

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Elaine Mickman	:	
	:	
v.	:	C-2022-3036040
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants the Formal Complaint of an electric service customer seeking repairs to her property through PECO’s administration of its Low-Income Usage Reduction Program.

**HISTORY OF THE PROCEEDING**

On October 12, 2022, Elaine Mickman (Complainant or Ms. Mickman) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant alleges, *inter alia*, that PECO failed to administer its Low-Income Usage Reduction Program (“LIURP”) properly and thus, engaged in discriminatory practices when it refused to make needed repairs at her property.

On November 1, 2022, PECO filed an Answer to the Complaint. In its Answer, PECO either admitted or denied the various averments of the Complaint. In particular, PECO averred that the Complainant was advised that there was a cracked drainpipe leaking sewage into

her basement and remediation of this hazardous condition must be completed by the Complainant before additional inspections and/or repairs could be made to the basement.

On November 2, 2022, PECO filed a Preliminary Objection with an attached Notice to Plead. In its Preliminary Objection, PECO averred that: “In essence, the Complainant is requesting that the Commission classify remediation of sewage, which was identified in the Complainant’s basement, as an incidental repair.” PECO further averred that sewage remediation is beyond the scope of the LIURP, therefore, the Complaint should be dismissed as it fails to set forth a violation of PECO’s tariff, the Public Utility Code, or a Commission Order or regulation as required by 52 Pa. Code §5.22(a)(4).

By Hearing Notice dated November 8, 2022, an Initial Call-In Telephonic Hearing was scheduled for January 5, 2023, and the matter was assigned to me.

On November 14, 2022, the Complainant filed an Answer to PECO’s Preliminary Objection averring that she was never advised by PECO that there was sewage leaking into her basement.

On December 8, 2022, I issued an Order denying the Preliminary Objection of PECO.

On January 5, 2023, the hearing convened as scheduled. The Complainant appeared *pro se*, testified on her own behalf, and presented one exhibit that was admitted into the record. The Respondent was represented by Khadijah Scott, Esquire, who presented the testimony of Steven Cobb, the Program Manager for PECO’s LIURP at CMC Energy Services. The Respondent offered three exhibits, all of which were entered into the record.

The record closed on January 24, 2023, upon the filing of the transcript with the Commission.

## FINDINGS OF FACT

1. The Complainant is Elaine Mickman, who resides at 1619 Gerson Drive, Narberth, PA 19072 (Service Address). Tr. 5-6.
2. The Respondent is PECO Energy Company, a jurisdictional public utility, which provides electric service to the Complainant at the Service Address.
3. The Complainant is a PECO customer eligible to receive services through PECO's LIURP. Tr. 6-7, 25.
4. PECO's LIURP is administered by CMC Energy Services (CMC). Tr. 19.
5. On June 13, 2022, CMC visited the Service Address and performed an energy audit on the home. Tr. 22; PECO Exh. 3.
6. CMC identified standing water in the basement during the June 13, 2022, energy audit, which they deemed an "active hazard" that prevented a full inspection of the basement, as well as normal diagnostic testing of the heating and water heating systems in the basement. Tr. 24-25; PECO Exh. 3.
7. On June 27, 2022, CMC sent a third-party vendor, Black Horse Plumbing and Heating II, Inc. (Black Horse Plumbing), to determine the source of the water in the basement and repair it if possible. Tr. 26-27; PECO Exh. 6.
8. Black Horse Plumbing determined that the source of the water in the basement was an active sewage leak from the primary drainpipe of the house. Tr. 27; PECO Exh. 6.
9. Black Horse Plumbing indicated that they were willing to repair the pipe but did not have the training and equipment to clean and sanitize the area so they could safely and successfully complete those plumbing repairs. Tr. 28; PECO Exh. 3.

10. The LIURP has never provided sewage remediation services. Tr. 28.

11. The definition of an “incidental repair” under the LIURP is broad and could include sewage remediation. Tr. 31.

12. Prior examples of “incidental repairs” completed under the LIURP include electrical repairs, plumbing repairs, general carpentry repairs to provide safe access to areas, roof repair, and pest remediation. Tr. 31-32.

13. A home may qualify for free energy-saving measures based on LIURP Program guidelines and the specific needs of the home. Tr. 21.

14. Additional free services can also be offered to the customer when the home qualifies, and these additional opportunities identified at the original audit are completed by program contractors at a later date. Tr. 22.

15. PECO will not complete any repairs to the Service Address under its LIURP until after sewage remediation has been completed. Tr. 25.

16. The Complainant remains eligible for all other LIURP services once the sewage remediation is completed. Tr. 25.

### DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 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 complainant can meet that burden if she presents evidence more convincing, by even the smallest

amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. 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. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemp. Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

This case arises out of PECO's administration of its LIURP. The Complainant is a customer of PECO and eligible to receive services through PECO's LIURP. PECO's LIURP is administered by CMC. On June 13, 2022, CMC visited the Complainant's home and performed an energy audit. During that audit, CMC identified standing water in the basement, which they deemed an "active hazard" that prevented a full inspection of the basement, as well as, normal diagnostic testing of the heating and water heating systems in the basement. As a result, CMC sent a third-party vendor, Black Horse Plumbing, to determine the source of the water in the basement and repair it if possible. On June 27, 2022, Black Horse Plumbing visited the Service Address and determined that the source of the water in the basement was an active sewage leak from the primary drainpipe of the house. Black Horse Plumbing advised CMC that they were willing to repair the drainpipe, but did not have the training and equipment to provide the sewage remediation that

would need to be completed first. Accordingly, PECO, via CMC, advised the Complainant that it could not complete any other services under its LIURP until sewage remediation was performed. PECO further advised the Complainant that sewage remediation is not covered by its LIURP, and therefore, she was responsible to have it completed at her own expense. As a result, the Complainant filed the instant Complaint. Essentially, the Complainant's position is that PECO has failed to provide any rationale why sewage remediation is not covered by its LIURP as an "incidental repair" under 52 Pa. Code § 58.12.

Residential LIURPs are controlled by Chapter 58 of the Pennsylvania Code. Regarding "incidental repairs," 52 Pa. Code § 58.12 states:

**§ 58.12. Incidental repairs.** Expenditures on program measures may include incidental repairs to the dwelling necessary to permit proper installation of the program measures or repairs to existing weatherization measures which are needed to make those measures operate effectively.

In this case, the only reason given for not including sewage remediation as an "incidental repair" was that it has never been done before. Tr. 28. As stated previously, PECO's LIURP is administered by CMC. Steven Cobb, the Program Manager for PECO's LIURP at CMC, was personally responsible for Ms. Mickman's case. Tr. 22. Mr. Cobb testified that he has many years of relevant work experience. Tr. 20. He has been employed with CMC for nearly nine years and holds multiple industry certifications from the Building Performance Institute, including Building Analyst, Quality Control Inspector, and Healthy Homes Evaluator. *Id.* He is also OSHA-10 Certified and an EPA RRP Certified Renovator. *Id.*

Under direct examination, Mr. Cobb was specifically asked whether sewage remediation would be considered an "incidental repair" under the LIURP. Tr. 31. Mr. Cobb answered:

**The definition of an incidental repair can be broad. You know it's anything that does not directly lead to energy saving but must be completed in order to make the safe completion of an effective performance of an energy savings work possible. So, [sewage remediation] could be categorized as an incidental repair.**

Tr. 31. (Emphasis added). Additionally, Mr. Cobb testified that prior examples of “incidental repairs” completed under the LIURP include electrical repairs, plumbing repairs, general carpentry repairs to provide safe access to areas, roof repair, and *even pest remediation*. Tr. 31-32 (emphasis added).

However, despite stating that sewage remediation could qualify as an “incidental repair,” Mr. Cobb concluded that it does not qualify without any explanation or rationale why it does not qualify. Tr. 28, 31. Moreover, PECO did not present any other testimony, evidence, regulations, or guidelines to explain why sewage remediation does not qualify as an “incidental repair.” As such, whether intentional or not, the decision not to complete the sewage remediation appears arbitrary and capricious.

The purpose of LIURP is to assist low-income customers conserve energy and reduce residential energy bills, which in turn, reduces the incidence and risk of customer payment delinquencies and the attendant utility costs associated with uncollectible accounts expense, collection costs and arrearage carrying costs. 52 Pa. Code §58.1. LIURP should also result in improved health, safety and comfort levels for program recipients. *Id.*

Here, the Complainant remains eligible for all other LIURP services once the sewage remediation is completed. Tr. 25. Under the particular facts of this case, I find that sewage remediation is necessary to permit the proper completion of those other LIURP services, and therefore constitutes an “incidental repair” under 52 Pa. Code § 58.12. Completion of the sewage remediation, along with the remaining LIURP services, will result in improved health, safety, and comfort level of the Complainant.

Accordingly, the Complainant's request that PECO complete the sewage remediation and all other remaining LIURP services shall be granted.

## CONCLUSIONS OF LAW

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

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. In order to prevail, the Complainant must show, by a preponderance of the evidence, that PECO is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 1976); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

4. The purpose of LIURP is to assist low-income customers conserve energy and reduce residential energy bills, which in turn, reduces the incidence and risk of customer payment delinquencies and the attendant utility costs associated with uncollectible accounts expense, collection costs and arrearage carrying costs. 52 Pa. Code §58.1.

5. LIURP should also result in improved health, safety, and comfort levels for program recipients. 52 Pa. Code §58.1.

6. Expenditures on LIURP measures may include incidental repairs to the dwelling necessary to permit proper installation of the program measures or repairs to existing weatherization measures which are needed to make those measures operate effectively. 52 Pa. Code § 58.12.

7. Under the facts of this case, sewage remediation qualifies as an “incidental repair” for purposes of the LIURP. 52 Pa. Code § 58.12.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Elaine Mickman at Elaine Mickman v. PECO Energy Company, Docket No. C-2022-3036040 is granted.
2. That PECO shall complete the sewage remediation and all other remaining LIURP services at the Service Address.
3. That Docket No. C-2022-3036040 be marked closed.

Date: April 19, 2023

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/s/  
F. Joseph Brady  
Administrative Law Judge