

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Wanda Walker	:	
	:	
v.	:	C-2021-3023220
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Darlene Heep  
Administrative Law Judge

**INTRODUCTION**

The Complainant, an electric and gas utility service customer, contends that there are incorrect charges on her PECO bill that were transferred to her from balances owed by her tenants. The Complainant further alleges that PECO did not credit her account with all payments that she made to PECO. As relief, the Complainant seeks return of money paid plus damages, interest and penalties.

This decision grants the Complaint, in part, and denies the Complaint, in part. The record supports a finding that PECO incorrectly transferred some of the disputed balances/charges from a tenant to the Complainant. The Complainant did not establish that the other remaining charges in question were incorrectly transferred to her or that payments made by the Complainant to PECO were not credited to the Complainant's accounts. In addition, the Complainant's request for penalties, damages and interest are denied.

## HISTORY OF THE PROCEEDING

On October 6, 2020, Wanda Walker (“Complainant”) filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission” or “PUC”) against PECO Energy Company (“PECO” or the Company). In the Complaint, Ms. Walker contends that there are incorrect charges on her PECO bill that are related to charges owed by her tenants. The Complainant further alleges that PECO did not credit her account with all payments that she made to PECO. As relief, the Complainant seeks return of money paid plus damages, interest, and penalties.

On December 9, 2020, the Commission’s Secretary served the Complaint on PECO.

On December 23, 2020, PECO filed an Answer to the Complaint. PECO denied all material allegations of fact and conclusions of law in the Complaint. PECO averred in the Answer that the Complainant is a PECO customer and a landlord property owner who has had rental property PECO accounts in her name at various times. PECO asserted that the Complainant requested that service be placed in her name at multiple properties and the bills and balances at issue accumulated while the accounts were in the Complainant’s name. PECO maintained that pursuant to 52 Pa. Code. § 56.16(a), the Complainant had an obligation to contact the Company to request discontinuance of service and, therefore, is responsible for the charges incurred until the service was discontinued. PECO further asserted that pursuant to 52 Pa. Code. § 56.16(b), the accounts were in the name of the Complainant and therefore the balances were properly transferred to an active account of the Complainant. PECO also asserted in the Answer that the Complainant’s residential account had a balance of \$3,070.53.

On December 28, 2020, an Initial Telephonic Hearing Notice was emailed to all parties, setting a hearing for February 17, 2021, beginning at 10:00 a.m.

A Prehearing Order was also emailed to all parties on December 28, 2020.

The hearing convened as scheduled on February 17, 2021. The Complainant did not appear. PECO moved that the case be dismissed for failure to prosecute. The motion was taken under advisement. *See* February 17, 2021 Transcript at 5.

On February 19, 2021, counsel for PECO advised me that the Complainant contacted PECO through email and stated that she did not receive the Initial Telephonic Hearing Notice or the Prehearing Order and that she had talked to someone over the phone and was told she would receive a call for the hearing. The Complainant also called and left a message containing the same information with the Commission's Harrisburg and Philadelphia offices. The Complainant also stated that she does not open email from unknown addresses. Due to the above, I decided to schedule another hearing in this matter.

On February 19, 2021, a Cancelled/Rescheduled Hearing Notice was issued, setting a hearing for March 9, 2021, at 10:00 a.m.

On February 19, 2021, a second Prehearing Order was issued. This Prehearing Order again advised the Complainant that she must call into the hearing, that any documents that she would like to present as evidence must be emailed to the Legal Assistant and that if she was unable to scan or email her documents, that she must email the Legal Assistant for alternative arrangements.

The hearing began as scheduled at 10:00 a.m. on March 9, 2021. As the hearing began, the Complainant stated that she had sent approximately 300 pages of documents to Harrisburg. Copies of the documents were not received by PECO or my office. The Complainant was advised of several methods for sending the documents and the hearing was adjourned with a Further Hearing to be scheduled.

On March 10, 2021, Further Telephonic Hearing was scheduled for April 14, 2021, with notice sent to all parties. Also on March 10, 2021, A Prehearing Order was issued to all parties. These documents were emailed to the Complainant, and none were returned as undeliverable.

The hearing convened on April 14, 2021, at 10:00 a.m. as scheduled. The Complainant did not appear. PECO moved to dismiss for failure to prosecute. The motion was taken under advisement.

On April 23, 2021, the Complainant sent an email to my scheduling office asking the date of her next hearing. The Complainant emailed a similar inquiry to the Secretary's Bureau on April 27, 2021. Given that the Complainant was acting *pro se*, the hearing was again rescheduled.

On April 28, 2021, a Further Telephonic Hearing Notice was mailed to all parties, setting a hearing for May 26, 2021. A Prehearing Order was also issued on April 28, 2021.

On May 24, 2021, by email, George Gossett, Jr., Esquire advised that he had been engaged by the Complainant to represent her in this matter. He requested a continuance of the July 14, 2021 hearing to allow him time to properly prepare for a hearing.

On May 25, 2021, A Cancelled/Rescheduled Hearing Notice was issued to all parties, rescheduling the hearing for July 14, 2021.

On July 12, 2021, Attorney Gossett filed an Entry of Appearance on behalf of the Complainant.

The hearing convened as scheduled on July 14, 2021. PECO was represented by Khadijah Scott, Esquire, and Attorney Gossett represented the Complainant. During the hearing, the parties requested a ten-minute break and upon returning advised that they believed that they could exchange information and resolve several of the issues and asked that a Further Hearing be scheduled.

On July 15, 2021, a Further Call-In Telephonic Hearing Notice was issued to all parties setting the hearing for September 29, 2021. A Prehearing Order was issued on July 21, 2021.

The rescheduled hearing convened as scheduled on September 29, 2021. Attorney Gossett appeared on behalf of the Complainant and Attorney Scott appeared on behalf of PECO. The Complainant testified on her own behalf. PECO presented Deba Ather, Regulatory Assessor, as a witness. At the end of the hearing, the parties were given until November 12, 2021 to provide late-filed exhibits. Both parties provided late-filed exhibits. The electronic transcript of the hearing was filed on November 18, 2021

Upon further review of the record, an Order was issued on January 5, 2022 directing PECO to provide additional information by January 19, 2022. PECO filed a response on January 19, 2022.

The record is closed as of January 19, 2022, the date PECO filings were due. The record includes a 248-page transcript and the following exhibits:

Complainant A - Copies of Complainant records

1. PECO Bills
2. Pre-hearing Order
3. Copies of Checks, Phone Payments

Complainant B<sup>1</sup> - Handwritten phone payment list and copy of 5/20/20 PECO bill

Complainant Exhibit C - Copies of Bills, Receipts and Lease for 6801 17th Street

Complainant Exhibit C - 1 8/12/18 Check # 1123 for \$3,044.36

Complainant Exhibit C - 2 Checks to PECO 8/12/18 to Present<sup>2</sup>

Complainant Exhibit C - 3 Confirmation Text Messages

PECO Exhibit - 1 BCS Decision Report

PECO Exhibit - 2 Case Details Report from BCS

PECO Exhibit - 3 Utility Company Report

PECO Exhibit - 4 Utility Company Report

PECO Exhibit - 5 Account Activity Statements

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<sup>1</sup> Exhibits Complainant A and B were filed by the Complainant acting *pro se*. The parties were also directed to submit documents following the hearing. Complainant Exhibit A, Complainant Exhibit B, Complainant Exhibit C, Exhibits C-1, C-2, and C-3 and PECO Exhibits 8-15 will be admitted in the Order.

<sup>2</sup> PECO Objected to admission of a check written by the Complainant to Philadelphia Gas Works that was included in Complainant Exhibit C-2. That objection will be sustained.

PECO Exhibit - 6 Balance Transfer History  
PECO Exhibit - 7 Balance Transfer History  
PECO Cross - 8/12/18 Check # 5 Examination 1 # 1123 for \$3,044.36  
PECO Exhibit 8 - Itemized payment information related to each text message confirmation number submitted by Complainant  
PECO Exhibit 9 - Copy of check #1123 – Complainant’s Exhibit  
PECO Exhibit 10 - Itemized account payments associated with check #1123 totaling \$3044.36  
PECO Exhibit 11 - Copy of all July 2018 and August 2018 bills  
PECO Exhibit 12 - (Confidential Management Document)  
PECO Exhibit 13 - Itemized transfer balances placed on each account  
PECO Exhibit 14 - PECO’S RESPONSE TO COMPLAINANT’S LATE FILED EXHIBIT C2  
PECO Exhibit 15 - List of Units with Bills Transferred to the Complainant

This matter is ready for a decision.

#### FINDINGS OF FACT

1. The Complainant is Wanda Walker.
2. The Respondent is PECO Energy Company.
3. The Complainant is the landlord and owner of the following PECO service addresses in Philadelphia, Pennsylvania:
  - a. 6801 North 17th Street, 9-unit residential property with a separate PECO electric meter for each unit.
  - b. 147 Manheim, 4-unit residential property with a separate PECO electric meter for each unit.
  - c. 5023 Wayne Avenue, 3-unit residential property with a separate PECO electric meter for each unit.

(Tr. 31-34).

4. The Complainant is a PECO gas and electric customer where she resides in Glenside, Pennsylvania. (“Glenside Account”). (Tr. at 33).

5. An account with a service address of 6801 North 17<sup>th</sup> Street, public lighting, Account Number 44226-XXXX, is in the Complainant’s name and had a balance of \$107 at the time of the hearing. (PECO Exhibit 5).

6. When a tenant vacates an apartment, the Complainant contacts PECO and asks PECO to put service in her name so that she can work on the apartment to prepare it for the next tenant. (Tr. 37).

7. PECO transferred \$1,777.34 in charges from 6801 North 17<sup>th</sup> Street, 2 MID 4 to the Complainant’s Glenside Account, Account Number 41133-XXXX. (PECO Exhibit 4, Tr. 173-176)

8. PECO transferred \$2,391.03 in charges from 6801 North 17<sup>th</sup> Street, 3 MID 7 to the Complainant's Glenside Account (Tr. 240-241; PECO Exhibits 5 and 6 – Account Number 47456-XXXXX).

9. A Utility Company Report letter dated November 14, 2019 sent by PECO to the Complainant states that after an investigation, PECO found that the Complainant was responsible for the account balances transferred to her account, with an overall account balance of \$3,267.87. (Tr. 174; PECO Exhibit 3).

10. The November 14, 2019 Utility Company Report letter does not specify the accounts from which the amounts were transferred, or on which dates the charges transferred to the Complainant were incurred. (PECO Exhibit 3).

11. A Utility Company Report dated January 21, 2020, sent by PECO to the Complainant, states that “Under the Pennsylvania law (66 Pa. C.S.A. § 1407 (D), you are responsible for all charges incurred at the property [6801 North 17<sup>th</sup> Street, 2 MID 4] through

April 12, 2019. As a result of this the balance of \$1,777.34 is your responsibility.” (PECO Exhibit 4).

12. At the time of the hearing, the Complainant had eleven active PECO accounts in her name. (Tr. 180; PECO Exhibit 5).

13. Complainant’s active accounts with balances at the time of the hearing were:

Address	Account Number	Amount
5015 Wayne Avenue, 2 <sup>nd</sup> Floor	28897XXXX	\$1,250.62
5023 Wayne Avenue, Public Lighting	35713-XXXX	\$97.63
5023 Wayne Avenue, First RR	38206-XXXX	(\$432.97)
6801 North 17th Street, Public Lighting	44226-XXXX	\$107.10
Front, 18 5023 Wayne Avenue	47456-XXXX	\$2,940
5023 Wayne Avenue, Second 5 Floor	50549-XXXX	\$426.62
Floor First, 8034 20 Pickering Street	72052-XXXX	\$21.49
Glenside Account	88702-XXXX	\$3,875.77

14. PECO credited the Complainant’s accounts with payments that she made to PECO. (Tr. 187, 211; PECO Exhibits 5, 8).

### DISCUSSION

The Complainant here contends that 1) PECO incorrectly billed her, 2) her payments were not properly credited, and 3) she should receive a refund, interest and penalties. 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:

[e]very 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. Cmwlth. 1995). The Code defines “service” as:

[s]ervice, 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.

66 Pa.C.S. § 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 (Opinion and Order entered July 15, 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*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 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. 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).

Regarding the responsibility of landlords to pay for utility service at rental property, the code provides:

**§ 1529.1. Duty of owners of rental property.**

**(a) Notice to public utility.**--It is the duty of every owner of a residential building or mobile home park which contains one or more dwelling units, not individually metered, to notify each public utility from whom utility service is received of their ownership and the fact that the premises served are used for rental purposes.

**(b) History of account.**--Upon receipt of the notice provided in this section, if the mobile home park or residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services

rendered thereunto. In the case of individually metered dwelling units, unless notified to the contrary by the tenant or an authorized representative, an affected public utility shall list the account for the premises in question in the name of the owner, and the owner shall be responsible for the payment for utility services to the premises.

**(c) Failure to give notice.--** Any owner of a residential building or mobile home park failing to notify affected public utilities as required by this section shall nonetheless be responsible for payment of the utility services as if the required notice had been given.

66 Pa.C.S. § 1529.1.

#### Billing and Transfer of Charges

The Complainant is questioning \$6,000 in charges and payments to PECO which she contends includes balances transferred from the accounts of tenants. (Tr. 38, 50). She testified that her Glenside Account services were shut off for nonpayment of these charges. (Tr. 53). Ms. Walker also stated during the hearing that she received bills for PECO services that were not her own but were for the accounts of tenants at 6801 North 17<sup>th</sup> Street. (Tr. 35-36). It is the Complainant's position that the balances on the PECO accounts of tenants should not have been transferred to her personal account.

Ms. Walker testified that on the day of the shut-off in October of 2019 (Tr. 119), she visited the PECO offices with copies of tenant leases, and she was told that she owed approximately \$3,000. (Tr. 49-50) According to the Complainant, PECO turned the services on at the Complainant's residence after she agreed to pay \$500 each month toward the outstanding bills. (Tr. 55). PECO acknowledged that on November 6, 2019, the Complainant and PECO entered into a payment agreement for a balance of over \$3,000. (Tr. 230). The Complainant also testified that in July of 2020, a PECO representative told her that she owed another \$3,000. (Tr. 60-61).

The Complainant testified that when a tenant moves in, the tenant puts service in his or her name. (Tr. 38-39). The Complainant credibly testified that the tenants whose bills she

received had service in their own names as part of a requirement of the Philadelphia Rapid Housing Program, a program for homeless women and families and people needing shelter. (Tr. 39-42). She also testified that she did not receive bills for these tenants while they resided in her properties and that she was not sent bills for a tenant's PECO services until the tenant no longer lived in her rentals. (Tr. 42-43). She also testified that after tenants moved out, PECO sent tenant PECO bills to her post office box. (Tr. 35-36)

The Complainant also testified that when a tenant moved out, she and PECO had an understanding that the service from that point would be placed in her name and the service not shut off so that she could do the work necessary to prepare the unit for the next tenant. (Tr. 36-37). The Complainant also credibly testified that when she prepared the apartments, she would occasionally find in the vacated apartments PECO bills that were in the names of tenants. She also testified that as part of an effort to encourage personal responsibility, the housing program that assisted her tenants required that the tenant have monthly utility bills in their names and that the program provides a stipend to the participants to pay the utility bills. (Tr. 38-42, 58-59). While acknowledging that she is responsible for and had paid for charges that are incurred when she is working on an apartment to lease to a new tenant, she disputes that she is responsible for charges left behind by a tenant and stated that she never agreed to pay such charges. (Tr. 43-44).

Transfer of \$1,777.34 from 6801 North 17<sup>th</sup> Street, 2 MID 4

PECO transferred \$1,777.34 in charges from 6801 North 17<sup>th</sup> Street 2 MID 4, Account 41133-XXXX, to the Glenside Account. (PECO Exhibit 4, Tr. 175-176). Records of PECO and the testimony of the Complainant establish that the property at 6801 North 17<sup>th</sup> Street has separate meters for each apartment and general lighting. (Tr. 33; PECO Exhibit 4, 5). Given the separate meters for each unit, the Complainant cannot be held responsible for tenant charges under 66 Pa.C.S. § 1529.1. The PECO account statements in the record include one account for the Complainant on North 17<sup>th</sup> Street, and that is for public lighting areas, Account 44226-XXXX. with a balance of \$107. (PECO Exhibit 5).

The Complainant credibly testified that she did not incur or agree to pay for any PECO charges incurred by a tenant at 6801 North 17<sup>th</sup> Street. (Tr. 102). None of the PECO account statements show that the Complainant incurred charges as the customer of record at 6801 North 17<sup>th</sup> Street, 2 MID 4. The Complainant established a *prima facie* case that the balance of \$1,777.34 from 6801 North 17<sup>th</sup> Street, 2 MID 4, was improperly transferred to the Glenside Account.

PECO presented the testimony of PECO Regulatory Assessor Ather. She testified that the basis for holding the Complainant liable for the \$1,777.34 in charges from 6801 North 17<sup>th</sup> Street, 2 MID 4, is because she “did not contact the company to discontinue the service” and “as a result the account remains open in Ms. Walker’s name, and she’s being held responsible for the bill.” (Tr. 177). The Company also relies on its January 21, 2020 Utility Company Report that states that the Complainant is responsible for the \$1,777.34 balance from 6801 North 17<sup>th</sup> Street, 2 MID 4, under 66 Pa.C.S.A. § 1407(d).

This is insufficient to rebut the Complainant’s *prima facie* case regarding the \$1,777.34 in charges from 6801 North 17<sup>th</sup> Street. PECO could not provide any source documents or direct printout or screen shots from its account records showing that the Complainant was the customer of record when the \$1,777.34 in charges accrued.

Additionally, PECO references 66 Pa.C.S.A. § 1407(d) as the basis for holding the Complainant responsible for the balances in question. This section provides:

**(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.

66 Pa.C.S.A. § 1407(d). There is no evidence showing that the Complainant resided at 6801 North 17<sup>th</sup> Street during the period the outstanding balance accrued. Small charges on the Complainant’s account statements support her testimony that she incurs small PECO charges at

her rental units during the periods that she places service temporarily in her name to prepare a unit for the next tenant. (PECO Exhibit 5).

Further, as PECO Regulatory Assessor Ather testified, if a balance accrues at a rental property and service is not under the name of the landlord/owner, the balance will not belong to the landlord/owner and the balance would follow the tenant rather than the landlord/owner. (Tr. 178-179). To hold otherwise would encourage tenants to simply move out and leave behind a bill for PECO services opened in his or her name for the landlord/owner to pay.

The evidence supports a finding that the Complainant is not responsible for the \$1,777.46 transferred from 6801 North 17<sup>th</sup> Street, 2 MID 4 to the Glenside Account. The Complainant prevails here.

Transfer of \$2,391.03 from 6801 17<sup>th</sup> Street, 3 MID 7

Also at question is the transfer of \$2,391.03 to the Complainant from 6801 17<sup>th</sup> Street, 3 MID 7, to the Glenside Account. The PECO testimony was that the company transferred balances from other rental units -- \$571.76 from 6801 North 17th Street, Rear Second 3; \$98.41 from 6801 North 17th Street, Rear First 1; plus \$1,562.70 from 147 West Manheim Street, Second Floor- into the account for 6801 North 17th Street, 3 MID 7. That total was then transferred to the Complainant's Glenside Account. (Tr. 240-241; PECO Exhibits 5 and 6 – Account Number 47456-XXXXX).

The Complainant testified that she incurred PECO service charges when she worked to prepare a vacant unit for rental. Neither the testimony nor the exhibits established that the Complainant was the customer of record when \$571.76 from 6801 North 17th Street, Rear Second 3; \$98.41 from 6801 North 17th Street, Rear First 1; and \$1,562.70 from 147 West Manheim Street, Second Floor charges were accrued. Particularly bringing these transfers into question is the large transfer of \$1,562.70 from 147 Manheim Street, Second Floor, an amount greater than the record suggests was accrued by the Complainant when she prepared units for

tenants.<sup>3</sup> PECO will be ordered to review these billings for the \$2,391.03, determine whether the Complainant was the account holder at the time any of the charges were incurred, and issue corrected bills to the Complainant, if appropriate.

As for the remaining charges, there was no testimony or documentation upon which to base a finding that the Complainant was improperly billed.

#### Crediting of Account for Payments Made

The Complainant also questions whether PECO properly credited her account with payments made. The record does not support finding for the Complainant here.

The Complainant provided more than 200 pages of copies of checks written to PECO and texts from PECO confirming payments made. (Complainant Exhibit A and C, Exhibit C-3). PECO reviewed the payments and provided a report regarding payments that were credited to the account. (PECO Exhibit 8). The PECO accounting shows that the payments were credited to accounts of the Complainant. However, the record also established that acts of both PECO and the Complainant contributed to confusion in crediting the Complainant's payments.

PECO records showed that the Complainant had a credit of \$432.97 at the time of the hearing. (Tr. 187, 211; PECO Exhibit 5). The Complainant testified that she sometimes paid for multiple bills and accounts with one check and wrote on the check the various account numbers for which the payments were made. The check did not always indicate how much should be credited toward which accounts. Also, the text receipts issued by PECO to the Complainant do not state to which accounts payments were credited. All of this contributed to the payment credit muddle. Nevertheless, there is no evidence that the payments made by the Complainant were not ultimately credited to an account of the Complainant. The Complainant cannot prevail on this issue. However, PECO and the Complainant should meet and discuss payment and billing matters and procedures, including establishing common designations and

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<sup>3</sup> A meter mix up at this location further brings into question these charges. (Tr. 109-112).

descriptions for apartment units, and develop a method to avoid such billing and payment issues in the future.

### Damages and Interest

The Complainant is also seeking damages and interest from PECO. The Complainant would have to bring an action in civil court to seek damages or interest. The Commission does not have jurisdiction to award the Complainant damages. As the Commission has stated:

The Commission does not have the authority to order a public utility to pay monetary damages. *Byer v. Peoples Natural Gas Co.*, 380 A.2d 383 (Pa. Super. 1977); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977); *DeFrancesco v. Western Pennsylvania Water Company*, 499 Pa. 374, 453 A.2d 595 (1982); *Elkin v. Bell of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980). Therefore, a request for damages is not appropriately before the Commission; rather, damage payments must be ordered by a court of competent jurisdiction, such as a county court of common pleas. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

*Deater v. Columbia Gas of Pa., Inc.*, Docket Number C-2020-3022118 (Opinion and Order entered October 7, 2021).

Also, although 66 Pa.C.S. § 1312(a) provides for interest on refunds, the provision is not applicable here. As the Commission explained, 66 Pa. Code § 1312(a) gives the Commission authority to order a refund when a complainant is billed in excess of rates contained in a utility's tariff or by unlawful collection, within four years prior to filing of the complaint. *Silver Valley Apartments c/o Mike Vianello v. PPL Electric Utilities Corporation*. Docket Number F-2019-3008686 (Opinion and Order entered March 26, 2020) at p. 10, fn. 8. The instant case involves an incorrect transfer of charges rather than an excessive or unjust rate. There are no refunds of an excessive or unjust rate and therefore no interest is warranted.

## Penalties

Here, PECO has been found to have erroneously transferred tenant balances to the Complainant's home account. 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 (Opinion and 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. However, a penalty is not automatically warranted when a violation is found. See *McKee v People's Nat. Gas*, Docket Number C-2017-2583759 (Opinion and Order entered December 20, 2018); *Greco v Pa. Am. Water*, Docket Number C-2011-2226099 (Opinion and Order entered August 30, 2012).

In view of the factors to be considered, a civil penalty is not warranted here. There was no fraud or misrepresentation, or evidence of intentional misconduct, as contemplated by factors 1, 2 and 3. The violation appears to be one of accounting error rather than a problem with general company procedures, as raised in factor 4. The record does not reflect that PECO has a compliance history of such violations, the factor 6 consideration for imposition of penalties. Therefore, no penalty will be imposed. See *Rahman v. Verizon Pa.*, Docket Number C-2016-2564338 (Opinion and 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 or she 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. Cmwlth. 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. Where rental units are not individually metered, an owner may be held responsible for payment of tenant utility services. 66 Pa.C.S. § 1529.1.

6. A public utility may require the payment of any outstanding balance or portion of an outstanding balance from an applicant 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.A. § 1407(d).

7. A preponderance of the evidence supports a finding that there was unreasonable service in violation of 66 Pa.C.S. § 1501 in that PECO Energy Company incorrectly transferred \$1,777.46 to the Complainant’s residential PECO account and PECO should further investigate the transfer of \$2,391.03 from 6801 17<sup>th</sup> Street to the Complainant’s residential PECO account.

8. Complainant did not present substantial evidence to support a finding that the remaining balance transfers were made in error. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982).

9. 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 (Opinion and Order entered March 16, 2000); *Rahman v. Verizon Pa.*, Docket Number C-2016-2564338, (Opinion and Order entered June 14, 2018).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant Exhibit A, Complainant Exhibit B, Complainant Exhibits C, C-1, C-2, and C-3, and PECO Exhibits 8-15 are admitted into the record.
2. That the objection of PECO Energy Company to a check included in Complainant Exhibit C-2 that was written to Philadelphia Gas Works is sustained.
3. That the Complaint in the matter of Wanda Walker v. PECO Energy Company at Docket Number C-2021-3023220 is granted, in part, and denied, in part.
4. That the Complaint is granted with respect to \$1,777.34 transferred to the Complainant's Glenside Account.
5. That within 30 days of the final order, PECO will remove \$1,777.34 from the Complainant's Glenside Account balance.

6. That within 30 days of the date of the final order, PECO will review the charges transferred to the Complainant from 6801 17<sup>th</sup> Street, 3 MID 7, Philadelphia, Pennsylvania totaling \$2,391.03 to determine whether the amounts transferred were incurred by the tenants or the Complainant as a customer or resident of the service addresses and, if necessary, adjust the Complainant's balance in accordance with this decision.

7. That within 60 days of the date of the final order, PECO shall issue a bill to the Complainant reflecting the adjustments made in accordance with this order.

8. That all other claims are denied and dismissed.

9. That the Secretary shall mark this docket closed.

Date: February 28, 2022

\_\_\_\_\_  
/s/  
Darlene Heep  
Administrative Law Judge