

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andina Caballero	:	
	:	
v.	:	F-2022-3035333
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Formal Complaint of Andina Caballero because she failed to meet her burden of proving that PECO incorrectly assessed a \$400.00 meter tampering fee against her account.

**HISTORY OF THE PROCEEDING**

On September 15, 2022, Andina Caballero (Complainant) filed a Formal Complaint (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 marked “[o]ther,” next to which she wrote in “Tampering Fee.” Under the “[r]equested relief” section of the Complaint form, the Complainant wrote in the following explanation:

I would like PUC to remove the tampering fee from my account. I just purchased the home back in March of 2021 and when I initially received the inspection back in November 2020 there was nothing wrong (with) the meter. So between the time of the

inspection to the time I officially purchased the home I had no control over what happened. Please help me. At this time I cannot pay for this and I really shouldn't be responsible for something that I did not do. So please remove this fee from my account.

On October 3, 2022, the Respondent filed an Answer indicating: that the Complainant established service at 5311 W. Oxford Street, Philadelphia, PA (service address) on March 15, 2022; that on April 4, 2022, the system generated a meter flag (reverse energy alarm) to notify PECO that the meter needed to be changed or investigated for possible damage; that on April 9, 2022, a technician visited the property and visibly observed that the meter was flipped upside down in the meter board; that PECO was unable to gain access to the meter until May 25, 2022; that on May 25, 2022, PECO completed a meter inspection; that the technician identified a hazardous condition at the property due to the meter being flipped upside down and damaged; that a new meter was installed; and that PECO applied a \$400.00 theft fee to the account. PECO further indicated that although it is not accusing the Complainant of personally tampering with the meter, since the meter tampering occurred at the Complainant's property, it properly assessed a tampering fee on the Complainant's account.

By Initial Telephonic Hearing Notice dated September 29, 2022, an initial call-in telephonic hearing was scheduled for December 8, 2022, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on October 5, 2022. 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 she is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on December 8, 2022. The Complainant appeared *pro se* and testified. The Respondent appeared and was represented by Khadija Scott, Esq., who presented the testimony of Leslie Wilson, a PECO Revenue Protection Technician,

and Michael Begley, a PECO Regulatory Assessor. The Respondent submitted four exhibits, all of which were admitted into the record (PECO Exhs. 1-4).

During the hearing, the Complainant indicated that she wanted to submit a “home inspection” as a late exhibit. Tr. 15. The Complainant was given until the close of business on December 9, 2022, to submit this exhibit, and the Respondent was given until the close of business on December 12, 2022, to object to the admissibility of the Complainant’s proposed exhibit.

On December 9, 2022, the Complainant submitted her exhibit, which was an email including a photo of a meter instead of the “home inspection” she proposed to submit. However, since PECO never objected to the Complainant’s proposed exhibit, it will be marked as Complainant’s Exh. 1 and admitted into the record through an ordering paragraph below.

The record closed on December 22, 2023, the date the transcript was filed with the Commission.

#### FINDINGS OF FACT

1. The Complainant in this case is Andina Caballero.
2. The Respondent in this case is PECO Energy Company.
3. The Complainant resides at 5211 W. Oxford Street, Philadelphia, PA (service address). Tr. 10.
4. On March 11, 2022, the Complainant purchased the service address. Tr. 12.
5. On April 4, 2022, the Complainant’s meter sent reverse energy alarms to PECO. Tr. 30, 38.

6. The meter sent the reverse energy alarm because it was not showing the normal energy capacity pattern. Tr. 37.

7. On April 9, 2022, a PECO technician visited the service address to inspect the Complainant's meter. Tr. 30.

8. The technician was unable to gain access to inspect the meter. Tr. 30-31.

9. On May 23, 2022, a PECO technician visited the service address to inspect the Complainant's meter. Tr. 20-21, 31.

10. The technician was unable to gain access to inspect the meter. Tr. 20.

11. The technician left a 10-day termination notice at the service address because he was unable to gain access to inspect the meter. Tr. 20.

12. The technician left the 10-day termination notice to let the Complainant know that PECO required access to the meter. Tr. 21-22.

13. On May 25, 2022, the technician returned to the service address and gained access to the Complainant's meter. Tr. 20.

14. The Complainant's son gave the technician access to the meter. Tr. 40.

15. The technician discovered that the meter was hanging upside down. Tr. 20; PECO Exh. 4.

16. PECO technicians never install meters upside down. Tr. 27.

17. The technician replaced the Complainant's meter. Tr. 26.

18. PECO's Tariff Electric Pa.P.U.C. No. 7 regarding Theft Investigation Charges provides as follows:

If the Company establishes that there has been confirmed active theft resulting from tampering with the Company meter on the customer's premises, and the customer is or was a customer as defined at Pa.C.S. § 1403 the customer shall pay a theft investigation charge in addition to any amount that the Company establishes is due for service used, but not registered on the Company's meter. The Company reserves the right to assess theft investigation charges as a precedent to reconnection of service as well as the right to assess a separate reconnection charge as described in Rule 18.7.

PECO Exh. 2.

19. PECO's Tariff Electric Pa.P.U.C. No. 7 regarding Theft Investigation Charges further provides for a \$400.00 theft investigation fee for electric theft at meter. Tr. 23, PECO Exh. 2.

20. On June 27, 2022, PECO assessed a \$400.00 theft investigation fee against the Complainant. Tr. 23-24, 32; PECO Exh. 1.

### DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 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. § 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). A preponderance of the evidence is evidence that is 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. *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. 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. Unemp't Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Cntr.*, 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).

A utility's Commission-approved tariff (list of services, rules for service and rates for service) has the force of law and is binding on the utility and its customers. *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n* 437 A.2d 1067 (Pa. Cmwlth. 1981); *Pa. Elec. Co. v. PA Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995).

Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. Pa. Pub. Util. Comm'n*, 594 A.2d 816 (Pa. Cmwlth. 1991); 66 Pa.C.S.A. §316.

PECO's Tariff Electric Pa.P.U.C. No. 7 enjoys all of these legal presumptions.

The Complainant challenged her responsibility for the \$400.00 meter tampering charge assessed against her account. The Complainant maintained that she should not be held responsible because she is not responsible for the tampering. However, the Commission has found that a property owner having dominion and control over a service address is responsible to have known, or should have known, of tampering and theft of service occurring at the property. *Simmons v. UGI Utils., Inc.*, Docket No. C-2017-2605783 (Opinion and Order entered July 12, 2018).

The Complainant, as the owner of the service address since March 11, 2022, had dominion and control over the property at all times relevant to this case. On April 4, 2022, the Complainant's meter sent reverse energy alarms to PECO. Tr. 30, 38. The Complainant was responsible for ensuring that tampering of PECO's service did not occur at the service address during the time she had dominion and control over the property. Although PECO is not accusing the Complainant of theft of service, her failure to secure PECO's meter leaves her responsible for the \$400 theft investigation fee since PECO demonstrated that her meter had been tampered with.

The Complainant was not able to offer anything to demonstrate that PECO's tariff is unreasonable, or that PECO charged her the theft investigation fee incorrectly pursuant to its Commission-approved tariff. Since the Complainant was not able to meet this burden, I cannot conclude that PECO incorrectly assessed this meter tampering fee against the Complainant. Accordingly, the Complainant's Complaint is denied.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. 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. A property owner having dominion and control over a service address is responsible to have known, or should have known, of tampering and theft of service occurring at the property. *Simmons v. UGI Utils., Inc.*, Docket No. C-2017-2605783 (Opinion and Order entered July 12, 2018).

5. A public utility's Commission-approved tariff has the force of law and is binding on the utility and its customers. *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Pa. Electric Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995).

6. Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. Pa. Pub. Util. Comm'n*, 594 A.2d 816 (Pa. Cmwlth. 1991); 66 Pa.C.S.A. §316.

7. PECO acted in accordance with its Commission-approved tariff when it assessed the \$400.00 meter tampering fee against the Complainant.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant's Exhibit 1 is admitted into the record of this proceeding.

