

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Peter Kurhan

v.

PECO Energy Company

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C-2015-2504819

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complainant's formal Complaint because he failed to sustain his burden of proof that he was entitled to a payment arrangement. The Complainant is not entitled to a Commission issued payment arrangement for his outstanding balance under Section 1405(d) of the Public Utility Code.

HISTORY OF THE PROCEEDING

On September 21, 2015, Peter Kurhan (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 contends that the Company was threatening to shut off, or had shut off, his utility service and requests a payment arrangement.

This matter is an appeal of a decision issued on August 12, 2015 from the Bureau of Consumer Services (BCS) at Case Number 3340300 which dismissed the informal complaint of the Complainant.

On October 13, 2015, Respondent filed an Answer denying the material allegations of the Complaint. PECO also alleges that Complainant is not entitled to a payment arrangement under 66 Pa.C.S. § 1405(d) of the Public Utility Code.

By Hearing Notice dated October 16, 2015, an initial hearing was scheduled for December 21, 2015 at 9:30 a.m., as part of a call of the docket, and the matter was assigned to me.

I issued a Prehearing Order on October 19, 2015. The Prehearing Order directed the parties to comply with various procedural requirements and 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 he is entitled to the relief requested in the Complaint.

On December 10, 2015, the Complainant made a continuance request which was opposed by PECO. I granted the request via Order dated December 15, 2015.

On December 15, 2015, a Hearing Cancellation/Reschedule Notice was issued indicating a new initial telephonic hearing scheduled for March 1, 2016 at 10:00 a.m.

The hearing convened as scheduled on March 1, 2016. Complainant participated *pro se*. Respondent appeared and was represented by Margaret Morris¹, Esquire, who indicated that the parties had reached a tentative settlement dependent on the Complainant making an initial payment on his outstanding balance.

Counsel for PECO later notified me that the Complainant had failed to meet the terms of settlement and requested that the matter be rescheduled for hearing. Via Hearing Cancellation/Reschedule Notice dated April 12, 2016, the matter was rescheduled for hearing on June 10, 2016 at 10:00 a.m.

¹ Ms. Morris entered her appearance on behalf of PECO on February 26, 2016. She withdrew her appearance on March 13, 2016. Ms. Morris re-entered her appearance on behalf of PECO on April 29, 2016 and again withdrew her appearance on June 9, 2016.

A further hearing convened as scheduled on June 10, 2016. Complainant participated *pro se* and testified on his own behalf. Respondent appeared and was represented by Shawane Lee, Esquire, who presented the testimony of one witness, Dana McCollum. Respondent offered six exhibits which were all admitted into evidence.²

The hearing resulted in a 39-page transcript. The record closed on June 29, 2016, when I received the transcript of the June 10, 2016 hearing.

FINDINGS OF FACT

1. The Complainant in this case is Peter Kurhan who resides at 1940 Valley Road, Meadowbrook, Pennsylvania 19046 (Service Address). Tr. 17.
2. The Complainant receives both electric and gas service from PECO at the Service Address. Tr. 18.
3. The Respondent is PECO Energy Company.
4. The Complainant resides alone. Tr. 22.
5. The Complainant is working part time for the Huntingdon Valley Country Club. Tr. 21.
6. The Complainant works approximately 22 hours per week at a rate of \$11.00 per hour or a gross pay of \$220.00 per week³. Tr. 21.

² On June 10, 2016, the parties again reached a tentative settlement agreement contingent on the Complainant making an initial payment to his outstanding balance. However, the Company wished to proceed with the substantive issues in the case because the previous settlement agreement was never fulfilled by the Complainant. Counsel for PECO informed the presiding officer that the Complainant did not comply with the terms of the tentative agreement via email dated October 9, 2017.

³ The Complainant has a monthly income from his part time work of \$953.00 ($\$220 \times 52 / 12 = \953 per month).

7. The Complainant also receives Social Security Disability benefits in the amount of \$1,600.00 per month. Tr. 21-22.

8. The Complainant's current household income of \$2,553.00 with one household member places the household at 258% of the Federal Poverty guidelines.⁴

9. The Complainant defaulted on two Company-issued payment arrangements on August 9, 2010 and April 13, 2015. Tr. 29; PECO Exh. 3.

10. The Complainant had a Commission-issued payment arrangement starting on December 7, 2012 and defaulting on January 7, 2014. Tr. 30, 34; PECO Exh. 3.

11. The Commission-issued payment arrangement was the result of an informal complaint filed with BCS at Case No. 3039523 where the Complainant reported an income of \$2,660 for a three-adult household. Tr. 30; PECO Exh. 5.

12. The last ten-day termination notice sent to the Complainant was issued on October 30, 2015. Tr. 28; PECO Exh. 2.

13. On November 6, 2015, PECO sent the Complainant a 72-hour notice. Tr. 28; PECO Exh. 2.

14. Ultimately, service was not terminated because the Complainant filed a Complaint. Tr. 28; PECO Exh. 2.

15. The total balance on the Complainant's account is \$1,393.99. Tr. 34; PECO Exh. 1.

⁴ *Federal Register*, Vol. 81, No. 15, January 25, 2016, pp. 4036-4037. Also, see <http://aspe.hhs.gov/poverty>.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 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. § 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 the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence 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 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).

Request for Payment Arrangement

The Complainant requests a payment arrangement in this matter. PECO contends that the Complainant is not entitled to a payment arrangement due to the fact that he has had a prior Commission-issued payment arrangement and has not demonstrated a significant change in circumstances.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401, *et seq.* (the Act or Chapter 14) applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow in handling customer complaints. Section 1405(a) of the Public Utility Code reads as follows:

§ 1405. Payment arrangements

(a) GENERAL RULE. -- The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

66 Pa.C.S. § 1405(a).

However, Section 1405(d) of the Public Utility Code prohibits the Commission from establishing a second or subsequent payment arrangement if the customer has defaulted, absent a change in income. 66 Pa.C.S. § 1405(d). Under Section 1403, a “change in income” is defined as a decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level. 66 Pa.C.S. § 1403.

Section 1405(e) of the Public Utility Code allows for an extension by six months of a payment arrangement in default if there is a significant change in circumstance. 66 Pa.C.S. § 1405(e). "Significant change in circumstance" is defined as any of the following circumstances which are experienced by customers with household income less than 300% of the Federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income.
- (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household.
- (3) Loss of the customer's residence.
- (4) Increase in the customer's number of dependents in the household.

66 Pa.C.S. § 1403.

It is undisputed that the Complainant resides at the Service Address alone. The Complainant is currently employed part time at Huntingdon Valley Country Club, working approximately 22 hours per week at a rate of \$11.00 per hour. The Complainant's gross pay from his part time work is \$220.00 per week. Mr. Kurhan also receives \$1,600.00 per month in Social Security disability benefits. The Complainant's current household income with one household member places the household at 258% of the Federal Poverty guidelines.⁵ This would make the Complainant a Level 3 customer. *See* 66 Pa.C.S. § 1405(b)(3).

However, in this instance, the Complainant has had a prior Commission-issued payment arrangement which defaulted on January 7, 2014. At the time of the prior Commission-issued payment arrangement, the Complainant indicated that his household income was \$2,660.00 per month for a household of three adults. The Complainant's current household income is \$2,553.00 per month. The Complainant's change of income does not meet the criteria set out in Section 1403 of the Public Utility Code as his income has only changed by four percent since his last Commission-issued payment arrangement. Further, the Complainant did not present any evidence to indicate that he had a significant change in circumstance as defined

⁵ *Federal Register*, Vol. 81, No. 15, January 25, 2016, pp. 4036-4037. Also, see <http://aspe.hhs.gov/poverty>.

under 66 Pa.C.S. § 1403. As such, the Commission is constrained from providing the Complainant with another payment arrangement. *See* 66 Pa.C.S. § 1405(d) & (e). Therefore, the Complainant's request for a payment arrangement is denied and the Complaint is dismissed.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the complainant. 66 Pa.C.S. § 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. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401, *et seq.* (the Act or Chapter 14) applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement.

5. Section 1405(d) of the Public Utility Code prohibits the Commission from establishing more than one payment arrangement unless there is a change in income. 66 Pa.C.S. § 1405(d).

6. Under Section 1403, a "change in income" is defined as a decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level. 66 Pa.C.S. § 1403.

7. The Complainant did not meet his burden of demonstrating a change in income.

8. Section 1405(e) of the Public Utility Code allows for an extension by six months of a payment arrangement in default if there is a significant change in circumstance. 66 Pa.C.S. § 1405(e).

9. “Significant change in circumstance” is defined as any of the following circumstances which are experienced by customers with household income less than 300% of the Federal poverty level: 1) onset of chronic disease or illness that results in a significant loss of the customer’s household income; 2) catastrophic damage to the customer’s residence that results in a net loss to the household; 3) loss of the customer’s residence; and 4) increase in the number of dependents in the household. 66 Pa.C.S. § 1403.

10. The Complainant did not meet his burden of demonstrating a significant change in circumstance.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Peter Kurhan against PECO Energy Company at Docket No. C-2015-2504819 is denied and dismissed;

2. That the record at Docket No. C-2015-2504819 be marked closed.

Date: October 13, 2017

/s/
Marta Guhl
Administrative Law Judge