

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|---------------------|---|----------------|
| Pamela Burton | : | |
| | : | |
| v. | : | C-2024-3046450 |
| | : | |
| PECO Energy Company | : | |

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses Pamela Burton’s Formal Complaint as she was not able to meet her burden of establishing that PECO Energy Company or its contractor damaged her property or violated any Commission statute, regulation, or order.

HISTORY OF THE PROCEEDING

On February 14, 2024, Pamela Burton (Ms. Burton or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Company or Respondent) alleging that, on October 15, 2021, a PECO contractor working to relocate her gas meter from indoor to outdoor used a jackhammer and dislodged a stone from her chimney, dug a hole deeper than her home’s foundation, dislodged her roof gutter, and installed a bollard pole in front of the meter in her driveway. Ms. Burton further averred that, on

October 16, 2021, the rain caused her basement to flood. As relief, Ms. Burton requests that PECO visit the Service Address to see the damage and repair the interior and exterior of her residence as soon as possible.

On March 5, 2024, PECO filed an Answer denying the material allegations of the Complaint.

By Interim Order dated March 8, 2024, Chief Administrative Law Judge, Charles E. Rainey, Jr. set the matter for resolution conference. The parties were unable to reach a resolution of the matter.

By Initial Call-In Telephonic Hearing Notice dated June 10, 2024, a telephonic hearing was scheduled for August 8, 2024.

On July 17, 2024, I issued a Prehearing Order reminding the parties of the time and date of the hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The hearing convened as scheduled on August 8, 2024. Ms. Burton appeared *pro se* and testified in support of her Complaint. Ms. Burton sponsored one exhibit which was admitted into the record. Khadijah Scott, Esq., represented PECO and presented the testimony of Xiomara Garcia who is PECO's Senior Contract Coordinator in charge of inspecting the work contractors perform on PECO's systems; Timothy Grow, who is the Senior Claims Case Manager for the Claims Division at PECO; and Michael Begley who is a Regulatory Assessor at PECO Energy Company. The Respondent sponsored three exhibits, which were admitted into the record.

During the hearing, I instructed the Complainant to submit, as a late-filed exhibit, copies of the pictures included in Complainant Exhibit 1 with accompanying

time stamps. Tr. 94-95. I also instructed Ms. Burton to submit a picture of her chimney showing or indicating where the stone was removed or dislodged. Tr. 95. Additionally, I instructed the Respondent to submit as a late-filed exhibit Ms. Burton's contact history with PECO. Tr. 95. The deadline for submitting late-filed exhibits was August 29, 2024. The deadline for filing written objections to the opposing party's late-filed exhibit was September 9, 2024.

Both parties filed timely late-filed exhibits. By email dated September 16, 2024, I informed the parties that I was unable to access Ms. Burton's late-filed exhibit which was submitted through a link to Ms. Burton's iCloud Drive. She was provided with instruction to resubmit the exhibit in a different format and the deadline for submitting the late-filed exhibits was postponed to September 29, 2024. The deadline for filing written objections was also postponed to October 3, 2024. On September 16, 2024, Ms. Burton resubmitted her late-filed exhibit. Neither party objected to the admission of the opposing party's late-filed exhibit. The late-filed exhibits will be marked as Complainant Exhibit 2 and PECO Exhibit 4, respectively, and will be admitted into the record in this matter in accordance with the ordering paragraphs below.

The record in this matter closed on October 3, 2024, after the deadline for filing written objections expired.

FINDINGS OF FACT

1. Complainant is Pamela Burton who resides at 3714 Rosemont Avenue, Drexel Hill, PA 19026 (Service Address). Tr. 7.
2. Respondent is PECO Energy Company.

3. The Service Address is a two-story, single house with stone exterior and a finished basement. Tr. 10, 26, 27; 48; Complainant Exhibits 1, 2.

4. The Service Address was built in the late 1800s. Tr. 25-26.

5. The interior walls of the Service Address are covered in plaster instead of drywall. Tr. 26.

6. The walls of the utility room in the basement of the Service Address are covered in plastic sheets. Tr. 47-48, 60; Complainant Exhibits 1 and 2.

7. On September 30, 2021, PECO's contractor, Miller Pipeline Company (Miller Pipeline), notified the Complainant that her gas meter would be removed from her basement to the outside of her home as part of PECO's enhanced safety and improvement project in the area where the Service Address is located. *See* Tr. 41; Complainant Exhibit 1; PECO Exhibit 4.

8. The notification occurred via a "door hanger" letter placed at the Service Address. Complainant Exhibit 1; PECO Exhibit 4.

9. The relocation of the gas meter from the basement to the Complainant's driveway was completed by PECO's contractor on October 13, 2021. Tr. 66.

10. Miller Pipeline installed a bollard pole in front of the meter to protect it from vehicle damage. Tr. 55, 57-58; Complainant Exhibits 1 and 2.

11. On October 15, 2021, Ms. Burton contacted PECO and left a voicemail regarding the meter relocation. PECO Exhibit 4.

12. On October 15, 2021, PECO's Bare Steel Service Replacement (BSSR) Program Manager spoke with Ms. Burton about her meter relocation and advised that a PECO representative would come to the property to discuss her meter location and evaluate options to potentially relocate meter to a different exterior location. PECO Exhibit 4.

13. PECO's BSSR Program Manager explained to Ms. Burton that the final restoration of her driveway would be completed within 30-60 days weather permitting. PECO Exhibit 4.

14. On October 20, 2021, Ms. Butler contacted PECO and reported that her driveway was sinking, that the meter location was not safe, and that she had called her home insurance company to inspect the damage. PECO Exhibit 4.

15. During the October 20, 2021 call Ms. Butler requested that a PECO "supervisor or manager" address her concerns. PECO Exhibit 4.

16. On October 27, 2021, Ms. Butler contacted PECO again and left a voicemail requesting to speak to a supervisor or manager and reported that due to the meter being moved outside, there was now water in her basement. PECO Exhibit 4.

17. On October 28, 2021, a Miller Pipeline employee installed a cold patch to level out the area of the meter replacement in Complainant's driveway. PECO Exhibit 4; Complainant Exhibits 1 and 2.

18. On November 5, 2021, Ms. Butler filed a complaint with PECO's Claims Division alleging that the basement was damaged because of a gas meter relocation. PECO Exhibit 4.

19. Pursuant to the terms of PECO's contract with Miller Pipeline, Ms. Butler's claim was referred to the contractor. PECO Exhibit 4.

20. On November 23, 2021, at Ms. Burton's request, PECO's Senior Contract Coordinator, Xiomara Garcia, visited the Service Address accompanied by a Millier Pipeline representative and by Nicholas Nagele, who is an engineer with the Commission's Bureau of Investigation and Enforcement. Tr. 58; PECO Exhibit 4.

21. During her visit, Ms. Garcia observed both the driveway and the basement of Ms. Burton's property but was unable to find any definitive leak around the gas service replacement. Tr. 60, 65, 67; PECO Exhibit 4.

22. Ms. Burton did not show Ms. Garcia any of the rooms in the second floor of her property. Tr. 68-69.

23. Following a discussion with Mr. Nagele about the requirements regarding the meter relocation, Ms. Burton agreed to keep the gas meter outside of her residence and to have it relocated from the driveway to her flowerbed. Tr. 68; PECO Exhibit 4.

24. Mr. Nagele did not identify nor cite PECO for any compliance violations in connection with the meter relocation at the Service Address. Tr. 59; *see also* Tr. 89-90.

25. Ms. Burton's gas meter was relocated to the flowerbed on December 1, 2021. Tr. 69.

26. The bollard was removed from Ms. Burton's driveway as it was no longer needed. Tr. 60-61.

27. Miller Pipeline has completed all repair work to Ms. Burton's driveway. Tr. 99; Complainant Exhibits 1, 2.

28. Ms. Burton's home insurer denied her claim for damages to her property. Tr. 12-13, 51-52.

29. By letter dated July 20, 2022, Zurich American Insurance Company, the insurance company for Miller Pipeline, denied Ms. Burton's claim finding no evidence that Miller Pipeline's work caused or contributed to the damage to her property. Tr. 11, 13-14; Complainant Exhibit 1.

DISCUSSION

In her Formal Complaint, Ms. Burton alleged that work performed by PECO's contractor to place the gas meter outside of her home has damaged the foundation and structure of her residence causing water to leak into her property. As relief, the Complainant requested that PECO visit the Service Address to see the damage and repair the interior and exterior of her residence as soon as possible.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). In *Waldron v. Philadelphia Electric Co.*, 54 Pa.P.U.C. 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. If the complainant

establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Co.*, 1994 Pa.P.U.C. LEXIS 95 (*Poorbaugh*). 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*, 413 A.2d 1037 (Pa. 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, the complainant has not satisfied her 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).

At the hearing, Ms. Burton testified that in October of 2021, PECO relocated her gas meter from her basement to the outside of her home as part of its

enhanced safety and improvement project in the area where the Service Address is located. *See* Tr. 41; Complainant Exhibit 1. Ms. Burton testified that the work performed by PECO's contractor left her with a hole that kept sinking in her driveway. Tr. 8, 9. More importantly, the relocation caused water to leak into her basement where it accumulated on the floor, causing her water heater to rust and the plaster on the walls to bulge and fall off. Tr. 8, 9, 11. In addition, Ms. Burton testified that the work performed during the meter relocation from her basement to her driveway dislodged one of the stones off her chimney causing it to fall to the ground. Tr. 10. As a result of the dislodging of the stone, water is seeping inside the chimney and into her daughter's room, which is located on the second floor of Ms. Burton's home, causing the plaster there to bulge and come off the wall. Tr. 28-29; 32-33.

Ms. Burton testified that she informed PECO of the damage done to her property by its contractor and requested that the meter be moved back into her basement. Tr. 8. She explained that a PECO representative visited her property accompanied by a Commission employee and agreed to move the meter from the driveway to Ms. Burton's flowerbed, removing the bollard installed in the process. Tr. 9. According to Ms. Burton, the second relocation of the meter to the flowerbed left a hole on her driveway which remains improperly filled while the water leakage inside her home continues. Tr. 9, 10; Complainant Exhibits 1, 2. Ms. Burton testified that apart from PECO and the Commission, she also contacted her home insurance seeking relief from the water damage in her property. According to her testimony, her home insurer denied her claim because the damage was caused by the utility. Tr. 12-13, 51-52. She also sought relief from Zurich American Insurance Company (Zurich), which is the insurance company for Miller Pipeline Company. By letter dated July 20, 2022, Zurich denied Ms. Burton's claim finding no evidence that Miller Pipeline's work caused or contributed to the damage to her property. Tr. 11, 13-14; Complainant Exhibit 1. She concluded her direct testimony by explaining that she is not asking for any money. She just wants "to rebuild the base of [her] home." Tr. 11.

During cross-examination, PECO pointed out that two downspouts release rainwater from Ms. Burton's roof and gutters to the area where she claims that water is coming into her basement. Tr. 46-47; Complainant Exhibit 1. Ms. Burton denied that she had water damage to her property prior to PECO relocating her gas meter. Tr. 47, *see also* Tr. 27. Next, PECO questioned the function of the plastic sheets that covered the walls in Ms. Burton's basement utility room. Tr. 47. Ms. Burton explained that she was instructed by her home insurance company to install plastic sheets over the utility room's walls because they are covered in plaster. Tr. 47-48. Finally, PECO questioned the age of the interior damage depicted in the pictures submitted into the record by the Complainant. Tr. 51. Ms. Burton testified that the pictures depict the state of the damage as of December 2021. Tr. 50; *see also* Complainant Exhibit 2.

In response to Ms. Burton's testimony, PECO presented the testimony of Xiomara Garcia, who is PECO's Senior Contract Coordinator in charge of inspecting the work contractors perform on PECO's systems. Tr. 56. Ms. Garcia testified that the first relocation of the gas meter from the basement to the driveway was completed by PECO's contractor on October 13, 2021. Tr. 66. Ms. Garcia explained that she visited the Service Address in November of 2021, following a complaint filed by Ms. Burton with PECO, in which she requested that a PECO and Commission representatives visit her property because she had concerns about the relocation of her gas meter. Tr. 57-59. At the Complainant's request, Ms. Garcia visited the Service Address accompanied by an engineer employed by the Commission, Nicholas Nagele, as well as a representative from the Miller Pipeline Company. Tr. 58. According to Ms. Garcia, PECO's visit was prompted by Ms. Burton's dissatisfaction with the new location of the meter as well as the installation of the bollard needed to protect the meter from vehicle damage. Tr. 57-58. Because the meter and the bollard were installed in her driveway, Ms. Burton was concerned that the bollard would cause damage to a vehicle. Tr. 58, 67-68.

Ms. Garcia testified that, while at the Service Address, she had an opportunity to inspect the meter in the Complainant's driveway as well as the interior of the utility room in her basement. Tr. 58-89. Her testimony on the water intrusion claim made by the Complainant was as follows:

Attorney Scott: And when you went inside, what, if anything, did you observe with regard to water intrusion.

Ms. Garcia: I didn't see any water in the home. I saw the plastic on the walls, that it had yellow -- what appeared to be glue that turned yellow, and some water mark near the water heater on the -- on the -- near the base of the water heater.

Attorney Scott: What about the flooding that Ms. Burton testified to? Did you observe any of that on the concrete floor of the basement?

Ms. Garcia: I did not.

Attorney Scott: Did you see anything besides a water mark on the -- by the heater that led you to believe that water had once been in the basement at some prior time?

Ms. Garcia: Only the plastic that was lined on the walls gave me that appearance, but I didn't see anything else other than those water marks near the water heater.

Tr. 60. Ms. Garcia reiterated her position later in her testimony when she denied discussing the potential source of water leak with the Complainant,

No, you and I did not have a discussion where I said that happened, and we needed to add because of the water because I did not see any water coming into that place, and it was also very dry. There was no evidence of any water coming in.

Tr. 65; *see also* Tr. 67. She further explained that Ms. Burton did not show her any of the other floors of the house, nor did she mention the damage to her chimney. Tr. 68-69.

To drive her point home, Ms. Garcia pointed out that the Commission's engineer Mr. Nagele would have cited PECO for compliance violations in connection with the meter relocation had such a violation been observed during the November 2021 visit. However, PECO received no such citation from the Commission with regard to the November 2021 visit to the Service Address. Tr. 59; *see also* Tr. 89-90. Ms. Garcia further explained that, at the end of the November 2021 visit, PECO agreed to relocate the gas meter from the driveway to the flowerbed as a courtesy to Ms. Burton. Tr. 68. On December 1, 2021, the gas meter was relocated to the flower bed. Tr. 69. The bollard was removed as it was no longer needed. Tr. 60-61. According to Ms. Garcia, Miller Pipeline has completed all repair work to Ms. Burton's driveway. Tr. 99.

The Commission's regulation at 52 Pa. Code § 59.18 requires gas meter and regulators be located outside and aboveground. In addition, Section 1501 of the Public Utility Code provides that a public utility has a duty to maintain safe, adequate, and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa.C.S. §1501. Section 102 of the Public Utility Code defines "service" as follows,

Used in its broadest and most inclusive sense, ["service"] 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[.]

66 Pa.C.S. § 102. The statutory definition of "service" is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995). A utility's "service" is not merely

confined to the distribution of utility service, but also includes "any and all acts" related to that function. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 578 A.2d 75 (Pa. Cmwlth. 1990).

Upon careful review of the record in this matter, I find that the Complainant has failed to prove by a preponderance of the evidence that PECO or PECO's contractor is responsible for causing the water damage to the Service Address. There is no doubt that the pictures submitted into evidence by the Complainant depict substantial water damage to Ms. Burton's house. *See* Complainant Exhibits 1, 2. However, not even the pictures submitted by Ms. Burton identify the source or the entry point for the water leak, its location, or even its general direction in relation to the gas meter. The fact that the walls of Ms. Burton's utility room appear in these pictures thoroughly covered by plastic sheets adds to the difficulty in determining a causal connection between PECO's work on October 13, 2021, and the water leaking into Ms. Burton's basement.

As for Ms. Burton's claim that PECO's contractor dislodged a stone from her chimney causing water to leak into her daughter's bedroom on the second floor, I note that Ms. Burton failed to provide any pictures showing the damage to her chimney. The pictures provided show the chimney wrapped in a blue plastic cover but give no indication as to the nature, extent or location of the damage. *See* Complainant Exhibit 2. More importantly, the time stamps on pictures submitted by Ms. Burton depicting the interior of her house indicate that most of them were taken between March and May of 2022. Complainant Exhibit 2. This five-to-seven-month distance between the date of the meter relocation and the dates of the pictures further undermines the causal connection between the meter relocation and the damage. In addition, Ms. Garcia testified credibly on behalf of PECO that during the November 2021 visit to the Service Address no signs of recent water damage were visible in Ms. Burton's basement.

In view of the above, I find that the Complainant failed to carry her burden of proving that PECO violated a Commission statute, regulation or order when performing the gas meter relocation on October 13, 2021. Consequently, Ms. Burton's Complaint against PECO will be denied.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The Complainant had the burden of proof and failed to carry that burden. 66 Pa.C.S. § 332(a).
3. The provisions of 52 Pa. Code § 59.18 require gas meter and regulators be located outside and aboveground. 52 Pa. Code § 59.18 (a)(1).
4. Section 1501 of the Public Utility Code provides that a public utility has a duty to maintain safe, adequate, and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa.C.S. §1501.
5. A utility's "service" is not merely confined to the distribution of utility service, but also includes "any and all acts" related to that function. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 578 A.2d 75 (Pa. Cmwlth. 1990).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant Exhibit 2 is admitted into the record in this case.
2. That PECO Exhibit 4 is admitted into the record in this case.
3. That the Formal Complaint filed by Pamela Burton in Pamela Burton v. PECO Energy Company at Docket No. C-2024-3046450 is dismissed in its entirety.
4. That the Secretary mark this docket closed.

Dated: December 30, 2024

/s/
Eranda Vero
Administrative Law Judge