborated by any competent evidence in the record. A finding of fact based solely on hearsay will not stand. *Walker*, 367 A.2d at 370.

¹⁶ Tr. 29.

¹⁷ Tr. 30.

The business records exception to the hearsay rule is commonly used in consumer complaint proceedings and only requires a copy of a business record and its appropriate authentication by a witness qualified to provide testimony on the subject matter.

(6) Records of a Regularly Conducted Activity. A record (which includes a memorandum, report, or data compilation in any form) of an act, event or condition if:

(A) the record was made at or near the time by – or from information transmitted by – someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a “business”, which term includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) neither the source of information nor other circumstances indicate a lack of trustworthiness.

Pa. R. Evid. 803(6).

Authentication of business records requires that the submitting party satisfy the requirements of the Business Records Act, establishing the authenticating witness as the custodian or qualified witness who can testify to the record’s identity and preparation, and whether it was made in the regular course of business at or near the time of the act, condition, or event. 42 Pa. C.S. § 6108. It is not essential under the Business Records Act to produce either the person who made the entries or the custodian of the record at the time the entries were made, and the law does not require that the witness qualifying business records even have a personal knowledge of the facts reported in the business records, as long as the authenticating witness can provide sufficient information relating to the preparation and maintenance of the records to justify the presumption of trustworthiness of the business records of a company. *Boyle* [v.

Steiman, 631 A.2d 1025, 1032 (Pa. Super. 1993), appeal denied, 538 Pa. 663, 649 A.2d 666 (1984).^[18]

Ms. Tarpley's testimony was based upon reading from PECO business records. Only portions of these business records were provided for admission into the record as a patchwork of screenshots that were selected by Ms. Tarpley. She testified that she selected these particular screenshots because, in her view, they were relevant. She did not include other screenshots, presumably because, in her view, they were not relevant. Yet, Ms. Tarpley provided a significant amount of factual testimony regarding alleged contacts between PECO representatives, Mr. Dunlap and his tenant, Sharon Wallace, occurring in January and June 2020. If these contacts were relevant to include in her testimony, the record of these contacts should have been relevant enough to include in PECO's exhibits. Without documentation, Ms. Tarpley's testimony is hearsay and cannot rebut the testimony of Mr. Dunlap who testified consistently and credibly from personal knowledge.

Conclusion

Mr. Dunlap sustained his burden of proving that PECO failed to render reasonable customer service required by Section 1501 of the Public Utility Code. The testimony provided by Ms. Tarpley was not corroborated by an actual business record, is hearsay, and is insufficiently reliable to rebut the first-hand testimony of Mr. Dunlap.¹⁹

Having concluded that PECO violated the Public Utility Code, it is appropriate to consider whether a civil penalty is warranted.²⁰ The amount in dispute is moderate. While Mr. Dunlap was clearly frustrated with his interaction with PECO, the dispute is likely the result of a miscommunication between the PECO customer service representatives and Mr. Dunlap. The Commission has held that the assessment of a civil penalty for a customer service violation is not

¹⁸ *Williams v. Pittsburgh Water & Sewer Auth.*, Docket C-2020-3019223 (Opinion and Order entered August 5, 2021), p. 21-22 (footnotes omitted).

¹⁹ *Roberts v. Verizon N. LLC*, Docket C-2015-2470550 (Opinion and Order entered November 22, 2016); *Moore v. NFG*, Docket C-2014-2458555 (Final Order entered August 25, 2015).

²⁰ *See* 66 Pa.C.S. § 3301.

mandatory.²¹ Therefore, I do not believe that a civil penalty is appropriate for this particular violation.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject-matter of this dispute. 66 Pa.C.S. § 701.
2. The Complainant bears the burden of proof. 66 Pa.C.S. § 332.
3. Utility customer service representatives are required to provide accurate and complete information to customers. *Maisch v. PECO Energy Co.*, Docket C-2009-2118649 (Opinion and Order entered May 19, 2011) (failure to provide a clear explanation of a customer's billing is unreasonable service); *Brickner v. PPL Elec. Utils. Corp.*, Docket C-2009-2105583 (Opinion and Order entered May 21, 2010) (failure to notify a customer of a pending rate change when the customer called for information).
4. If a utility customer service representative fails to provide complete and accurate information to a customer, the utility failed to provide reasonable customer service in violation of the Public Utility Code. 66 Pa.C.S. § 1501.
5. The Complainant met his burden of proving that PECO failed to provide him with reasonable customer service. 66 Pa.C.S. §§ 332; 1501.
6. The Complainant is not responsible for the electricity charges placed in his name at 2720 North Marvine Street from February 5, 2020 through June 18, 2020.

²¹ *Rahman v. Verizon Pa. Inc.*, Docket C-2016-2564338 (Opinion and Order entered June 14, 2018).

