

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andree Lombard

v.

PECO Energy Company

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C-2023-3041719

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Formal Complaint filed by Andree Lombard against PECO Energy Company because she failed to meet the burden of demonstrating that PECO Energy Company charged her incorrectly for service.

HISTORY OF THE PROCEEDING

On July 10, 2023¹ Andree Lombard (Ms. Lombard) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). On the Complaint form, Ms. Lombard checked boxes indicating there were incorrect charges on her bill, she would like a payment agreement, and PECO is threatening to shut off service. In an attachment to the Complaint, Ms. Lombard explained that she filed the Complaint because she was unsure if the account had been “overpaid” and could not get a clear explanation from PECO of billing for her account. She also requested a new payment arrangement.

On August 1, 2023, PECO filed an Answer to the Complaint denying all material allegations in the Complaint.

By Hearing Notice dated August 2, 2023, an Initial Telephonic Hearing was scheduled for October 3, 2023, at 10:00 a.m. and the matter was assigned to me.

A Prehearing Order was issued on August 31, 2023, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

The hearing convened as scheduled on October 3, 2023. Ms. Lombard did not appear. Giovanni Lombard, who identified himself as Ms. Lombard's husband, appeared *pro se* and testified in support of the Complaint.¹ No exhibits were offered by Mr. Lombard.

The Respondent appeared and was represented by Khadijah Scott, Esquire, who presented the testimony of Anthony Costello, a Senior Regulatory Officer at PECO. During the hearing, the Respondent offered the following four exhibits, all of which were entered into the record:

- PECO 1: Customer Contacts for Account Number: xxxxx-01705 (5 pages)
- PECO 2: Monthly Bill dated 1/09/1023, 2/07/2023, 3/08/2023, 4/06/2023 (two copies), 5/05/2023, 6/06/2023, 7/06/2023 (16 pages)
- PECO 3: Collection History for Account # xxxxx -01705 (2 pages)
- PECO 4: Payment Agreement History for Account # xxxxx -01705 (2 pages)

The record in this case consists of a 49-page transcript and four exhibits. The record closed on October 24, 2023, when the transcript was filed with the Secretary.

¹ For convenience, Andree Lombard and Giovanni Lombard are referred to herein, individually and collectively, as Complainants.

FINDINGS OF FACT

1. Andree Lombard filed the Formal Complaint in this matter.
2. The Respondent is PECO Energy Company.
3. Andree Lombard is the customer whose name is associated with the PECO account that serves 404 Aldan Avenue, Aldan, PA 19018 (Service Address). Tr. 4-5, 23.
4. Andree Lombard and her husband, Giovanni Lombard reside at the Service Address, which is occupied by them and their adult child. Tr. 15.
5. PECO provides electric and gas service to the Service Address. Tr. 14.
6. On June 15, 2021, Complainants entered into a payment agreement (2021 Payment Agreement) with PECO.
7. The 2021 Payment Agreement provided for repayment by Complainants of a deferred payment amount of \$3,081.60 in 24 equal monthly installments of \$128.40, together with current usage reflected on the regular monthly bill. Tr. 39; PECO 1, 3.
8. PECO's budget billing plan allows customers to pay a fixed amount each month based on utility usage over the most recently concluded 12-month period; the monthly amount is adjusted on a quarterly basis to reflect utility usage over a rolling 12-month period. Tr. 26-28, 31-32.
9. On or about February 7, 2023, the Complainants enrolled in PECO's budget billing program.
10. The monthly budget billing amount initially established for the Complainants was \$272.00. Tr. 31; PECO 1.

11. After enrolling in PECO's budget billing plan, the Complainants' monthly utility bill consisted of the monthly deferred payment installment of \$128.40 plus the budget billing amount of \$272.00, a total of \$400.40. Tr. 32-33. PECO 2.

12. The Complainants' PECO bill dated April 6, 2023, reflected a total amount due of \$400.40.

13. Of the \$400.40 shown as due on the PECO bill dated April 6, 2023, the Complainants paid only \$200.00. Tr. 33; PECO 1, 2.

14. By failing to pay the PECO bill dated April 6, 2023, in full, the Complainants defaulted on the 2021 Payment Arrangement.

15. PECO accurately billed the Complainants for utility service.

16. At the time of the hearing the Complainants' account had an outstanding balance of \$824.07. Tr. 23; PECO 1.

17. PECO issued a Ten-Day Shut Off Notice for the Service Address on July 3, 2023. Tr. 36-37; PECO 3.

DISCUSSION

The Parties and Appearances at the Hearing

Although Andree Lombard filed the Formal Complaint in this matter, she did not appear at the hearing. Instead, Giovanni Lombard appeared for the hearing. Mr. Lombard indicated that he and Ms. Lombard are married and that he wished to provide testimony and present argument in this matter on behalf of himself and his wife.² It was immediately apparent from Mr. Lombard's testimony that he is personally and actively involved in managing the

² Tr. 4-5. Mr. Lombard did not indicate, and there is no evidence in the record, that he is an attorney licensed to practice law in the Commonwealth of Pennsylvania.

PECO account that is the subject of the Complaint. For example, he stated, “I was enrolled in budget billing” and “I finished also the previous arrangement that I had . . . and I took the budget billing off.” Tr. 13.

Respondent’s counsel raised no objection to conducting the hearing in Ms. Lombard’s absence or Mr. Lombard’s appearance and participation at the hearing.³ At no point during the proceeding did PECO counsel inquire as to Mr. Lombard’s standing or ability to present testimony in support of the Complaint. Furthermore, Mr. Lombard was permitted to cross-examine PECO’s witness, without objection by PECO counsel.

Permitting one spouse to proceed at a hearing despite the absence of the spouse who filed the formal complaint is unusual but not unprecedented. In *Townsend v. GTE North, Inc.* Docket No. F-09157128, (Final Order entered Aug. 21, 1992) the judge allowed a husband, whose name was not on the account, to testify in lieu of his wife who was the account holder but who was not available. The utility service was shared at the service address by both spouses. In addition, in *Espenship v. PECO Energy Co.*, Docket No. C-2013-2354841 (Final Order entered March 14, 2014), the judge allowed a wife to testify in lieu of her husband when the latter was not available even though husband was the account holder and the husband had signed and filed the formal Complaint. In each case, the utility did not object to the hearing proceeding despite the fact that the spouse appearing was neither the account holder nor the spouse that signed the complaint.

Burden of Proof

As the party seeking affirmative relief from the Commission, the complainant bears the burden of proving that he or she is entitled to the requested relief. 66 Pa.C.S. § 332(a). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Samuel J.*

³ PECO presented undisputed testimony and evidence that since July 2, 2007, the Lombards have filed 15 formal complaints with the Commission against PECO. Tr. 38; PECO Exhibit 3. Thus, it appears that PECO and its counsel have a long history of responding to formal and informal complaints filed and pursued by the Lombards in Commission proceedings.

Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa. Cmwlth. 1990); *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. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Pub. Welfare, White Haven Ctr.*, 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 the 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*, 501 Pa. 433, 461 A.2d 1234 (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).

Testimony and Evidence Presented by the Parties

On the Complaint form, Ms. Lombard checked boxes indicating that there were incorrect charges on her bill, she would like a payment agreement, and PECO is threatening to shut off service. In an attachment to the Complaint, Ms. Lombard explained that she filed the Complaint because there were, or may have been, incorrect charges on bill(s) for service issued by PECO and

that she was unsure if the account had been “overpaid” and could not get a clear explanation from PECO of billing for her account. She also requested a new payment arrangement⁴

At the hearing, Mr. Lombard confirmed that he was aware of the filing of the Complaint and the claims asserted therein. Tr. 12-13. Through his testimony, he clarified the rationale for the filing of the Complaint, indicating that it related to budget billing for the Complainants’ account, the “deferred balance” for the account and confusion as to the reason the amount due and/or charges on his bill changed over time.⁵ Tr. 13-14. Mr. Lombard offered no testimony as to high billing, nor did he request or provide any information that would support the grant of a Commission-issued payment arrangement.

In his testimony, PECO’s witness, Anthony Costello described the 2021 Payment Agreement, which provided for payment of an outstanding balance of \$3,081.60 at the rate of \$128.40 in 24 monthly installments, the last installment being due June 28, 2023. Tr. 25; PECO 1. In addition, he provided a thorough explanation of PECO’s budget billing process. Tr. 26-28. Mr. Costello explained that budget billing allows a customer to “level out seasonal billing” and “pay a consistent amount” monthly. He also described how a customer’s budget billing amount is established and the mechanism used to revise the amount on a quarterly basis to “be sure that average is staying in line, looking at the past 12 rolling months.” Tr. 26-27.

Using the Complainants’ service bills as supporting documentary evidence, Mr. Costello provided clear testimony to explain the various amounts used to calculate the Complainants’ PECO bills each month, including payments received, the amount owed under the

⁴ Complaint ¶ 5, attachment. In an undated letter attached to and filed with the Complaint, Ms. Lombard expressed confusion regarding budget billing, deferred balance and deferred payment and specifically referenced the bill from June 2023. “I am not sure if I actually was overpaying my account or if the computer/system generated those number automatically.” See Complaint attachment.

⁵ On the Complaint form, Ms. Lombard checked the box indicating “incorrect charges are on my bill.” However, no testimony or evidence was presented to demonstrate that specific charges on any PECO bill were incorrect. The attachment filed with the Complaint clarifies her concern and sheds light on the reason the box was checked. In the attachment, Ms. Lombard indicated “please could [you] put the account on hold/get a new payment arrangement and get a clear explanation why the bill jumped from \$272.00 back to \$400.40 ??” Thus, it appears that the issue was essentially a request for clarity as to how payments, and more specifically, the \$200 partial payment made on the account on April 28, 2023, was credited to the Complainants’ account.

payment agreement with PECO, budget bill charges for the current month and unpaid amounts (and whether the unpaid amount arose under the payment agreement or the budget bill program) from any previous bills. Tr.24-26.

Mr. Costello also explained the difference between the “budget billing amount” and “total new charges” shown on a PECO billing statement. Tr. 31-32; PECO 2. He provided specific testimony regarding the Complainants’ account summary and bills, which each reflected the total amount due consisting of the amount payable under the payment agreement with PECO and the budget billing amount, as well as the actual cost of usage for the billing period. Tr. 32-33; PECO 1, 2. Mr. Costello explained that the April 6, 2021, PECO bill in the amount of \$400.40 due May 1, 2023, was not paid in full. Rather, a payment of \$200.00 was received and was applied to the budget bill amount of \$272.00, leaving \$200.40 unpaid, consisting of \$72.00 of the budget bill and the regular monthly payment of \$128.40 due under the payment agreement. The \$200.40 not paid when due on May 1, 2023, was carried forward by PECO and included in the bill dated May 5, 2023, which specified a total amount due of \$600.80. Tr. 33; PECO 1, 2. Finally, he testified that all bills issued by PECO to the Complainants were accurate and no errors with regard to payment, crediting or billing were found with respect to the Complainants’ account. Tr. 41.

At the hearing, Mr. Lombard acknowledged that he failed to make timely payments in full under the payment agreement. Tr. 42. Although he testified that he called PECO to inform PECO that he would not make certain payments in full, he did not provide any testimony or documentary evidence that would support a finding that PECO agreed to any change to the terms of the payment agreement. Tr. 42. Although Mr. Lombard testified that he was confused about budget billing, in cross-examination, he agreed that he understood how PECO’s budget billing program functions, and that it does not lower or raise a bill, and that budget billing is different from a payment agreement. Tr. 13, 16-18.

In addition, I note that Mr. Lombard failed to refute, dispute or discredit Mr. Costello’s testimony or the evidence presented by PECO. In sum, Mr. Lombard failed to provide any testimony that would support any of the inference that the allegations in the

Complaint related to overbilling by PECO. Despite the references in the Complaint to possible high billing and a new payment agreement, Mr. Lombard gave no testimony and provided no documentation concerning a new PECO-issued payment agreement, nor did he indicate that the Complainants wished to request a Commission-issued payment arrangement. Likewise, he provided no testimony or evidence that would support a finding that the shut-off notice issued by PECO on July 3, 2023, violated any provision of the Code or any Commission regulation or policy.

Disposition

Based on the foregoing, I find that the Complainants have failed to carry the burden of proving that utility bills issued for their account are not correct as rendered. The Complainants also failed to present any testimony or evidence that would support a request for a Commission-issued payment arrangement. The Complainants have not met the burden of proving that PECO has violated any provision of the Code or regulation of the Commission. The Complaint, therefore, must be 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 Complainants. 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. The Complainants have not met the burden of proving that PECO has violated any provision of the Code or regulation of the Commission or that the Complainants are entitled to a Commission-issued payment arrangement, and so the Complaint must be dismissed. 66 Pa.C.S. §§ 332(a), 701.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Andree Lombard in *Andree Lombard v. PECO Energy Company* at Docket No. C-2023-3041719 is dismissed in its entirety; and
2. That Docket No. C-2023-3041719 be marked closed.

Date: January 22, 2024

_____/s/
Arlene Ashton
Administrative Law Judge