

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dolores Kervick	:	
	:	
v.	:	F-2016-2580010
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This decision dismisses Complainant’s claim that PECO shut-off or threatened to shut off her service and denies the request for a payment arrangement.

HISTORY OF THE PROCEEDING

On December 14, 2016, the Complainant, Dolores Kervick, filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO). In the Complaint, Ms. Kervick states that PECO shut-off or threatened to shut-off her service and that she would like to be placed on budget billing and back on her payment arrangement. This is a timely appeal of a decision on an informal complaint filed with the Bureau of Consumer Services (BCS), Case No. 3444859.

On December 21, 2017, PECO filed an Answer denying all material allegations. PECO averred that Complainant has previously defaulted on a Commission-issued payment

arrangement and therefore is not eligible for another payment arrangement under 66 Pa.C.S. §1405(d).

On January 13, 2017, a Hearing Notice was issued setting an Initial Hearing for March 14, 2017, at 9:30 a.m. before Administrative Law Judge (ALJ) Cynthia Fordham. On March 16, 2017, a Hearing Notice was issued rescheduling the hearing for April 18, 2017, at 10:00 a.m. before ALJ Darlene Heep.

Ms. Kervick called the morning of the hearing and asked to appear by telephone. That request was granted.

The hearing convened and Ms. Kervick appeared by telephone, *pro se*. PECO was represented by Shawane Lee, Esq., who appeared in person along with a witness, Anna Mae Migliaccio, PECO Regulatory Assessor. Attorney Lee also introduced eight exhibits.

All of PECO's exhibits were admitted into the record. The record closed on May 22, 2017, upon receipt of the transcript.

FINDINGS OF FACT

1. Complainant is Delores Kervick, a PECO electric residential customer at 63 Taylor Drive in Levittown, Pennsylvania (service address).
2. Respondent is PECO Energy Company, an electric utility under the jurisdiction of the Pennsylvania Public Utility Commission.
3. At the time of the hearing, Complainant had a balance of \$5,356.04, (PECO Exhibit 1; Tr. 27).
4. On February 13, 2014, BCS awarded a payment arrangement (2014 payment arrangement) on a balance of \$3,852.79. (Tr. 30).

5. On at least eight occasions between January 2015 and May of 2016, Complainant defaulted on the payment arrangement and PECO reinstated the payment arrangement based on the BCS-issued arrangement terms. (PECO Exhibit 1).

6. At the time that Complainant received a payment arrangement from the Commission in 2014, her income was about \$2,000 per month. (Tr. 16).

7. Complainant's income is now \$3000 per month. (Tr. 16).

8. Her household, at the time of the hearing and at the time that she was awarded the 2014 payment arrangement, included one adult and two children. (Tr. 16).

9. At the time of the hearing, Complainant had electric service. (PECO Exhibit 1; Tr. 24).

DISCUSSION

Complainant is seeking a payment arrangement. She also stated in her Complaint that PECO threatened to terminate or did terminate her service.

Any offense alleged by the Complainant must be a violation of the Public Utility Code ("Code"), the Commission's regulations, or an outstanding order of the Commission.

66 Pa.C.S. § 701. Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the party seeking relief from the Commission has the "burden of proof." To 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 Company of Pennsylvania*, 72 Pa. PUC 196 (1990).

TERMINATED OR THREATENED TO TERMINATE SERVICE

It became clear during the hearing that Complainant is not contesting the amount that she owes PECO or alleging that PECO violated a commission statute or regulation by terminating her service at some point because of her default. The Complainant did not present any evidence showing that PECO failed to follow proper procedures or that the company did not comply with regulations, its electric tariff or the law. This claim will be dismissed because Complainant failed to sustain her burden of proof.

PAYMENT ARRANGEMENT

The Responsible Utility Customer Protection Act (Chapter 14) authorizes the Commission to establish payment arrangements between a public utility, customers and applicants within the limits established. 66 Pa.C.S. § 1405(a). Chapter 14 also provides strict rules regarding whether a customer who defaults on a payment arrangement is eligible for another payment arrangement.

In 2014, the Commission authorized a payment arrangement. Subsequently, Complainant defaulted on her payment arrangement. (Tr.17)

Title 66 Pa.C.S. § 1405(d) states:

(d) Number of payment arrangements. -- Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement.

Change in income is defined as follows:

A decrease in household income of 20% or more if the customer's household income level exceeds 200% of the federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level.

66 Pa.C.S. § 1403.

Therefore, where a customer defaults on a payment arrangement, under § 1405(d), a customer is eligible for another payment arrangement only when there is a decrease in income. At the time that she was awarded the 2014 payment arrangement, Complainant's income was \$2,000 per month. It is now \$3,000 per month, an increase of 50%. (Tr. 14-16). The number of persons in her household has not changed.

Given that the Complainant defaulted on her prior Commission-issued payment arrangement in January 2015 and has since experienced an increase in her household's income, Complainant is not eligible for another Commission-issued payment arrangement. Accordingly, the Complainant's request for a second Commission-issued payment arrangement will be denied.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Complainant failed to sustain her burden of proof on the service shut-off claim.
66 Pa.C.S. § 332(a).
3. The Commission is authorized to establish payment agreements between a public utility, customers and applicants within the limits established. 66 Pa.C.S. § 1405(a).
4. Complainant is not eligible for a payment arrangement. 66 Pa.C.S. § 1405(a-d); § 1403; *Joy Turner v Philadelphia Gas Works*, C-2013-2388319 (Order Entered June 19, 2014).

