

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Frank Toroney	:	
	:	
v.	:	C-2024-3045932
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

This Decision dismisses the Formal Complaint of Frank Toroney because he did not establish by a preponderance of the evidence that PECO violated the Public Utility Code, Commission regulation or Orders by billing the Complainant a monthly service charge for an off-peak meter or asserting that a customer is responsible for the service extension to appliances.

HISTORY OF THE PROCEEDING

On January 17, 2024, Frank Toroney (Mr. Toroney or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Respondent, or the Company) challenging PECO billing him monthly for an off-peak meter for a discount program that

no longer exists. The Complainant also contends that he should not have to pay for any rewiring required if the off-peak meter is removed.

On February 20, 2024, the Respondent filed an Answer and New Matter, along with a Notice to Plead. In its Answer, PECO denied the material allegations of the Complaint and averred that the Company did not object if the Complainant no longer wishes to have an off-peak meter. PECO also stated that the Company advised Mr. Toroney that he can have the meter removed at his expense and that until the meter is removed, pursuant to PECO's tariff, it has a right to bill a \$2.04 fee per month.

In the New Matter, PECO argued that the Complainant lacks standing to seek reimbursement for claims stemming back to 2003 because he was not a customer of record at the property at issue until June 2022.

On February 20, 2024, the Respondent filed a Preliminary Objection seeking dismissal of the portion of the Complaint which addresses billing issues prior to 2022, because the Complainant lacks standing to raise those issues, and the statute of limitations on them has run.

By Motion Judge Assignment Notice dated March 20, 2024, PECO's Preliminary Objection was assigned to Administrative Law Judge Eranda Vero for disposition.

On April 11, 2024, Judge Vero issued an Order overruling the Preliminary Objection, in part, and sustaining it, in part, stating:

Because the disputed charges are ongoing, the statute of limitations outlined in 66 Pa.C.S. § 3314 has not run on the claims raised in the present Complaint. However, pursuant

to 66 Pa.C.S. § 1312(a), the Complainant is barred from obtaining a refund for the disputed charges beyond four years from the date of the filing of the Complaint. Consequently, PECO's Preliminary Objection is denied, in part, with regard to its challenge to Mr. Toroney's standing and its claim of the running of the statute of limitations. However, the Preliminary Objection is granted, in part, with regard to the limitation of the refund period. The matter shall be set for a hearing

April 11, 2024 Order, p.3.

Also on April 11, 2024, an Initial Telephonic Hearing Notice was issued assigning the matter to me and setting the hearing for June 4, 2024. Due to a scheduling conflict, on May 6, 2024, a Rescheduled Initial Call-In Telephonic Hearing Notice was issued, setting a hearing for June 27, 2024. A Prehearing Order was issued on May 14, 2024.

The hearing convened as scheduled on June 27, 2024. Mr. Toroney appeared and testified on his own behalf. He presented one exhibit.

PECO was represented by Khadijah Scott, Esquire. On behalf of PECO, Ms. Scott presented one witness, PECO Regulatory Assessor Ramona Milburn, and four exhibits.

Both the Complainant's exhibit and the PECO exhibits were admitted into evidence. During the hearing, PECO was directed to provide a copy of Commission orders pertaining to the phase out of the off-peak program within two weeks. Later, on June 27, 2024, PECO submitted four documents, which were marked as PECO Exhibits

5-8. Mr. Toroney was given until July 17, 2024 to file any response or objection. No response or objection was filed by Mr. Toroney. PECO Exhibits 5-8 are admitted herein.

The record closed on July 17, 2024, the due date of Mr. Toroney's response.

FINDINGS OF FACT

1. The Complainant is Frank Toroney, a PECO customer on Springton Road in Glenmore, Pennsylvania (service address).

2. PECO is a jurisdictional public utility providing electric service to the service address.

3. There are two meters at the service address, an off-peak meter and a standard meter. Tr. 15, 52.

4. The off-peak meter is connected to the Complainant's water heater. Tr. 8.

5. PECO discontinued its discounted off-peak rate service the end of 2012. Tr. 51, 56-57.

6. PECO charges a monthly service charge of \$2.04 for the off-peak meter. Tr. 46; PECO Supplement No. 50 to Tariff Electric Pa. PUC No. 7, Page No. 51.

7. At the time of the hearing, PECO charged a monthly service charge of \$10.54 for the standard meter. Tr. 55; PECO Supplement No. 50 to Tariff Electric Pa. PUC No. 7, Page No. 51.

DISCUSSION

The Pennsylvania Public Utility Code (“Code”) requires each public utility to provide the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

The Complainant bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through 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

Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990). In addition, the Commission’s decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere “trace of evidence or a suspicion of the existence of a fact” is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 489 Pa. 109, 413 A.2d 1037 (1980).

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 to the evidence presented by the Complainant, the Complainant has not satisfied his burden of proof. The Complainant would then 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).

Also, 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. *Pa. Elec. Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995); *Respond Power, LLC v. Pa. Elec. Co.*, Docket No. C-2016-2576287 (Opinion and Order Entered July 13, 2017).

Mr. Toroney contends that he should not have to pay a \$2.04 service charge for an off-peak meter connected to his water heater because PECO discontinued the discount program. He also argues that he should not have to pay for rewiring of his water heater if the off-peak meter is removed. To have the water heater rewired would cost Mr. Toroney \$3,732.00. Complainant Exhibit 1. He would like PECO to pay this cost of rewiring and to refund the off-peak meter service charges he has paid over the last four years. Tr. 26, 37.

It is well-established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award money damages. *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978).

The Commission cannot award the type of compensation sought by the Complainant here. *See Morrow v. Bell Tel. Co. of Pa.*, 479 A.2d 548 (Pa. Super. 1984); *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 521 A.2d 75 (Pa. Cmwlth. 1987); *Ostrov v. I.F.T., Inc.*, 586 A.2d 409 (Pa. Super. 1991). A request for monetary damages must be pursued before a Magisterial District Justice or a Court of Common Pleas.

As for the \$2.04 per month that PECO charges Mr. Toroney for the off-peak meter, that charge is authorized by the Commission-approved PECO Electric Tariff. *See* PECO Supplement No. 50 to Tariff Electric Pa. PUC No. 7, Page No. 51.¹

PECO Regulatory Assessor Ramona Milburn testified that PECO would remove the off-peak meter at no cost to Mr. Toroney. Tr. 44. As to the service extension connecting his water heater to PECO meters, the PECO Tariff Electric provides:

6.3 CUSTOMER'S SERVICE EXTENSION. The customer shall provide, own, inspect and maintain the service extension from the Company's service-supply lines to the point of delivery and receiving equipment. PECO may install a Company-owned meter, transformer (which transformer may serve one or more customers), or other required equipment, of its choice, on customer-owned property or facilities; Such installation does not alter the responsibility of the customer to provide, own, inspect, and maintain the required customer service extension to which such Company-owned facilities may be attached.

PECO Tariff Electric Pa. P.U.C. No. 7 Rule 6.3.

PECO did not violate the Public Utility Code, or Commission regulations or Orders or the PECO Tariff by not paying the cost of rewiring the Complainant's water

¹ At the time of the hearing, the service charge for the non-off-peak meter is \$10.54. Tariff Electric Pa. PUC No. 7, Page No. 51.

heater and billing the Complainant a monthly service charge for the off-peak meter. The Complainant cannot prevail here.

CONCLUSIONS OF LAW

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

2. Every public utility is required to provide reasonable service. 66 Pa.C.S. § 1501

3. The party filing the Complaint bears the burden of proving by a preponderance of the evidence that he is entitled to relief from the Commission. 66 Pa.C.S. § 332(a).

4. 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. *Pa. Elec. Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995).

5. Under the PECO Tariff, Mr. Torney is to provide, own, inspect and maintain the service extension from the Company's service-supply lines to the point of delivery and receiving equipment. PECO Tariff Electric Pa. P.U.C. No. 7 Rule 6.3.

6. The Complainant has not established by a preponderance of the evidence that PECO has violated the Public Utility Code, its Tariff or Commission Orders or regulations. *See Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990).

ORDER

THEREFORE,

IT IS ORDERED:

1. That PECO Exhibit 5-8 are admitted into the record.
2. That the Formal Complaint of Frank Toroney against PECO Energy Company at Docket No. C-2024-3045932 is denied.
3. That the Formal Complaint filed by Frank Toroney in Frank Toroney v. PECO Energy Company at Docket No. C-2024-3045032 is dismissed.
4. That the Secretary's Bureau should mark this matter closed

Date: October 7, 2024

/s/
Darlene Heep
Administrative Law Judge