

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tyease Turner	:	
	:	F-2016-2573086
v.	:	
	:	F-2016-2573091
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

The customer filed a Complaint alleging that PECO Energy Company convinced her to withdraw an informal complaint with the Commission’s Bureau of Consumer Services (BCS) by removing \$1,000 from her outstanding balance, only to add that amount back to her outstanding balance at a later date. This Initial Decision denies the Complaint because the customer failed to sustain her burden of demonstrating that PECO violated a Commission statute, regulation or order or provided her with inadequate service when it added this amount back to her outstanding balance.

HISTORY OF THE PROCEEDING

On October 24, 2016, Tyease Turner (Complainant) filed a formal Complaint (Complaint against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the box marked “[o]ther.” The Complainant provided a written statement in which she alleged that PECO promised to remove \$1,000 from her outstanding balance to induce her to withdraw a prior complaint she had against the company regarding PECO’s refusal to allow her to participate in PECO’s Customer

Assistance Program (CAP). The Complainant further alleged that, following her withdrawal of her complaint, PECO added the \$1,000 back to her balance several months later. The Complainant asserted that this was a misrepresentation of services. As relief, the Complainant indicated that she wants this \$1,000 balance removed from her bill. The Secretary's Bureau docketed this Complaint at F-2016-2573086.¹

On November 16, 2016, Respondent filed an Answer denying all material allegations of fact in the Complaint. PECO further responded: that the Complainant established electric service at 543 Green Street, Norristown, PA (service address); that the Complainant was initially enrolled in PECO's CAP program on October 9, 2015 under Tier E1; that at the time of her enrollment, she had a \$1,064.09 balance which PECO isolated on the account for forgiveness under the company's Pre-Program Forgiveness program; that under this program, the Complainant was entitled to forgiveness of 1/12th of this set-aside balance per month if she paid her current bill in full and on time; that the Complainant did not pay her bills in full and on time; that PECO discontinued service in the Complainant's name at the service address on June 17, 2016 after another ratepayer established service there; that PECO had not received any payments from the Complainant since July 2015; and that once the service was discontinued, the pre-program arrears balance of \$1,064.09 defaulted back to the Complainant's account and became due in the final bill.

By Hearing Notice dated December 12, 2016, a hearing was scheduled for January 20, 2017 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on December 14, 2016. The Prehearing Order directed the parties to comply with various procedural requirements and explained that the Complainant bears the burden of proof to establish that the Respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

¹ The Secretary's Bureau also docketed this Complaint at F-2016-2573091 the same day it was docketed at F-2016-2573086. Since the Complaints at these dockets are identical, they will be consolidated pursuant to 52 Pa.Code § 5.81.

The hearing convened as scheduled on January 20, 2017. Complainant appeared *pro se* and testified. Respondent appeared and was represented by Shawane L. Lee, Esq., who presented the testimony of Renee Tarpley, a Senior Regulatory Assessor. Respondent offered seventeen exhibits (PECO Exhs. 1 through 17) which were all admitted into evidence.

The record in this case consists of an 82-page transcript and seventeen exhibits. The record closed on February 21, 2017, when I received the transcript of the January 20, 2017, hearing.

FINDINGS OF FACT

1. The Complainant in this case is Tyease Turner.
2. The Respondent in this proceeding is PECO Energy Company.
3. The Complainant currently resides at 20 E. Jackson Street, York, PA 17401.
Tr. 9.
4. The Complainant's Complaint concerns service provided at 543 Green Street, Norristown, PA 19401 (service address). Tr. 9.
5. The Complainant had gas and electric service from PECO at the service address. Tr. 38-39.
6. When a customer is enrolled in PECO's CAP program, PECO sets aside the balance that they are carrying at the time of enrollment for partial forgiveness over a period of twelve months, provided the customer makes the required monthly payments to PECO. Tr. 40, 43; PECO Exh. 5.
7. If a CAP customer fails to make the required monthly payment, there is no partial forgiveness of their debt for that month. Tr. 40.

8. In approximately April 2015, the complainant began contacting PECO regarding applying for the CAP program. Tr. 48.
9. In April 2015, PECO sent a CAP application to the Complainant. Tr. 48; PECO Exh. 3.
10. Complainant submitted two CAP applications to PECO. PECO Exhs. 6 & 7.
11. PECO could not process the Complainant's CAP applications because they did not receive complete income information with either CAP application. Tr. 52-53.
12. On October 2, 2015, the Complainant filed an informal complaint with the Commission's BCS because she could not afford to pay her bill and also because she had not been able to enroll in PECO's CAP program. Tr. 53, 61; PECO Exh2. 3 & 13.
13. On October 9, 2015, PECO received, by mail, the Complainant's completed CAP application as well as verification of her household income. Tr. 45, 54; PECO Exhs. 1 & 3.
14. On October 9, 2015, PECO enrolled the Complainant into the CAP program, Tier E-1, and set aside \$1,064.09 for Pre-Program Arrears (PPA) forgiveness to be forgiven in 1/12th increments, provided the Complainant paid her bills on time and in full over the subsequent twelve month period. Tr. 13-14, 39-40, 67; PECO Exhs. 1 & 2.
15. On October 9, 2015, a PECO representative spoke with the Complainant and advised her that she was enrolled in PECO's CAP program and also explained the CAP discount and the PPA. Tr. 55; PECO Exh. 3.
16. By email to the Complainant dated October 9, 2015, PECO verified the Complainant's admission to PECO's CAP program and that \$1,064.09 had been placed in PPA. Tr. 44-46; PECO Exh. 17.

17. By return email dated October 9, 2015, the Complainant confirmed receipt of this email regarding her admission into PECO's CAP program, and that her informal complaint was resolved. Tr. 45-46; PECO Exh. 17.

18. The Complainant did not make any payments to PECO after she was admitted into the CAP program. Tr. 16, 37; PECO Exh. 1.

19. The only payments PECO received towards the Complainant's account were a \$170 LIHEAP payment on February 25, 2016 and a \$65 LIHEAP payment on July 7, 2016. Tr. 40-41; PECO Exh. 1.

20. PECO did not forgive any of the Complainant's \$1,064.09 PPA since she did not make any payments towards her bills. Tr. 42-43; PECO Exh. 1.

21. The Complainant moved out of the service address on May 18, 2016. Tr. 19, 20.

22. The Complainant requested discontinuance of service to the service address on May 24, 2016. Tr. 19-20.

23. Following discontinuance of service, PECO issued the Complainant a final bill that included the \$1,064.09 PPA since none of that previously set-aside balance was forgiven. Tr. 14, 18, 37.

24. On an unspecified date, the Complainant contacted PECO to dispute her final bill, at which time she was again informed about the terms of the CAP program and PPA forgiveness. Tr. 20-21.

25. The Complainant's final bill totals \$1,983.80. Tr. 65.

DISCUSSION

The Public Utility Code, 66 Pa.C.S.A. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

To establish a sufficient case and satisfy the burden of proof, Complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa.P.U.C. 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Upon the presentation by a Complainant of a *prima facie* case, i.e., evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the customer shifts to the respondent. If the evidence presented by the respondent is of co-equal value or "weight," the burden of proof has not been satisfied. The Complainant now has to provide some additional evidence to rebut that 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 going forward with the evidence 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).

In the present case, the Complainant alleged in her Complaint and during the hearing that PECO persuaded her to withdraw an informal complaint she filed with the Commission's BCS by offering to remove \$1,000 from her outstanding bill. The Complainant further alleged that after she withdrew her informal complaint, PECO added the \$1,000 back to her outstanding balance. Complainant wants this portion of her balance removed from her final bill. Complainant has alleged that PECO misrepresented its services.

PECO is required by law to provide its customers with adequate, safe and reasonable service with respect to its service. As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa.C.S.A. § 1501 requires public utilities to provide reasonable and adequate, not perfect service. The statute at 66 Pa.C.S.A. § 1501, provides, in relevant part:

§1501. Character of service and facilities

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

Interpreting this provision in *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa.Cmwlth. 1984), the Commonwealth Court stated:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility. (Footnote omitted).

478 A.2d at 949.

The statutory definition of “service” is to be broadly construed.² *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995). In applying the facts to the law, the issue becomes whether PECO’s actions as described in the Complaint rise to the level of inadequate service that constitutes a violation of the Public Utility Code.

In response to the Complainant’s claims, PECO witness Renee Tarpley, a Senior Regulatory Assessor, admitted that PECO removed \$1,064.09 from the Complainant’s balance which was ultimately added back to her balance. However, Ms. Tarpley demonstrated that PECO removed this \$1,064.09 from the Complainant’s balance as part of her admission into PECO’s CAP program. This amount represented the Complainant’s PPA amount that was set aside for possible forgiveness. Ms. Tarpley explained that as long as the Complainant paid her monthly bills in full, 1/12th of this balance would be forgiven each month until the balance was exhausted. Ms. Tarpley explained that since the Complainant did not make any payments after her admission to the CAP program, PECO did not forgive any of the \$1,064.09 balance, and this balance was ultimately added back on to her bill.

Although the Complainant alleged that PECO improperly induced her to withdraw her informal complaint by promising to forgive a large portion of her outstanding debt, the record demonstrates that PECO only set aside \$1,064.09 of her balance for possible forgiveness under the CAP program. The record further demonstrates that PECO communicated the terms of the CAP program to the Complainant as well as what she would have to do to earn forgiveness of that set aside balance. Since the Complainant failed to make any payments following her admission into PECO’s CAP program, she failed to earn forgiveness of any portion of her set aside balance. Under these circumstances, I cannot conclude that PECO’s actions were a violation of a Commission statute, regulation or order, or that PECO provided the Complainant with inadequate service.

² “Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, 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.A. § 102.

Accordingly, the Complainant's Complaint is denied in its entirety.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S.A. § 332(a).

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

4. PECO did not provide the Complainant with inadequate service in violation of 66 Pa.C.S. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaints docketed at F-2016-2573086 & F-2016-2573091 are consolidated pursuant to 52 Pa.Code § 5.81;

2. That the Complaints of Tyease Turner against PECO Energy Company at Docket Nos. F-2016-2573086 & F-2016-2573091 are denied; and

