

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Vanee Flowers	:	
	:	
v.	:	F-2023-3037961
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s Formal Complaint because she failed to meet her burden of proving that the Respondent erred in transferring the balance from her previous account to her current account. The Complainant did not establish that the Respondent violated the Public Utility Code, or a Commission regulation or Order regarding its actions in this matter.

HISTORY OF THE PROCEEDING

On January 25, 2023, Vanee Flowers (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission).¹ In the Complaint, the Complainant contends that there were incorrect charges on her bill. Specifically, the Complainant contends that she should not be responsible for any outstanding balance on a PECO account in her name for utility service provided while she rented an apartment at 927 Coates Street, 2nd Floor Unit, Sharon Hill, Pennsylvania

¹ The Complaint is a timely appeal from a determination of the Commission’s Bureau of Consumer Services (BCS) at BCS No. 3866604 issued on December 21, 2022.

19079 (Service Address).² The Complainant requests that: (a) she be reimbursed for all electric service provided to her at the Service Address; and (b) that all balances for utility service to her at the Service Address be charged to the owner of the rental property.

On February 17, 2023, the Respondent filed an Answer denying the material allegations of the Complaint.³

By Hearing Notice dated February 21, 2023, an initial telephonic hearing was scheduled for April 12, 2023, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on March 9, 2023. The Prehearing Order directed the parties to comply with various procedural requirements and 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 April 12, 2023. The Complainant participated *pro se* and testified. The Complainant offered four exhibits, which were entered into the record. The Respondent appeared and was represented by Khadijah Scott, Esq., who presented the testimony of Anna Mae Migliaccio, a PECO regulatory assessor. Respondent offered four exhibits, which were all entered into the record.

The hearing resulted in 93-page transcript. The record closed on April 26, 2023, when the transcript was filed with the Commission.

² On the complaint form, the Complainant checked boxes indicating that the utility service that is the subject of the complaint included electric, gas, steam heat and storm water. The words “electrical pole” and other illegible words were also hand-written on the complaint form. Complaint ¶ 3.

³ PECO’s Answer indicated that the Complainant had electric and gas heating service at the Service Address. Answer ¶ 3.

FINDINGS OF FACT

1. The Complainant is Vanee Flowers.
2. The Respondent is PECO Energy Company.
3. The Complainant currently resides at 1101 Hook Rd. Apt. 350, Sharon Hill, Pennsylvania 19079 (Current Address). Tr. 14.
4. The Complainant previously resided at a rental property located at 927 Coates Street, 2nd Floor Unit, Sharon Hill, Pennsylvania 19079. Tr. 13.
5. It is PECO's policy to require access to the breaker box for the service location when investigating electric service complaints. Tr. 64.
6. On September 22, 2022, the Complainant contacted PECO and reported an issue with her electric service, indicating that her lights were flickering. Tr. 49, 66.
7. When the Complainant contacted PECO to report the issue with her electric service, she indicated that she did not have access to the breaker box for the Service Address. Tr. 15, 25, 49.
8. After September 22, 2022, PECO tried to contact the Complainant via telephone and email to discuss her complaint about flickering lights and to schedule an inspection. Tr. 53-54, 67, 71.
9. The Complainant did not respond to any of PECO's efforts to discuss her complaint about flickering lights and to schedule an inspection. Tr. 54.
10. The Complainant did not provide access the breaker box for the Service Address. Tr 55.

11. On October 10, 2022, PECO sent one or more representatives to the Service Address. Tr. 55.

12. The PECO representatives were unable to investigate Ms. Flowers' complaint on October 10, 2022 because they could not access the breaker box for the Service Address. Tr. 55-56.

13. On November 18, 2022, the Complainant contacted PECO and requested that electric and gas service be established in her name at 1101 Hook Rd, Unit 305, Sharon Hill PA 19079 (Current Address). Tr. 53, 72.

14. The Complainant's account at the Service Address was finalized and closed on November 30, 2022. Tr. 55-56.

15. When the Complainant's account at the Service Address was finalized, there was an outstanding balance of \$542.91. Tr. 57, 72.

16. On January 19, 2023, PECO transferred the outstanding balance on the Complainant's account for service at the Service Address to the Complainant's account at her Current Address. Tr. 44-45, 53, 72. PECO Exhibit 1, 3.

DISCUSSION

The Public Utility Code⁴ 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.⁵ pursuant to.

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

⁴ 66 Pa.C.S. § 332(a).

⁵ *Id.*

Complaint.⁶ Such a showing must be by a preponderance of the evidence.⁷ A preponderance of the evidence is shown by presenting evidence more convincing, by even the smallest amount, than that presented by the other party.⁸ Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.⁹ More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.¹⁰

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.¹¹

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.¹²

The Complainant alleges that she should not be responsible for charges to the PECO account in her name at the Service Address because PECO failed to provide an adequate response to her complaint regarding electric service at the Service Address, an allegation of unreasonable service. In addition, the Complainant argues that PECO incorrectly billed her for the balance on the account at the Service Address.

⁶ *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).

⁷ *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

⁸ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁹ *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.

¹⁰ *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 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).

¹¹ *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

¹² *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

PECO is required by law to provide the Complainant with adequate and reasonable service. Section 1501 of the Public Utility Code 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.¹³

Interpreting this provision, the Commonwealth Court has stated:

[w]e 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.¹⁴

The statutory definition of “service” is to be broadly construed.¹⁵ In 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 testified that on multiple occasions, she reported problems with her electric service to PECO.¹⁶ The Complainant contends that PECO

¹³ 66 Pa.C.S. § 1501.

¹⁴ *West Penn Power Co. v. Pennsylvania Public Utility Commission*, 478 A.2d 947(Pa. Cmwlth. 1984) at 949 (footnote omitted).

¹⁵ *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995). “ ‘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.

¹⁶ Tr. 15.

failed to provide her adequate service because PECO failed to perform an inspection of the Service Address in response to her complaints about her electric service.

In support of her testimony, Ms. Flowers provided evidence that home inspections for the Service Address were conducted on multiple occasions, including October 14, 2022, November 14, 2022, December 22, 2022.¹⁷ The home inspections were performed by McCright & Associates, which appears to have performed the inspection to determine compliance with Department of Housing and Urban Development standards.¹⁸ She also provided documentation demonstrating that each of these inspections confirmed that: the inspector was unable to obtain access to the breaker box at the Service Address, and the possible presence of a breaker overload.¹⁹ The documentation provided by the Complainant supports her testimony and that of PECO's witness that she did not have access to the breaker box at the Service Address.²⁰

PECO's witness, Ms. Migliaccio acknowledged that Ms. Flowers contacted PECO and reported issues with her electric service at the Service Address. Ms. Migliaccio also testified that to investigate an electric service complaint, PECO must have access to a breaker box. In addition, Ms. Migliaccio testified that if a tenant of a rental unit does not have direct access to the breaker box for a rental unit, it is PECO's policy to inform tenants that they must contact the landlord of the service location to obtain access to the breaker box before an inspection will be scheduled and/or conducted.²¹

¹⁷ Complainant Exhibit A. The Complainant also provided evidence of inspections on April 29, 2022, and May 27, 2022 inspection; however, the inspection report for those dates do not reflect any utility defects.

¹⁸ See Complainant Exhibit A at 2-8. Documentation submitted by the Complainant indicates that her landlord was Glory to God Enterprises, LLC and that the apartment was subject to oversight by the Delaware County Housing Authority. Complainant Exhibit B at 7, Complainant Exhibit A at 9.

¹⁹ Complainant Exhibit A. The November Inspection Report includes the following notation in the space provided for Routine Repairs "The breaker/fuse box has open breaker/fuse ports or damaged breakers/fuses . . . possible Breakers overloaded." In the space designated as "Reinspection Photo," the November Inspection Report has a handwritten note indicating "No access to Electric Braker [sic] Box for unit #2-2nd Floor." Neither the November nor December Inspection Report listed any "Emergency Repairs." Complainant Exhibit A at 4.

²⁰ See Complainant Exhibits A, B.

²¹ Tr. 49.

It is not unreasonable for PECO to require access to the breaker box and other relevant areas before committing personnel, equipment and other resources to conduct an investigation of poor service. Although Ms. Flowers and Ms. Migliaccio provided conflicting testimony as to whether an inspection had been scheduled,²² they agreed that PECO did not conduct an inspection and would have been unable to do so without access to the breaker box. By her own testimony and evidence, Ms. Flowers was aware that access to the breaker box was in the landlord's control. She provided no testimony or evidence indicating that she took any steps to obtain access to the breaker box so that PECO could investigate her report of service issues. Based on all of the above, it is clear that the Complainant has failed to meet her burden of proof under the law to establish that PECO provided less than reasonable service.

The Complainant did not provide any testimony or evidence that would support a finding that she was improperly billed for service at the Service Address. Thus, the Complainant has failed to meet her burden of proof under the law to establish that she was improperly billed for service by PECO. Accordingly, the Complainant is responsible for the bills issued to her by PECO for service provided at the Service Address.

Commission regulations govern the transfer of charges to and among utility customer accounts;²³ they provide, in part, as follows:

(a) A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly.²⁴

In her testimony, Ms. Flowers acknowledged that she had a PECO account in her name and received utility service from PECO at the Service Address. She also acknowledged that she established a PECO account in her name at the Current Address.

²² Tr. 65-68.

²³ 52 Pa. Code § 56.35

²⁴ 52 Pa. Code § 56.35(a).

PECO presented testimony and evidence establishing that the Complainant was the account holder for the Service Address when the account was finalized on November 30, 2022.²⁵ PECO's witness, Ms. Migliaccio also testified that the unpaid balance of the Complainant's account at the Service Address was transferred to the Complainant's account at the Current Address on January 19, 2023.²⁶

Pursuant to the aforementioned Commission regulation, PECO was entitled to transfer the balance from Ms. Flowers' account at the Service Address to the Complainant's account at her Current Address. It is not unreasonable for PECO to request that the Complainant pay the outstanding balance for service rendered to her at the Service Address.

In the present case, PECO has not done anything that would constitute a violation of a Commission rule, regulation or order. As such, the Complainant is responsible to pay the outstanding balance from the Service Address, and her Complaint is dismissed.

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.

²⁵ Tr. 55, PECO Exhibit 2, 3.

²⁶ Tr. 45, PECO Exhibit 1.

4. A public utility may also require the payment of any outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there. 66 Pa.C.S. § 1407.

5. A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly. 52 Pa. Code § 56.35(a).

6. The Complainant did not meet her burden of establishing that PECO violated the Public Utility Code, Commission regulations or a Commission Order regarding the transfer of the balance from the Complainant's account at the Service Address to her account at the Current Address. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Vanee Flowers in Vanee Flowers v. PECO Energy Company at Docket No. F-2023-3037961 is dismissed.
2. That Docket No. F-2023-3037961 be marked closed.

Date: July 14, 2023

/s/
Arlene Ashton
Administrative Law Judge