

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Philip Alexander Carlton	:	
	:	
v.	:	C-2023-3039584
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Formal Complaint of Philip Alexander Carlton because he failed to satisfy his burden of proving that PECO Energy Company violated its tariff, the Public Utility Code, or a Commission Regulation or Order.

**HISTORY OF THE PROCEEDING**

On March 31, 2023, Philip Alexander Carlton (Mr. Carlton or Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Mr. Carlton alleged that PECO is threatening to terminate his service, that there are incorrect charges on his bill, and that his original contract with PECO Energy did not have consideration as required under contract law.

On April 26, 2023, PECO filed an Answer to the Complaint. In its Answer, PECO admitted in part, and denied in part, various allegations of the Complaint. PECO admitted

that it provides electric service to the Complainant at 409 East 12<sup>th</sup> Street, Chester, PA 19013, and, on March 28, 2023, the Complainant received a Ten-Day Termination Notice effective on or after April 11, 2023, for a past due balance of \$1,473.72. PECO averred that the Complainant only made one payment to his account in the last year. PECO further averred that the Complainant is being billed on actual meter readings and all bills and balances are correct. PECO requested that the Complaint be dismissed.

By Hearing Notice dated May 1, 2023, an Initial Telephonic Hearing was scheduled for June 23, 2023, and the matter was assigned to me.

A Prehearing Order was issued on June 1, 2023, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to the proceeding.

On June 22, 2023, the Complainant requested a continuance, via email, due to the passing of a family member. Counsel for PECO Energy Company did not object to the request.

On June 29, 2023, an Order was issued granting the Complainant's request for a continuance.

Also on June 29, 2023, a Cancellation/Reschedule Hearing Notice was issued rescheduling the hearing for July 27, 2023.

On July 27, 2023, the hearing convened as scheduled. The Complainant appeared *pro se* and testified on his own behalf. The Complainant offered one exhibit that was admitted into the record. Khadijah Scott, Esquire, appeared on behalf of PECO and presented the testimony of Anna Mae Migliaccio, a Regulatory Assessor at PECO. PECO offered four exhibits, which were admitted into the record.

The record closed on August 15, 2023, upon the filing of the transcript with the Commission.

## FINDINGS OF FACT

1. The Complainant is Philip Alexander Carlton.
2. The Respondent is PECO Energy Company, a utility under the jurisdiction of the Pennsylvania Public Utility Commission.
3. The Complainant resides and receives electric service from PECO at 409 East 12<sup>th</sup> Street, Chester, PA 19013 (Service Address). Tr. 5.
4. On November 17, 2022, the Complainant made a payment to his account in the amount of \$446.95, via a Visa debit card. Tr. 37.
5. PECO accepts payments in the form of credit/debit cards, cash, money orders, or personal checks. Tr. 37.
6. On March 28, 2023, PECO sent the Complainant a disconnection notice for an outstanding balance of \$1,473.72. Tr. 40; PECO Exh. 3.
7. As of July 13, 2023, the Complainant's outstanding balance was \$2,264.85. Tr. 41.

## 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 he 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. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Pa. 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).

Finally, a Commission-approved tariff is *prima facie* reasonable, has the full force of law, and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Zucker v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981). A complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. *Shenano Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996).

In this matter, PECO is billing Mr. Carlton pursuant to its Commission-approved Electric Tariff. Mr. Carlton does not dispute that he must pay for his electric service. Tr. 32. At the outset of the hearing, Mr. Carlton stated the reason he filed the Complaint against PECO:

I filed a Complaint because PECO – I asked for the original contract. They never provided it for me. The original contract is a security. It says promissory note. So by them receiving the promissory note, just like the notes in your pocket, a note is a note is a note, for the record, on the Court of record, they had a cash deposit because they accepted it for that account.

Tr. 7-8. At the conclusion of the hearing, Mr. Carlton summarized his position as follows:

Well, I just like to say on behalf of Philip Carlton, that we never once said that we were not paying anything. We still haven't gotten a clear definition of what payment meant, what a payment was. We understand terms or different ways and means of payment, but no one defined payment. No one gave a clear definition of payment. So at this time, I look at it as a - still, because no one ever said that they received the remittance coupon that was sent in. And we sent them - like I said, we sent one to Mr. Michael - let me see, the Defendants on the Default Judgment. He sent the instruments to them. PUC has sent us notice that they received a deposit from Philip Alexander Carlton Trust. The date of deposit is February the 8th, 2023. In back of that was a draft for \$100,450. And we had assigned it to the Commissioner to satisfy all obligations in perpetuity for any bill that comes from PECO.

Tr. 58-59.

The Complainant's arguments are difficult to discern, but it appears he may have filed the Complaint because he seeks to remit payment in a form other than PECO's accepted forms of credit/debit card, cash, money order, or personal check. Tr. 7-8; 58-59. However, Mr. Carlton did not present any relevant testimony or evidence at the hearing to establish even a *prima facie* case to support this position. Furthermore, the Commission has previously held that it is reasonable and in compliance with Section 1501 of the Code, 66 Pa. C.S. § 1501, for a utility to require payment in the above-listed forms. *See Feitt v. Peoples Nat. Gas*, Docket No. F-2018-3003833 (Opinion and Order entered Oct. 8, 2020). Thus, I find the Complainant failed to

satisfy his burden of proving that PECO violated its tariff, the Public Utility Code, or a Commission Regulation or Order. Accordingly, the Complaint will be denied.

#### 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. A public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law, and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Zucker v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

4. It is reasonable and in compliance with Section 1501 of the Code, 66 Pa. C.S. § 1501, for a utility to require payment in the forms of credit/debit card, cash, money order, or personal check. *See Feitt v. Peoples Natural Gas*, Docket No. F-2018-3003833 (Opinion and Order entered Oct. 8, 2020).

5. The Complainant has failed to satisfy his burden of proving that PECO violated its tariff, the Public Utility Code, or a Commission Regulation or Order. 66 Pa.C.S. § 701.

