

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Richard Antonio Perez Lopez	:	
	:	
v.	:	C-2022-3031635
	:	
PECO Energy Company,	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This Initial Decision holds that the Complainant did not establish that PECO provided unreasonable service. The Complaint will be dismissed.

HISTORY OF THE PROCEEDING

On March 25, 2022, Mr. Richard Antonio Perez Lopez (Complainant or Mr. Lopez) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Company). On the Formal Complaint form, Mr. Lopez checked the box indicating that PECO was threatening to shut off his service or had already shut it off. He further stated that he paid his bill on March 7, 2022 by depositing a \$290 check into the “Safe Mail Box” at the PECO building at 2301 Market Street, Philadelphia, Pennsylvania and that PECO contends that the company did not receive the payment and is threatening to take Mr. Lopez off the budget billing program. Mr. Lopez also averred that he has called PECO numerous times, the company does not return his calls and that the company sends letters telling him to pay more or he will be taken off budget billing. Attached to the Complaint

is a Check Stop Payment form dated March 15, 2022 for a check issued to PECO in the amount of \$290 and a PECO “Your Bill Is Past Due” notice dated March 8, 2022 stating that Sonia Perez had not paid \$127.48 owed.

Under Requested Relief on the Complaint form, Mr. Lopez stated that he would like to know where his check is. He further stated that he had to cancel this check and is now receiving threats of shut off and being taken off budget billing, which he cannot afford.

On April 18, 2022, PECO filed an Answer denying all material allegations. PECO also averred that the Company did not receive a \$290 payment on March 7, 2022, and that bills issued to Mr. Lopez are correct.

On April 20, 2022, an Interim Order Setting Resolution Conference was issued, and the matter was sent to Mediation. The Complaint was not resolved, and on June 2, 2022, an Initial Call-In Telephone Hearing Notice was issued, setting a hearing for July 14, 2022. On June 6, 2022, a Prehearing Order was issued.

The hearing began as scheduled on July 14, 2022. Kadajah Scott, Esq. appeared on behalf of PECO. The Complainant did not appear. A motion by Attorney Scott that the matter be dismissed for failure to prosecute was taken under advisement.

On July 22, 2022, Mr. Lopez sent an email to my Legal Assistant stating that he was ill with COVID-19 and would like the hearing rescheduled. A Further Call-In Telephone Hearing Notice was issued setting a hearing for September 15, 2022. A Prehearing Order was issued on August 8, 2022.

The hearing began as scheduled on September 15, 2022. Mr. Lopez appeared *pro se*. He presented his wife, Sonia Perez, as a witness but offered no exhibits.

Attorney Scott represented PECO and presented the testimony of Deba Ather, Senior Regulatory Assessor, and four exhibits, as follows:

PECO Exhibit 1	Activity Statement
PECO Exhibit 2	Bill, due date March 7, 2022
PECO Exhibit 3	Bill, due date April 4, 2022
PECO Exhibit 4	Payment Agreement

All PECO exhibits were admitted into the record.

During the hearing, the Complainant referenced the stop payment that he placed on the check and PECO's attorney cross-examined the Complainant regarding the stop payment document that was attached to the Complaint. The Complaint and attachments will be admitted into evidence as Complainant Exhibit 1.

The record closed on October 4, 2022, when the transcript was received.

FINDINGS OF FACT

1. The Complainant is Richard Antonio Perez Lopez.
2. The Respondent is PECO Energy Company.
3. PECO provides electric service to Mr. Lopez at a house that he owns on Benner Street in Philadelphia, Pennsylvania (service address). Tr. 13
4. Mr. Lopez is married to and resides with Mrs. Sonia Perez at the service address. Tr. 11, 13, 41.
5. Ms. Sonia Perez is the customer of record for the service address. Tr. 44; PECO Exhibit 1.

6. On March 7, 2022, the Complainant and his wife placed personal check number 153 in the amount of \$290, payable to PECO, in the outside PECO payment drop box at the PECO office building at 2301 Market Street, Philadelphia, Pennsylvania. Tr. 14, 29, 65.

7. PECO has no record of receiving the payment check deposited in the drop box by the Complainant and his wife on March 7, 2022. Tr. 35, 43-45, 51.

8. Complainant's personal check number 153, in the amount of \$290 payable to PECO, was not cashed nor was it debited from Complainant's bank account. Tr. 43-44, 58-59.

9. On March 8, 2022, PECO issued Ms. Perez a notice stating "YOUR PAYMENT IS PAST DUE. Complainant Exhibit 1, at 8; Tr. 65.

10. After they received the payment due notice from PECO, the Complainant and his wife contacted PECO to inform the Company that they had deposited a check in the PECO Market Street offices payment drop box. Tr. 15-17, 65.

11. When the Complainant and his wife contacted PECO after receiving the payment due notice, a PECO representative informed the Complainant that the Company had not received the check. Tr. 31.

12. On March 15, 2022, Mr. Lopez completed a STOP PAYMENT order with his bank for the check number 153 payment to PECO. Complainant Exhibit 1.

13. At the time that the Complainant and his wife deposited the payment check at the PECO office, the service address account was under a payment agreement with PECO. Tr. 48.

14. PECO and Ms. Perez entered into another payment agreement on May 31, 2022, which was in effect on the date of the hearing. Tr. 48; PECO Exhibits 1, 4.

DISCUSSION

As the proponent of a rule or order, the Complainant bears the burden of proof pursuant to Section 332(a) of the Pennsylvania Public Utility Code (Code). 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate by a 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. 66 Pa.C.S. § 701.

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. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980). A trace of evidence or a suspicion of the existence of a fact is insufficient. *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961).

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 Pennsylvania Public Utility Code requires each public utility to comply with the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501. The statutory definition of “service” is to be broadly construed. *Betchy v. West Penn Power Co.*, Docket No. C-2018-3000257 (Opinion and Order entered Oct. 8, 2020) (citing *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995)). As defined in the Code:

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

66 Pa.C.S. § 102.

On March 7, 2022, the Complainant and his wife deposited a check for \$290 payable to PECO in the payment deposit box at the PECO office building on Market Street in Philadelphia, Pennsylvania. The Complainant contends that PECO should have notified him sooner that the Company had not received his check, that PECO could have verified by video that they had deposited the check in the payment box and that PECO should have worked with them rather than take his wife off the payment agreement. Mr. Lopez also asserted that the company is threatening to take them off budget billing. Tr. 19, 23.

The issue is whether PECO provided reasonable service in response to the Complainant and his wife contacting PECO regarding the check for payment that they deposited

in the PECO payment drop box outside of the PECO office on Market Street in Philadelphia. The record supports a finding that PECO acted reasonably and provided reasonable customer service.

The due date for the bill the Complainants were seeking to pay was March 7, 2021, the day that the Complainant and his wife deposited the check into the PECO payment drop box. PECO has no record of receiving the check deposited in the outside PECO payment box and therefore has no record of receiving a payment for the service address by the March 7, 2022 due date. Consequently, on March 8, 2022, PECO issued a payment due notice to the Complainant. Complainant Exhibit 1, at 8; Tr. 51, 87.

After receiving the payment due notice from PECO, the Complainant and his wife contacted PECO and told a company representative that they had deposited a check in the PECO drop box. After the Complainant and his wife became aware that PECO had not deposited the check, on March 15, 2022, completed a bank STOP PAYMENT action for the check at issue. Tr. 76.

The Complainant and Ms. Perez credibly established that they deposited the check into the outside PECO payment drop box at PECO offices. However, for reasons not established in the record, although the check was delivered to the PECO offices drop box by Mr. Lopez and Ms. Perez, it was not received by PECO. Ms. Perez testified that the amount of the check was not deducted from her bank account. Tr. 77. PECO does not have a record of receiving the check and therefore PECO did not cash the check or credit it to the service address account. According to Ms. Ather, PECO Senior Regulatory Assessor, if PECO had received the check, the company would have cashed it or debited the amount of the check from the Complainant's checking account.

Although PECO has no record of receiving a payment for the service address by the due date, PECO nevertheless did not issue a shut off notice or shut off the service at the service address. There is no indication in the record that PECO removed Mrs. Perez from budget billing. The company also entered another payment arrangement with Mrs. Perez. Tr. 48. There

was no showing that PECO did not respond to inquiries made by the Complainant and Mrs. Perez.

PECO acted reasonably under the facts presented. Therefore, the Complainant cannot prevail in this action.

CONCLUSIONS OF LAW

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

2. The party filing the Complaint bears the burden of proving by a preponderance of the evidence that he is entitled to relief from the Commission. 66 Pa.C.S. § 332(a).

3. A Commission decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980). A trace of evidence or a suspicion of the existence of a fact is insufficient. *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961).

4. PECO provided reasonable service to the Complainant. 66 Pa.C.S. § 1501.

5. The Complainant has not established by a preponderance of the evidence that PECO violated the Pennsylvania Public Utility Code, regulations, or a Commission Order. See *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).

