

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Leonardo Sanchez :
 :
 v. : F-2022-3037286
 :
 PECO Energy Company :

VIA E-MAIL and El. Filing
Honorable Conrad Johnson
PA Public Utility Commission
400 North Street

Harrisburg, PA 17120 cc: COUNSEL FOR PECO K. SCOTT Esq, via e mail
RE: Leonardo Sanchez v. PECO Energy Company

Date: March 1st, 2023

Dear Judge Johnson:

Kindly find attached Plaintiff's Proposed Findings of Fact and Conclusions of Law, in support of his request for a finding of liability.

By: Predrag Filipovic, Esquire, *Attorneys for Plaintiff*

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Leonardo Sanchez	:	
	:	
v.	:	F-2022-3037286
	:	
PECO Energy Company	:	

PLAINTIFFS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN
SUPPORT OF HIS CLAIM UNDER UNFAIR TRADE PRACTICES CONSUMER
PROTECTION LAW 73 P.S. § 201-1, et seq.

**I. APPLICATION AND COVERAGE OF THE ACT AND PUC’s JURISDICTION OVER
PLAINTIFF’s CLAIM**

1. "PECO [] is a jurisdictional public utility providing electric and gas service in the Commonwealth of Pennsylvania. *See Hatchigian, D. v. PECO/EXELON*, 142 EDA 2018, see Pennsylvania Superior Court opinion attached as **Exhibit A**.
2. Plaintiff Leonardo Sanzhez (“Leo”), is a residential PECO customer residing in Chester County, Exton, Pennsylvania, a decorated combat veteran and still with the Military Department of Defense.
3. In order to protect the environment and decrease their carbon footprint Leo and his family have installed Solar City, (Not Tesla solar panels), on the roof and sides of their home in Exton PA. See Transcript of April 25th 2023 hearing attached as **Exhibit B** hereto, 20: 14-21: 19.
4. Instant controversy arises out of apparent discrepancies, confusion, misunderstanding that stems from how PECO calculates, bills, processes, and credits the electricity produced by the consumer’s solar panels and fed into PECO’s grid.

5. Mr. Sanchez and his family contend that the manner in which PECO calculates, bills, processes, and credits the electricity produced by the consumer's solar panels and fed into PECO's grid, violates the UTPCPL catchall provision under current and most recent decision of the Pennsylvania Supreme Court ruling in *Gregg v. Ameriprise Financial, Inc.*, 2021 LEXIS 208 (Pa.), also cited under 29WAP2019 (Pa. Feb 17, 2021).
6. PUC has primary jurisdiction over Mr. Sanchez's UTPCPL claim pursuant to well established line of cases cited above:

"Hatchigian raises a claim that PECO has violated the UTPCPL. We hold that the PUC has primary jurisdiction over Hatchigian's complaint." Hatchigian, 142 EDA 2018. Ex A.

II. STANDARD OF LIABILITY UNDER UTPCPL CATCHALL PROVISION UNDER GREGG. V. AMERIRPISE IS ONE OF STRICT LIABILITY

7. "The UTPCPL's provision for private actions allows a trial court [or PUC herein], to assess and award actual damages for violations of the statute. See 73 P.S. § 201-9.2 (a). The statute also authorizes the trial court to award reasonable attorney fees. *Id.*" *Gregg v. Ameriprise Fin.*, 628 WDA 2021, 3 n.4 (Pa. Super. Ct. Jun. 30, 2022).
8. This section, known as the "catch-all" provision, prohibits anyone who advertises, sells, or distributes good or services from "[e]ngaging in any . . . fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding" during a transaction. 73 P.S. § 201-2(4)(xxi).
9. The Superior Court's holding is consistent not only with the plain language of the CPL, but also with our precedent holding that the CPL is a remedial statute that should be construed broadly in order to comport with the legislative will to eradicate unscrupulous business practices. See *Commonwealth by Creamer v. Monumental Props., Inc.*, 329 A.2d 812, 817 (Pa. 1974). Accordingly, we affirm. *Id.*

10. Regardless of which unfair method of competition a plaintiff challenges in a private cause of action, therefore, Section 201-9.2 requires the plaintiff to establish justifiable reliance.

Creating both public and private causes of action, See Stephen Buckingham, *Distinguishing Deception and Fraud: Expanding the Scope of Statutory Remedies Available in Pennsylvania for Violations of State Consumer Protection Law*, 78 TEMP. L. REV. 1025, 1028 (2005); Charlotte E. Thomas, *The Quicksand of Private Actions Under the Pennsylvania Unfair Trade Practices Act: Strict Liability, Treble Damages, and Six Years to Sue*, 102 DICK. L. REV. 1, 2 (1997).

11. The legislature established a statutory claim for anyone who demonstrates that: (1) they purchased or leased “goods or services primarily for a personal, family, or household purpose”; (2) they suffered an “ascertainable loss of money or property”; (3) the loss occurred “as a result of the use or employment by a vendor of a method, act, or practice declared unlawful by” the CPL; and (4) the consumer justifiably relied upon the unfair or deceptive business practice when making the purchasing decision. 73 P.S. § 201-9.2(a); *Id.*, § 201-8; see also Schwartz, 932 A.2d 897 n.16. *Id.*

12. While Section 201-2(4) enumerates twenty distinct unfair methods of competition and unfair or deceptive acts and practices that are unlawful, the legislature also included the catch-all provision in Section 201-2(4)(xxi). *Id.*

13. The addition of “deceptive” to describe the type of conduct barred by the catch-all provision of the CPL expanded that provision beyond fraudulent conduct. In particular, in the context of consumer protection, “deceptive conduct” had acquired a peculiar and appropriate meaning prior to the 1996 amendment. As we have explained, the CPL is based upon the Federal Trade Commission Act (“FTCA”) and the Lanham Act. *Id.* at 818 (observing that parts of the CPL are identical to the FTCA and that the “Lanham Act’s

similarity to the [CPL] is likewise strong”). Id.

14. Mindful of our task liberally to construe the CPL in accord with the General Assembly’s intent to eradicate unfairness and deception in consumer transactions, *Monumental*, 329 A.2d at 817, we are bound to conclude again that the plain language of the amended provision eliminates the state of mind element that was required prior to the amendment. Id.

15. The plain language of the current statute imposes liability on commercial vendors who engage in conduct that has the potential to deceive and which creates a likelihood of confusion or misunderstanding. That is all that is required. The legislature required neither carelessness nor intent when a cause of action is premised upon deceptive conduct. *Gregg*, 29WAP2019 (Pa. Supreme Court, Feb, 2021).

16. Accordingly, under the plain meaning of the statute, deceptive conduct during a consumer transaction that creates a likelihood of confusion or misunderstanding and upon which the consumer relies to his or her financial detriment does not depend upon the actor’s state of mind. Liberally construing the CPL as we must, the amended language places the duty of compliance with the CPL on commercial vendors, without regard to their intent. Without a state of mind requirement, the amended catch-all provision fairly may be characterized as a strict liability offense. As the Superior Court in this case held:

[A]ny deceptive conduct, “which creates a likelihood of confusion or of misunderstanding,” is actionable under 73 P.S. § 201-2(4)(xxi), whether committed intentionally (as in a fraudulent misrepresentation), carelessly (as in a negligent misrepresentation), or with the utmost care (as in strict

liability). Whether a vendor's "conduct has the tendency or capacity to deceive . . . is a lesser, more relaxed standard than that for fraud or negligent misrepresentation." TAP, 36 A.3d at 1253. The only thing more relaxed than negligence—regarding a consumer's burden of proof—is strict liability. Gregg, 195 A.3d at 939.

III. PROPOSED FINDING OF FACTS ON THE RECORD THAT IN CALCULATING, PROCESSING, STORING AND CREDITING THE ELECTRICITY PRODUCED BY THE CONSUMER'S SOLAR PANELS FED INTO PECO'S GRID, THAT PECO ENGAGED IN CONDUCT THAT IS LIKELY TO LEAD TO CONFUSION AND MISUNDERSTANDING AND THUS MUST BE HELD LIABLE UNDER CATCHALL PROVISION OF THE UTPCPL

17. The transcript of the hearing is saturated with confusion, and manner in which PECO manages the accounts of Solar customers easily meets and exceeds the threshold for liability set forth in Gregg.

18. Mr Sanchez confirmed that he understood that all of the electricity his solar panels produce would be fed into PECO's grid, and his home would take from the grid:

Sure. And so your understanding was that all of the electricity solar, that your solar panels produced would be fed into the PECO's grid -

A. Correct, yes.

Q. - as opposed to being consumed by your home.

A. Right, correct.

Q. Okay.

Ex. B. 23:13-19

A. PECO'S SOLAR CUSTOMER'S BILL LACKS TRANSPARENCY AND IS CONFUSING TO READ AND INTERPRET EVEN TO THE COURT LET ALONE CONSUMERS AT LARGE

19. “ (Whereupon, Sanchez's Exhibit LS0032 through 8 0033, 8/29/22 PECO Bill, was marked for identification.) (Whereupon, Sanchez's Exhibit LS0034 through 0035, 7/29/22 PECO Bill, was marked for identification.)

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JUDGE: I have it on my screen. Go ahead.

ATTORNEY FILIPOVIC: Thank you.

BY ATTORNEY FILIPOVIC:

Q. Mr. Sanchez, could you tell the court -.

A. Yes, I'm here.

Q. All right, sir. So the corresponding PECO bill for the August, September of 2022 I believe, is bates number document LS 0032 through 34. Could you locate it please?

A. Yes.

Okay. 1

Can you explain for the court the readings that correspond or should correspond to Tesla's readings for this particular month?

A. Okay.

For the month of August 2022, obviously, it was in the middle of the summer. My panels produced 846 kilowatts. But when you look at PECO's bill for that month, shows that my panels only produced 346. And since my house used 861 kilowatts, I had to purchase 515 kilowatts.

I'm sorry.

Q. And where are you reading that from, sir? Just so the court is clear.

A. I'm reading from -.

Q. Uh-huh (yes).

A. I'm reading from Exhibit LS0002 and I'm also reference to PECO bill Exhibit LS0033.

Q. Okay.

JUDGE: Just a minute, Mr. Sanchez. The bill that I have in front of me - the bill I have in front of me is LS0032. Is that the bill 22 that you're reading from?

ATTORNEY FILIPOVIC: It's actually 33, Your Honor.

THE WITNESS: The next page, Your Honor.

JUDGE: Let me scroll down. Okay.

So I'm at page LS0033. It looks like what's handwritten 2/2. Now, where are you getting this number? You gave a number of 846 kilowatts. Where is that on this page?

THE WITNESS: It's on top. Under total usage, there are two numbers. The third number at the bottom says total kilowatts used is used from my house, 861.

JUDGE: I misunderstood you. I thought you said 846. You're saying 861.

Is that correct?

THE WITNESS: 861. That's the total number of kilowatts, Your Honor, that my house consumed or used for that month in particular.

Ex. B: 29:3-38:17

20. Even at this early juncture PECO's Solar consumers' bill format alone is so confusing that it this Court with the aid of attorneys, deponent and the bill in front of it, had a hard time following where the numbers are coming from, as compared to the least sophisticated consumer and public at large, it is clear that transparency and ease of reading and understanding was not PECO's focus in creating the billing.

B. THERE ARE DISCREPENCIES BETWEEN THE TESLA AND PECO READINGS ON HOW MUCH ELECTRICITY EXACTLY CONSUMER'S SOLAR PANELS PRODUCE ACCORDING TO THE PECO BILL

21. Let me rephrase that. For the month of July of 2022, the second line of this LS0022, that's what my question is going to be about. Okay. Isn't it true that PECO told you at some point that the discrepancies explained by the consumption of electricity directly from the panels by your home before it was fed into the grid?

A. I heard that for the first time when - I'm not sure what you call the conference. When we phone conference, we spoke for somebody from billing or customer service. It was maybe like three weeks ago. That was the first time I heard that.

Q. Okay.

And after that, - now, what is your understanding of - is that possible? Is that a plausible explanation that maybe your home consumed the electricity that the panels produced essentially before any meter caught it? Is that possible?

A. It could be possible in the month of December or January. But the thing is, the kilowatts, they overproduced. They will roll over to next month. But there's no way possible in summertime, we like an average family, four people in the summertime, we only use the dryer. We put clothing, you know, in the air outside to dry. So it is not like I'm running a business, you know.

Q. Understood. How big are these panels, Mr. Sanchez?

A. Dimension-wise?

Q. Yeah.

A. I'm not quite sure. I probably haven't looked at the chart, but I would say they're at least 40 by 80. They're rectangles shaped.

Q. 40 by 80 what?

A. Inches. I'm sorry. I estimate.

Q. That's alright. We understand you're estimating. Okay.

So these are sizable components. Where do you keep them? Are they under trees? Are they obstructed? Is it possible that there's other influence?

Ex. B 45:2-47:15

21. Going further:

“ So is it your position, Mr. Sanchez, that you shouldn't have had to pay anything to PECO that month, for example, the month of July according to the Tesla number? In fact, you should have credit ?

A. Yes, I concur with that. Perhaps when we got the panels, I was assuming that expectation that perhaps for the month of November, December, January, I'm going to have to pay the PECO, but I wouldn't have to pay anything to PECO for the month of April, spring, all through the summer.

Q. Right. Okay.

Did PECO try to explain this in any way to you at any point?

A. When I found out the discrepancy, I reached several times to PECO, and sometimes, I was placed on hold. I couldn't wait longer. Other times, I was trying for customer service. I was trying for the billing. And I kept saying that this might be something of a more technical expertise that perhaps I was not going to be able to resolve. And they offered me to send somebody to check the meter for \$120. By that time, I didn't have the funds to do so. But it was like I always found closed doors. And as you know, you know, me being a family man,

sometimes I feel that I don't have a voice of people with higher authority to try to shut me down saying no, it's incorrect. You don't understand how it works. So I didn't get anywhere.

Q. Okay.

Exhibit B 39:18-40:22

22. Herein above the Court noted that it appeared odd that Sanchezes had a large bill even in the summertime months, given the size of the solar panels.

23. Next Plaintiff's Expert testified that he inspected the site and meters and that there is no way that as much as 500 kw of electricity could be gobbled up by the household directly from the panels without any meter measuring it or recording the use.

Id. 46:7-22.

C. PECO's BILLING OF SOLAR PANEL CUSTOMERS IS SO CONFUSING THAT NOT EVEN AN EXPERT CAN STATE WITH SUBSTANTIAL CERTAINTY WHAT WAS USED WHAT WAS PRODUCED BY THE HOUSEHOLD

24. Expert testified that upon inspection he found that :

Alex, do you have this Exhibit LS0058?

A. I do have just an exhibit with a daily 6 basis printed off my email this morning, but it doesn't say which it actually is.

Q. Okay, that's fine. Can you explain the numbers that you see? It says PECO meter, Tesla meter one, Tesla meter two inside.

A. Yeah, it's pretty obvious that, as I said in my previous explanation, that Tesla meter located inside of the garage is counting like kilowatt hours produced by solar panels on the top of the house, and it split like house usage. And all extra kilowatt hours sent out to PECO's grid and counted by one of the outdoor meters that is marked as a meter out.

Q. Uh-huh (yes). Okay.

So according to these measurements then, is it possible - again I'll ask you again, the house is simply consuming the excess electricity directly from the panels, in addition to consuming measurable and chargeable electricity from PECO grid?

A. It's impossible

Id. 50:01-51:01

D. IT WAS NOT UNTIL THE SECOND HEARING SEVERAL MONTHS LATER THAT PECO'S PROFESSIONAL WITNESS ADMITTED THAT PECO "DOES NOT KNOW NOR DOES IT CARE HOW MUCH ELECTRICITY IS PRODUCED BY THE CONSUMER'S SOLAR PANELS OR HOW MUCH IS USED BY THE HOUSEHOLD"

25. You had stated, Mr. Black, that PECO is unaware or doesn't keep in sight the total 2 production by Tesla meters, by Tesla panels? You don't know what's on the -?

A. That's my understanding. Yes, that's my understanding.

Q. So how does - if PECO doesn't know what the total production of Tesla panels is, how does PECO determine if there's a surplus or a shortage on a monthly basis?

A. The surplus is being measured by what the customer is not using - that they generated and not using at that time that's flowing back to the grid. So there's two things there. PECO - I mean, I'll say that PECO is unaware of what is totally being produced off the solar panels, but I'll also say that PECO doesn't really care what's being produced totally by the customer off the panels. The only thing PECO needs to know from a billing perspective is what the customer is taking from PECO and what is being pushed back to the grid.

PECO has no idea of the customer's operation. You know, the customer may be producing 10,000 kilowatt hours of usage off their solar panels, but if they're using 99 percent of that to

run their home, PECO would have no way of knowing that.

The only thing that PECO is measuring is anything that the customer takes from PECO at a time when they're not generating at all and they need PECO as auxiliary load, and what the customer is generating, not using at that moment, that flows back out to the grid. And that's what they're being compensated.

Q. Okay.

See December 4th 2023 Transcript attached as Ex. C

26. The “don’t know don’t care” how much household uses or even produces, explanation by PECO’s expert is sharply contradicted by the line of questioning PECO’s attorney Scott elicited from Plaintiff’s witness in April of 2023, which questioning revealed that there were three meters, and 2 PECO meters and one TESLA meter on the property, and that each meter was recording the use or the production or the feeding to the grid, but producing irreconcilable numbers.

Ex. B, p. 52

27. The “catch 22” here is that PECO attempts to explain the large (500+kW) discrepancy found in July /August 2022 bill by home consumption, yet Mr. Black its expert, claims that no meter records any of it, and there are three meters on Sanchez’s home, two of which are PECO’s and they were inspected to be certified to work properly.

28. The foregoing are just the most glaring examples of the confusion and misunderstanding surrounding PECO’s billing practices of Solar customers like Mr. Sanchez.

29. There was also no explanation given by PECO, to the question by Mr. Sanchez and his counsel, how is it that when PECO delivers electricity to consumer’s home, it charges, the generation charge, the distribution charge, transmission charge. Etc. yet when customers’ solar

panels feed the electricity they produce into PECO's grid they only receive the raw cost of a Kwh.

Ex. C 158-163.

Plaintiff submits that he has shown PECO to be liable under catchall provision of the UTPCPL in that its billing practices for Solar Customers are confusing and do lead to misunderstanding, or at least they have the potential to. Gregg Supra. *Internal citations omitted.*

Mr. Sanchez has relied upon it all in paying all his PECO bills to date.

Therefore, Plaintiff Claimant has shown that PECO is liable for violation of UTPCPL, catchall sencion and since attorney fees are also awarded under the UTPCPL, respectfully requests that the Honorable Judge and the PUC find PECO liable and schedule submissions on amount of damages to be awarded to the Claimant.

Respectfully submitted:

Date: 03/1/2024

/s/Predrag Filipovic, Esq.
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CERTIFICATE OF SERVICE

I Predrag Filipovic, Esq. hereby certify that the foregoing filing was shared with the Respondent's Counsel Kadajah Scott on March 1st 2024, and Honorable Administrative Law Judge Conrad's Chambers via e mail and will be filed with PUC electronically as soon as practicable