

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Henson Gaines	:	
	:	
v.	:	C-2024-3048977
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Complainant’s Complaint because he did not meet his burden of demonstrating that PECO incorrectly assessed a \$400 meter tampering fee against his account for service.

**HISTORY OF THE PROCEEDING**

On May 7, 2024, Henson Gaines (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Complainant) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed checkmarks in the boxes marked “[i]ncorrect charges are on my bill” and “[o]ther.” Under the “requested relief” section of the Complaint form the Complainant indicated that PECO is charging him \$400 for something he did not do.

On May 29, 2024, the Respondent filed an Answer to the Complaint. In the Answer, the Respondent denied all material allegations of fact in the Complaint. The Respondent further answered: that the Complainant established electric service in his name at 6827 Sylvester Street, first floor, Philadelphia, PA 19149 (service address) on June 13, 2023; that on July 31, 2023, PECO identified that the Complainant's utility meter was not properly reading back to PECO's system; that on August 15, 2023, a revenue protection technician inspected the property and identified theft of services, finding a jumper cable behind the meter board; and that PECO assessed a \$400 theft fee on the account. PECO noted that, although it is not accusing the Complainant of personally tampering with its equipment, the equipment was tampered with while the account was listed in the Complainant's name, and it assessed the \$400 tampering fee on his account in accordance with Section 18.8 of its Electric Tariff.

By Initial Call-In Telephonic Hearing Notice dated June 4, 2024, an initial call-in telephonic hearing was scheduled for July 16, 2024 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on June 4, 2024. The Prehearing Order also advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing 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.

The hearing convened as scheduled on July 16, 2024. The Complainant appeared *pro se* and testified. The Respondent appeared and was represented by Khadija Scott, Esq., who presented the testimony of Michael Begley, a PECO Regulatory Assessor. The Respondent submitted four exhibits, all of which were admitted into the record.

The record closed on August 5, 2024, the date the transcript was filed with the Commission.

### FINDINGS OF FACT

1. The Complainant in this case is Henson Gaines.
2. The Respondent in this case is PECO Energy Company.
3. The Complainant resides at 6827 Sylvester Street, first floor, Philadelphia, PA (service address). Tr. 8.
4. The Complainant contacted PECO on June 13, 2023 to initiate service in his name at the service address. Tr. 14, 19-20; PECO Exh. 1.
5. PECO sent a technician to investigate the Complainant's meter because PECO was not receiving any readings from his meter. Tr. 20; PECO Exh. 1.
6. PECO's technician visited the service address on August 15, 2023 and found jumper cables on the meter board that bypassed the meter and provided service without registering usage. Tr. 20.
7. PECO's technician cleared the theft lock, sealed the meter and requested that a theft fee be assessed. Tr. 22; PECO Exh. 3.
8. PECO's Electric Service Tariff at Rule 18.8 allows PECO to assess a theft investigation charge:

If the Company establishes that there has been confirmed active theft resulting from tampering with the Company meter on the customer's premises, and the customer is or was a customer as defined at [66] Pa.C.S. 1403 the customer shall pay a theft investigation charge in addition to any amount that the Company establishes is due for service used, but not registered on the Company's meter. The Company reserves the right to assess theft investigation charges as a precedent to reconnection of service as well as the right to assess a separate reconnection charge as described in Rule 18.7.

Tr. 21; PECO Exh. 3.

9. Rule 18.8 of PECO's Electric Service Tariff provides for a theft investigation fee of \$400 for electric theft at meter. Tr. 21; PECO Exh. 3.

10. PECO will assess this fee against the active rate payer at the property. Tr. 22; PECO Exh. 3.

11. On August 15, 2023, PECO assessed a \$400 meter tampering fee against the Complainant. Tr. 11, 20; PECO Exhs. 1 & 3.

12. PECO did not bill the Complainant for unauthorized usage that occurred prior to August 15, 2023. Tr. 21.

### 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 (Pa. Cmwlth. 1990). A preponderance of 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 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).

A utility's Commission-approved tariff (list of services, rules for service and rates for service) has the force of law and is binding on the utility and its customers. *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Pennsylvania Elec. Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995).

Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. Pa. Pub. Util. Comm'n*, 594 A.2d 816 (Pa. Cmwlth. 1991); 66 Pa.C.S. § 316.

PECO's Tariff Electric Pa.P.U.C. No. 18.8 enjoys all of these legal presumptions.

PECO's Electric Service Tariff at Rule 18.8 allows PECO to assess a theft investigation charge:

If the Company establishes that there has been confirmed active theft resulting from tampering with the Company meter on the customer's premises, and the customer is or was a customer as defined at [66] Pa.C.S. 1403 the customer shall pay a theft investigation charge in addition to any amount that the Company establishes is due for service used, but not registered on the Company's meter. The Company reserves the right to assess theft investigation charges as a precedent to reconnection of service as well as the right to assess a separate reconnection charge as described in Rule 18.7.

Tr. 20; PECO Exh. 3. Moreover, Rule 18.8 of PECO's Electric Service Tariff provides for a theft investigation fee of \$400 for electric theft at meter. Tr. 20; PECO Exh. 3.

The record reflects that the Complainant was the customer of record when PECO discovered that his meter was not registering usage due to meter tampering.

Although the Complainant maintained that he was not responsible for the meter tampering, that does not negate the fact that the meter tampering was discovered while he was the active customer of record. As such, PECO acted in accordance with its Commission-approved tariff by assessing a \$400 meter tampering fee against his account.

As PECO's actions did not violate a Commission statute, regulation, order or its own Commission-approved tariff, the Complainant's Complaint is denied.

### 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 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. A public utility's Commission-approved tariff has the force of law and is binding on the utility and its customers. *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Pa. Elec. Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995).

5. Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. Pa. Pub. Util. Comm'n*, 594 A.2d 816 (Pa. Cmwlth. 1991); 66 Pa.C.S. §316.

6. Complainant failed to sustain his burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Henson Gaines at Henson Gaines v. PECO Energy Company, Docket No. C-2024-3048977 is denied.

2. That the docket at Docket No. C-2024-3048977 be marked closed.

Date: October 31, 2024

\_\_\_\_\_/s/  
Christopher P. Pell  
Deputy Chief Administrative Law Judge