

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michele Carella	:	
	:	
v.	:	F-2017-2591176
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complaint of Michele Carella against PECO Energy Company because the Complainant failed to meet her burden of demonstrating that PECO provided her with inadequate service.

HISTORY OF THE PROCEEDING

On February 24, 2017, Michele Carella (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” and indicated that her Complaint concerned PECO’s Customer Assistance Program (CAP). Specifically, the Complainant indicated that she did not receive notice that there were going to be changes to PECO’s CAP program. Complainant also raised concerns that PECO provided her with poor customer service when she called to ask about the changes to the CAP program.

On March 7, 2017, Respondent filed an Answer denying all material allegations of fact in the Complaint. PECO further responded that: the Complainant has electric service at 773 South 8th

street, 1st Floor, Philadelphia, PA; the Complainant enrolled in PECO's CAP program on January 22, 2010, while at a previous service address; the Complainant's CAP status transferred to her current address on June 1, 2012; the Complainant's account was converted to the CAP-Fixed Credit Option program on October 12, 2016; PECO sent correspondence to the Complainant notifying her about the CAP-FCO program on June 13, 2016; and that PECO sent an explanatory letter to her on October 17, 2016. PECO maintained that it complied with the CAP-FCO program requirements and notification requirements set forth under 52 Pa.Code § 58.9, et seq.

By Hearing Notice dated March 24, 2017, a hearing was scheduled for May 2, 2017, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on March 28, 2017. The Prehearing Order directed the parties to comply with various procedural requirements. It also explained that the complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on May 2, 2017. Complainant appeared *pro se* and testified. Complainant offered four exhibits (Comp. Exh. 1-4) which were admitted into the record. Respondent appeared and was represented by Shawane L. Lee, Esq., who presented the testimony of Renee Tarpley, a Senior Regulatory Assessor for PECO, and Roberto Alicea, a High Bill Field Investigator. Respondent offered thirteen exhibits (PECO Exhs. 1-13) which were all admitted into evidence without objection.

On May 9, 2017, the Complainant submitted a letter indicating that she now objects to the admission of PECO Exhibit 13, an audio recording of a telephone call between her and PECO employee Charles Tejchman that took place on November 22, 2016. Although the Complainant raised no objection to the admissibility of this exhibit during the hearing when it was played or offered for admission into the record, the Complainant now objects because she never granted Mr. Tejchman permission to record her call.

On May 11, 2017, Ms. Lee submitted PECO's response to the Complainant's objection to PECO Exhibit 13.

On May 14, 2017, the Complainant submitted a letter responding to Ms. Lee's May 11, 2017, response to her objection. As explained below, the Complainant's objection to the admissibility of PECO Exhibit 13 is overruled.

The record in this case consists of a 154-page transcript and seventeen exhibits. The record closed on June 1, 2017, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Michele Carella.
2. The respondent in this proceeding is PECO Energy Company.
3. Complainant resides at 773 South 8th Street, Front A, Philadelphia, PA 19147 (service address). Tr. 12, 97.
4. Complainant has residential electric service from PECO at the service address. Tr. 98.
5. The Complainant has participated in PECO's Customer Assistance Program (CAP) continuously since January 22, 2010. Tr. 25, 99-100; PECO Exh. 2.
6. As a CAP participant under CAP tier level D1, the Complainant previously received a discount on the first 650 kilowatts of electric service she used in a billing period. Tr. 98-100.
7. On June 13, 2016, PECO issued a CAP FCO outreach letter to the Complainant regarding pending changes to PECO's CAP program. Tr. 120; PECO Exhs. 9 & 12.

8. The June 13, 2016, outreach letter was not returned as undeliverable to PECO. Tr. 121.

9. On September 12, 2016, PECO filed with the Commission's Secretary's Bureau its revised Universal Service and Energy Conservation Plan (USECP) for 2016-2018, Supplement No. 20 to Tariff Electric Pa. P.U.C. No. 5, bearing an effective date of October 14, 2016. Tr. 110; PECO Exh. 4.

10. Supplement No. 20 to Tariff Electric Pa. P.U.C. No. 5 at Fifth Revised Page No. 71 regarding CAP rider provides, in pertinent part, that "[b]ased on the applicable level of income, number of household members, and their historical usage CAP customers will receive a Fixed Credit Option ("FCO") based upon that individual household's need." Tr. 109; PECO Exh. 3.

11. PECO's new CAP FCO program replaced PECO's CAP Rate program. Tr. 112; PECO Exh. 4.

12. Pursuant to the changes to PECO's CAP program, PECO determined the Complainant's total annual household income to be \$10,548 (\$879 monthly household income x 12 months = \$10,548). Tr. 105, 114; PECO Exh. 2.

13. PECO determined that Complainant's household income placed her at 89% of the Federal Poverty Level (FPL). Tr. 105; PECO Exh. 2.

14. PECO then determined, based upon the Complainant's 89% FPL compared to an energy burden percentage table derived from ranges found at 52 Pa.Code § 69.265(2)(i)(A), that the Complainant's energy burden percentage is 6%. Tr. 105, 114; PECO Exh. 2.

15. PECO then utilized the Complainant's \$10,548 total annual household income and her 6% energy burden to determine that her yearly energy burden totals \$632.88. Tr. 106; PECO Exh. 2.

16. PECO then subtracted the Complainant's \$632.88 yearly energy burden from her prior 12-month undiscounted electric usage of \$678.51 and determined she was eligible for an annual credit of \$45.63 ($\$678.51 - \$632.88 = \45.63). Tr. 106, 115, 118; Comp. Exh. 2.¹

17. PECO will then distribute the Complainant's \$45.63 credit over the next 12 months of her monthly bills. Tr. 115; PECO Exh. 5.

18. Since usage may change, PECO periodically recalculates and adjusts the annual credit. Tr. 115; PECO Exh. 5.

19. On November 3, 2016, PECO issued the Complainant a letter regarding changes to PECO's CAP program, explaining that she would now receive a credit distributed over her bills for the following 12-month period. Tr. 13, 27, 29, 90; Comp. Exh. 2, PECO Exh. 7.

20. The November 3, 2016 letter further informed the Complainant that her monthly credits would be recalculated in three months. Tr. 118; Comp. Exh. 2.

21. These changes resulted in the Complainant's bill increasing by approximately \$25 per month. Tr. 26.

22. On November 7, 2016, the Complainant called PECO and spoke with PECO representative Sierra Brown-Richardson regarding changes to the CAP program. Tr. 37-38; PECO Exh. 9.

23. Complainant was not satisfied with the explanation provided by Ms. Brown-Richardson and asked to speak to a supervisor. Tr. 38; PECO Exh. 9.

24. Complainant subsequently spoke with Patricia Conroy. Tr. 38; PECO Exh. 9.

¹ Although the letter PECO issued to the Complainant indicated that her total annual credit was \$45.73, the actual amount of the credit was \$45.63.

25. Ms. Conroy explained to the Complainant that PECO would review her account and her credit under the CAP program every three months. Tr. 39-40

26. Ms. Conroy also advised the Complainant of agencies she could contact to seek assistance. Tr. 39.

27. On November 11, 2016, the Complainant spoke with a PECO representative Charles Tejchman to inquire into changes she noticed in PECO's CAP credit. Tr. 13, 15, 46-47, 124; PECO Exh. 9.

28. At the outset of the Complainant's telephone call with Mr. Tejchman, Mr. Tejchman informed the Complainant that he would be recording the call. Tr. 51.

29. Complainant agreed to Mr. Tejchman recording their telephone conversation. Tr. 51.

30. Mr. Tejchman explained the changes to the CAP program, how those changes affected her, and provided her with contact information for agencies that provide assistance to people with low incomes. Tr. 51-70.

31. The Complainant became dissatisfied with the explanation provided by Mr. Tejchman and asked to speak with his supervisor. Tr. 66-68.

32. Mr. Tejchman provided his supervisor's first name and transferred the Complainant back to customer service. Tr. 70, 73.

33. It is not PECO practice to provide customers with a supervisor's direct telephone number. Instead, a supervisor will call the customer back within 24-hours to address the customer's concerns. Tr. 126.

34. Complainant subsequently spoke with supervisor Anthony Mosco to complain about the call she had with Mr. Tejchman. Tr. 16, 75-76; PECO Exh. 9.

35. In response to Complainant's concerns, the supervisor advised the Complainant that he would review the taped conversation she had with Mr. Tejchman. Tr. 16.

36. On November 15, 2016, the Complainant spoke with PECO representative, Moneka Smith who provided her with contact information for an energy assistance program. Tr. 17, 19, 78-84; PECO Exh. 9.

37. The Complainant is up to date with her payments to PECO. Tr. 28.

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. *Selling 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).

Complainant's Post-Hearing Objection to PECO Exhibit 13

During the May 2, 2017, hearing, PECO presented PECO Exhibit 13, which was an audio recording of the November 11, 2016, telephone call between the Complainant and PECO representative Charles Tejchman. PECO presented this recording to rebut the Complainant's assertions that Mr. Tejchman was rude, discourteous, and unhelpful when she called to inquire about changes to PECO's CAP program. The Complainant did not object to PECO playing this recording during the hearing. Additionally, when I asked the Complainant if she had any objections to the admissibility of any of PECO's exhibits into the record, which would include PECO Exhibit 13, the recording of the November 11, 2016, telephone call, indicated that she had no objection to any of these exhibits being admitted into the record. Tr. 148.

On May 9, 2017, the Complainant submitted a letter objecting to the admission of PECO Exhibit 13 into the record. The Complainant did not attempt to object to the admissibility of any other PECO exhibit. Complainant maintained that PECO Exhibit 13 should be excluded from the record because Mr. Tejchman did not ask for her consent to record their conversation. On this basis, the Complainant requested that PECO Exhibit 13 be excluded from the record.

In Pennsylvania, “[i]n order to preserve an issue for appellate review, a party must make a timely and specific objection at the appropriate stage of the proceedings before the trial court. Failure to timely object to a basic and fundamental error will result in waiver of that issue.” *Thompson v. Thompson*, 963 A.2d 474, 475-76 (Pa.Super. 2008); see also *Mazlo v. Kaufman*, 793 A.2d 968, 969 (Pa. Super. 2002).

In the present case, the Complainant's objection to the admissibility of PECO Exhibit 13 is untimely. She did not object at the time the recording was played during the hearing, nor did she object when I specifically asked her if she objected to the admissibility of any of PECO's Exhibits, which included a recording of the November 11, 2016 telephone call. The Complainant's failure to object during the hearing constitutes a waiver of that issue. Accordingly, her objection is overruled.

I would note that although the Complainant argued in her letter that Mr. Tejchman failed to obtain her consent to record their conversation, the transcription of the November 11, 2016 telephone call demonstrates otherwise:

Mr. Tejchman: Hi. My name is Chuck. I'm going to tape our conversation. All right?

Ms. Carella: Okay.

Tr. 51. Therefore, even if the Complainant had raised this objection in a timely manner during the hearing, I still would have overruled her objection.

Service Issues

In her Complaint and during the hearing, the Complainant alleged that PECO's representative, Mr. Tejchman, was rude, discourteous and generally unhelpful when she spoke with him on November 11, 2016, regarding recent changes to PECO's CAP program. Complainant also alleged that PECO failed to provide her with advance notice of the changes to PECO's CAP program. Complainant has raised a claim of inadequate service.

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:

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 the present case, the record demonstrates that Mr. Tejchman behaved in a professional and courteous manner during the November 11, 2016 telephone call. Mr. Tejchman tried to answer all of the Complainant's questions and to provide her with contact information for agencies that might be able to help her adjust to her increased bills resulting from the changes to PECO's CAP program. The recording demonstrates that the Complainant became argumentative with Mr. Tejchman after he informed her that he could not make any changes to PECO's CAP program. Despite the Complainant's increased hostility towards him, Mr. Tejchman responded professionally to her questions. Accordingly, the Complainant failed to demonstrate that Mr. Tejchman's behavior during their telephone call constituted unreasonable 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.

The Complainant further alleged that PECO failed to provide her with advanced notice of the changes to PECO's CAP program. However, PECO's witness demonstrated that PECO sent the Complainant an outreach letter on June 13, 2013 that advised of the changes to PECO's CAP program and how these changes would affect her:

As a PECO CAP customer, you currently receive a discounted rate on your monthly bill. Beginning in October 2016, instead of this discounted rate, you will receive a credit based on your total household income and the energy you use. You will begin to see the credit on your November 2016 bill.

In October, you will receive a letter outlining your total credit for the next 12 months. This credit will be divided and applied to your bill each month. Because the amount of energy you use changes, a larger credit will be applied during months when you normally use more energy.

Sine PECO's witness established that PECO sent this notice to the Complainant, months in advance of these changes taking place to the CAP program, the Complainant failed to meet her burden of demonstrating that PECO failed to provide her with notice of these changes, or that PECO provided her with inadequate service.

Accordingly, since the Complainant failed to meet her burden in this case, her 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 Complaint of Michele Carella against PECO Energy Company at Docket No. F-2017-2591176 is denied; and
2. That the record at Docket No. F-2017-2591176 be marked closed.

Date: August 18, 2017

/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge