

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Peter Meltzer	:	
	:	
v.	:	C-2023-3039965
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complainant’s formal Complaint because he failed to sustain his burden of proof to establish that PECO Energy Company did not properly handle the issue of foreign load at the Service Address.

HISTORY OF THE PROCEEDING

On April 13, 2023, Peter Meltzer (Complainant or Mr. Meltzer) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant indicated that there is a foreign load issue at the Service Address which PECO failed to handle in a proper manner, and that he should not be responsible for the outstanding balance.

On May 3, 2023¹, Respondent filed an Answer denying the material allegations of the Complaint.

¹ The Secretary’s Bureau served a copy of the Complaint on the Respondent on April 19, 2023.

On the same date, the Respondent also filed a Preliminary Objection which alleged that the Complaint should be dismissed for lack of legal sufficiency.

On May 24, 2023, the Complainant filed a response to the Preliminary Objection which indicated that the Complaint was sufficient, and the matter should move forward.

By Call-In Telephone Hearing Notice dated June 6, 2023, a hearing was scheduled for August 9, 2023, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on August 3, 2023. 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 he is entitled to the relief requested in the Complaint.

On August 9, 2023, the hearing was held as scheduled. The Complainant did not appear for the hearing. PECO was represented by counsel, Khadijah Scott, Esq. and had one potential witness available. At the hearing, I denied the Preliminary Objection and indicated that the matter should be decided on the merits. The Respondent also moved to dismiss the Complaint for lack of prosecution.

Later on August 9, 2023, the Complainant contacted my office regarding his Complaint and the hearing. The Complainant indicated that he did not have the correct time for the hearing in his calendar, so he failed to call in at the appointed time. The Complainant requested that a new hearing date be scheduled in the matter. The Respondent did not object to the Complainant's request, so I sent the matter to be rescheduled by the Harrisburg scheduling office.

Via Further Telephonic Hearing Notice dated August 18, 2023, the matter was rescheduled for a further call-in telephonic hearing on October 25, 2023, at 10:00 a.m.

The hearing convened as scheduled on October 25, 2023. Complainant appeared *pro se* and testified. The Complainant presented four exhibits which were entered into the record at the hearing. Respondent appeared and was represented by Khadijah Scott, Esq., who presented the testimony of Duane Vargas, a High Bill Field Consultant, and Renee Tarpley, a Senior Regulatory Assessor. Respondent offered seven exhibits which were all admitted into evidence.

The hearing resulted in a 68-page transcript. The record closed on November 27, 2023, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Peter Meltzer. Tr. 13.
2. The Respondent in this proceeding is PECO Energy Company.
3. The Complainant owns the property located at 201 Lansdowne Avenue, Havertown, Pennsylvania 19083, which he purchased in 2017 (Service Address). Tr. 14.
4. The Service Address is divided into two rental units which were occupied by tenants. Tr. 14.
5. The leases for the tenants indicated that the tenants were responsible for the payment of utilities. Tr. 24.
6. The Service Address receives gas service from PECO. Tr. 14.
7. The Service Address has one house heater servicing both units at the Service Address. Tr. 14-15.
8. The bill for the PECO gas was sent to the first-floor unit at the Service Address. Tr.

9. There was an arrangement between the first-floor tenant and second floor tenants that they would divide the bill evenly for payment. Tr. 24.

10. The Complainant did not contact PECO to be listed as a third party to be notified of any shut-off notices or non-payments. Tr. 25.

11. On December 5, 2022, PECO sent high bill field consultant Duane Vargas to the Service Address to investigate the first-floor tenant's allegation of foreign piping. Tr. 34; PECO Exh. 3.

12. Mr. Vargas found that there was only one gas meter at the Service Address which was attached to the first-floor apartment. Tr. 36; PECO Exh. 3.

13. On December 5, 2022, the tenant balance of \$6,046.27 was transferred to the account in the name of the Complainant for the Service Address. Tr. 37, 38; PECO Exhs. 4 & 5.

14. PECO does not send shut off notices to the landlord of a property unless they are listed as a third party or the customer of record. Tr. 49.

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, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is evidence 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. Unemployment Compensation Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, 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 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).

Foreign Piping

The present case raises the issue of whether PECO acted properly in placing the balance of the account for gas service for the Service Address in the Complainant's name. In doing so, Respondent followed 66 Pa.C.S. § 1529.1(b) of the Public Utility Code, which provides in pertinent part that, "if the mobile home or residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be

responsible for the payment for the utility services rendered thereunto.” (Emphasis added). *See also, Del Vecchio v. PPL Elec. Utils. Corp.*, Docket No. Z-01464793 (Opinion and Order entered Sept. 13, 2005). In *Del Vecchio*, the Commission found the utility violated 66 Pa.C.S. § 1529.1 because it failed to transfer complainant’s electric account to the landlord when it found foreign load on complainant’s meter.

Hence, a plain reading of 66 Pa.C.S. § 1529.1 holds a property owner financially responsible for a tenant’s entire account once foreign load/shared meter is verified on the tenant’s utility service. *Santos v. Metro. Edison Co.*, Docket No. C-00967757 (Opinion and Order entered Aug. 7, 1997). Upon finding foreign load, the utility must list the account, including any arrearage, in the name of the landlord. The landlord bears the responsibility of paying the utility bills until the foreign load is corrected. Once the foreign load is corrected by the landlord and verified by the utility, the utility places the account back in the name of the tenant. However, the arrearage, if any, remains with the landlord. *Ace Check Cashing Inc. v. Phila. Gas Works*, Docket No. C-2008-2056428 (Opinion and Order entered May 21, 2010). There is no *de minimus* exception; any dispute between the landlord and tenant regarding the financial responsibilities of the parties is a matter to be resolved in the Court of Common Pleas and is outside this Commission’s jurisdiction. *Id.*

The Complainant contends that PECO should not have allowed the balance to get as high as it did and should have notified him that the tenant was not paying the bills. Further, the Complainant contends that the tenant requested that the balance should not be transferred to Mr. Meltzer’s name.

The Complainant owns the property located at 201 Lansdowne Avenue, Havertown, Pennsylvania 19083, which he purchased in 2017 (Service Address). Tr. 14. The Service Address is divided into two rental units which were occupied by tenants. Tr. 14. The leases for the tenants indicated that the tenants were responsible for the payment of utilities. Tr. 24. The Service Address receives gas service from PECO. Tr. 14. The Service Address has one house heater servicing both units at the Service Address. Tr. 14-15. The bill for PECO gas was sent to the first-floor unit at the Service Address. Tr. 14. There was an arrangement between the

first-floor tenant and second-floor tenants that they would divide the bill evenly for payment. Tr. 24.

However, on December 5, 2022, PECO sent high bill field consultant Duane Vargas to the Service Address to investigate the first-floor tenant's allegation of foreign piping. Tr. 34; PECO Exh. 3. Mr. Vargas found that there was only one gas meter at the Service Address which was attached to the first-floor apartment. Tr. 36; PECO Exh. 3. On December 5, 2022, the tenant balance of \$6,046.27 was transferred to the account of the Complainant. Tr. 37, 38; PECO Exhs. 4 & 5.

Further, PECO does not send shut off notices to the landlord of a property unless they are listed as a third party or the customer of record. Tr. 49. The Complainant did not contact PECO to be listed as a third party to be notified of any shut-off notices or non-payments. Tr. 25.

Based on all of the above, it is clear that PECO followed the Commission's statutes, regulations and orders related to the foreign piping at the Service Address. When foreign piping was discovered, the tenant's balance was placed in the name of Mr. Meltzer, who is the landlord. Moreover, PECO is not permitted to provide information about another customer's account and is not required to send notices to a landlord unless they request to be a third party on the account, which Complainant did not do. It seems that the crux of the issues in this case are more of a landlord/tenant dispute and not within the Commission's jurisdiction. As such, the Complainant has not met his burden of proof and his Complaint 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. Pursuant to 66 Pa.C.S. § 332(a), 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. “[I]f the mobile home or residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services rendered thereunto.” 66 Pa.C.S. § 1529.1(b).

5. The Commission found that a utility violated 66 Pa.C.S. § 1529.1 when it failed to transfer a customer's electric account to the landlord when it found foreign load on the customer's meter. *Del Vecchio v. PPL Elec. Utils. Corp.*, Docket No. Z-01464793 (Opinion and Order entered Sept. 13, 2005).

6. Once the foreign load is corrected by the landlord and verified by the utility, the utility places the account back in the name of the tenant. *Ace Check Cashing Inc. v. Phila. Gas Works*, Docket No. C-2008-2056428 (Opinion and Order entered May 21, 2010).

7. The Complainant failed to meet his burden of demonstrating that PECO violated the Commission's statutes, regulations, or orders when it investigated the foreign piping and transferred the balance to the Complainant at the Service Address. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Peter Meltzer against PECO Energy Company at Peter Meltzer v. PECO Energy Company, Docket No. C-2023-3039965 is denied and dismissed;
2. That the record at Docket No. C-2023-3039965 be marked closed.

Date: February 21, 2024

/s/
Marta Guhl
Administrative Law Judge