

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Liddy	:	
	:	
v.	:	C-2021-3028123
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision grants, in part, and denies, in part, Michael Liddy’s Complaint against PECO Energy Company. Mr. Liddy’s Complaint is granted to the extent he claimed that PECO provided him with unreliable and inadequate electric and gas services but is denied to the extent it claimed that Mr. Liddy suffered discrimination in service.

HISTORY OF THE PROCEEDING

On August 20, 2021, Michael Liddy (Mr. Liddy or Complainant) filed a formal Complaint (Complaint) with the Public Utility Commission (Commission) against PECO Energy Company (PECO, Respondent, or the Company) alleging that he is having a reliability, safety, or quality problem with his electric and gas services. In particular, Mr. Liddy alleges that PECO has improperly denied his application for the installation of a gas-powered generator at his property. He states that the installation of the generator is necessary to secure reliable power at his property.

On September 7, 2021, PECO filed an Answer denying the material allegations of fact in the Complaint.

A Hearing Notice dated September 8, 2021, notified the parties that an initial hearing was scheduled for October 27, 2021, at 10:00 a.m.

A Prehearing Order was issued on October 6, 2021, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The hearing convened as scheduled on October 27, 2021. Mr. Liddy appeared *pro se* and testified on his own behalf. The Complainant sponsored eight exhibits which were admitted into the record in this matter. Khadijah Scott, Esq. represented the Respondent, and presented the testimony of Samantha Camerota – who is the manager of the Gas New Business Department for PECO; Robert Ridgeway – who is the manager of Gas Reliability Program and Capacity Planning for PECO; and Lauren Evans – who is a regulatory staffer with PECO in charge of investigating informal and formal complaints filed with the Commission against PECO. The Respondent sponsored five exhibits all of which were admitted into the record in this matter.

During the hearing, counsel for the Respondent requested permission to submit, as a late-filed exhibit, a reliability report for the electric circuit that serves Mr. Liddy's residence. Instead, I advised the parties that a further hearing would be held to address the Complainant's claims regarding reliability issues with his electric service.

A Further Hearing Notice dated October 28, 2021, notified the parties that a further hearing was scheduled for November 19, 2021, at 10:00 a.m.

The further hearing convened as scheduled on November 19, 2021. Mr. Liddy appeared *pro se* and again testified on his own behalf. Khadijah Scott, Esq. represented the Respondent, and presented the testimony of Nicole DeMott – who is a Reliability Engineer for

PECO, in charge of performing outage analysis and investigating customer concerns. The Respondent sponsored one exhibit – PECO Exhibit 6, which is a Service Reliability Report for the Complainant’s address, covering the period June 15, 2019, to October 26, 2021.

After PECO Exhibit 6 was admitted into evidence, counsel for PECO requested permission to submit as a late-filed exhibit an updated version of its Service Reliability Report for the Complainant’s address, for the sole purpose of expanding the report by two additional years (2017 and 2018). Mr. Liddy objected to this request. I granted PECO’s request for the submission of the late-filed exhibit and provided the parties with instructions for filing the said exhibit and for filing any objections to it.

On the same day, November 19, 2022, PECO submitted via email its late-filed exhibit. Also, on the same day, Mr. Liddy informed me via email that he had no additional objections to PECO’s late-filed exhibit

PECO’s late-filed exhibit – Service Reliability Report for the Complainant’s address covering the period January 1, 2017, to November 18, 2021— will be marked and identified as PECO late-filed Exhibit 7. It will be admitted into the record in this matter in accordance with the ordering paragraphs below.

The record in this matter closed upon receipt of the hearing transcript on December 20, 2021.

FINDINGS OF FACT

1. The Complainant is Michael Liddy, who resides at 211 West Court Street, Doylestown, PA 18901 (Service Address). Tr. 9.
2. The Respondent is PECO Energy Company.

3. Michael Liddy has residential gas and electric service from PECO at the Service Address. Tr. 10, PECO late-filed Exhibit 7.

4. The electric circuit that serves the Service Address is Doylestown 004. Tr. 203, PECO late-filed Exhibit 7.

5. Doylestown 004 serves 814 customers and is made up of 4.25 miles of aerial conductors and 0.89 miles of underground conductors. Tr. 203-204; PECO late-filed Exhibit 7.

6. Sustained power outages are those longer than five minutes in duration. Tr. 204.

7. Momentary power outages are less than five minutes long. Tr. 225.

8. From January 2017 to November 2021, Mr. Liddy experienced the following sustained power outages:

	Date	Storm (Y=yes N=no)	Cause	Interruption Duration (minutes)
1	08/28/2021	N	Vegetation: Tree down	127
2	07/31/2021	N	Equipment Failure: Aerial cable	116
3	06/04/2021	Y	Vegetation: Tree contact	32
4	05/29/2021	Y	Partial power: Defective transformer	335
5	05/27/2021	Y	Vegetation: Tree down	111
6	04/01/2021	N	Equipment failure: Switch	62
7	12/25/2020	Y	Vegetation: Tree limb	226
8	10/02/2020	N	Vegetation: Large tree down	15
9	08/04/2020	Y	Vegetation: Tree contact	1,932
10	06/03/2020	Y	Vegetation: Tree contact	1,418
11	04/13/2020	Y	Vegetation: Tree on wire	99
12	10/31/2019	Y	Vegetation: Tree on wire	368
13	08/09/2019	N	Equipment failure: Wire down	48

14	05/30/2019	Y	Vegetation: Tree on wire	190
15	05/29/2019	Y	Vegetation: Tree on wire	509
16	05/04/2019	N	Vegetation: Tree on wire	107
17	02/25/2019	Y	Vegetation: Tree on wire	117
18	03/07/2018	Y	Vegetation: Tree on wire	310
19	03/02/2018	Y	Vegetation: Uprooted tree	385
20	07/24/2017	N	Vegetation: Tree on wire	88

PECO late-filed Exhibit 7 and Complainant Exhibit G.

9. In addition to the sustained power outages, Mr. Liddy also experienced frequent momentary power outages. Tr. 196-97, 204-206; Complainant Exhibit G.

10. From January to November 2021, the Service Address was impacted by 16 outages, of which six were the sustained outages, and 10 were momentary ones. Tr. 196-97, 204-206, Complainant Exhibit G.

11. The last routine tree trimming in the Doylestown 004 circuit took place on May 4, 2018, and a mid-cycle tree trimming was completed on source substation on May 29, 2020. Tr. 209-10; PECO late-filed Exhibit 7.

12. Between December 2019 and November 2021, PECO performed vegetation trimming, installed pole replacements, installed three new automated switches, and performed other aerial equipment upgrades in the Doylestown 004 circuit. Tr. 205, PECO late-filed Exhibit 7.

13. PECO determined that its reliability enhancement efforts were not “as successful as anticipated.” Tr. 205-206.

14. In the summer of 2020, PECO implemented a new project that will relocate the primary lines that feed Mr. Liddy’s circuit away from a railroad right of way. Tr. 214, 208.

15. The project will remove 4,000 feet of lines away from a “vegetated, hard to access area” and will install approximately 700 feet of new conductor along Lower State Road to create an alternate path away from the areas that have been responsible for a large portion of the outages. Tr. 206.

16. PECO estimates that the project will not be completed before the summer of 2022. Tr. 208-209.

17. Mr. Liddy and his wife work exclusively from home. Tr. 10.

18. Mrs. Liddy is a freelance writer. Tr. 34.

19. Mr. Liddy is a carpenter and wood laying operator who works from the shop in his garage. Tr. 34, 36

20. Mr. Liddy is a volunteer firefighter, who is often called away from his home in cases of emergency. Tr. 197-98.

21. A storm-related power outage in August of 2020 caused Mr. Liddy’s sump pump to stop working and his basement to flood. Tr. 35-36, see also Tr. 197-98.

22. In 2020, Mr. Liddy purchased a 14 KW house gas generator that needs to be connected to the existing fuel supply at the Service Address. Tr. 219.

23. Mr. Liddy’s generator is designed to only operate during a power outage. Tr. 37-8.

24. In June 2020, Mr. Liddy received a permit from the Borough of Doylestown to install the generator on his property. Complainant Exhibit B.

25. On June 14, 2020, Mr. Liddy applied to PECO for a permit to connect his generator to the gas supply line serving the Service Address. Tr. 10; Complainant Exhibit H.

26. On June 16, 2020, PECO denied Mr. Liddy's application because of a concern regarding the total amount of available gas in the distribution system that currently feeds the Service Address. *Id.*

27. PECO advised Mr. Liddy to use propane as the fuel source for his house generator. Tr. 34, 24-25.

28. The layout of Mr. Liddy's property does not permit him to install a propane tank of adequate size to fuel his house generator. Tr. 34, 24-25, Complainant Exhibit C.

29. Mr. Liddy's property is currently located on a low-pressure gas system within the town of Doylestown. Tr. 10, 112.

30. Most of the pipes in that system consists of "outdated mains," which means that the system is mainly comprised of cast iron or other legacy materials. Tr. 117.

31. The maximum allowable operating pressure in Mr. Liddy's gas system is set at low pressure or utilization pressure, rather than elevated pressure. Tr. 109-110, 117-18.

32. When gas pressure is set at utilization level, the pressure that comes into the residence is the same pressure that gas appliances run on. Tr. 109-110, 117-18, PECO Exhibit 1.

33. Gas pressure is measured in inches of water column. Tr. 118.

34. PECO's gas system is designed to operate, at its highest point, at around seven and a half inches of water column. Tr. 118.

35. A design day is the coldest and highest gas usage day that PECO can reasonably expect to see on its gas system. Tr. 111.

36. If the gas system can maintain adequate, minimum system pressures in each unit system during a design day, the system is deemed to be reliable year-round. Tr. 111.

37. PECO projects that, during a design day, gas pressure in parts of the gas system in which Mr. Liddy's property is located, will fall at four and half inches of water column, while others will fall at four inches of water column. Tr. 111-12, PECO Exhibit 1.

38. If any area in the gas system is projected to drop below four inches of water column, it falls below its designed minimum threshold and threatens the pilots in the gas appliances to go out. Tr. 111, 118.

39. Because the gas system that serves Mr. Liddy is interconnected, load addition to any area in that system would impact the rest of the system and would be detrimental to those customers who are in areas projected to fall below system minimum thresholds or in those areas that are approaching that threshold. Tr. 112.

40. The gas division of PECO's New Business Department has been instructed to reject all additional load requests for the low-pressure system within the City of Doylestown. Tr. 111-12, 130; PECO Exhibit 1.

41. Gas house generators, like the one that Mr. Liddy wants to install, are considered additional loads to PECO's gas system. Tr. 138-139.

42. During the period 2020-2021, PECO's engineering review rejected 11 generator applications for the low-pressure gas system in which Mr. Liddy's residence is located. Tr. 59; PECO Exhibit 4.

43. Other applications, like that of Mr. Liddy, were rejected without even going through engineering review due to known capacity constraints in the gas system. Tr. 69.

44. Three house generator applications in Mr. Liddy's gas system were approved erroneously by PECO in 2020. Tr. 17; PECO Exhibit 5.

45. PECO does not plan to remove the additional load that the three house generators present to the low-pressure system in Doylestown, choosing instead to monitor the situation and make contingency plans for the winter of 2021-2022. Tr. 113, 145-46.

46. PECO has designed a new capacity expansion project aimed at eliminating the capacity constraint in the system. Tr. 120.

47. The project will replace some of the low-pressure mains in Mr. Liddy's gas system with a main that is fed from a different, higher pressure, gas system. Tr. 114, PECO Exhibit 2.

48. PECO has calculated that removing some of the customers from the low-pressure system into a higher-pressure one will raise gas capacity for the remaining customers on Mr. Liddy's system. Tr. 114, PECO Exhibit 2.

49. PECO foresees that the remaining load on gas system in Mr. Liddy's system is adequate to allow for additional load on the system. Tr. 140.

50. As of the date of the further hearing, PECO's capacity expansion project had been designed and budgeted. Tr. 140.

51. PECO's capacity expansion project is also identified within the work scope of the contractor for the year 2022. Tr. 140.

52. As of the day of the initial hearing, PECO had not applied for permits from the City of Doylestown for its capacity expansion project. Tr. 140.

53. Application for permits with the City of Doylestown will be the next step of the process but will not occur until early in 2022. Tr. 140-41.

54. Barring any unforeseen problems with the permits from the City of Doylestown, PECO will be able to approve Mr. Liddy's house generator application by the second quarter of 2022. Tr. 120.

DISCUSSION

Legal standard

As the proponent of a rule or order, Mr. Liddy bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To satisfy this burden, he must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. This must be shown by a preponderance of the evidence. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *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). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

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 to the evidence presented by the Complainant, the Complainant has not satisfied

his burden of proof. The Complainant would then be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

The undisputed facts of this case are as follows:

Michael Liddy resides at 211 West Court Street, Doylestown, PA 18901 (Service Address). Tr. 9. He receives residential gas and electric service from PECO at the Service Address. Tr. 10, PECO late-filed Exhibit 7. The electric circuit that serves the Service Address is Doylestown 004. Tr. 203, PECO late-filed Exhibit 7. It serves 814 customers and is made up of 4.25 miles of aerial conductors and 0.89 miles of underground conductors. Tr. 203-204; PECO late-filed Exhibit 7.

From February 2019 to November 2021, Mr. Liddy experienced 17 sustained power outages alone: six in 2021, five in 2020, and six in 2019. Of the sustained power outages 13 were caused by vegetation, 11 were storm-related, and four were due to equipment failure. The shortest of these power outages lasted 15 minutes and the longest lasted 1,932 minutes. Complainant Exhibit G; PECO late-filed Exhibit 7.

In addition to the sustained power outages, Mr. Liddy also experienced frequent momentary power outages. Tr. 196-97, 204-206; Complainant Exhibit G. PECO admitted that “for 2021 alone, there were 16 outages” of which six were the sustained outages mentioned above, and 10 were momentary ones lasting less than 5 minutes. Tr. 196-97, 204-206, Complainant Exhibit G.

PECO first addressed the reliability problem in Doylestown 004 through routine processes already in place. The last routine tree trimming took place on May 4, 2018, and a mid-cycle tree trimming was completed on source substation on May 29, 2020. Tr. 209-10; PECO late-filed Exhibit 7. In addition, PECO performed vegetation trimmings, installed pole replacements, installed three new automated switches, and performed other aerial equipment upgrades in the Doylestown 004 circuit. Tr. 205, PECO late-filed Exhibit 7.

PECO determined that these efforts were not “as successful as anticipated.” Tr. 205-206. To rectify the situation, in the summer of 2020, PECO implemented a new project that will relocate the primary lines that feed Doylestown 004 circuit away from a railroad right of way. Tr. 214, 208. The project will remove 4,000 feet of lines away from a “vegetated, hard to access area” and will install approximately 700 feet of new conductor to create an alternate path away from the areas that have been responsible for a large portion of the outages. Tr. 206. PECO is confident that the relocation of the conduit will improve the performance of the circuit but estimates that the project will not be completed before the summer of 2022. Tr. 208-209.

Mr. Liddy and his wife work exclusively from home. Tr. 10. Mrs. Liddy is a freelance writer whereas Mr. Liddy is a carpenter and wood laying operator who works from his shop in his garage. Tr. 34. In addition, Mr. Liddy is a volunteer firefighter, who is often called away from his home in cases of emergencies. Tr. 197-98. This renders him unable to tend to his house in cases of storm-related power outages that have caused his sump pump to stop working and his basement to flood in the past. Tr. 35-36, see also Tr. 197-98.

In order to address the situation, Mr. Liddy purchased a 14 KW house gas generator that needs to be connected to the existing fuel supply at the Service Address. Tr. 219. This type of generator is designed to only operate during a power outage. Tr. 37-8. In June 2020, Mr. Liddy received a permit from the Borough of Doylestown to install the generator on his property. Complainant Exhibit B. Also, on June 14, 2020, Mr. Liddy applied to PECO for a permit to connect his generator to the gas supply line serving the Service Address. Tr. 10; Complainant Exhibit H. On June 16, 2020, PECO denied his application. *Id.* Upon inquiry, PECO advised Mr. Liddy to use propane as the fuel source for his house generator. Tr. 34, 24-

25. That alternative, however, is not available to him as his property layout does not permit him to install a propane tank of adequate size. Tr. 34, 24-25, Complainant Exhibit C.

Mr. Liddy's application was denied because the Service Address is currently located on a low-pressure gas system in Doylestown. Tr. 10, 112. The majority of the pipes in that system consists of "outdated mains," which means that the system is mainly comprised of cast iron or other legacy materials. Tr. 117. As a result of the age of the system and the materials used for the pipes, the maximum allowable operating pressure in the gas system is set at low pressure or utilization pressure, rather than elevated pressure. Tr. 109-110, 117-18. This means that the pressure that comes into the residence is the same pressure that all the equipment run on. Tr. 109-110, 117-18, PECO Exhibit 1.

Gas pressure is measured in inches of water column. PECO's gas system is designed to operate, at its highest point, at around seven and a half inches of water column. Tr. 118. PECO projects that, during a design day, gas pressure in parts of the gas system in which Mr. Liddy's property is located, will fall at four and half inches of water column, while others will fall at four inches of water column. Tr. 111-12, PECO Exhibit 1. If any area in the system is projected to drop below four inches of water column, it falls below its designed minimum threshold and threatens the gas pilots to go out. Tr. 111, 118. Because the gas system is interconnected, load addition to any portion of that system would impact the rest of it and would be detrimental to those customers who are in areas projected to fall below system minimum thresholds or in those areas that are approaching that threshold. Tr. 112. In order to avoid that, the gas division of PECO's New Business Department has been instructed to reject all additional load requests for the low-pressure system within the City of Doylestown. Tr. 111-12, 130; PECO Exhibit 1. Gas house generators, like the one that Mr. Liddy wants to install, are considered additional loads to PECO's gas system. Tr. 138-139. During the period 2020-2021, PECO's engineering review rejected 11 generator applications for the low-pressure gas system in which Mr. Liddy's residence is located. Tr. 59; PECO Exhibit 4. Other applications, like that of Mr. Liddy, were rejected without even going through engineering review due to known capacity constraints in the gas system. Tr. 69.

However, three generator applications in the same gas system made it past PECO's approval process in 2020. Tr. 17; PECO Exhibit 5. As of the date of the further hearing, PECO had not removed the additional load that the three house generators present to the low-pressure system in Doylestown, choosing instead to monitor the situation and making contingency plans for the winter of 2021-2022. Tr. 113, 145-46.

In the long term, PECO has designed a new capacity expansion project aimed at eliminating the capacity constraint in the system. Tr. 120. The project will see some low-pressure mains in Mr. Liddy's gas system "replaced with a main that is [fed] from a different, higher pressure gas system which has significantly more capacity to serve customers." Tr. 114. PECO has calculated that, removing some of the customers from the low-pressure system (into a higher-pressure system) will raise that capacity for the remaining customers on the system. Tr. 114, PECO Exhibit 2. PECO foresees that "The remaining load on the system is more than allowable to let anyone start adding load on the system, at least the next couple years until we continue to replace the system." Tr. 140. As of the date of the further hearing, PECO's capacity expansion project had been designed and budgeted. It was also identified within the work scope of the contractor for the year 2022; however, PECO had yet to apply for permits from the City of Doylestown. Tr. 140. This step of the process would not occur until early in 2022. Tr. 140-41. PECO is confident that, barring any unforeseen problems with the permits from the City of Doylestown, it would be able to approve Mr. Liddy's house generator application by the second quarter of 2022. Tr. 120.

Service reliability

It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" to its customers. 66 Pa.C.S.A. § 1501. Such service also shall be reasonably continuous, without unreasonable interruptions or delay, and in conformity with the regulations and orders of the Commission. *Id.* Based on the facts listed above, I find that PECO has failed to fulfill its duty under 66 Pa.C.S.A. § 1501. While the Company is not required to guarantee uninterrupted service, 17 sustained outages from February 2019 to November 2021, in addition to numerous momentary outages, constitute unreasonable

interruptions and a failure in PECO's duty to furnish its customer with adequate, safe, and reasonable service. In this case, the reliability problem of PECO's Doylestown 004 electric circuit is exacerbated by the capacity constraints of PECO's Doylestown gas system where the outdated mains are unable to take on the additional load of house generators. Although under the purview of two different PECO divisions, issues with PECO electric and gas services to the section of Doylestown where Mr. Liddy's property is located have placed him in a "catch-22" situation where he is left without any reliable power source until at least the summer of 2022.

Under Public Utility Code Sections 3301(a) and (b), "the Commission may levy a fine of up to \$ 1,000 per day for continuing violations of the Public Utility Code." 66 Pa.C.S.A. § 3301. The Commission has set forth, in a statement of policy, the factors and standards for evaluating proceedings involving violations of the Public Utility Code for purposes of determining appropriate civil penalty amounts. See, 52 Pa. Code § 69.1201(c). These factors and standards are as follows:

(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(c). These factors, relative to this proceeding, are examined below.

First, the evidentiary record collected in this matter does not contain sufficient evidence to conclude that PECO's failure to provide Mr. Liddy with adequate, safe, and reasonably continuous service was willfully fraudulent or a misrepresentation. While outdated mains responsible for capacity constrains in the gas system serving Mr. Liddy's residence compounded the reliability problems that he experienced with PECO's electric service, they do not amount, either separately or together, to willfully fraudulent conduct on the part of PECO.

Second, there is little evidence that PECO's failure to comply with 66 Pa.C.S.A. § 1501 had any consequences of a serious nature, beyond water damage to Mr. Liddy's basement, and the general disruption that power outages cause to his and his wife's work and personal life. Tr. 11, 35-36, 197. Mr. Liddy did not quantify the property damage or the lost income. *See id.*

Third, the record in this case supports a finding that the violation of section 1501 of the Public Utility Code, 66 Pa.C.S.A. § 1501, resulted from the Respondent's negligence in addressing in a timely manner the issues in the electric and gas systems that serve the Service

Address. When asked why the project for relocating primary lines on Mr. Liddy's circuit had not been initiated sooner (than summer of 2020), PECO's witness only pointed to "an increase in extreme storms" and the multi-step process that the project has to go through before work begins. Tr. 214-15. While this may be the case, it does not explain why PECO failed to ramp up the procedures that were already in place for addressing storm and vegetation related interruptions. The last routine tree trimming of Mr. Liddy's circuit took place on May 4, 2018, before the "increase in extreme storms." See Tr. 215, PECO late-filed Exhibit 7. A mid-cycle tree trimming was completed on May 29, 2020, but it only affected the source substation. *Id.* PECO's Exhibit 6 and late-filed Exhibit 7 also show that the Company installed pole replacements and new automated switches and upgraded other aerial equipment in the Doylestown 004 circuit. Tr. 205, PECO late-filed Exhibit 7. However, little vegetation maintenance occurred on Mr. Liddy's circuit, even though 13 of the 17 sustained power outages that he experienced from February 2019 to November 2021 were vegetation related. In particular, PECO late-filed Exhibit 7 shows one work order for vegetation trimming dated January 30, 2020, on Doylestown 4; and two others, dated December 27, 2019, and September 13, 2021, on the circuit that feeds Doylestown 004. Yet, there is no evidence on the record regarding the extent or the nature of the work performed.

The worsening reliability of Mr. Liddy's electric circuit only brought to light the inadequacy of Mr. Liddy's gas system. PECO deemed this system unable to sustain the load of house generators, like the one that Mr. Liddy wants to install on his property. The capacity constraint of the system is the direct result of the age and materials used in its mains. Although PECO cannot claim ignorance of the "outdated mains" in its system, it only started designing its capacity expansion project in 2021. Tr. 64-65. In this instance, the reason why PECO waited so long to implement a capacity expansion project in the area cannot be explained by a change in weather patterns.

Fourth, the Respondent entered evidence on the record indicating that it has modified its internal practices and procedures to address the offensive conduct at issue to deter and prevent similar conduct in the future. The Company has taken steps to implement two projects that

will improve the reliability of the electric circuit in question and will increase the capacity of the Doylestown gas system by the summer of 2022.

Fifth, the record indicates that the reliability issue that forced Mr. Liddy to apply for a permit to install the house generator in June of 2020 led other PECO customers to take similar steps to ensure the reliability of their electric power. PECO Exhibit 4 shows that between July 2020 and September 2021, the engineering review of PECO's New Business-Gas rejected 11 applications for house generators due to capacity constraints in the gas system. PECO's witness testified at length that an additional, yet unspecified, number of applications for house generators were rejected automatically, without going to engineering review, simply based on their location in the capacity-constrained-system. Tr. 68-73. In fact, Mr. Liddy's was one of the applications that was denied without an engineering review. *Id.* This shows that, at least 15 PECO customers (11 applications rejected by the engineering review, three applications approved in error, plus Mr. Liddy's) were impacted by the combination of problems with electric circuit reliability with capacity constraints of the gas system. These numbers paint a disturbing picture of the reliability of electric and gas service in the Doylestown area where Mr. Liddy's residence is located -- especially when one takes under consideration the sizes of the Doylestown 004 circuit and of the low-pressure gas system that impacts Mr. Liddy (see PECO Exhibit 1, 2 and 6), as well as the brief period of time (July 2020 – September 2021) from which these numbers were extrapolated (see PECO Exhibit 4).

Sixth, the record does not include a history of PECO's past offenses; and seven, the Commission did not conduct an investigation in this proceeding.

The eighth, ninth and tenth factors listed in 52 Pa. Code § 69.1201(c) are inter-related in this case and they are, respectively: the amount of a civil penalty required to deter future violations; prior Commission decisions in similar cases; and the catch-all "other relevant factors."

After reviewing the evidence collected in this matter, I conclude that a civil penalty in the amount of \$22,000.00 (\$1,000.00 for each month (June 2020 – March 2022)) that

the combination of reliability issues in the Doylestown 004 circuit with the capacity constrains in the gas system left Mr. Liddy without a reliable power source) is appropriate to deter future violations of this nature and to draw the Company's attention to the need for improved service reliability in the Doylestown area . See *Sheila and Stewart Berger v. PECO Energy Co.*, Docket No. C-00992680 (Final Order entered May 9, 2000); *John J. Rounce v. PECO Energy Co.*, Docket No. C-2015-2506941 (Opinion and Order entered December 9, 2016).

Within 30 days of the Commission's Final Order in this case, PECO shall pay a civil penalty in the amount of \$22,000.00 via a certified check or money order payable to the Commonwealth of Pennsylvania. In addition, PECO shall cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. §§ 101 *et seq.*, and the regulations of the Pennsylvania Public Utility Commission, 52 Pa.Code §§ 1.1 *et seq.*

Discrimination in service

Pursuant to section 1502 of the Public Utility Code,

No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service.

66 Pa.C.S. § 1502.

During the initial hearing, Mr. Liddy testified and conducted extensive cross-examination on the three applications for house generators that PECO approved in 2020. All three permits were approved for the low-pressure system in Doylestown during the period September to December 2020. See Complainant Exhibit H and PECO Exhibit 5. Mr. Liddy maintained that these approvals were the results of nepotism or the Company's bias in favor of commercial customers. Tr. 20, 22, 33, 79. He argued that one of the approvals was granted to the brother of a PECO employee, while the other two went to commercial accounts. Tr. 20, 22, 33;

Complainant Exhibit H. Mr. Liddy pointed out one application in particular, that for 73 S. Hamilton Street, which was rejected by PECO on October 6, 2020, due to its location in the low-pressure system only to be approved on December 8, 2020. Tr. 101, Complainant Exhibit H; PECO Exhibit 4.

In response, PECO admitted that one of the successful applicants was the brother of a PECO employee but maintained that the relationship had no bearing on the decision to approve the application. Tr. 77-78. Instead, the PECO witness, Samantha Camerota testified that the three approvals were the results of human error. Tr. 61-62. Ms. Camerota explained that after a PECO employee was fired due to poor job performance, other staff members were charged to handle the backlog of additional load requests. *Id.* These employees were not familiar with the characteristics of the natural gas system in Doylestown, specifically the low-pressure system in the area, and did not process these applications for engineering review. *Id.* With regard to the once-denied-then-approved application for 73 S. Hamilton Street, Ms. Camerota stated that it was most likely a second application that was approved in error after the first one was appropriately rejected. Tr. 100-101.

Ms. Camerota's testimony raises questions about the probability that an application approved in error went to the brother of a PECO employee, and about how the applicant for 73 S. Hamilton Street would know to resubmit the application a mere two months after it was first denied. However, a mere "trace of evidence or a suspicion of the existence of a fact" does not constitute substantial evidence on which the Commission can support a decision. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980). After carefully reviewing the record, I find that the evidence presented by the Respondent on the issue of discrimination in service is of co-equal weight to the evidence presented by the Complainant. In order to successfully carry his burden of proof, the Complainant was 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). Mr. Liddy did not provide any additional evidence to rebut the evidence presented by PECO. Consequently, he failed to carry his burden of proving by a preponderance of the evidence that PECO improperly engaged in discriminatory actions with regard to application approvals.

In view of the above, Mr. Liddy's Complaint against PECO is denied, in part, and granted, in part. Mr. Liddy's Complaint is granted to the extent it claimed that PECO provided him with unreliable and inadequate electric and gas services but is denied to the extent it claimed that Mr. Liddy suffered discrimination in service.

CONCLUSIONS OF LAW

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

2. In a hearing before the Commission, a party has the right of presentation of evidence, cross-examination, objection, motion. 52 Pa. Code § 5.243.

3. As the proponent of a rule or order, the complaint bears the burden of proof. 66 Pa.C.S. § 332(a).

4. To satisfy the burden of proof, the complaint must demonstrate by the preponderance of the evidence that the respondent was responsible for the problems alleged in the complaint through a violation of the Code or a regulation or order of the Commission. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990).

5. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *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).

6. The Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

7. 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).

8. It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" to its customers. 66 Pa.C.S.A. § 1501.

9. Service shall be reasonably continuous, without unreasonable interruptions or delay, and in conformity with the regulations and orders of the Commission. 66 Pa.C.S.A. § 1501.

10. Under Public Utility Code Sections 3301(a) and (b), the Commission may levy a fine of up to \$1,000 per day for continuing violations of the Public Utility Code. 66 Pa.C.S. § 3301.

11. No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. 66 Pa.C.S. § 1502.

12. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service. 66 Pa.C.S. § 1502.

ORDER

THEREFORE,

IT IS ORDERED:

1. That PECO Energy Company late-filed Exhibit 7 is admitted into the record.
2. That the Formal Complaint of Complaint filed by Michael Liddy against PECO Energy Company at Docket No. C-2021-3028123 is granted, in part, and denied, in part.
3. That the Formal Complaint filed by Michael Liddy against PECO Energy Company at Docket No. C-2021-3028123 is granted with regard to his claim that the utility provided him with unreliable and inadequate electric and gas service.
4. That the Formal Complaint filed by Michael Liddy against PECO Energy Company at Docket No. C-2021-3028123 is denied with regard to his claim that the utility discriminated against him in the application approval process.
5. That PECO Energy Company shall pay a civil penalty in the amount of Twenty-two Thousand Dollars (\$22,000.00) by sending a certified check or money order payable to the Commonwealth of Pennsylvania, within thirty (30) days from the entry of the Final Commission Order to:

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

6. That PECO Energy Company shall cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. §§ 101 *et seq.*, and the regulations of the Pennsylvania Public Utility Commission, 52 Pa. Code §§ 1.1 *et seq.*

7. That the Secretary mark this docket closed.

Date: March 21, 2022

_____/s/
Eranda Vero
Administrative Law Judge