BEFORE THE

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Beth Trivelpiece :

:

v. :C-2015-2462644

:

PECO Energy Company :

**INITIAL DECISION**

Before

Conrad A. Johnson

Administrative Law Judge

INTRODUCTION

This decision sustains Complainant’s complaint which alleges there are incorrect charges on her bill and avers there are quality problems with her service. Additionally, the decision denies Complainant’s request for a payment arrangement, but orders Respondent to recalculate her arrearages. Also the decision assesses penalties against Respondent for failing to provide Complainant reasonable service as required by the Public Utility Code in addition to violating the Commission’s regulations.

HISTORY OF THE PROCEEDING

On January 14, 2015, Complainant Beth Trivelpiece, (Complainant or Ms. Trivelpiece) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent or PECO or Company). Ms. Trivelpiece alleged the following: a) PECO was threatening to shut off her service or had already shut off her service; b) she would like a payment arrangement that was reasonable; c) charges on her bill of $15,988.35 including late fees were incorrect; d) there were quality

problems with her service because PECO would not provide her a reasonable payment arrangement; e) PECO could not explain why her bill was so high and she was very ill and needed electricity for medical equipment.[[1]](#footnote-1)

On January 23, 2015, PECO filed an Answer, generally denying the material allegations of the Complaint. PECO further averred Complainant was responsible for her current balance of $16,687.28, which included balance transfers from prior service addresses. Additionally, PECO averred that Complainant’s outstanding balance included $4,392.98 in Customer Assistance Program (CAP) charges, which could not be subject to a payment arrangement. As relief, PECO requested dismissal of the Complaint.

On March 3, 2015, the Commission notified the parties that this case was assigned to me for a telephone hearing on April 20, 2015, at 10:00 a.m. A Prehearing Order outlining the applicable procedural rules was served upon the parties on March 13, 2015. As a result of a conflict in my schedule, a Hearing Cancellation/Reschedule Notice was issued to the parties on April 8, 2015, informing them that the April 20, 2015 hearing was cancelled and rescheduled to June 2, 2015.

The telephone hearing convened as rescheduled on June 2, 2015. Complainant was represented by Deborah M. Steeves, Esquire (Attorney Steeves). PECO was represented by Margaret A. Morris, Esquire (Attorney Morris). Prior to the receipt of testimony, Respondent offered an oral motion in limine which is discussed below. Testimony was received from both Complainant and Respondent’s Regulatory Assessor, Renee Tarpley (Ms. Tarpley). Complainant’s case manager and witness, Jesika Levek, was present but was not called to testify. Complainant offered pre-marked Exhibits B and C, which were admitted into the record. Respondent offered pre-marked Exhibits 3, 4, 6 through 9, and 14 through 16, all of which were admitted into the record.

Respondent also offered pre-marked Exhibit 1, a chart prepared by Ms. Tarpley,

which purported to be a business record of Complainant’s service addresses, account numbers, service dates and final bill amounts with comments. Ms. Tarpley testified that Exhibit 1 was data she compiled from reviewing other records. She admitted Exhibit 1 contained an error as to one of the account numbers. (Tr. 65-66.) Complainant objected to the admission of Exhibit 1 as a business record, and the objection was sustained on that basis. (Tr. 114-116.)

In anticipation that the transcript would be filed within twenty days of the hearing, I directed the parties to file their memorandums of law by July 10, 2014. (Tr. 147.) Additionally, counsel for Complainant expressed concern that her organization could not afford the cost of a transcript. Therefore, I instructed Attorney Steeves, if she did not have the transcript in order to submit finding of facts, to write a legal argument as to why Ms. Trivelpiece should prevail on her complaint. (Tr. 148.)

The hearing transcript consisting of 152 pages was filed in Harrisburg on June 25, 2015, and received by me in Pittsburgh on June 29, 2015. By interim order entered on June 30, 2015, I informed the parties that the filing date for the memorandums of law was extended to July 17, 2015, and the record would close as of that date. On July 17, 2015, Complainant and Respondent filed a brief and memorandum of law respectively. In accordance with the June 30, 2015 interim order the record closed on July 17, 2015.

By email dated July 21, 2015, counsel for Respondent argued that Complainant’s brief addressed issues beyond the scope of my directive at page 41 of the transcript. Respondent argued that the issues were limited to Section 56.35 of the Commission’s regulations.[[2]](#footnote-2) (52 Pa.Code § 56.35.) Respondent submitted that Complainant’s brief addressed issues relating to medical certifications, termination based on non-basic charges, billing components, application of payments, adequacy of PECO’s bills and late payment charges. Accordingly, Respondent requested permission to submit a response to the additional issues.

By email dated July 21, 2015, counsel for Complainant submitted that Complainant’s brief addressed the issues as directed by me, but the directive was not limited to just those issues. Accordingly, Complainant objected to Respondent’s request to file a reply brief.

By email dated July 21, 2015, I informed the parties as follows: “Upon due consideration of PECO’s request to file a reply brief and Complainant’s response thereto, PECO’s request is hereby denied. An Initial Decision in this matter shall be prepared and

issued.”

On August 20, 2015, counsel for PECO, Attorney Morris, filed a Withdrawal of Appearance and indicated that Shawane L. Lee, Esquire was now representing PECO. Attorney Lee earlier entered her appearance in this matter by filing PECO’s Answer to the Complaint.

This case is procedurally ripe for ruling.

FINDINGS OF FACT

Complainant’s Family Size, Income, and Service Usage

1. Complainant Beth Trivelpiece receives electric and gas service from Respondent at her home, 852 Aspen Avenue, Spring City, PA 19475 (Aspen Avenue). (Tr. 5, 65, 72-73.)

2. Respondent PECO Energy Company is a jurisdictional public utility providing electric and gas service to Pennsylvania customers.

3. Complainant resides at Aspen Avenue with her two sons, ages 15 and 14. (Tr. 26.)

4. The residence at Aspen Avenue is a very small, two bedroom mobile home, Model Year 1991, which Complainant purchased for $5,000.00 on October 16, 2013. (Tr. 29, 42; PECO’s Exhibit 8.)

5. Complainant’s monthly service usage and payment history at Aspen Avenue from November 21, 2013 to April 27, 2015, is listed in the below chart. Complainant’s service usage and payment history comparison for the monthly billing periods, December 2013 and December 2014, January 2014 through April 2014, and January 2015 through April 2015, is as follows:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Billing Period | Gas Usage |  | Electric Usage | Current Usage Charge | Amount  Paid/Date |
| 11/21/13 to 12/26/13 | 74 CCF |  | 961 kWh | $ 80.89 Gas  $318.03 Electric  $156.03 Late Charge | $0.00 |
| 11/23/14 to 12/28/14 | 80 CCF |  | 848 kWh | $ 66.51 Gas  $ 63.29 Electric  $129.80 Total | $129.80  LIHEAP $114.00  1/22/15 |
| 12/26/13 to 01/28/14 | 137 CCF |  | 1774 kWh | $138.26 Gas  $285.55 Electric  $156.03 Late Charge | $0.00 |
| 12/28/14 to 01/28/15 | 104 CCF |  | 730 kWh | $ 80.86 Gas  $ 45.72 Electric  $129.58 Total | $126.58  2/18/15 |
| 01/28/14 to 02/26/14 | 92 CCF |  | 971 kWh | $ 96.69 Gas  $159.50 Electric  Late Charge $162.38 | $0.00 |
| 01/28/15 to 02/26/15 | 106 CCF |  | 873 kWh | $ 82.26 Gas  $ 67.37 Electric  $149.63 Total | $149.63  3/23/15 |
| 02/26/14 to 03/27/14 | 83 CCF |  | 1069 kWh | $102.20 Gas  $164.19 Electric  Late Charge $166.22 | $0.00 |
| 02/26/15 to 03/29/15 | 75 CCF |  | 805 kWh | $ 60.00 Gas  $ 54.69 Electric  $114.69 Total | $60.00  4/10/15  $562.69  4/13/15 |
| 03/27/14 to 04/27/14 | 41 CCF |  | 1064 kWh | $ 56.92 Gas  $164.56 Electric  $170.21 Late Charge | $0.00 |
| 03/29/15 to 04/27/15 | 32 CCF |  | 628 kWh | $ 30.69 Gas  $ 30.87 Electric  $ 61.56 Total | $61.56  5/19/15 |
| 04/27/14 to 05/27/14 | 24 CCF |  | 1339 kWh | $ 38.18 Gas  $205.26 Electric  $173.53 Late Charge | $0.00 |
|  |  |  |  |  |  |
| 05/27/14 to 06/25/14 | 8 CCF |  | 1436 kWh | $ 20.34 Gas  $216.87 Electric  $177.18 Late Charge | $0.00 |
|  |  |  |  |  |  |
| 06/25/14 to 07/27/14 | 8 CCF |  | 1668 kWh | $ 25.00 Gas  $180.34 Electric  $180.74 Late Charge | $0.00 |
|  |  |  |  |  |  |
| 07/27/14 to 08/25/14 | 6 CCF |  | 1300 kWh | $25.00 Gas  $126.59 Electric  $151.59 Total  $183.83 Late Charge | $151.59  9/16/14 |
|  |  |  |  |  |  |
| 08/25/14 to 09/24/14 | 9 CCF |  | 1291 kWh | $ 25.00 Gas  $122.50 Electric  $147.50 Total | $147.50  10/6/14 |
|  |  |  |  |  |  |
| 09/24/14 to 10/23/14 | 20 CCF |  | 919 kWH | $26.75 Gas  $69.39 Electric  $96.14 Total | $96.14  11/6/14 |
|  |  |  |  |  |  |
| 10/23/14 to 11/23/14 | 53 CCF |  | 752 kWh | $ 53.68 Gas  $ 45.54 Electric  $ 99.22 Total | $100.00  12/5/14 |
|  |  |  |  |  |  |

Table 1

(Tr. 29; PECO’s Exhibit 4).

6. Since October 2011 Complainant’s household gross income has been derived from her bi-weekly workers’ compensation benefits in the amount of $573.16 equating to $1,146.32 monthly. (Tr. 26.)

7. Complainant’s monthly income for a family size of three does not exceed 150% of the Federal poverty guideline, thereby placing her household at Level 1 of the guidelines. (Tr. 95.)

8. Since September 2014 Complainant has paid her electric and gas bill for

her current usage. (Tr. 33; PECO’s Exhibit 4.)

9. Complainant lived at other addresses where she received service from Respondent prior to residing at Aspen Avenue. (Tr. 37.)

2004, 2006, 2008, and 2009 Final Balance Transfers

10. Respondent billed Complainant for service at 373 Church Street, Phoenixville, Pennsylvania (373 Church Street) from June 2003 to June 16, 2004, resulting in a final and outstanding balance of $1,435.69. (Tr. 67.)

11. Complainant’s account for service at 373 Church Street was under Respondent’s Customer Assistance Program (CAP). (Tr. 69.)

12. Complainant was not a customer of Respondent from June 17, 2004 to June 9, 2006. (Tr. 67-68.)

13. Sometime in June 2006 Complainant applied for service at 229 Church Street, 3rd Floor, Phoenixville, Pennsylvania (229 Church Street). (Tr. 68.)

14. In response to Complainant’s June 2006 application for service, Respondent placed Complainant’s account for service at 229 Church Street under its CAP. (Tr. 69.)

15. In response to Complainant’s June 2006 application for service, Respondent transferred the final balance of $1,435.69 from the service address at 373 Church Street to Complainant’s service address at 229 Church Street and provided her service. (Tr. 68.)

16. Complainant received service from Respondent at 229 Church Street from June 10, 2006 to August 2, 2007.

17. Respondent billed Complainant for service at 229 Church Street from June 10, 2006 to August 2, 2007, resulting in a final and outstanding balance of $3,086.38.

(Tr. 68.)

18. Complainant was not a customer of Respondent from August 2, 2007 to September 15, 2008. (Tr. 68-69.)

19. Sometime in September 2008 Complainant applied for service at 221 High Street, Apartment 1, Phoenixville, Pennsylvania (221 High Street). (Tr. 68.)

20. In response to Complainant’s September 2008 application for service, Respondent placed Complainant’s account for service at 221 High Street under its CAP. (Tr. 69.)

21. In response to Complainant’s September 2008 application for service, Respondent transferred the final balance of $3,086.38 from 229 Church Street to the service address at 221 High Street and provided her service starting on September 16, 2008. (Tr. 69.)

22. The $3,086.38 balance that Respondent transferred to Complainant’s account for service at 229 Church Street in September 2008 included final charges dating back to the time period June 2003 to June 16, 2004. (Tr. 67-69.)

23. By applying the $3,086.38 balance to Complainant’s account for service to her at 221 High Street in September 2008, Respondent required her to pay for charges that had accrued during the time period June 2003 to June 16, 2004. (Id.)

24. Respondent billed Complainant for service at 221 High Street from September 16, 2008 to December 12, 2008, resulting in a final and outstanding balance of $4,563.68. (Tr. 68.)

25. Complainant’s final charges in the amount of $4,563.68 on December 12,

2008 for service at 221 High Street were all CAP charges. (Tr. 69.)

26. In December 2008 Complainant requested service at 367 Second Avenue, 1st Floor, Phoenixville, Pennsylvania (2nd Avenue.) (Tr. 70.)

27. On December 3, 2008, Respondent transferred Complainant’s service from 221 High Street to her service address at 2nd Avenue. (Tr. 70.)

28. On January 27, 2009, Respondent transferred Complainant’s CAP balance of $4,563.68 from her service address at 221 High Street to her service address at 2nd Avenue. (Tr. 69-70.)

29. The $4,563.68 CAP balance that Respondent transferred to Complainant’s account for service at 2nd Avenue in January 2009 included charges that had accrued during the time period June 2003 to June 16, 2004. (Tr. 69.)

30. Complainant received service at 2nd Avenue from December 3, 2008 until July 30, 2010, during which Respondent billed Complainant approximately another $8,000.00 in

charges. (Tr. 70.)

31. Respondent terminated Complainant service at 2nd Avenue on July 30, 2010 with an outstanding bill of $11,476.54. (Tr. 75.)

32. Complainant’s service account at 2nd Avenue was not under Respondent’s CAP. (Tr. 79-80.)

33. Complainant was not a customer of Respondent between July 31, 2010 and November 17, 2013. (Tr. 70, 75; PECO’s Exhibits 3 and 4.)

2013 Application for Service

34. On October 10, 2013, Complainant applied for service at Aspen Avenue. (Tr. 70-71, 75.)

35. On October 29, 2013, Respondent mailed Complainant a Service Denial

Notice for Aspen Avenue. (Tr. 81; PECO’s Exhibit 7.)

36. On October 29, 2013, Respondent informed Complainant that it denied her application for service at Aspen Avenue because she owed an outstanding balance at 2nd Avenue in the amount of $12,121.35 for service from December 2, 2008 to July 30, 2010. (Tr. 82; PECO’s Exhibit 7.)

37. On October 29, 2013, Respondent’s information to Complainant that she had an outstanding balance of $12,121.35 at 2nd Avenue was based, in part, on the $4,563.68 CAP balance that Respondent had finalized on December 12, 2008 for Complainant’s service at 221 High Street, which included charges that accrued during the time period June 2003 to June 16, 2004. (Tr. 69.)

38. On October 29, 2013, Respondent’s information to Complainant that she

had an outstanding balance of $12,121.35 at 2nd Avenue was based, in part, on charges that had accrued, in part, between December 12, 2008 and October 28, 2009, which was more than four years prior to October 29, 2013. (Id.)

39. On October 29, 2013, Respondent informed Complainant that outstanding balance of $12,121.35 must be satisfied before starting service in her name at Aspen Avenue. Respondent also informed Complainant she qualified for payment terms. (PECO’s Exhibit 7.)

40. On October 29, 2013, Respondent informed Complainant that in order to start service in her name at Aspen Avenue, she was required to submit certain documentation: a lease agreement and proof of identification. (Id.)

41. On or about October 29, 2013, Complainant asked Respondent for an explanation as to why the outstanding balance was so high. (Tr. 46.)

42. In October 2013, Respondent did not give Complainant any specific reason concerning the calculation of the outstanding balance in the amount of $12,121.35. (Tr. 46.)

43. On November 4, 2013, Complainant sent Respondent a lease agreement for the space for her mobile home, proof of identification and proof of income. (Tr. 43; PECO’s Exhibit 8.)

44. From October 10, 2013 to November 19, 2013, Complainant did not have any electric or gas service at Aspen Avenue. (Tr. 28, 75; PECO’s Exhibit 4.)

2013 Balance Transfer and Late Charges

45. On November 15, 2013, Respondent established an account for Complainant at Aspen Avenue and transferred her outstanding bill from 2nd Avenue in the amount of $11,476.54 to her account at Aspen Avenue. (Tr. 27, 70-75; PECO’s Exhibits 3 and 4.)

46. The $11,476.54 balance that Respondent transferred to Complainant’s account at Aspen Avenue in November 2013 included final charges that had accrued during the time period June 2003 to June 16, 2004. (Tr. 69; PECO’s Exhibit 3.)

47. The $11,476.54 balance that Respondent transferred to Complainant’s account at Aspen Avenue in November 2013 included charges that had accrued during the time period December 3, 2008 to November 14, 2009, as well as for the time period November 15, 2009 to July 30, 2010. (Tr. 70; PECO’s Exhibit 3.)

48. On November 15, 2013, Respondent applied an additional late charge of

$1,477.60 to Complainant’s outstanding bill from 2nd Avenue in the amount of $11,476.54 to her account at Aspen Avenue. (Tr. 75; PECO’s Exhibits 3 and 4.)

49. The additional late charge of $1,477.60 that Respondent applied to Complainant’s service account at Aspen Avenue was calculated on the outstanding amount of $11,476.54 for the time period July 30, 2010 to November 14, 2013. (Tr. 70-71, 75; PECO’s Exhibits 3 and 4.)

50. The $1,477.60 in late charges that Respondent applied to Complainant’s account at Aspen Avenue on November 15, 2013, included late charges that accrued during the time periods: June 2003 to June 16, 2004; December 3, 2008 to November 14, 2009; as well as for the time period November 15, 2009 to July 30, 2010. (Tr. 70; PECO’s Exhibit 3.)

Condition for Furnishing Service

51. On November 18, 2013, as a condition for providing Complainant service at Aspen Avenue, Respondent required Complainant to pay the outstanding balance of $11,476.54, plus the $1,477.60 in late charges under a 24-month payment agreement (PAR). (Tr. 70-71, 91-92, 96-99.)

52. On November 18, 2013, the outstanding balance of $11,476.54, plus the

$1,477.60 in late charges that Respondent required Complainant to pay under the PAR was based upon the following account transfers:

|  |  |  |  |
| --- | --- | --- | --- |
| Service Address | Service Dates | Balance | New Address and Date of Balance Transfer |
| 373 Church St. | 06/20/03 – 06/16/04 | $1,435.69 | 229 Church St. 06/10/06 |
| 229 Church St. | 06/10/06 – 08/02/07 | $3,086.38 | 221 High St. 09/16/08 |
| 221 High St. | 09/16/08 – 12/12/08 | $4,563.68 | 367 2nd Ave. 01/27/09 |
| 367 2nd Ave. | 12/03/08 – 07/30/10 | $11,476.54  Plus $1,477.60 Late Charge | Aspen Ave. 11/15/13 |

Table 2

(Tr. 67-71.)

53. Under the PAR, Complainant was required to pay $563.73 monthly plus the current service charges. (Tr. 96-97.)

54. Complainant could not afford to pay Respondent monthly $563.73 plus current service charges. (Tr. 44.)

55. On November 18, 2013, an organization paid $505.06 on Complainant’s service account. (Tr. 28, 92; PECO’s Exhibit 3.)

56. On November 20, 2013, Respondent connected Complainant’s service at Aspen Avenue and transferred a balance of $12,954.24 from 2nd Avenue to her account at Aspen Avenue. (Tr. 28, 75; PECO’s Exhibit 4.)

57. If Complainant had not accepted responsibility for the outstanding balance at 2nd Avenue, Respondent would not have connected her service at Aspen Avenue on November 20, 2013. (Tr. 92.)

Reinstatement Bad Debt Service Charge

58. After November 2013, Respondent began issuing Complainant monthly billings for her current usage at Aspen Avenue plus multiple “reinstate bad debt service” charges. (Tr. 34, 106; Complainant’s Exhibit C.)

59. Upon receiving bills for service with the reinstate bad debt service charges, Complainant began calling Respondent for an explanation as to the charge and why her bill was so high. (Tr. 34.)

60. On January 29, 2015, Respondent issued Complainant a monthly billing statement listing her current usage for electricity at $45.72, and gas at $80.86, for a total of $126.58, plus a past due amount of $447.82 and the following billing summary:

|  |  |
| --- | --- |
| Thank you for your payment of $129.80 |  |
| LIHEAP payment $144.00 |  |
| Reinstate bad debt –Service | $6.00 |
| REINSTATE BAD DEBT – GAS SERVICE | $355.76 |
| Reinstate bad debt –Service | $192.15 |
| Reinstate bad debt –Service | $593.62 |
| Reinstate bad debt –Service | $1.77 |
| Reinstate bad debt –Service | $562.75 |
| Reinstate bad debt –Service | $2,039.38 |
| Reinstate bad debt –Service | $640.73 |
| REINSTATE BAD DEBT – GAS SERVICE | $530.03 |
| Connection charge - standard | $6.00 |
| REINSTATE BAD DEBT – GAS SERVICE | $1.21 |
| Reinstate bad debt –Service | $118.28 |
| Reinstate bad debt –Service | $6.00 |
| Reinstate bad debt –Service | $404.00 |
| Reinstate bad debt –Misc. business | $5.78 |
| Reinstate bad debt –Service | $3,449.24 |
| Reinstate bad debt –Service | $150.00 |
| Reinstate bad debt –Service | $33.81 |
| Reinstate bad debt –Service | $1,647.10 |
| Charges from previous bill | $3,029.33 |
| Late payment charge | $2,670.54 |
| **Total Other Charges** | **$16,443.48** |

Table 3

(Tr. 46; Complainant’s Exhibit C.)

61. Respondent did not provide Complainant with an explanation of the reinstatement bad debt service charge until February 12, 2015. (Tr. 106, 108.)

­Complainant’s Payment History and Termination Notice

62. When Respondent began billing Complainant in November 2013, the monthly billings listed a message stating a deferred payment agreement of $570.11. (Tr. 93.)

63. Complainant did not pay her monthly service bill from December 2013 to August 2014 because she could not afford the deferred payment agreement amount of $570.11 plus her monthly service charges. (Tr. 28, 33.)

64. On April 7, 2014, while Complainant was hospitalized, Respondent posted at her address a 10-day shut-off notice for her electricity. (Tr. 45, 111.)

65. In November 18, 2013 Complainant had applied for Respondent’s CAP and was enrolled on July 14, 2014. (Tr. 28; PECO’s Exhibit 6.)

66. Respondent did not conduct an energy consumption investigation of Complainant’s high bill complaint. (Tr. 104-105.)

67. Sometime in June 2014, an unidentified service person conducted an energy efficiency audit of Complainant’s home and made adjustments to Complainant’s appliances, after which Complainant’s electricity usage was substantially reduced. (Tr. 29; PECO’s Exhibit 4.)

68. On September 15, 2014, Complainant filed an informal complaint with the Commission’s Bureau of Consumer Services (BCS) disputing Respondent’s CAP charges and her account balance in the approximate amount of $14,000.00. (Tr. 100; PECO’s Exhibit 14.)

69. Complainant timely paid her monthly electric and gas bills for her current

usage from October 6, 2014 to May 19, 2015. (PECO’s Exhibit 4.)

DISCUSSION

Motion In Limine

At the commencement of the hearing, Respondent orally motioned to prohibit the introduction of any evidence concerning Complainant’s account balance in the amount of $1,435.69 for service at 373 Church Street from June 2003 to June 2004. (Tr. 9-10.) According to Respondent, on August 14, 2006, Complainant had alleged in her informal complaint filed with BCS at No. 2126084 that she never lived at 373 Church Street. (Tr. 10.) Respondent argued that Section 3314(a) of the Commission’s regulations required Complainant to bring a formal complaint within three years from the date the liability arose.[[3]](#footnote-3) (Id.) Respondent submitted that Complainant’s cause of action arose June 15, 2006 when the $1,435.69 balance was transferred to Complainant’s service address at 229 Church Street. (Id.) Respondent asserted that BCS dismissed the informal complaint on January 4, 2007, and Complainant did not file an appeal from the BCS decision. (Id.)

Initially, Complainant did not object to dropping the $1,435.69 arrears from 373 Church Street, as a claim in this proceeding. (Tr. 14.) Accordingly, I granted Respondent’s motion in limine and ruled that no testimony would be received on the $1,435.69 amount and transfer. (Tr. 15.) However, subsequent to granting Respondent’s motion, Complainant testified to her final billing at 229 Church Street following her eviction from that address on June 6, 2007. (Tr. 37.) The final billing at 229 Church Street included the $1,435.69 arrears that were transferred from 373 Church Street. Respondent objected to the testimony as being barred by my earlier ruling. (Tr. 37.) Complainant retorted that the ruling only applied to the service address at 373 Church Street. (Tr. 38.) In reply, Respondent argued, “That amount ($1,435.69) had been transferred in September of ’08. We are still outside the three years. Any claim that could have and should have been brought within the three years PECO respectfully request that that be barred.” (Id.)

Thus it became apparent that multiple dates of service, billing amounts at various addresses, when usage accrued, and when transfers occurred were all at issue. Accordingly, I directed the parties “to submit memorandums of law specifically outlining what the facts are, when the billings occurred and why either side believed that they should prevail in this matter.” (Tr. 41, 144.) I thereby effectively reversed my earlier ruling, and Respondent later presented testimony on the $1,435.69 amount and transfer to subsequent services addresses. (Tr. 67-71.)

Positions of the Parties

Ms. Trivelpiece maintains there are incorrect charges on her bill, and she seeks a Commission ordered payment arrangement for her service at Aspen Avenue. She also asserts that PECO failed to address her high bill concerns and threatened to terminate her service. PECO contends that Ms. Trivelpiece is responsible for an outstanding bill in the amount of $16,687.28, which includes $4,392.98 in CAP arrears. Under Section 1404(c) of the Code,[[4]](#footnote-4) PECO argues that CAP arrears cannot be subject to a payment arrangement, and under Section 56.35 of the regulations,[[5]](#footnote-5) the Company may require the payment of any outstanding balance as a condition for providing service.

Burden of Proof

As the proponent of a rule or order, Complainant in this proceeding bears the

burden of proof pursuant to Section 332(a) of the Pennsylvania Public Utility Code (Code).[[6]](#footnote-6) To establish a sufficient case and satisfy the burden of proof, Complainant must show that Respondent is responsible or accountable for the problem described in the Complaint, in that the named utility has violated the Code, a regulation or order of the Commission. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). 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), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, Complainant’s evidence must be more convincing, by even the smallest amount, than that presented by Respondent. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, the Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n,* 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, to rebut the evidence of Complainant, shifts to Respondent. If the evidence presented by Respondent is of co-equal weight, Complainant has not satisfied her burden of proof. Complainant now must provide some additional evidence to rebut that of Respondent. *Burleson v. Pa. Pub. Util. Comm’n,* 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff’d,* 501 Pa. 433, 461 A.2d 1234 (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).

Therefore, in this proceeding, Ms. Trivelpiece has the burden of establishing that PECO is responsible or accountable for the problem described in her Complaint and that she is entitled to the relief requested, i.e., a Commission-ordered payment arrangement.

Reasonable Service Requirement in Processing the Application for Service

Public utility companies are required to provide reasonable service to their customers as well as applicants. In *Jerry Prosser* v. *Columbia Gas of Penn*s*ylvania,* Docket No. C-20066376, (Opinion and Order entered October 30, 2006), the Commission explained the

reasonable service requirement as follows:[[7]](#footnote-7)

The Public Utility Code imposes a duty on every public utility to furnish and maintain adequate, efficient and reasonable service to the public. 66 Pa. C.S. § 1501. The statutory definition of “service” is to be broadly construed. *County Place Waste Treatment Company, Inc. v. Pennsylvania Public Utility Commission,* 654 A.2d 72 (Pa. Cmwlth. 1995).

66 Pa. Code § 102 states, in pertinent part:

“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…

*Prosser* at 3. In accordance with statutory construction, a public utility’s processing of an application for electric or gas service falls within the broad definition of service, which requires the process to be reasonable.

Before addressing the processing of Ms. Trivelpiece’s application for service, a clarification on this issue is helpful. Initially it was not clear during the hearing as to whether Complainant was challenging PECO’s delay in establishing service at Aspen Avenue. On direct examination, Ms. Trivelpiece testified that she was without electricity for more than a month after filing her application for service at Aspen Avenue. (Tr. 28.) PECO’s counsel, Attorney  Morris, argued that Complainant had raised for “the first time somehow there was some delay in establishing service as the company kept asking her for more and more documents.” (Tr. 83.) Ms. Trivelpiece’s counsel, Attorney Steeves, submitted, “Actually, that testimony went to the delay in getting her into the CAP rate program.” (Tr. 85.) As a result, Attorney Morris asked whether Attorney Steeves was stipulating that a delay in starting service was not at issue in the proceeding. Attorney Steeves replied, “That’s correct. Pursuant to the CAP rate program.” (Tr. 85.) I noted that Attorney Steeves’ reply did not appear to be a stipulation. As a result, Attorney Morris asked, “Counsel, are you stipulating that the issue of the delay only relates to the enrollment into the CAP program, not when service was established?” (Tr. 86.) Attorney Steeves replied, “The issue of the delay was actually closed, but the first issue of the delay and her service starting has to do more with her questions in the amount of the bill when she ---.” (Tr. 86-87.) Attorney Morris replied, “Your Honor, if she said yes we’ll go ahead and fax it [PECO’s Exhibit 8] so that it is an issue in this proceeding. Attorney Morris later stated, “The issue appears to be that the Company did not process the establishment of the account in a timely manner.” (Tr. 89.) Based upon attorneys’ colloquy, I concluded that there was no stipulation concerning the issue of the establishment of service at Aspen Avenue. Additionally, Attorney Morris questioned her witness on this issue. (Tr. 89-92.) Accordingly this issue is addressed next.

On October 10, 2013, Ms. Trivelpiece applied for service at Aspen Avenue. (Tr. 70-71, 75.) Nineteen days later, on October 29, 2013, PECO mailed her a Service Denial Notice. (Tr. 81; PECO’s Exhibit 7.) The denial notice stated that a $12,121.35 balance at 2nd Avenue from December 2, 2008 to July 30, 2010 must be satisfied before PECO would start service in her name. The denial notice further stated she qualified for payment terms and was required to provide certain documents to get service in her name. The required documents included a completed lease or settlement statement and two forms of identification. (Id.) Ms. Trivelpiece sent the required documents to PECO on November 4, 2013. Sixteen days later, on November 20, 2013, PECO initiated Ms. Trivelpiece’s service at Aspen Avenue.

I conclude that PECO’s 19-day delay in responding to Ms. Trivelpiece’s application for service and 16-day delay in initiating service violated the reasonable service provisions of Section 1501 of the Code, 66 Pa.C.S. § 1501.

As an applicant, Ms. Trivelpiece was entitled to a prompt response to her October 10, 2013 request for service. She was without electricity at Aspen Avenue for a month. (Tr. 28.) PECO contends it was waiting for Ms. Trivelpiece’s response to the October 29, 2013 notice of denial. PECO did not offer any explanation as to the delay in processing Ms. Trivelpiece’s application during the nineteen days between October 10 and 29, 2013.

Section 56.36(1) Issue – Reasons for Denial of Credit

PECO’s delay in processing Ms. Trivelpiece’s application overlooked the requirements of Sections 56.36(1) and 56.37 of the Commission’s regulations.[[8]](#footnote-8) Section 56.36(1) provides that if service is denied because of credit status, the public utility is required to inform the applicant in writing within 3 business days of the denial. Section 56.36(1) also states, “If the public utility is requiring payment of an unpaid balance in accordance with § 56.35, the public utility shall specify in writing the amount of the unpaid balance, the dates during which the balance accrued and the location and customer name at which the balance accrued.” Thus in conformity with the 3 business days provision requirement for informing an applicant of service denial because credit status, PECO was required to inform Ms. Trivelpiece within 3 business days of October 13, 2013, that service was denied because of an outstanding balance. However, PECO failed to do so.

Additionally, the October 29, 2013 Service Denial Notice is defective. (PECO’s Exhibit 7.) The notice is printed upon PECO’s standard form and states the application cannot be approved because of the following:

You have an outstanding balance at the following address:

* Acct #85078-67029 -367 2nd Ave., 1ST FLOOR PHOENIXVILLE PA 19460 in the amount of 12,121.35 for service from 12/02/08 to **07/30/2010**
* Acct # (00000-00000) – (Address) in the amount of (Dollar value) for service from (start date) to (end date).

Outstanding balances must be satisfied before we will start new service in your name.

(Id.) (Emphasis in original.) The notice is defective because the $12,121.35 balance did not accrue at 2nd Avenue in less than two years as suggested by the notice. Rather the $12,121.35 is a compilation of balance transfers from multiple addresses. (See Table 3 above.) While PECO’s standard form provides for the listing of multiple addresses, account numbers, balance amounts and services dates, PECO failed to detail these items, i.e., the various addresses and final balances, in the denial notice to Ms. Trivelpiece, whereby she could have challenged the balances as beyond the four-year limitations period. Thus, I must conclude that PECO violated Section 56.36(1) of the regulations and in so doing also violated the reasonable service provisions of Section 1501 of the Code.

Section 56.35 Issue - Payment of Outstanding Balance

Under the Commission’s regulations a utility may require a residential applicant to pay an outstanding balance from a prior service address, in order to receive serve. The regulation states as follows:

**§ 56.35 Payment of outstanding balance.**

(a) A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly.

52 Pa.Code § 56.35. However, conditioning a payment arrangement upon an account balance that is more than four years old contravenes Section 56.35. *Duquesne Light Company v. Pa. Pub. Util. Comm’n*, 2844 C.D. 1998 (Memorandum Opinion Filed July 14, 1999).

The evidence establishes that Ms. Trivelpiece lived at multiple addresses prior to receiving service at Aspen Avenue on November 20, 2013. Each time she moved to a new address PECO transferred the final balance to her new address. Her earliest address was for service at 373 Church Street from June 2003 to June 16, 2004, ending with a final balance of $1,435.69. On June 10, 2006, PECO transferred that $1,435.69 balance to 229 Church Street, which ended with a final balance of $3,086.38 on August 2, 2007. The $3,086.38 balance was transferred to 221 High Street on September 16, 2008, ending with a final balance of $4,563.68 on December 12, 2008. On January 27, 2009, the $4,563.68 balance was transferred to 2ndAvenue, ending with a final balance of $11,476.54 on July 30, 2010.

Ms. Trivelpiece did not have service in her name again until November 2013. As a condition of furnishing service on November 20, 2013, PECO required Ms. Trivelpiece to accept responsibility for all of the transferred balances dating back to June 16, 2004. This requirement was part of the PECO’s November 2013 PAR granted to Ms. Trivelpiece. (Tr. 70-71, 91-92, 96-99.) Ms. Trivelpiece repeatedly maintained she never agreed to the November 2013 PAR, because she could not have afforded the $570 monthly payment plus her current service amount. (Tr. 33.) PECO’s witness countered that if Ms. Trivelpiece had not accepted responsibility for the outstanding balance, the Company would not have connected her service at Aspen Avenue on November 20, 2013. (Tr. 92.) Essentially Ms. Trivelpiece received the benefits of the November 2013 PAR when service was turned on. Accordingly, I find there was a tacit acceptance of the PAR on her part.

However, by conditioning the furnishing of service upon Ms. Trivelpiece’s accepting responsibility for a balance accruing more than four years before November 20, 2013, PECO violated Section 56.35. Under this section, a public utility may not require an applicant to pay an outstanding balance which accrued more than four years before the application as a condition for providing service.

PECO argues that each of Ms. Trivelpiece’s final balances was transferred from her old address to a new address within four years. Herein lies PECO’s misapprehension of Section 56.35. The date of transfer is not the determining factor. The operative word in the regulation is “accrued.” When the balance “accrued” is the determining factor for the transfer. PECO was prohibited from including in the transfer those balances that accrued prior to November 20, 2009.

On this issue the Commission’s ruling in *Michelle A. Mangel v. Duquesne Light* *Company,* C-00970563 (Opinion and Order entered September 18, 1998) is instructive. On July 29, 1997, Ms. Mangel filed a complaint alleging a financial inability to pay her utility bills and requesting a payment arrangement. Ms. Mangel had a large balance at her current address in the amount of $8,096.26. Similar to Ms. Trivelpiece’s situation, Ms. Mangel’s $8,096.26 balance included a March 18, 1997 balance transfer in the amount of $6,536.25. Additionally, like Ms. Trivelpiece’s dated balance transfers, Ms. Mangel’s $6,536.25 balance transfer included a $1,930.80 balance accrued from a prior address between May 2, 1986, and July 2, 1991. In deciding Ms. Mangel’s complaint, the administrative law judge (ALJ) dismissed the complaint except to the extent of sustaining BCS’s earlier decision granting Ms. Mangel a payment arrangement, which included the $1,930.80 balance transfer. Ms. Mangel filed exceptions to the ALJ’s decision. The Commission denied Ms. Mangel’s exceptions but modified the ALJ’s decision by removing the dated $1,930.80 balance, even though Ms. Mangel had agreed to the balance transfer. The Commission specifically held as follows:

We shall direct that the above referenced balance of $1,930.80, be removed from the Commission’s consideration in this proceeding. This balance is more than four years old. To subject this balance to a payment arrangement would be contrary to 52 Pa. Code § 56.35. Consequently, this balance shall be removed from our consideration and Duquesne shall pursue collection in an appropriate forum.

*Mangel* at 11. Duquesne took an appeal; however, Commonwealth Court affirmed the Commission’s ruling. The Court held that the Commission’s interpretation of Section 56.35 was soundly based on its language. The Court noted that the Commission’s Order did not preclude Duquesne from seeking to collect the past due amount via alternative collection proceedings. *Duquesne Light Company v. Pa. Pub. Util. Comm’n*, 2844 C.D. 1998 (Memorandum Opinion Filed July 14, 1999).

Within in the context of this proceeding, the Commission’s ruling in *Debra Brown v. PECO Energy Company,* Docket No. C-2009-2097007 (Opinion and Order entered January 29, 2010) must be distinguished from the ruling in *Mangel*. In the formercase, Ms. Brown established service at her current residence on April 9, 2008, and PECO transferred an outstanding balance of $11,356.60 to her current account from her prior accounts. The transferred balance was for services at Complainant’s investment properties between July 8, 2000 and August 25, 2008. Similar to Ms. Trivelpiece, Ms. Brown was not a customer of PECO between August 26, 2005 and April 8, 2008. Ms. Brown filed exceptions to the Administrative Law Judge’s Initial Decision dismissing her complaint, which alleged there were incorrect charges on her bill. Relying upon the Commission’s regulations at 52 Pa.Code § 56.35, Ms. Brown excepted, in part, that she was not responsible for arrearages transferred to her current account which accrued between 2000 and 2004. Ms. Brown maintained that that these arrearages “fall within the 4-year statute of Section 56.35, thus are outside of the ratepayer’s responsibility.” *Brown* at 7-8.

The Commission denied Ms. Brown’s exception and explained as follows:

Section 56.35 is part of the Commission’s “Procedures for New Applicants” under “Subchapter C. Credit and Deposit Standards Policy.” 52 Pa. Code §§ 56.31 – 56.38. Section 56.35 is part of our Regulations regarding requirements for establishing new service. Section 56.35 states that PECO “may require, as a condition of furnishing residential service to an applicant, the payment” of outstanding balances that accrued within the past four years (emphasis supplied). Under Section 56.35, PECO had the option of requesting payment for arrearages as a condition of establishing a new account for Ms. Brown. *PECO did not impose such a requirement*. PECO provided service without any payment from the Complainant on or about April 4, 2008. . . . . Since PECO did not request a payment of outstanding balances as a condition of establishing service to the Complainant, it did not violate 52 Pa. Code § 56.35.

*Brown* at 9. (Underlining in original; italicizing added.)

As emphasized above, PECO did not require Ms. Brown to pay anything for starting her new service, which is unlike PECO’s requirement in Ms. Trivelpiece’s case. As already discussed above, PECO would not have started Ms. Trivelpiece’s service at Aspen Avenue, unless she agreed to accept responsibility for charges which were outside of the four-year limitations period. (Tr. 91-92.) Thus the decision in *Brown* is distinguishable from the decision in *Mangel*. Accordingly *Mangel* controls the resolution of the Section 56.35 issue in the present proceeding.

Applying the holding in *Mangel* to the present case, on November 20, 2013, PECO improperly conditioned the furnishing of service to Ms. Trivelpiece under a payment arrangement which required her to pay any balance which accrued between June 2003 and November 19, 2009. This time period was more than four years before November 20, 2013, which was the date PECO began providing service to Ms. Trivelpiece at Aspen Avenue. The

following chart illustrates the balances accruing more than four years before November 20, 2013.

|  |  |  |  |
| --- | --- | --- | --- |
| Service Address | Service Dates | Balance | New Address and Date of Balance Transfer |
| 373 Church St. | 06/20/03 – 06/16/04 | $ 1,435.69 | 229 Church St. 06/10/06 |
| 229 Church St. | 06/10/06 – 08/02/07 | $ 3,086.38 | 221 High St. 09/16/08 |
| 221 High St. | 09/16/08 – 12/12/08 | $ 4,563.68 | 367 2nd Ave. 01/27/09 |
| 367 2nd Ave. | 12/03/08 – 11/19/09 | $8,929.69  (Approximate)[[9]](#footnote-9) | Aspen Ave. 11/15/13 |

Table 3

In addition to improperly transferring $8,929.69 to Ms. Trivelpiece’s account at Aspen Avenue, PECO added on a $1,477.60 late charge. This late charge was based upon amounts that had accrued more than four years ago. Again PECO was in violation of Section 56.35. The precise amount PECO improperly included in the November 2013 PAR cannot be determined from the record. As PECO’s witness, Ms. Tarpley, was not involved in developing the payment arrangement. (Tr. 124.) Accordingly, PECO will be directed to recalculate Ms. Trivelpiece’s balance minus any charges predating November 20, 2009.

Section 56.151 - Investigation Requirement

Title 52 of the Pennsylvania Code, Chapter 56, 52 Pa.Code § 56.1 et seq., prescribes standards for utility companies in billing residential customers. Under Section 56.1, 52 Pa.Code § 56.1, the provisions of Chapter 56 are to be liberally construed. After a residential customer has initiated a billing dispute, as in the present case, the utility company is required to investigate the matter. Section 56.151 specifically states:

Upon initiation of a dispute covered by this section, the utility shall:

…

(2) Investigate the matter using methods reasonable under the

circumstances, which may include telephone or personal conferences,

or both with the ratepayer or occupant.

…

(5) Within 30 days of the initiation of the dispute, issue its report to the complaining party. The public utility shall inform the complaining party that the report is available upon request.

(i) If the complainant is not satisfied with the dispute resolution, the utility company report must be in writing and conform to § 56.152 (relating to contents of the public utility company report). Further, in these instances the written report shall be sent to the complaining party if requested or if the public utility deems it necessary.

1. PECO’s Failure to Investigate High Usage Complaint

Ms. Trivelpiece began calling PECO in December 2013 as to why her bill was so high, this included questions about her usage and the billing charges. Ms. Trivelpiece’s electric bill was consistently high from December 2013 ($318.03) to June 2014 ($216.87). (See Table 1 above.) Her electric bill was inordinately high for a small, two-bedroom, mobile home with one adult and two minors. Although Ms. Trivelpiece repeatedly called about her high bill, PECO took no action to investigate her concerns. PECO did not perform a meter test or conduct a consumption investigation. Ms. Trivelpiece’s electric bill came down significantly when an unidentified person[[10]](#footnote-10) performed an energy efficiency check and made adjustments to her fixtures during the summer of 2014. (Tr. 29.) Ms. Trivelpiece did not do anything differently in her home (Tr. 32.), but after the adjustments were made her electric bill dropped from $122.50 for August/September 2014 to $69. 39 for September/October 2014. (See Table 1 above.) The drop in her electric usage is also evident when comparing the previous month and year to the succeeding month and year as demonstrated by the following: December 2013 ‒ 961 kWh compared to December 2014 ‒ 848 kWh; January 2014 ‒ 1774 kWh compared to January 2015 ‒ 730 kWh; February 2014 ‒ 971 kWh compared to February 2015 ‒ 873 kWh; March 2014 ‒ 1069 kWh compared to March 2015 ‒ 805 kWh; and April 2014 ‒ 1064kWh compared to April 2015 ‒ 628 kWh. (See Table 1.)

Had PECO investigated Ms. Trivelpiece’s concern about her usage in December 2013, she may have been able to reduce her usage earlier than September 2014. However, PECO failed to conduct an investigation. Accordingly a conclusion is required that PECO failed to comply with the regulation. 52 Pa.Code § 56.151.

2. PECO’s Failure to Explain Reinstate Charges

Shortly after Ms. Trivelpiece’s service was started at Aspen Avenue in late 2013, she began to receive a billing summary with her monthly bill that included “reinstate bad debt service” charges. (Tr. 33-34; Complainant’s Exhibit C.) Ms. Trivelpiece repeatedly contacted PECO for an explanation for these charges; but PECO did not provide an explanation for the charges until after she filed her Complaint in January 2015. (Tr. 34, 107-108.) The billing summary listed charges labeled “Reinstate bad debt – GAS SERVICE,” “Reinstate bad debt – Service” and Reinstate bad debt –Misc. business” See Table 3 above. The billing summary also included payments made for the previous billing period and current charges for gas and electric. (Complainant’s Exhibit C.) Her contacts began in December 2013; but according to Ms. Trivelpiece no one at PECO would explain the charges to her. (Tr. 34, 42.)

Ms. Tarpley testified, “Usually if a customer defaults on a payment agreement or they have a former balance that’s now becoming due or being questioned, on the monthly bill the line item is identified as reinstate bad debt/service. That’s letting you know it’s an unpaid charge.” (Tr. 106.) Ms. Tarpley further testified that sometime after the January 14, 2015 Complaint filing, she contacted Ms. Trivelpiece and explained the reinstate charges. (Tr. 107-108.) She also confirmed her explanation in a February 12, 2015 letter to Ms. Trivelpiece. (Tr. 108.)

Section 56.15 of the Commission’s regulations requires a public utility to clearly state the billing information. I find that PECO’s billing summary fails to comply with Section 56.15 in that the reinstate bad debt service charges does not explain the bad debt referenced in the bill was for previous service at previous addresses. PECO did not clarify bad debt service charge to Ms. Trivelpiece until after she filed her formal complaint. PECO’s long delay in responding to Ms. Trivelpiece’s inquiry about her billing charges constituted unreasonable service in violation of Section 1501 of the Code.

Section 1405 - Payment Arrangements

Ms. Trivelpiece sustained a work-related injury in 2006. (Tr. 25.) She had no income in 2010 (Tr. 95.), resulting in service termination on July 30, 2010 and an outstanding balance of $11,476.54. (Tr. 75.) She also reinjured herself in 2011. (Tr. 26.) After service was started again in November 2013, three medical certifications apparently prevented service termination. (Tr. 20; PECO Exhibit 15.) The sole source of Ms. Trivelpiece’s income is a bi-weekly workers’ compensation benefit in in the amount of $573.16. (Tr. 26, 95.) This benefit computes to a monthly income in the amount of $1,146.32. She has a three-member household. Based on her monthly income and household size, Ms. Trivelpiece is at Level 1 of the Federal Poverty Guidelines. Ms. Trivelpiece seeks a reasonable payment arrangement.

Through the enactment of the Responsible Utility Customer Protection Act,[[11]](#footnote-11) the General Assembly has declared as policy “that service remains available to all customers on reasonable terms and conditions.” 66 Pa.C.S. § 1402(3). Additionally, the Commission has interpreted the Act as authorizing it to grant an applicant or customer at least one payment arrangement. *George Crawford v. National Fuel Gas Distribution Corporation,* C-20066348 (Opinion and Order entered August 30, 2007). There is no evidence in the record that Ms. Trivelpiece has ever been granted a payment arrangement by the Commission.

Importantly, Ms. Trivelpiece has demonstrated her good faith in paying her utility bill since September 2014. See Table 1 above. This occurred after PECO enrolled her in CAP on July 17, 2014. Ms. Trivelpiece’s enrollment in CAP has the benefit of reducing her utility service charges. However her enrollment in PECO’s CAP restricts the Commission from granting her a payment arrangement

Section 1405 of the Code, 66 Pa.C.S. § 1405, concerning payment arrangements provides, in relevant part, as follows:

(a) **General rule.** — . . . The commission is authorized to establish payment arrangements between a public utility, customers and

applicants with the time limits established by this chapter.

(b) **Length of payment arrangements. —** The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

\* \* \*

(1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.[[12]](#footnote-12)

\* \* \*

(c) **Customer assistance programs**. — Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.

When Ms. Trivelpiece enrolled in CAP on July 17, 2014, all of her arrearages and current charges came under CAP. In accordance with Section 1405(c), the Commission may not subject a payment arrangement to CAP rates. Therefore, Ms. Trivelpiece’s request for a Commission ordered payment arrangement must be denied.

However, Ms. Trivelpiece’s enrollment in CAP does not mean that PECO may circumvent the Commission’s regulations by including in the CAP charges that are more than four years old. As discussed above the Commission is authorized to remove from consideration charges accruing more than four years ago.

Civil Penalties

Ms. Trivelpiece carried her burden of proof in establishing that PECO violated the Public Utility Code and the Commission’s regulations. The Company did not present any evidence rebutting her prima facie case. Therefore, penalties must be addressed. Pursuant to Section 3301 of the Code, 66 Pa.C.S. § 3301, the Commission may impose a maximum civil penalty of $1,000 per day for each violation of the Code, its regulations or its orders. However, certain standards apply when imposing a civil penalty. *Joseph A.* *Rosi v. Bell Atlantic-Pa., Inc.*, 94 PUC 103 (February 10, 2000).

The *Rosi* factors are generic in nature and apply to all violations of the Public Utility Code, as well as Commission regulations and orders, regardless of utility type. *Pa. Pub. Util. Comm’n v. NCIC Operator Services*, Docket No. M‑00001440 (Order entered December 21, 2000). The factors and standards first articulated by the Commission in *Rosi* were published as Policy Statements and Guidelines. *See* 52 Pa.Code § 69.1201. Section 69.1201 applies to both litigated and settled cases involving the calculation of civil penalties. Section 69.201 in part, provides as follows:

(a)  The Commission will consider specific factors and standards in evaluating litigated and settled cases involving violations of 66 Pa.C.S. (relating to Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest.

(b)  Many of the same factors and standards may be considered in the evaluation of both litigated and settled cases. When applied in settled cases, these factors and standards will not be applied in as strict a fashion as in a litigated proceeding. ….

(c)  The factors and standards that will be considered by the Commission include the following:

(1)  Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2)  Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3)  Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4)  Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5)  The number of customers affected and the duration of the violation.

(6)  The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7)  Whether the regulated entity cooperated with the Commission’s investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8)  The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

    (9)  Past Commission decisions in similar situations.

    (10)  Other relevant factors.

52 Pa.Code § 69.1201.

In the instant case, the evidence demonstrates Respondent failed to provide reasonable service to Complainant as required by Section 1501 of the Code in the following aspects:

1) PECO failed to process Complainant’s 2013 application for service in a timely manner.

2) PECO failed to initiate Complainant’s service at Aspen Avenue in a timely manner.

3) PECO improperly included in Complainant’s PAR charges that had accrued more than four years ago as a condition of providing service to her.

4) PECO improperly included in Complainant’s PAR late payment charges based upon charges that that had accrued more than four years ago.

5) PECO failed to conduct a full investigation of Complainant’s high usage dispute.

6) PECO failed to provide a timely explanation of Complainant’s billing charges, i.e., reinstate bad debt service charges.

In failing to provide Ms. Trivelpiece reasonable service, PECO also violated the the Commissions’ regulations concerning payment arrangements for an outstanding balance[[13]](#footnote-13) and procedures for addressing customer disputes.[[14]](#footnote-14)

In light of PECO’s violations, the following determinations are warranted under the *Rosi* factors and standards:

(1) PECO’s failure to provide Ms. Trivelpiece reasonable service in six different aspects, as enumerated above, is of a serious nature and warrants a higher penalty of $500.00 for each separate violation for a cumulative penalty of $3,000.00.[[15]](#footnote-15)

(2) PECO’s delay in processing Ms. Trivelpiece’s 2013 application for service resulted in Ms. Trivelpiece being without service for a month. The consequences of this delay are of a serious nature and warrant a penalty of $1,000.00.

(3) This was a litigated case. PECO’s inclusion of charges in the PAR that were more than four years old is deemed intentional in light of the fact that PECO would not have initiated service unless Ms. Trivelpiece agreed to the PAR. Accordingly, a higher penalty of $1,000.00 is warranted.

(4) There is no evidence that PECO has made efforts to modify internal practice and procedures to address the conduct at issue and prevent similar conduct in the future. Therefore, the civil penalties mentioned above are warranted.

(5) There is no evidence that other customers were affected by PECO’s violation of the Code and the Commission’s regulations. As to the duration of the violations, the evidence establishes that PECO’s delay in processing Ms. Trivelpiece’s application for service and delay in initiating service extended over a month. Additionally, PECO failed to investigate Ms. Trivelpiece’s high usage claim, and PECO failed to explain certain charges on her bill for a number of months. Therefore, a civil penalty for the duration of the violation is warranted in the amount of $1,000.00.

(6) In this case the evidence is silent on PECO’s compliance history.

(7) There is insufficient evidence to rule on PECO’s level of cooperation with the Commission’s investigation or to find that PECO acted in bad faith.

(8) The civil penalties mentioned above are necessary to deter future violations by PECO.

(9) In their respective brief and memorandum of law, the parties did not cite any prior Commission decisions concerning the issues raised in this proceeding. Accordingly a penalty for this factor is not warranted.

(10) Considering the entire record, the above penalties totaling $6,000.00 are warranted.

CONCLUSIONS OF LAW

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

2. Complainant carries the burden of proving Respondent has in some manner violated the provisions of the Public Utility Code (Code) or the regulations of the Commission in the course of providing her service. Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a).

3. Complainant carried the burden of proving Respondent violated the Code and Commission regulations and failed to provide Complainant with reasonable customer service relating to the processing of her application for service, conditioning the furnishing of service base upon charges that accrued were more than four years ago, and addressing her billing dispute and high bill complaint. 66 Pa.C.S. § 1501.

4. A public utility shall make a full and prompt investigation of disputes by its customers and within 30 days of the initiation of the dispute issue its report to the complaining party. 52 Pa.Code § 56.151.

5. A utility may not condition the furnishing of service to an applicant upon the payment of an outstanding balance that accrued more than four year ago. *Michelle A. Mangel v. Duquesne Light* *Company,* C-00970563 (Opinion and Order entered September 18, 1998); *aff’d. Duquesne Light Company v. Pa. Pub. Util. Comm’n*, 2844 C.D. 1998, Filed July 14, 1999.

6. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401, *et seq.*, applies to this proceeding.

7. Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the Commission.

8. The Commission is the final arbiter of a consumer’s rights with respect to payment disputes. *George Crawford v. National Fuel Gas Distribution Corporation*, Docket Number C-20066348 (Opinion and Order entered December 6, 2007).

9. The Commission is authorized to consider and impose civil monetary penalties against a public utility company. 52 Pa.Code § 1201, *et seq*.

10. The violations of the Public Utility Code and the Commission’s regulations that are of a serious nature warrant a higher penalty. 52 Pa.Code § 69.1201(c)(1).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Beth Trivelpiece against PECO Energy Company at Docket No. C-2015-2462644 is hereby sustained in that there are incorrect charges on her bill consistent with this Initial Decision.

2. That the Complaint of Beth Trivelpiece against PECO Energy Company at Docket No. C-2015-2462644 is hereby sustained in that there are quality problems with her service.

3. That Respondent PECO Energy Company shall compute Complainant’s outstanding balance based upon unpaid charges which accrued on or after November 20, 2013.

4. That within thirty days of the Commission’s Final Order in this matter, Respondent shall file with the Commission’s Secretary’s Bureau at Docket No. C-2015-2462644 and serve Complainant an account statement of the unpaid charges that accrued on or after November 20, 2013. That the account statement shall not include late payment charges.

5. That Respondent PECO Energy Company is hereby assessed a penalty of Six Thousand Dollars ($6,000.00) because Respondent failed to provide Complainant reasonable service in processing her application for service, in delaying the start of her service, failing to timely address her billing dispute and high bill complaint, and in improperly including four year old charges in her payment arrangement thereby violating the Commission’s regulations.

6. That Respondent PECO Energy Company, within thirty days of the entry of the Commission’s Final Order in this case, shall pay a civil penalty in the amount of Six Thousand Dollars ($6,000.00) by sending a certified check or money order payable to the Commonwealth of Pennsylvania addressed to:

Secretary

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA 17105-3265

7. That PECO Energy Company shall cease and desist from further violations of the Public Utility Code, 66 Pa.C.S.A. § 101, *et seq*. and the Commission’s regulations.

8. That the Secretary’s Bureau shall mark Docket No. C-2015-2462644 closed.

Date: October 2, 2015 /s/ Conrad A. Johnson

Administrative Law Judge

1. Ms. Trivelpiece filed her Complaint subsequent to the November 21, 2014 decision of the Commission’s Bureau of Consumer Services (BCS) closing her informal complaint at BCS No. 003285243. BCS determined the following: Ms. Trivelpiece was liable for a balance from a prior address; her current balance of $16,558.26 included CAP arrears; she had used three medical certifications; and she was not eligible for a payment arrangement. [↑](#footnote-ref-1)
2. Section 56.35 provides that a public utility may require an applicant to pay an outstanding residential balance which accrued within the past 4 years, as a condition for furnishing residential service to the applicant. [↑](#footnote-ref-2)
3. **§ 3314 Limitation of actions and cumulation of remedies.**

   **(a)  General rule.--**No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part.

   66 Pa.C.S. § 3314(a). [↑](#footnote-ref-3)
4. 66 Pa.C.S. § 1404(c). [↑](#footnote-ref-4)
5. 52 Pa.Code. § 56.35.

   [↑](#footnote-ref-5)
6. 66 Pa.C.S. § 332(a). [↑](#footnote-ref-6)
7. In *Prosser* the presiding officer dismissed the complaint on preliminary objections for lack of jurisdiction over complainant’s negligence claim. The Commission reversed and remanded for consideration of the reasonableness of service issue. [↑](#footnote-ref-7)
8. 52 Pa.Code §§ 56.36(1) and 56.37. [↑](#footnote-ref-8)
9. The outstanding balance that was transferred to Aspen Avenue was $11,476.54 plus $1,477.60 in late charges. (See Table 2 above.) The approximate $8,929.69 balance includes the prior charges at 2nd Avenue in the amount of $4,563.68. The difference between $11,476.54 and $4,563.68 is $6,912.86, which is the amount that accrued between 12/03/08 and 7/30/10, a 19 month period. Thus there are approximately 12 months (12/03/08 – 11/19/09) during which the $6,912.86 balance accrued that are more than four before November 20, 2009. Dividing $6,912.86 by 19 months equates to an approximate monthly accrual rate of $363.83. Multiplying $363.83 by 12 months equates to $4,336.01. Adding $4,336.01 to $4,563.68 equates to $8,929.69. [↑](#footnote-ref-9)
10. PECO’s witness testified that in all likelihood the person who conducted the consumption was from LIHEAP. (Tr. 105.) [↑](#footnote-ref-10)
11. 66 Pa.C.S. §§ 1401 et seq., as amended and effective December 22, 2014. [↑](#footnote-ref-11)
12. In January or February of each year the federal government releases an official income level for poverty called the Federal Poverty Income Guidelines, often informally referred to as the "Federal Poverty Level." The benefit levels of many low-income assistance programs are based on these poverty guidelines. For the year 2015, the federal poverty level for a family of three is at $20,090 gross annual income. [↑](#footnote-ref-12)
13. 52 Pa.Code § 56.35 [↑](#footnote-ref-13)
14. Id. § 56.151 [↑](#footnote-ref-14)
15. If the violation is intentional, the Commission should start with the presumption that the penalty will be in the range of $500.00 to $1,000.00 per day. If the violation is negligent, the Commission should start with

    the presumption that the penalty will be in the range of zero dollars to $500.00 per day. … [T]he Commission retains broad discretion in determining a total civil penalty amount that is reasonable on an individual case basis.

    See *Rosi,* cited above. [↑](#footnote-ref-15)