

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alan Fabius	:	
	:	
v.	:	C-2024-3050914
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Arlene Ashton  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Complaint of Alan Fabius against PECO Energy Company (PECO) because he failed to carry his burden of proving, by a preponderance of the evidence, that PECO provided unreasonable service or switched his suppliers in violation of the Public Utility Code, Commission regulations or a Commission Order.

**HISTORY OF THE PROCEEDING**

On August 21, 2024, Alan Fabius (Complainant or Mr. Fabius) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against his electric distribution company (EDC) PECO. On the Complaint form, Mr. Fabius checked boxes indicating that “[t]he utility is threatening to shut off my service or has already shut off my service” and “[i]ncorrect charges are on my bill.” As

relief, the Complainant requested: (1) a detailed explanation of how he could owe \$9,572.62 when his average bill is approx. \$375/month; (2) removal of all Clean Choice Energy fees; and (3) cessation of “harassment and threats to disconnect. Complaint ¶ 5.

On September 11, 2024, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint. In its Answer, PECO indicates that the Complainant has an outstanding balance of \$10,544.13. PECO acknowledged that on August 7, 2024, it issued a Ten-Day Termination Notice to the Complainant due to a delinquent balance on his account. Answer ¶ 4. Respondent averred that:

The Complainant was enrolled with CleanChoice. On April 17, 2023, the Complainant contacted PECO about his bill. The Complainant was advised that he should consider changing his supplier, in as much as, his supplier was charging him significantly higher pricing than PECO. The Complainant requested that the supplier be dropped from his account. On April 17, 2023, a drop notification letter was sent to the Complainant, and the Complainant was returned to PECO Energy.

*Id.*

On September 18, 2024, the Commission issued a hearing notice setting an initial call-in telephonic hearing for November 26, 2024, at 10:00 a.m. and assigning me as the presiding officer.

A prehearing order was issued to all parties on October 2, 2024.

The hearing began as scheduled on November 26, 2024. The Complainant represented himself; he presented two exhibits at the hearing. Respondent’s hearsay objection to Complainant Exhibit 1 labeled “PECO Facts” was sustained; therefore, only

Complainant Exhibit 2, a spreadsheet entitled “PECO fees history” was entered into the record.

PECO was represented by Khadijah Scott, Esquire. Nadine Tillman, PECO Senior Energy Acquisition Analyst, and Anthony Costello, PECO Senior Regulatory Assessor, testified on behalf of PECO. PECO also presented the following exhibits, all of which were entered into the record:

- |                |  |
|----------------|--|
| PECO Exhibit 1 | Account Activity Statement                                     |
| PECO Exhibit 2 | 01/17/2023 PECO bill issued to Complainant                     |
| PECO Exhibit 3 | Billing and Payment Spreadsheet for Complainant’s PECO Account |
| PECO Exhibit 4 | BCS Decision Case # 3921628                                    |
| PECO Exhibit 5 | Customer Contacts  |

The record closed on December 17, 2024, when the 91-page transcript was received.

#### FINDINGS OF FACT

1. The Complainant is Alan Fabius.
2. The Respondent is PECO Energy Company.
3. PECO is a jurisdictional utility.
4. CleanChoice Energy (CleanChoice) is an Electric Generation Supplier (EGS) operating in Pennsylvania. (PECO Exhibit 2, Tr. 70-72).

5. The Complainant resides at 12 Knox Court, Chesterbrook, Pennsylvania 19087 (service address). (Tr. 15).
6. The Complainant enrolled with CleanChoice from June 1, 2020 to April 21, 2023. (PECO Exhibit 2; Tr. 40, 52).
7. When a PECO customer enrolls with an EGS, the EGS sends an electronic enrollment transaction notification to PECO. (Tr. 40).
8. Once PECO receives notification that a customer has enrolled with an EGS, PECO sends an enrollment letter to the customer. (Tr. 40-41).
9. A customer's EGS supplier is also shown on the customer's monthly PECO bill. (PECO Exhibit 2; Tr. 47-50).
10. PECO does not have the authority to select an EGS for a customer and provides a customer with PECO default service until enrollment by the customer with an EGS is received. (Tr. 39).
11. The Complainant contacted PECO on April 17, 2023, and requested that his account be returned to PECO default service. (PECO Exhibit 4, Tr. 54).
12. On or about April 17, 2023, PECO sent a confirmation letter to the Complainant confirming his decision to return to PECO as his EGS. (PECO Exhibit 4, Tr. 54).
13. When the Complainant terminated his enrollment with CleanChoice, he had an unpaid balance of \$3,849.89 on his PECO account. (PECO Exhibit 1; Tr. 64).

14. As of October 16, 2024, the Complainant had an unpaid balance of \$11,352.82 on his PECO account. (PECO Exhibit 1; Tr. 85).

15. In response to the filing of the Formal Complaint, on September 11, 2024, PECO contacted the Complainant and suggested that he schedule a high bill field visit. (Exhibit 5; Tr. 68-69).

16. The Complainant did not schedule a high bill field visit. (Tr. 69).

17. On October 16, 2023, the Complainant entered into a payment agreement pursuant to which he would repay an outstanding balance of \$6,107.69 in 23 monthly installments of \$265.55 per month. (Tr. 78).

18. If a customer fails to make timely monthly payments on a PECO payment agreement, the entire balance becomes due. (Tr. 78-79).

19. The Complainant made two payments in the aggregate amount of \$1,268.84 to PECO in October 2023. (PECO Exhibit 1; Tr. 79).

20. The Complainant did not make any payment to PECO from November 2023 through May 2024. (PECO Exhibit 1; Tr. 79, 86).

21. The Complainant made a \$317.12 payment to PECO on June 25, 2024. (PECO Exhibit 1, 79).

22. The Complainant made no other payments to PECO after June 25, 2024. (PECO Exhibit 1).

## DISCUSSION

As the proponent of a rule or order, the Complainant bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate by a preponderance of the evidence that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission.

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 "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 to the evidence presented by the Complainant, the Complainant has not satisfied his burden of proof. The Complainant would then 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).

The Pennsylvania Public Utility Code (Code) requires each public utility to comply with the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501. The statutory definition of “service” is to be broadly construed. *Betchy v. West Penn Power Co.*, Docket No. C-2018-3000257 (Opinion and Order entered Oct. 8, 2020) (citing *Country Place Waste Treatment Co. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995)). As defined in the Code:

“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.

### Electric Generation Supplier

As the default service provider, EDCs have been directed by the Commission to include a Standard Offer Customer Referral Program, or SOP, in their default service plans. *See Investigation of Pa.’s Retail Elec. Mkt: Intermediate Work Plan*, Docket No. I-2011-2237952 (Order entered Mar. 2, 2012). The Standard Offer Customer Referral Program is a program that involves voluntary participation by

EGSs who agree to provide a standard offer to participating customers. The standard offer typically provides for a percentage off an EDC's price for a stated period of time. A customer may voluntarily participate in the program, switching his or her supplier. *Id.* at 31-36.

The procedures for changing a customer to an EGS are as follows:

When a customer contacts an EGS to request a change from the current EGS or default service provider to a new selected EGS, the following actions shall be taken by the selected EGS and the customer's EDC:

(1) The selected EGS shall notify the EDC of the customer's EGS selection at the end of the 3-business day rescission period under § 54.5(d) (relating to disclosure statement for residential and small business customers) or a future date specified by the customer. The selected EGS may notify the EDC by the end of the next business day following the customer contact upon customer consent.

(2) Upon receipt of this notification, or notification that the customer has authorized a switch to default service, the EDC shall send the customer a confirmation letter noting the proposed change of EGS or change to default service. The notice must include the date service with the new selected EGS or default service provider will begin. The letter shall be mailed by the end of the next business day following the receipt of the notification of the customer's selection of an EGS or default service provider.

52 Pa. Code § 57.173.

The Complainant has the burden of showing that the Respondent violated these provisions or otherwise provided unreasonable service to him.

Here, Mr. Fabius contends that PECO did not provide adequate service because: (1) his EGS was changed from PECO to Clean Energy "without his consent;"

(2) PECO failed to provide adequate notice of the EGS supplying electricity to him; and (3) he was overbilled for service. (Tr. 18, 20-24). Mr. Fabius requests that his meter be examined and tested, that his outstanding balance be modified to reflect “an adjusted monthly average cost” for the 17 months of usage since returning to PECO as his default supplier, that PECO be his EGS in perpetuity and that, with the exception of default suppliers, EGS suppliers should be required to send separate bills for their services. (Tr. 21, 23-24).

Mr. Fabius contends that CleanChoice was designated as his EGS without his consent. (Tr. 18, 20). He asserts that he has no recollection of receiving a letter confirming his selection of CleanChoice as his EGS. (Tr. 20-21). He also argues that an EGS supplier confirmation letter should require written confirmation of receipt, and that EGSs should provide their own bills. Mr. Fabius also testified that PECO bills received after terminating his contract with CleanChoice were extremely high and may have included inappropriate charges or fees. (Tr. 21).<sup>1</sup>

PECO explained its process of handling EGS switches. PECO does not switch a customer to an EGS unless PECO receives a change order from the EGS indicating that the customer directly made the switch through contact with the EGS. Once PECO receives that notification, PECO confirms the switch by sending the customer a letter providing the name of the EGS and a future effective date. This allows a customer time to contact PECO if the customer did not in fact switch his or her EGS. If a customer contacts PECO and states that he or she did not switch the EGS, the service is then switched to PECO as the default provider. PECO does not have the authority to switch a customer back to a previous EGS. (Tr. 38-50).

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<sup>1</sup> In the Complaint and at the hearing, Mr. Fabius indicated that he had filed a complaint with the Commission against CleanChoice and that the matter had been settled. Complaint Attachment ¶ 7, Tr. 14.

At the hearing, Mr. Fabius indicated that his wife had been seriously injured in an automobile accident on June 18, 2022 and that since that time he had been “incredibly overwhelmed” by caring for her. (Tr. 18). He also testified that while caring for his wife, he “had little time to pay attention to anything other than [his] wife.” (Tr. 20). While Mr. Fabius testified that he “had no recollection” of receiving a letter from PECO concerning the selection of Clean Choice as his EGS, he presented no other evidence in support of his allegation that PECO did not inform him of the EGS switch to Clean Choice. (Tr. 21).

PECO’s witness, Ms. Tillman was able to provide testimony as to PECO’s procedures for handling EGS switch requests. (Tr. 38-39). She also testified that “PECO is not involved in a customer’s decision to switch to a [different EGS] supplier . . . it’s their choice and their right to be served by an alternate supplier.” (Tr. 38). Furthermore, she testified that she was not familiar with how Mr. Fabius enrolled with CleanChoice, only that PECO received notice of the enrollment from CleanChoice on May 26th and his enrollment became effective June 1, 2020. (Tr. 40). PECO also presented documentary evidence to indicate that the name, address, telephone number and pricing information for Mr. Fabius’ EGS was available on his monthly PECO billing statements. (PECO Exhibit 2; Tr. 41-42, 48-50).

I find the testimony of Ms. Tillman credible, and the evidence presented by PECO in this matter persuasive. The evidence presented by the Complainant does not establish that PECO violated the Code, Commission regulations or any Commission Order. The Complainant was provided PECO electric service after he notified the Company that he wished to return to PECO as his EGS. PECO then became the Complainant’s default provider in accordance with 66 Pa.C.S. § 2807 and 52 Pa. Code § 54.181.

Additionally, PECO's practice of sending a letter to a customer once it receives notice that the customer has switched to an EGS and allowing several days for a customer to contact PECO if the switch is incorrect or unauthorized is reasonable. PECO procedures alert the customer that PECO has received EGS switch documentation and verifies the switch. Although the Complainant did not recall receiving the EGS confirmation letter sent to him by PECO, he failed to present clear and convincing evidence that such a procedure is not reasonable. PECO's procedures also comport with the procedures discussed by the Commission in *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*.

There is no violation here.

### High Bill Dispute

The Complainant contends that his bills contain charges related to the termination of his contract with CleanChoice and/or are out of line for the amount of electricity he is using, specifically the months of May and June 2023. The Complainant asserts that his bills for those months increased significantly from the prior year and are not comparable to those of neighbors who live in similar homes.

The burden of proof for "high bill" complaints has been explained in *Waldron v. Philadelphia Electric Co.*, 54 Pa.P.U.C. 98 (1980) (*Waldron*), and its progeny. In *Waldron*, the Commission adopted the Michigan Public Service Commission's (PSC's) policy announced in *Hallifax v. O & A Electric Co-Op*, Case No. U-5825, May 1979, which stated that, while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Commission stated that it will also consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy

utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100.

The Commission explained the burden of proof set forth in *Waldron* as follows:

[T]he *Waldron* Rule allows a complainant to establish a *prima facie* case in a “high bill” complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed *or by providing other relevant evidence showing that the disputed bill is unreasonably high.* In evaluating a “high bill” complaint, the Commission may consider such evidence as “the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), *and any other relevant facts or circumstances that come to light during the proceeding.*”

*Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197, at 5 (Opinion and Order entered Nov. 15, 2011).

At the hearing, Mr. Fabius argued that his PECO bills for May and June 2023 were “very high” when compared to May and June 2024. The following table summarizes his position:

<b>Period</b>	<b>PECO Bill</b>	<b>Days</b>	<b>Ave Temp</b>	<b>\$ Difference 2024 v 2023</b>
May 2024	\$330.98	29	56	\$359.60 less
May 2023	\$690.58	29	59	N/A
June 2024	\$317.12	32	72	\$872.55 less
June 2023	\$1189.57	32	67	N/A

(Complainant’s Exhibit 2; Tr. 21-22).

Mr. Fabius also testified that he had compared his PECO bill to that of a neighbor who lives in a house with “identical square footage” and found that even after his account returned to PECO as the EGS supplier, he calculated that his PECO bills were approximately 43% higher than those of his neighbor. (Tr. 22-23.) Summarizing his allegations concerning overbilling, Mr. Fabius testified that he believed that his PECO billing statements were incorrect because they included termination charges imposed by CleanChoice and/or a defective meter. (Complainant’s Exhibit 2; Tr. 24).

Anthony Costello, a Senior Regulatory Assessor for PECO testified that Mr. Fabius’ account balance of over \$11,000 was primarily an accumulation of PECO charges and did not include termination fees imposed by CleanChoice. (PECO Exhibit 1; Tr. 62.) Mr. Costello also testified that Mr. Fabius had failed to make payments on his PECO account on time and in full since PECO was renamed the EGS on the account in April 2023. (Tr. 62). He specified that the first PECO bill naming PECO as the EGS for the account was issued on May 12, 2023, and reflected a past due balance of \$3,849.89 and new charges of \$690.58, bringing the total balance due to \$4,540.47. Furthermore, Mr. Costello noted that in the 12 months preceding the hearing, only 3 payments had been made on the Complainant’s account. (PECO Exhibit 1; Tr. 63-68).

Mr. Costello also testified that on October 16, 2023, Mr. Fabius and PECO negotiated a payment agreement pursuant to which the then-outstanding balance of \$6,107.69 would be repaid in 23 monthly installments of \$265.55. He further explained that the arrangement was reflected on Mr. Fabius’ PECO bills and that a default occurred shortly after the arrangement was made, making the entire balance due immediately. (PECO Exhibit 5; Tr. 78-80).

PECO’s witness also testified that following the filing of the Formal Complaint, he reached out to Mr. Fabius and suggested to him that an all-day field visit

by a PECO representative be scheduled to ascertain the source of Mr. Fabius' billing issues. (PECO Exhibit 5; 68-69). He testified that no such visit had been scheduled. (Tr. 70, 72-73). Mr. Costello also testified that homes of the same size, like those of Mr. Fabius and his neighbor, do not necessarily consume the same amount of electricity, stating that "no one can guarantee that each family uses their appliances in the same method. They might set their thermostat higher or lower. They might cook more; they might do more or less laundry. [Y]ou really can't compare neighbors as far as that's concerned." (Tr. 76).

Although Mr. Fabius indicated that he had no recollection of negotiating a payment arrangement with PECO, he did not dispute that he failed to make regular payments on his PECO account. He also failed to provide credible and convincing testimony that the charges on his account were excessive or unrelated to actual usage. In contrast, PECO demonstrated that it had promptly responded to his overbilling allegation, but Mr. Fabius failed to schedule an on-site visit to ascertain whether his electrical system, including his meter and appliances were functioning properly. Based on the foregoing, I conclude that Mr. Fabius has failed to meet the burden of proving that he was overbilled or that there were other inappropriate charges on his PECO account.

The Complainant cannot prevail here, and the Complaint will be dismissed.

#### CONCLUSIONS OF LAW

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

2. The party filing the Complaint bears the burden of proving by a preponderance of the evidence that he is entitled to relief from the Commission.  
66 Pa.C.S. § 332(a).

3. A Commission decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A “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).

4. PECO responded to the Complainant’s EGS choice selections in compliance with 52 Pa. Code § 57.177.

5. The Complainant has failed to meet his burden of establishing that his bills were inaccurate. *See* 66 Pa.C.S. § 332(a).

6. PECO provided reasonable service to the Complainant. 66 Pa.C.S. § 1501.

7. The Complainant has not established by a preponderance of the evidence that PECO violated the Pennsylvania Code, regulations, or a Commission Order. *See Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

ORDER

THEREFORE

IT IS ORDERED

1. That the Formal Complaint filed by Alan Fabius in Alan Fabius v. PECO Energy Company, Docket Number C-2024-3050914, is denied and the Complaint is dismissed.
2. That this matter be marked closed.

Date: March 12, 2025

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/s/  
Arlene Ashton  
Administrative Law Judge