

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alfredo Nicotra	:	
	:	
v.	:	F-2024-3048923
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint of Alfredo Nicotra against PECO Energy Company because he failed to meet his burden of proving that PECO Energy Company improperly transferred his tenant’s account balance to an account in his name upon discovery of foreign load at the service address.

**HISTORY OF THE PROCEEDING**

On April 22, 2024, Alfredo Nicotra (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the boxes indicating “[i]ncorrect charges are on my bill” and “[o]ther.” On an attached sheet, the Complainant advised that he owns the building at 1501 S. 9<sup>th</sup> Street and that Maryann Perez has been his tenant since July 1, 2020 and rents the second-floor

apartment at this address. The Complainant challenged PECO's decision to transfer Ms. Perez's balance to his account following the discovery of foreign load at her apartment. The Complainant has requested that PECO put Ms. Perez's balance back in her name.

On May 28, 2024, the Respondent filed an Answer to the Complaint denying all material allegations of fact in the Complaint.

By Interim Order Setting Resolution Conference issued by Chief Administrative Law Judge Charles E. Rainey, Jr. on May 30, 2024, the parties were directed to attempt to resolve this matter themselves.

The parties were unable to resolve the matter.

By Initial Call-In Telephonic Hearing Notice dated August 1, 2024, an initial call-in telephonic hearing was scheduled for September 24, 2024 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on August 2, 2024. The Prehearing Order also advised the parties of the date and time of the scheduled 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 September 24, 2024. The Complainant appeared and was represented by Joseph Capone, Esq. The Complainant offered one exhibit which was admitted into the record. The Respondent appeared and was represented by Khadijah Scott, Esq., who presented the testimony of Brandon Lewis, a PECO High Bill Field Consultant, and Ramona Milburn, a PECO Regulatory Assessor. PECO offered five exhibits which were all admitted into the record.

The record closed on September 30, 2024, the date the transcript was filed with the Commission.

### FINDINGS OF FACT

1. The Complainant in this case is Alfredo Nicotra.
2. The Respondent in this case is PECO Energy Company.
3. The Complainant resides at 941 Federal Street, Philadelphia, PA 19147. Tr. 9.
4. The Complaint concerns service to 1501 South 9<sup>th</sup> Street, Philadelphia, PA 19147 (service address). Tr. 11.
5. The Complainant owns the service address. Tr. 11.
6. The service address is a triplex consisting of three apartment units. Tr. 11.
7. All of the tenants at the service address have their own electric accounts. Tr. 11-12.
8. On August 30, 2023, a PECO High Bill Field Investigator visited the service address in response to the second-floor tenant's complaint about her bill. Tr. 28; PECO Exh. 5.

9. During a high bill investigation, a High Bill Field Investigator will verify PECO's equipment, make sure that the customer is being billed on the correct meter, that the meter is functioning correctly, and that the customer is not being billed for services outside of their apartment. Tr. 28-29.

10. The PECO High Bill Field Investigator was unable to gain access to the second-floor tenant's meter because it was located in the basement of the building. Tr. 29.

11. The PECO High Bill Field Investigator was able to access the second-floor tenant's breaker because it was located inside the second-floor apartment. Tr. 14, 29.

12. When the PECO High Bill Field Investigator turned off the second-floor tenant's breaker, he observed that the hallway lighting went out, confirming that there was foreign load on the second-floor tenant's account. Tr. 29.

13. Once foreign load was discovered, the PECO High Bill Investigator put in a request to remove the account from the second-floor tenant and transfer it to the Complainant. Tr. 30; PECO Exh. 5.

14. PECO will transfer a customer's full balance to a property owner or landlord upon discovery of foreign load, even if the foreign load is only one lightbulb. Tr. 31, 49.

15. Upon discovery of the foreign load, PECO transferred the second-floor tenant's \$2,894.74 balance to the Complainant's account for service at 1167 South 12<sup>th</sup> Street. Tr. 16, 41-42; PECO Exh. 1.

16. On September 8, 2023, PECO informed the Complainant's second-floor tenant of their discovery of foreign load during the high bill field investigation. Tr. 49.

17. The Complainant was always aware, and even made his tenant aware, that the hallway lighting was attached to the second-floor unit account for service. Tr. 13.

18. Subsequent to transferring the second-floor tenant's full balance to the Complainant, PECO credited the Complainant's account for \$305.67 to remove the outstanding arrearage that the tenant accrued at a prior address, not the foreign-load affected second-floor unit at issue. Tr. 47-48; PECO Exh. 3.

19. The Complainant has since hired an electrician who installed a separate meter for the hallway lighting, correcting the foreign load situation. Tr. 15.

### 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). That is, by presenting 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. 2 Pa.C.S. § 704;

*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). 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).

In the present case, the Complainant has challenged his responsibility for bills he received from PECO as a result of foreign load found on the meter for the second-floor unit at the service address. The Complainant argued that the cost associated with this single hallway lightbulb is minimal, that his tenant was fully aware of this foreign load situation when she moved into the property, and as compensation for having this lighting on her service, he never charged her late fees. The Complainant further disputed the Complainant's tenant's entire balance being transferred to his account because it included charges carried over to the tenant's account from a prior address.

The present case raises the issue of whether PECO acted properly by placing the balance of the account for electric service for the Complainant's tenant at 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 September 13, 2005) (*Del Vecchio*). 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 is verified on the tenant's utility service. *Santos v. Metro. Edison Co.*, Docket No. C-00967757 (Opinion and Order entered August 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 record in this matter reveals that the Complainant was fully aware that the hallway lighting was attached to the account for service for the second-floor unit.

Although the Complainant argued that the electricity used by this lighting was minimal, it is clear that there is no *de minimus* exception in the application of 66 Pa.C.S. § 1529.1. Moreover, the Complainant's tenant's knowledge and consent to foreign wiring does not override the requirements of 66 Pa.C.S. § 1529.1. Lastly, PECO ensured that it held the Complainant responsible only for charges that accrued at the foreign-load affected service address. Tr. 46-47.

Since PECO correctly determined that foreign load existed at the service address, and because the Complainant does not dispute that foreign load existed at the service address, pursuant to 66 Pa.C.S. § 1529.1(b) of the Public Utility Code, I cannot conclude that PECO improperly transferred the Complainant's tenant's balance for service provided to the second-floor unit at the service address to an account for service in the Complainant's name. Accordingly, 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. 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. Section 1529.1(b) of the Public Utility Code provides in pertinent part that, "if the mobile home or residential building contains one or more dwelling units

