

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eric J. Banks	:	
	:	
v.	:	C-2023-3043759
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Formal Complaint of Eric J. Banks because he failed to satisfy his burden of proving that PECO Energy Company provided him with inadequate or unreasonable service.

HISTORY OF THE PROCEEDING

On October 20, 2023, Eric J. Banks (“Complainant” or “Mr. Banks”) filed a Formal Complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against PECO Energy Company (“PECO” or “Respondent”). The Complainant checked the box marked “other” to describe the nature of his Complaint. By way of explanation, Mr. Banks indicated that his disagreement with PECO arose out of his efforts to file an application for a Low Income Home Energy Assistance Program (LIHEAP) grant. More specifically, he

alleged, *inter alia*, that PECO prohibited him from obtaining a LIHEAP grant because it informed LIHEAP that he did not have a past due balance. As relief, Mr. Banks requested that PECO review its systems, policy and procedures regarding its response to LIHEAP grant application inquiries.

On November 9, 2023, PECO timely filed an Answer denying the material allegations and conclusions of law in the Complaint. PECO acknowledged that on December 8, 2022 and February 3, 2023, Mr. Banks contacted PECO stating that he could not receive a LIHEAP grant because his bill did not state a negative balance. PECO contends that the Complainant asked that his bill be changed to show a negative balance. PECO asserts that Mr. Banks was advised that he did not have a past due balance, as he had an active payment agreement. PECO indicates that Mr. Banks was encouraged to contact a LIHEAP representative and to review with the representative the second page of his PECO bill, which displays the full balance on the account. Further, PECO avers that on May 2, 2023, the Complainant contacted PECO requesting that he be given a Ten-Day Termination Notice indicating that he had been advised by LIHEAP that he could not receive assistance without a shut off notification. PECO states the Complainant was advised that he could not be issued a Ten-Day Notice until he was eligible for termination, which he was not, as his balance was not past due.

On November 15, 2023, an Interim Order was issued by Chief Administrative Law Judge Rainey directing the parties to attempt to resolve the matter themselves and informing the parties of the mediation resources and services available through the Commission. The parties were unable to reach a resolution of their dispute. Tr. 26.

On January 31, 2024, an Initial Call-In Telephonic Hearing Notice (“Hearing Notice”) was eServed on both parties scheduling a call-in telephonic evidentiary hearing on March 26, 2024, at 10:00 a.m., and assigning me as the presiding

officer.¹ This Hearing Notice included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing.

On February 6, 2023, a Prehearing Order was eServed on both parties which, *inter alia*, reminded the parties of the hearing date and time, and the telephone number to call, and the passcode to enter, to participate in the hearing. Additionally, the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint.

Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

On March 26, 2024, the hearing convened, as scheduled. Ms. Khadijah Scott, Esquire, appeared on behalf of PECO, along with a witness and was prepared to proceed with the hearing. A court reporter was also present. The Complainant did not appear. The hearing was recessed at 10:04 a.m. to allow time for the Complainant to appear and re-convened ten minutes later at 10:15 a.m. The Complainant did not appear after the recess and the hearing proceeded despite his absence. No testimony was taken, and no exhibits were introduced for the record.

¹ Mr. Banks was enrolled in the Commission's eService system, therefore, all correspondence sent by the Office of Administrative Law Judge ("OALJ") to the Complainant was sent to the email address designated by him at the time of enrollment. It appears that PECO also communicated with Mr. Banks using the same email address. Tr. 23.

During the hearing, PECO moved to dismiss the Formal Complaint without prejudice for the failure of the Complainant to appear and prosecute the Complaint. I took PECO's motion under advisement.

On April 2, 2024, I received an e-mail from Mr. Banks, indicating that he failed to appear at the March 26, 2024 hearing because he had not received notice of the scheduled hearing via e-mail, text, or U.S. Mail. Mr. Banks provided no explanation as to how or when he became aware of the March 26, 2024 hearing nor did he explain his failure to contact OALJ prior to April 2, 2024.

In an abundance of caution to ensure Mr. Banks, a *pro se* complainant, was afforded due process, on April 4, 2024, a Further Hearing Notice was eServed on both parties scheduling a call-in telephonic evidentiary hearing on April 26, 2024, at 10:00 a.m. The Hearing Notice included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing.

The April 26, 2024 hearing convened as scheduled. Mr. Banks appeared for the hearing, as did counsel for PECO. At the outset of the hearing, counsel for PECO requested a continuance of the hearing, explaining that PECO's witness scheduled to appear at the hearing had been taken to an urgent care facility and was awaiting transport to a hospital for treatment. Mr. Banks did not object to PECO's request, which was granted. Tr. 10-11.

On April 29, 2024, a Cancelled/Rescheduled Further Hearing Notice was eServed on both parties indicating that the hearing scheduled for April 26, 2024 had been cancelled and rescheduled for June 11, 2024, at 10:00 a.m. The Hearing Notice included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing.

On June 11, 2024, the hearing convened, as scheduled. The Complainant appeared *pro se* and testified on his own behalf. The Complainant did not present any exhibits at the hearing. The Respondent also appeared and was represented by Ms. Scott, who presented the testimony of Victoria Young, a PECO business analyst, and Renee Tarpley, a PECO senior regulatory assessor. The Respondent offered six exhibits, all of which were admitted into the record (PECO Exhs. 1- 6).

The record consists of a 104-page transcript and six exhibits. The record closed on July 3, 2024, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Eric J. Banks.
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 the Respondent at 959 Fillmore Street, Philadelphia, PA. Tr. 84; PECO Ex. 1.
4. The LIHEAP program provides cash grants, crisis grants, and energy conservation and weatherization grants to eligible households. Tr. 51.
5. Eligibility criteria for LIHEAP grants are established annually and include income, number of people in the household, customer balance, minimum/maximum grant amounts, and number of grants issued to the customer. Tr. 55-57, 60-62.

6. PECO receives a weekly report from the Department of Human Services (DHS) listing the PECO customers who have applied for LIHEAP grants. Tr. 53.

7. For each customer listed on the weekly report, DHS requests information concerning the customer's account balance and account status, which is used by DHS to confirm whether the customer is experiencing a heating emergency. Tr. 53.

8. PECO responds to the DHS weekly report by reporting each customer's account balance, indicating whether the customer's service is on or off and whether a shut off notice has been issued to the customer. Tr. 54.

9. DHS alone determines whether a LIHEAP grant will be issued to the customer and the type of grant to be issued; PECO is not involved in the LIHEAP award decision-making process. Tr. 54, 56.

10. On November 2022, DHS contacted PECO concerning the Complainant's account status. Tr. 59.

11. PECO informed DHS that Mr. Banks' account was not in termination status because he had entered into a payment agreement with PECO regarding the outstanding balance on his PECO account. Tr. 59, 90, 93; PECO Exs. 1, 2, 3.

12. The Complainant was awarded a LIHEAP cash grant of \$300.00, which was applied to his account with his gas supplier, Philadelphia Gas Works (PGW). Tr. 59.

DISCUSSION

In this matter, Mr. Banks filed the Complaint because he believes that he was unable to obtain a LIHEAP grant due to “systemic issues” within PECO’s control. Tr. 31-33. The Complainant has raised a claim of inadequate or unreasonable service.

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 (Pa. Cmwlth. 1990). A preponderance of evidence is evidence that is 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 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).

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).

PECO is required by law to provide the Complainant with adequate and reasonable service. Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, 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.

Interpreting this provision in *West Penn Power Co. v. Pennsylvania Public Utility Commission*, 478 A.2d 947 (Pa. Cmwlth. 1984), the Commonwealth Court 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.

478 A.2d at 949 (footnote omitted).

The statutory definition of "service" is to be broadly construed.² *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995). 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.

At the hearing, Mr. Banks testified that he repeatedly endeavored to obtain LIHEAP assistance and was unable to do so. Tr. 31. According to Mr. Banks, when making his requests, he had a bill of approximately \$3,000 and was entitled to "up to \$2,000 worth of [LIHEAP] assistance." Tr. 33, 32. He contends that he did not receive a good explanation from PECO or anybody else of why he was unable to obtain such assistance. Tr. 31. Mr. Banks did not present any evidence at the hearing in support of his Complaint other than his own statement that he "did everything right" and the system failed him. Tr. 34.

PECO presented two witnesses who provided clear and compelling testimony, which was supported by copious evidence that although PECO provides data to DHS concerning a LIHEAP applicant's account balance and account status, it is not involved in the decision-making process relating to the grant or denial of a LIHEAP application. Testimony by PECO's witnesses and supporting documentary evidence

² "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.

establish that Mr. Banks' ineligibility for a LIHEAP grant was not related to PECO systems, but instead was attributable to his failure to meet one or more of DHS' criteria for the award of a LIHEAP grant. Mr. Banks failed to provide any testimony or documentary evidence that would tend to refute, dispute or discredit such a conclusion.

It is well established that personal opinions or perceptions do not constitute substantial evidence sufficient to permit a complainant to sustain his burden of proof. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered Nov. 16, 2006).

Based on the testimony and evidence presented at the hearing, I find the Complainant failed to satisfy his burden of proving that PECO provided inadequate or unreasonable customer service.

Accordingly, for the reasons stated above, the Complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.

2. As the party seeking relief, the Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a), *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

3. Personal opinions or perceptions do not constitute substantial evidence sufficient to permit a complainant to sustain his burden of proof. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered Nov. 16, 2006).

4. As the proponent of a rule or order, Complainant has the burden of proof in this matter. 66 Pa.C.S. § 332(a).

5. The Complainant has failed to meet his burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Eric J. Banks in Eric J. Banks v. PECO Energy Company at Docket No. C-2023-3043759 is denied.

2. That the docket at Docket No. C-2023-3043759 be marked closed.

Date: September 18, 2024

_____/s/
Arlene Ashton
Administrative Law Judge