PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265

Beth Trivelpiece

v.

PECO Energy Company

PUBLIC MEETING: September 1, 2016
2462644-OSA

Docket No. C-2015-2462644

MOTION OF COMMISSIONER SWEET

Before the Commission is the disposition of the Exceptions of PECO Energy Company and the Reply Exceptions of the Complainant in the above-captioned case to an Initial Decision which assesses a $6,000 civil penalty on PECO Energy Company (PECO).

This case is not about adjudicating the customer's bill, and it is not really about the $6,000 civil penalty because the penalty will not help the customer to pay her bill. Rather, the issue is whether PECO's behavior violates the standards of behavior which would justify the imposition of a civil penalty, and in my opinion, it does not.

In this case, Complainant sought a reasonable payment agreement in order to address her arrearage of $15,988.35. She indicated that she was ill and needed her electric service for medical equipment, and that she was on disability and could not pay the $8,000 necessary to institute service at her address. She also indicated that she did not understand her bill and that PECO had transferred her to multiple persons who were all unable to explain it to her.

At the evidentiary hearing, Complainant testified that she is a home health aide who was injured in 2006 and had surgery on her neck. After returning to work for about two years, she was injured again and has been collecting Workers' Compensation since October 2011. Her two teenaged sons, aged 14 and 15 at the time of the hearing, live with her. Her monthly income is below the Federal Poverty Guidelines for a family of three.

From 2003 to the present, Complainant lived at five different residences where the PECO bill was placed in her name. Complainant accepted service from PECO from June 20, 2003 to June 16, 2004, at 373 Church Street, Phoenixville, and left a balance of $1,435.69, which was then transferred to a second account at 229 Church Street on June 15, 2006. The second account was terminated on August 2, 2007, leaving a balance of $3,086.38.

On September 16, 2008, Complainant opened a third account at 221 High Street, Phoenixville, and the balance from the first and second accounts was applied to this third account on September 8, 2008. The account was taken out of Complainant's name on December 12, 2008, and at that time, the arrearage had grown to $4,563.68.

On December 3, 2008, Complainant opened an account at a fourth address, 367 2nd Avenue, Phoenixville, and the arrearage from the prior three accounts was applied to the fourth account on January 27, 2009. This account was terminated on July 30, 2010, with an arrearage that had grown to $12,959.24.

On October 10, 2013, Complainant opened a fifth account at 852 Aspen Avenue, Spring City, and on November 15, 2013, the arrearage from the prior four accounts was applied to her fifth account.

On January 14, 2015, Complainant filed a formal Complaint in which she alleged: (1) she would like a reasonable payment arrangement; (2) she would like to understand why the late fees are larger than the bill; (3) PECO will not make a reasonable payment arrangement and cannot explain how the bill is so high; (4) she is ill and needs electric service for her medical equipment. She asks that PECO show her actual bills because her usage is much lower than the bills, and she seeks a reasonable payment arrangement.

Complainant was represented by counsel, and an evidentiary hearing was held on June 2, 2015. Legal briefs were filed on July 17, 2015, and the ALJ's Initial Decision issued on October 29, 2015. The Initial Decision sustains the Complaint with 69 Findings of Fact and the assessment of a civil penalty in the amount of $6,000. Exceptions were filed by PECO on November 18, 2015, and Complainant filed her Reply Exceptions on November 30, 2015.

From the record, it is clear that PECO had extended multiple payment arrangements to Complainant, that Complainant had been awarded LIHEAP funding, and that PECO had placed her on its CAP program when she lived at the second of the five addresses, but that the fourth address was not a CAP account. Tr. 79. When Complainant moved to her fifth address, PECO issued a letter which denied service until Complainant satisfied her outstanding balance from the prior addresses, listed in excess of $12,000, and also asked for additional documents necessary to certify her for CAP. Tr. 82-85. An informal BCS case filed November 19, 2013, was closed with no decision on January 8, 2014, noting that service had been restored to the Complainant as of November 19, 2013. Tr. 99. Another BCS case was opened September 14, 2014, which disputes the balance from the Second Avenue address, which Complainant claimed should have been waived when she entered CAP. BCS closed the case with an informal decision that Complainant was responsible for the entire balance. Tr. 102. Complainant had already used her three medical certificates. Tr. 102. PECO sent a CAP application on April 11, 2014 pursuant to a request from Complainant. Tr. 80, 109.

From the record, it is clear that the Complainant is a low-income customer who struggles to pay her bills under ideal circumstances and that her circumstances have been less than ideal. PECO has numerous programs designed to assist customers like Complainant, and it appears that they acted responsibly towards this customer.

I agree with the majority of the recommended disposition of the exceptions and reply exceptions in this matter but I do not believe that the reversal goes far enough. The additional issues which should be reversed are discussed below.

The issue of whether PECO processed the application for service in a timely fashion was not properly before the ALJ.

In the ID, the ALJ finds that the time period from the initial request for service and the day that service commenced, 19 days, was too long to be characterized as reasonable service under Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501. Note first that this issue was not raised in the Complaint, and therefore PECO was not on notice that it would be evaluated as part of this proceeding. If the ALJ wished to permit its evaluation as an amendment to the pleadings under 52 Pa.Code § 5.92(a), he would have been required to permit PECO a reasonable opportunity to respond to the allegations. PECO was not afforded this opportunity, even though PECO properly requested it. Accordingly, where the due process rights of a party have not been provided, the Complaint has not been properly amended to include this issue. Therefore, it cannot be used as a basis for either a finding that PECO's service was unreasonable within the meaning of the Public Utility Code or to support a civil penalty. Consequently, PECO's Exception regarding this matter should be sustained not because the evidence fails to support the allegations but because the issue was not properly before the ALJ for disposition.

Explanation of Charges on Bill

The Initial Decision finds that PECO failed to adequately explain the charges on Complainant's bill, which turns out to be the statement "reinstate bad debt." I am hard-pressed to find that a customer who has moved five times and has had an arrearage transferred from the prior address to the new address five times, would not question the charge earlier in the process. The arrearage from the first address was applied to the bill for the second address on June 15, 2006. The arrearage from the second address was applied to the bill for the third address on September 2008. The arrearage from the third address was applied to the bill for the fourth address on January 27, 2009. The arrearage from the fourth address was applied to the bill for the present address on November 15, 2013. During that time, the arrearage grew to the present level of $16,687.28.

I note here that Chapter 14 of the Public Utility Code now contains a provision that creates an affirmative responsibility for public utilities to attempt to collect its outstanding consumer debt. A public utility also has a duty to report to the Commission annually those residential customers who have accumulated a debt in excess of $10,000 and to report the efforts being taken to collect those debts. Failure to make reasonable attempts may result in civil penalties. 66 Pa.C.S. § 1410.1(3). Therefore, the utility is in a situation where it must walk a fine line between attempting to collect excessively high accounts and becoming too zealous in its attempts and running afoul of Commission statutes and regulations, either of which can result in a civil penalty. The record here does not show that the utility has strayed from that fine line.

At some point during the nine years from the transfer of the first amount to the time of the filing of the formal complaint, Complainant either did or should have discovered what the "reinstate bad debt" line item was on her monthly bill. Even if she did not understand that debt accrued at prior addresses would be added to the account for the subsequent address, Complainant's lack of understanding that amounts unpaid from prior bills will continue to appear on present and future bills until they are paid, cannot be attributed to PECO's failure to explain it.

The PECO witness testified that a call to its collections department due to a termination notice would not get the caller answers regarding CAP and would need to be transferred. In addition, the PECO witness explained that she did not understand Complainant's confusion until the formal Complaint was filed, and at that time, the PECO witness attempted to address Complainant's concerns. In the absence of evidence that Complainant specifically asked for justification of each "reinstate bad debt" line item on her bills at some point prior to her filing of the formal Complaint, there is no evidence to support a finding that PECO failed to provide adequate service in the form of a clear explanation for the phrase. Rather, the record shows that PECO responded to the inquiry as soon as it was instituted on the formal Complaint. Consequently, PECO's exception should be sustained and the Initial Decision reversed on this issue.

Complainant's Outstanding Balance from Prior Addresses and PECO's Service Denial Notice

The Initial Decision addressed the question of whether PECO violated Section 1501 of the Public Utility code and Section 56.35 of the Commission's regulations in requiring the Complainant to enter into a payment agreement to satisfy her outstanding account balance of $12,000+ relating to service from prior addresses as a condition to establishing service at her current Aspect Avenue address. The Initial Decision also addressed whether the October 2013 Service Denial Notice conformed to Section 56.36(b)(1) of the Commission's regulations because it misrepresented the amount of the unpaid balance that the customer was lawfully required to pay as a condition of receiving service.

In fact, the only offense that Complainant provided support for was the claim that the Service Denial Notice contained the requirement that the entire arrearage be paid prior to initiation of service rather than the amount comprised of no more than the prior four years' unpaid usage as provided under 52 Pa.Code § 56.35(a). The difference is that PECO required the payment of the entire arrearage of $12,959.24, instead of the total arrearage minus the amount which was applied to the December 12, 2008, bill, $4,563.68 for the roughly correct amount of $8,395.64.

I acknowledge that this $4,500+ difference is a considerable amount of money, particularly for a low-income customer. However, upon review of the facts and applicable law, PECO's violation of 52 Pa.Code § 56.35(a) and 56.36(b)(1) does not reach the level of an offense which is subject to the imposition of a civil penalty after the application of the Commission's standards at 52 Pa.Code § 69.1201 or under Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501. Accordingly, I move that:

1. The PECO exceptions are granted consistent with this Motion.
2. That OSA prepare an Opinion and Order consistent with this Motion.

DATE: September 1, 2016

David W. Sweet, Commissioner