

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mor Levy	:	
	:	F-2021-3029828
v.	:	
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal Complaint of Mor Levy against PECO Energy Company because he failed to meet his burden of proving that PECO Energy Company improperly held him responsible for his tenant’s balance after discovering foreign load at an apartment complex he owns, or that PECO provided him with inadequate or unreasonable service.

HISTORY OF THE PROCEEDING

On November 16, 2021, Mor Levy (Complainant) filed a formal Complaint against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the box indicating that “[i]ncorrect charges are on my bill.” In an attached letter, the Complainant indicated that he owns an apartment where foreign load was discovered in 2019. The Complainant challenged PECO’s decision to hold him responsible for \$5,634.73 that accrued while the foreign load situation existed. The Complainant maintained that his tenant, the person who lived in the apartment, should be held responsible for this bill.

On December 8, 2021, the Respondent filed an Answer denying all material allegations of fact in the Complaint.

By Initial Telephonic Hearing Notice dated December 10, 2021, an initial call-in telephonic hearing was scheduled for January 26, 2022 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on December 13, 2021. The Prehearing Order directed the parties to comply with various procedural requirements and also explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on January 26, 2022. The Complainant and his wife, Amy Levy, appeared *pro se* and testified. The Respondent also appeared and was represented by Khadijah Scott, Esq., who presented the testimony of Mary McQuilkin, a PECO High Bill Field Technician, and Michael Begley, a PECO Regulatory Assessor. The Respondent submitted nine exhibits, all of which were admitted into the Record (PECO Exhs. 1-9).

The record consists of an 83-page transcript and nine exhibits. The record closed on February 7, 2022 upon my receipt of the hearing transcript.

FINDINGS OF FACT

1. The Complainant in this case is Mor Levy.
2. The Respondent in this case is PECO Energy Company.
3. The Complainant resides at 1137 Carpenter Street in Philadelphia. Tr. 8.

4. The Complainant owns the property located at 407 South 60th Street in Philadelphia (service address). Tr. 9.
5. The service address is a three-unit apartment building. Tr. 9.
6. In March 2019, a tenant, Christian Wooding, moved into the first-floor unit at the service address. Tr. 10-11, 35.
7. On April 2, 2019, PECO placed the account for service for the first-floor unit in Mr. Wooding's name. Tr. 57; PECO Exh. 1.
8. Mr. Wooding contacted PECO regarding high bills at the service address. Tr. 10, 14, 57.
9. On May 28, 2019, a PECO field technician visited the service address in response to the high bill Complaint. Tr. 42; PECO Exh. 4.
10. As part of the high bill field investigation, the technician first verifies that the meter PECO is billing the customer for is the correct meter for their unit. Tr. 41.
11. The technician also verifies that the meter services only the customer, and that the customer is not paying for any services that would benefit another tenant. Tr. 41.
12. The PECO technician shut the meter off for Mr. Wooding's apartment to verify that power to the apartment stopped. Tr. 41-42.
13. The PECO technician determined that all of the public lighting, including the common entry, hallway lights and basement lights, was wired to the first-floor apartment's service. Tr. 13-14, 29, 42-43; PECO Exh. 4.

14. On May 28, 2019, PECO closed out Mr. Wooding's account for service due to the discovery of foreign load at the service address. Tr. 57.

15. On May 28, 2019, PECO transferred the balance from the Complainant's first floor tenant's account for service into an account in Complainant's name. Tr. 60, 72; PECO Exhs. 2 & 4.

16. By letter dated May 31, 2019, PECO informed the Complainant about the foreign load discovered at the service address, advising as follows:

When PECO identifies foreign wiring, Pennsylvania State law requires the electric service to be transferred into the name of the landlord, until the wiring is properly corrected. (Per Section 1529.1(b) of the Pennsylvania Public Utility Code, 66 Pa. C.S. 1529.1).

Please be advised that the electric service of the accounts in question will be transferred into your name effective immediately. If any of the current tenant's balance due is attributable to the found foreign wiring the entire balance will be transferred into your name as well. The service can only go back into your tenants (sic) name if you have your electrician correct the wiring for each apartment.

Tr. 42-43, 59; PECO Exh. 4.

17. The landlord must have his own electrician correct the foreign wiring for the situation to be considered resolved. Tr. 44, 69.

18. On September 12, 2019, the Complainant applied for a new meter at the service address. Tr. 63.

19. On or about November 22, 2019, PECO installed a new meter for commercial service at the service address. Tr. 50-51, 62-63; PECO Exh. 3.

20. On December 10, 2019, the Complainant contacted PECO to come and inspect the foreign wiring repairs. Tr. 64.

21. On December 19, 2019, the same PECO field technician returned to the service address to investigate whether the foreign load situation had been corrected. Tr. 44, 65; PECO Exh. 5.

22. The PECO field technician determined that the common hallway lighting was still wired to the first-floor meter, and that the foreign wiring had not been corrected. Tr. 45, 50-51; PECO Exh. 5.

23. The PECO field technician did verify that the basement lighting was wired to the house meter. Tr. 45.

24. The technician explained the continuing foreign load to the Complainant at the time of the visit on December 19, 2019. Tr. 45; PECO Exh. 5.

25. The PECO field technician also explained that the account for service for the first floor would remain in the Complainant's name. Tr. 46.

26. After the December 19, 2019 field visit, the Complainant did not contact PECO again until May 25, 2021. Tr. 65-66.

27. On May 25, 2021, the Complainant contacted PECO to advise that the foreign wiring repairs were complete. Tr. 65.

28. On July 21, 2021, the same PECO field technician visited the service address and confirmed that the foreign wiring situation had been corrected. Tr. 46-47, 51; PECO Exh. 6.

29. The final account balance under the Complainant's name for the service address totaled \$5,634.73. Tr. 61-62; PECO Exh. 2.

DISCUSSION

The Public Utility Code, 66 Pa.C.S.A. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

To establish a sufficient case and satisfy the burden of proof, Complainant must show that the Respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 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). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. 2 Pa.C.S. § 704; *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993). 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).

In the present case, the Complainant has challenged his responsibility for bills he received from PECO as a result of foreign load found on the meter for the first-floor apartment at the service address. Additionally, the Complainant raised concerns that PECO did not properly notify him that it transferred his tenant's bill for service into his name upon finding foreign load at the service address. This constitutes a claim of inadequate or unreasonable service by PECO.

The present case raises the issue of whether PECO acted properly in placing the balance of the account for electric service for the Complainant's tenant at the service address in Complainant's name. In doing so, Respondent followed 66 Pa.C.S. § 1529.1(b) of the Public Utility Code, which provides in pertinent part that, "if the mobile home 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." (Emphasis added). *See also, Del Vecchio v. PPL Elec. Utils. Corp.*, Docket No. Z-01464793 (Opinion and Order entered September 13, 2005) (*Del Vecchio*). In *Del Vecchio*, the Commission found the utility violated 66 Pa.C.S. § 1529.1, because it failed to transfer complainant's electric account to the landlord when it found foreign load on complainant's meter.

Hence, a plain reading of 66 Pa.C.S. § 1529.1 holds a property owner financially responsible for a tenant's entire account, once foreign load is verified on the tenant's utility service. *Santos v. Metro. Edison Co.*, Docket No. C-00967757 (Opinion and Order entered August 7, 1997). Upon finding foreign load, the utility must list the account, including any arrearage, in the name of the landlord. The landlord bears the responsibility of paying the utility bills until the foreign load is corrected. Once the foreign load is corrected by the landlord and verified by the utility, the utility places the account back in the name of the tenant. However, the arrearage, if any, remains with the landlord. *Ace Check Cashing Inc. v. Phila. Gas Works*, Docket No. C-2008-2056428 (Opinion and Order entered May 21, 2010). There is no *de*

minimus exception; any dispute between the landlord and tenant regarding the financial responsibilities of the parties is a matter to be resolved in the Court of Common Pleas and is outside this Commission’s jurisdiction. *Id.*

Additionally, PECO is required by law to provide the Complainant with adequate and reasonable service. Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, provides, in relevant part:

§1501. Character of service and facilities

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

Interpreting this provision in *West Penn Power Co. v. Pa. Pub. Utility Comm’n*, 478 A.2d 947 (Pa. Cmwlth. 1984), the Commonwealth Court stated:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer’s complaint, to require any action by the utility.

478 A.2d at 949 (footnote omitted).

The statutory definition of “service” is to be broadly construed.¹ *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995). In

¹ “Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their

applying the facts to the law, the issue becomes whether PECO's actions as described in the Complaint rise to the level of inadequate service that constitutes a violation of the Public Utility Code.

In the present case, the Complainant does not believe that PECO should be able to hold him responsible for the balance that accrued at his tenant's apartment. While the Complainant did not dispute that foreign load existed at the service address, he is disputing PECO holding him responsible for the balance that accrued at the service address. Tr. 11. The Complainant asserted that PECO did not provide him with any notice that it transferred his tenant's account balance into an account in his name. The Complainant further asserted that any attempts by PECO to provide him notice at 2211 North American Street were erroneous since he moved out of this property "in the beginning of 2019." Tr. 23. The Complainant maintained that he informed PECO by letter about his address change in August 2019. Tr. 23.

Additionally, the Complainant explained that upon learning of the foreign load, he hired an electrician who moved the wires for the hallway lighting to another breaker box. Tr. 18. The Complainant testified that he informed PECO in November 2019 that the foreign load situation had been corrected. Tr. 19-20. In support of his assertion that he had the foreign load situation corrected, the Complainant indicated that PECO installed a meter for the hallway and basement lights during a second trip to the service address in November 2019 and started to bill him for usage on that meter. Tr. 17-20.

PECO witnesses responded that on May 28, 2019, a PECO field technician visited the service address in response to the Complainant's tenant's high bill Complaint. Tr. 42; PECO Exh. 4. The PECO technician determined that all of the public lighting, including the common entry, hallway lights and basement lights, was wired to the first-floor service. Tr. 42-43; PECO Exh. 4. On that same day, PECO closed out the Complainant's tenant's account for service due to the discovery of foreign load at the service address and transferred the tenant's balance into an account in the Complainant's name. Tr. 57, 60, 72; PECO Exhs. 1, 2 & 4. By letter dated

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.

May 31, 2019, PECO informed the Complainant about the foreign load situation discovered at the service address, and the actions that PECO had taken. Tr. 42-43, 59; PECO Exh. 4. The notice specifically advised that “[t]he service can only go back into your tenants (sic) name if you have your electrician correct the wiring for each apartment.” PECO Exh. 4. The notice further instructed the Complainant of a number to call once the repairs were completed. *Id.*

PECO’s witnesses further explained that on September 12, 2019, the Complainant applied for a new meter at the service address. Tr. 63. As a result of this contact, PECO installed the new meter for commercial service at the service address on November 22, 2019. Tr. 50-51, 62-63; PECO Exh. 3.

Also, PECO’s witnesses testified that on December 10, 2019, the Complainant contacted PECO to come and inspect the foreign wiring repairs. Tr. 64. The same PECO field technician returned to the service address on December 19, 2019 to investigate whether the foreign load had been corrected. Tr. 44, 65; PECO Exh. 5. The PECO field technician determined that the common hallway lighting was still wired to the first-floor meter, and that the foreign wiring had not been corrected. Tr. 45, 50-51; PECO Exh. 5. The PECO field technician did verify that the basement lighting was wired to the house meter. Tr. 45. The technician explained the continuing foreign load to the Complainant at the time of the visit on December 19, 2019. Tr. 45; PECO Exh. 5. The PECO field technician also explained that the account for service for the first floor would remain in the Complainant’s name, as well as the balance he owed at that time. Tr. 46.

PECO’s witnesses further explained that after the December 19, 2019 field visit, the Complainant did not contact PECO again until May 25, 2021. Tr. 65-66. On May 25, 2021, the Complainant contacted PECO to advise that the foreign wiring repairs were complete. Tr. 65. On July 21, 2021, the same PECO field technician visited the service address and confirmed that the foreign wiring situation had been corrected. Tr. 46-47, 51; PECO Exh. 6.

Regarding the Complainant’s claims about inadequate notice, PECO’s witnesses explained that when a field technician finds foreign wiring, the technician refers the matter back to the office, who refers the matter to PECO’s legal department. PECO’s legal

department will then search property records to find a mailing address for the owner. Tr. 42-43, 58; PECO Exh. 9. In this case, PECO searched city records to find that the Complainant is the owner of the service address, and that his mailing address was 2211 North American Street. Tr. 70; PECO Exh. 9. PECO's witnesses explained that PECO did not receive any returned mail regarding bills issued to the 2211 North American Street address. Tr. 70-71. PECO updated the address for the bill when the Complainant contacted them in July 2021 for the field visit. Tr. 74. It was at that time that the Complainant provided PECO his corrected mailing address.

Since PECO correctly determined that foreign load existed at the service address, and because the Complainant did not dispute that foreign load existed at the service address, pursuant to 66 Pa.C.S. § 1529.1(b) of the Public Utility Code I cannot conclude that PECO improperly placed the Complainant's tenant's account for service in Complainant's name.

Nor can I conclude that PECO provided the Complainant with inadequate notice of the transfer. PECO acted reasonably by searching City records to determine the owner of the service address as well as the owner's mailing address. Additionally, it is important to note that the Complainant provided conflicting testimony regarding when PECO provided notice to him that it transferred his tenant's balance to an account in his name, and when he received bills for the usage on his tenant's meter:

Judge Pell: Now, after PECO discovered foreign load at the address, did they place the account for the first floor unit in your name at that point?

Mr. Levy: I didn't know about it. Nobody told me nothing about it.

Judge Pell: Did you ever come to learn that they had done that?

Mr. Levy: Yesterday I learned about it when they called me to try to shut it down. They told me like instead of 6,500 there were going to take only 6,000 – instead of 5,600, they only wanted me to pay 5,000. They told me that yesterday. I learned about it like something wiring, you know, like

incorrect wiring in the house. The meter gets charged to like the landlord. That's when I learned about it yesterday.

Judge Pell: So the reason I asked is because you filed this complaint so you had to have known about a balance that they were charging you for, right, the \$5,000-plus? Do you have any idea where that came from?

Mr. Levy: Yes. I got it on July 13, 2021, is the first time I got the bill; and I was in shock like where is that came from. And as far as the – I'm sorry?

Judge Pell: Am I correct that that bill was for the usage at the first floor unit at this property?

Mr. Levy: Yes, sir.

Judge Pell: Okay. Just bear with me. I'm taking some notes. (Pause.) I believe you answered this already but I'm going to ask you again anyway. Did PECO notify you that it was placing your tenant's account balance and the account for service in your name?

Mr. Levy: No, sir. In the first floor that's as far as I know. Nobody know the [inaudible], and I didn't know about it until I filed the complaint. That's the first time I noticed about it. I filed the complaint was the first time I noticed about it.

Judge Pell: Okay. Now, after PECO discovered the foreign load situation at the rental unit, did they tell you what you had to do to correct the situation?

Mr. Levy: Yes, sir. They showed me document. They told me exactly. I was in with the guy. We went over everything; and he told me like the hallway lights, the hallway thing it needs to get the house meter separated so its not going to go to the first apartment and I'm like okay.

And then the technician came. He add like another small box next to everything there. He made like another electric box with a breaker for

the basement and the hallway lights, and then he put another space for meter. And then after he did this, we called again PECO. Then came over to put a new meter in there, **and then I stopped receiving a bill for this.**

And that's what [inaudible]. It was on November 13th about a month later from the first time they visited and told me to fix it is when I received the first bill. It was like within a month everything. I got electrician visit and then came back. I don't have the exact date when they came back again to put the meter. That's the only thing I don't have in my record because [inaudible]. I just signed. I don't know what date.

Tr. 15-17 (emphasis added). The Complainant's own testimony indicates that, contrary to his position that he never received a bill for the usage on the first-floor account for service, or that he was unaware that PECO was billing him for service for the first-floor unit, he did receive bills for the first-floor unit in 2019, prior to the installation of the new meter. Additionally, although the Complainant claimed he moved out of the mailing address at the beginning of 2019, PECO did not receive any returned mail that would have alerted it that the mailing address was incorrect. Moreover, although the Complainant claimed he informed PECO of his address change by letter in August 2019, he did not provide a copy of this letter for my consideration.

PECO properly transferred the Complainant's tenant's account for service into an account in the Complainant's name upon discovery of foreign load at the service address. PECO also properly continued to bill the Complainant for the tenant's service until the Complainant corrected the foreign load situation and notified PECO so they could verify the correction. Lastly, PECO provided the Complainant with adequate notice and service regarding these matters. Accordingly, the Complainant's Complaint is denied in its entirety.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

4. Section 1529.1(b) of the Public Utility Code provides in pertinent part that, "if the mobile home 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." 66 Pa.C.S. § 1529.1(b).

5. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service. 66 Pa.C.S. § 1501.

6. Complainant failed to meet his burden of proof regarding his request that his former tenant's balance be removed from his account balance. 66 Pa.C.S. § 332(a).

7. The Complainant failed to meet his burden of proving that the Respondent provided him with inadequate or unreasonable service. 66 Pa.C.S. § 332(a)

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Mor Levy against PECO Energy Company at Docket No. F-2021-3029828 is denied.
2. That the Secretary's Bureau shall mark docket number F-2021-3029828 as closed.

Date: May 9, 2022

_____/s/_____
Christopher P. Pell
Deputy Chief Administrative Law Judge