

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Daye Davis	:	
	:	
v.	:	F-2024-3050489
	:	
PECO Energy Co.	:	

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 provided him with inadequate or unreasonable service by rejecting his submitted forms of payment.

HISTORY OF THE PROCEEDING

On July 8, 2024, Daye Davis (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO, Respondent or the Company) with the Pennsylvania Public Utility Commission (Commission).¹ In the Complaint, the Complainant placed checkmarks in the boxes indicating “[i]ncorrect charges are on my bill”

¹ The Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (BCS), at BCS No. 3970431, which dismissed Complainant’s informal complaint. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

and “[o]ther,” next to which the Complainant wrote that “[t]his complaint is for past, current and future certificates of indebtedness under this account due to securities fraud.” As relief, the Complainant provided an account number and requested “I would like for them [to] forward all past, current and future certificate of indebtedness to the billing account.” The Complainant further requested “[d]o not credit my PECO account for the certificate of indebtedness.”

On August 13, 2024, the Respondent filed an Answer to the Complaint. In the Answer, the Respondent denied all material allegations of fact contained in the Complaint.

By Initial Call-In Telephonic Hearing Notice dated August 21, 2024, an initial call-in telephonic hearing was scheduled for October 31, 2024 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on August 22, 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. Additionally, the Prehearing Order directed the parties to comply with various procedural requirements, 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 October 21, 2024. The Complainant appeared *pro se* and testified. The Complainant also presented the testimony of his wife, Rochelle Garland. The Complainant offered four exhibits which were all admitted into the record. The Respondent appeared and was represented by Khadijah Scott, Esq., who presented the testimony of Renee Tarpley, a PECO Senior Regulatory Assessor. PECO offered four exhibits which were all admitted into the record.

The record closed on November 6, 2024, the date the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant in this case is Daye Davis.
2. The Respondent in this case is PECO Energy Company.
3. The Complainant is a PECO customer residing at 2023 West 4th Street, Chester, PA 19013 (service address). Tr. 10.
4. The Complainant agrees that the charges on his PECO bills for service are correct. Tr. 11.
5. Prior to December 8, 2023, the Complainant paid his PECO bills with a bank debit card. Tr. 11-12; PECO Exh. 1.
6. The Complainant has not made payment on his account that PECO has accepted since PECO received a \$400 payment on December 8, 2023. Tr. 13, 29-30; PECO Exh. 1.
7. The Complainant and his wife have sent in a portion of the bills he has received from PECO as a form of payment towards the PECO bills. Tr. 16-17.
8. PECO does not accept its own payment coupons, which are included on PECO's bills, as a form of payment. Tr. 34-35.

9. Acceptable forms of payment for PECO bills include cash, credit card, check, as well as agency grant payments. Tr. 29.

10. PECO advised the Complainant that it does not accept as payment the offerings he has submitted on his account. Tr. 17.

11. Following PECO's notice that it would not accept the form of payment submitted by the Complainant, the Complainant did not offer any other form of payment to pay his bills. Tr. 17-18.

12. As of September 30, 2024, the Complainant's account balance totaled \$5,033.63. Tr. 31; PECO Exh. 2.

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 (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. 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).

PECO is required by law to provide the Complainant with adequate and reasonable service. Section 1501 of the Public Utility Code provides, in relevant part:

§1501. Character of service and facilities

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.

66 Pa.C.S. § 1501.

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.

West Penn Power, 478 A.2d at 949 (footnote omitted).

The statutory definition of “service” is to be broadly construed.² *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.

In the present case, the Complainant challenged PECO’s decision to not accept his submitted form of payment towards his bills for service. In this instance, the Complainant attempted to pay his bills with portions of the bills the Company issued to him.

² “**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 ... 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 (emphasis original).

The Commission’s regulations do not specifically address the forms of payment which a utility is required to accept from a customer as payment for services rendered. However, the regulations relating to termination note that a customer may avoid termination if “payment in full is tendered in *any reasonable manner...*” 52 Pa. Code § 56.94(1) (emphasis added). The regulation also notes that payment “in any reasonable manner includes payment by personal check. . . .” *Id.* at § 56.94(2).

PECO’s witness established that acceptable forms of payment for PECO bills include cash, credit card, check, as well as agency grant payments. Tr. 29. PECO advised the Complainant that it does not accept the form of payment being submitted on the account. Tr. 17. Following PECO’s notice that it would not accept the form of payment submitted by the Complainant, the Complainant did not offer any other form of payment to pay his bills. Tr. 17-18.

Under the circumstances, I cannot conclude that PECO’s decision to reject the Complainant’s submitted form of payment constituted inadequate or unreasonable service. The Complainant’s method of payment, which consisted of portions of the bills rendered by PECO for service, is not a reasonable method of payment. Accordingly, his Complaint is denied in its entirety.

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

5. Commission regulations relating to termination note that a customer may avoid termination if “payment in full is tendered in any reasonable manner.” 52 Pa. Code § 56.94(1).

6. The Complainant failed to meet his burden of demonstrating that PECO provided him with inadequate and unreasonable service when it rejected his submitted forms of payment. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Daye Davis against PECO Energy Company at Docket No. F-2024-3050489 is denied.

