

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Elliot Konstant	:	
	:	
v.	:	C-2024-3049241
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This initial decision finds that the Complainant failed to meet his burden of proof to demonstrate that the Respondent failed to provide reasonable, adequate and safe service related to the replacement of the meter at the Service Address.

**HISTORY OF THE PROCEEDING**

On May 23, 2024, Elliot Konstant (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent). In the Complaint, Mr. Konstant alleged that PECO damaged his electrical panel in the Service Address when the Company replaced the meter at the address. Mr. Konstant requested reimbursement of the costs to have an electrician fix the electrical panel and that PECO was unreasonable and unsafe with their service at the property.

On June 12, 2024, PECO filed an Answer and New Matter, denying the material allegations of the Complaint and requesting that the Complaint be dismissed. Also on that date, the Company filed Preliminary Objections requesting that the Complainant's request for damages be dismissed as the Commission lacks jurisdiction to award damages.

On July 18, 2024, a Call-In Telephonic Hearing Notice was issued which indicated that an initial hearing was scheduled for October 8, 2024, and the matter was assigned to me.

On September 3, 2024, I issued a Prehearing Order which indicated the procedures for the hearing.

The hearing convened as scheduled on October 8, 2024. At that time, I granted the Preliminary Objections of PECO related to the request for damages and explained to the Complainant that the Commission did not have the authority to award monetary damages. The Complainant represented himself and testified on his own behalf. The Complainant also presented the testimony of Brenna Safer, who also resides at the Service Address. The Complainant presented two exhibits at the hearing, which were entered into the record. PECO was represented by counsel, Khadijah Scott, Esquire. PECO presented the testimony of two witnesses, Steven Murray, a Meter Technician, and Edmund Howarth, a Senior Claims Case Manager. PECO offered two exhibits which were entered into the record.

The record closed on October 31, 2024, when I received my copy of the hearing transcript.

## FINDINGS OF FACT

1. The Complainant is Elliot Konstant, who lives at 1924 Schley Street, Philadelphia, Pennsylvania 19145 (Service Address). Tr. 8.
2. The Respondent is PECO Energy Company.
3. PECO sent a technician to the Service Address on February 6, 2024 to replace the meter. Tr. 9.
4. After the meter replacement, the Complainant experienced issues with the electric on the first floor, particularly several lights and light switches. Tr. 10.
5. An outside electrician found that the neutral wire in the electrical panel for the Service Address was loose. Tr. 14.
6. The Complainant had solar panels installed at the Service Address and PECO needed to install a bidirectional meter. Tr. 17.
7. The PECO technician, Mr. Murray, did not use excessive force to get the new meter into place. Tr. 31.
8. Mr. Murray did not touch the Complainant's electrical panel. Tr. 32.
9. There was nothing out of the ordinary in the installation of the new meter at the Service Address. Tr. 31.
10. PECO does not own and is not responsible for the electrical panel at a residence. Tr. 32.

## 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, the 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, 602 (Pa.Cmwlth. 1990). A preponderance of the 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) (*Mill*); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993) (*Edan Transportation*); 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. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980) (*Norfolk & Western*); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960) (*Erie Resistor*); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Cntr.*, 480 A.2d 382 (Pa. Cmwlth. 1984) (*Murphy*).

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).

### Replacement of the Meter

The Complainant contends that when PECO replaced the meter at his residence, the Company caused damage to his electrical panel. Specifically, the Complainant asserts that when PECO replaced the meter, they loosened the neutral wire in the electrical panel, which caused electrical issues in the residence. The Complainant has raised a claim of inadequate or unreasonable service by PECO.

The statute at 66 Pa.C.S. § 1501, provides, in relevant part:

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:

We 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.<sup>1</sup> *Country Place Waste Treatment Co., Inc. v. Pa. Publ. 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.

It is undisputed that PECO sent a technician to the Service Address on February 6, 2024 to replace the meter at the Service Address. Tr. 9. After the meter replacement, the Complainant testified that he experienced issues with the electric on the first floor, particularly several lights and light switches. Tr. 10. The Complainant also indicated that an outside electrician found that the neutral wire in the electrical panel for the Service Address was loose. Tr. 14. Ms. Safer stated that they had solar panels installed at the Service Address and PECO needed to install a bidirectional meter. Tr. 17.

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<sup>1</sup> “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.

PECO presented the testimony of the PECO technician, Mr. Murray, who visited the Service Address on February 6, 2024. He testified that he did not use excessive force to get the new meter into place. Tr. 31. Mr. Murray did not touch the Complainant's electrical panel. Tr. 32. He indicated that there was nothing out of the ordinary in the installation of the new meter at the Service Address. Tr. 31. Further, he noted that PECO does not own and is not responsible for the electrical panel at a residence. Tr. 32.

In this matter, the Complainant has failed to present sufficient evidence to establish that PECO caused damage to the electrical panel at the Service Address. While he and his partner presented testimony regarding what took place and their belief of what happened, neither actually witnessed PECO's technician damage the electrical panel.<sup>2</sup> Further, the technician testified that there was nothing out of the ordinary related to the installation of the new meter at the residence and that he did not touch or damage the electrical panel at the residence. As such, the Complainant has not been able to demonstrate that PECO failed to provide reasonable, safe and adequate service. Therefore, the Complaint must be dismissed.

#### CONCLUSIONS OF LAW

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

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<sup>2</sup> Adjudications by the Commission must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *See Consol. Edison Co. of N.Y. v. Nat'l Labor Rels. Bd.*, 305 U.S. 197 (1938). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk; Erie Resistor; Murphy*. Mere bald assertions, personal opinions or perceptions do not constitute evidence to bolster a claim. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (1987).

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.

3. Mere bald assertions, personal opinions or perceptions do not constitute evidence to bolster a claim. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (1987).

4. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities. 66 Pa.C.S. § 1501.

5. The Complainant has not met his burden of establishing that PECO failed to provide adequate, safe and reasonable service. 66 Pa.C.S. § 332(a).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Elliot Konstant at *Elliot Konstant v. PECO Energy Company*, at Docket No. C-2024-3049241, is denied and dismissed.

2. That the docket at Docket No. C-2024-3049241 be closed.

Dated: January 23, 2025

\_\_\_\_\_/s/  
Marta Guhl  
Administrative Law Judge