

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bernice Wallace	:	
	:	
v.	:	C-2016-2552460
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision denies Bernice Wallace’s formal Complaint against PECO Energy Company at Docket No. C-2016-2552460 because she failed to carry the burden of proving that she qualifies for a subsequent Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On June 20, 2016, Bernice Wallace (Mrs. Wallace or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Mrs. Wallace averred that the utility is threatening to shut off her service and that she is unable to pay her electricity bills to PECO. As relief, the Complainant requested a payment arrangement.

On July 6, 2016, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

By Hearing Notice dated July 11, 2016, a hearing was scheduled for Tuesday, August 30, 2016, at 9:30 a.m., and the matter was assigned to me.

The morning before the scheduled hearing, Shawane L. Lee, Esq., counsel for PECO, informed me that the Complainant had filed a Chapter 7 bankruptcy petition in federal court. Ms. Lee explained that on August 16, 2016, Mrs. Wallace filed a Motion to Dismiss the bankruptcy petition. While the bankruptcy judge had not ruled on Mrs. Wallace's Motion as of August 16, 2016, Ms. Lee believed the ruling to be forthcoming in the near future and requested that the matter be stayed pending the resolution of the bankruptcy petition.

By Order dated August 31, 2016, I granted PECO's request and stayed the proceedings at Docket No. C-2016-2552460 pending resolution of the Complainant's bankruptcy petition. The hearing scheduled for August 30, 2016, was cancelled and the parties were instructed to file a status report with the Commission at this Docket, with a copy to me and the opposing party, within sixty (60) days of the date of the Order, and every sixty (60) days thereafter, until the bankruptcy proceeding was concluded.

By correspondence dated February 2, 2017, Respondent's counsel informed me that Mrs. Wallace's bankruptcy case was dismissed on September 28, 2016, and the case was closed on October 6, 2016.

On February 3, 2017, I issued an Order lifting the stay of proceedings and setting the case for a hearing.

By Hearing Cancellation/Reschedule Notice dated February 3, 2017, a hearing was scheduled for Wednesday, March 22, 2017, at 10:00 a.m.

A Prehearing Order was issued on February 21, 2017, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on March 22, 2017. The Complainant appeared *pro se* via telephone and testified in support of the Complaint. The Complainant's husband, Kevin Wallace, appeared at the hearing in person and also testified in support of the Complaint. Shawane Lee, Esq. represented the Respondent, and presented the testimony of Anna Mae Migliaccio, who is a customer review officer in charge of investigating formal and informal complaints filed against PECO. The Respondent sponsored six exhibits which were admitted into the record.

The record in this matter closed on April 22, 2017.

FINDINGS OF FACT

1. The Complainant is Bernice Wallace, who resides at 1157 Atwood Road, Philadelphia, PA 19151 (Service Address). Tr. 7-8.
2. The Respondent is PECO Energy Company.
3. The Complainant resides at the Service Address with her husband and their two children, who are 17 and 20 years old, respectively. Tr. 9.
4. Mr. Wallace is employed full time with Detweiler Pharmaceuticals. Tr. 9, 13.
5. Mr. Wallace's income from his employment is \$6,209.03 per month. Tr. 13, PECO Exhibit 4.
6. Mrs. Wallace is employed full time with Independent Blue Cross. Tr. 9, 13.
7. Mrs. Wallace's income from her employment is \$5,052.15 per month. Tr. 13-14, PECO Exhibit 4.

8. On August 24, 2012, the Complainant filed an informal Complaint with the Commission's Bureau of Consumer Services (BCS) at BCS Case # 3011879, reporting a gross household income of \$2,774 per month for a household of two adults and two children. Tr. 14-15, PECO Exhibit 5.

9. On August 29, 2012, BCS issued a decision on BCS Case # 3011879 establishing a payment arrangement which required the Complainant to pay a special budget amount of \$144 per month, consisting of the regular budget amount of \$126 per month plus \$18 per month towards the arrears. PECO Exhibit 6.

10. On July 8, 2013, the Complainant defaulted on the Commission-issued payment arrangement. Tr. 15, 18, PECO Exhibit 3.

11. As of the day of the hearing, Complainant's outstanding balance with PECO was \$4,762.53. Tr. 17, PECO Exhibit 7.

DISCUSSION

In the present formal Complaint, Mrs. Wallace alleged her inability to pay her electricity bills to PECO. As relief, she requested a payment arrangement.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S.A. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut

the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95 (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

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*, 501 Pa. 433, 461 A.2d 1234 (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).

The Complainant resides at the Service Address with her husband and their two children, who are 17 and 20 years old, respectively. Mr. Wallace is employed full time with Detweiler Pharmaceuticals at a payrate of \$6,209.03 per month. Mrs. Wallace is employed full time with Independent Blue Cross at a payrate of \$5,052.15 per month.

On August 24, 2012, the Complainant filed an informal Complaint with the BCS at BCS Case # 3011879, reporting a gross household income of \$2,774 per month for a household of two adults and two children. On August 29, 2012, BCS issued a decision on BCS

Case # 3011879 after finding that the Complainant was a level 1 income customer. PECO Exhibit 6. BCS established a payment arrangement which required the Complainant to pay a special budget amount of \$144 per month, consisting of the regular budget amount of \$126 per month plus \$18 towards the arrears. PECO Exhibit 6.

On July 8, 2013, the Complainant defaulted on the Commission-issued payment arrangement. Tr. 15, 18, PECO Exhibit 3. As of the day of the hearing, Complainant's outstanding balance with PECO was \$4,762.53. Tr. 17, PECO Exhibit 7.

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 of the Public Utility Code regarding payment arrangements reads in pertinent part:

(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 agreement if a customer has defaulted on a previous payment agreement. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

66 Pa.C.S. § 1405(d). (Emphasis added). Furthermore, Section 1403 of the Public Utility Code defines “change in income” as 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.

The evidence collected in this matter reveals that Mrs. Wallace has already received and defaulted on one Commission-issued payment arrangement. Tr. 15, 18, PECO Exhibit 3. In addition, Mr. Wallace admitted that their current household income is higher than what it was at the time of the first payment arrangement issued by the Commission at BCS Case # 3011879. See, Tr. 13-14. At the hearing, Mr. Wallace reported a gross household income of

\$11,261.18¹ per month, which represents a manifold increase from the \$2,774 per month that Mrs. Wallace reported to BCS in August of 2012. The number of the household members has remained unchanged.

After carefully reviewing the record in this matter, I find that the Complainant has failed to carry her burden of proving that she has experienced a decrease in income that satisfies the definition of a “change in income” pursuant to 66 Pa.C.S. §§ 1403 and 1405(d). Consequently, the Commission lacks the authority to issue a subsequent payment arrangement for the Complainant.

For the reasons stated above, Mrs. Wallace’s present Complaint against PECO is dismissed in its entirety.

Before concluding, I would like to note that, although the Commission lacks the authority to issue a subsequent payment arrangement for the Complainant, PECO “may, at its discretion, enter into a second or subsequent payment agreement with a customer.” 66 Pa.C.S. § 1405(d). During the hearing, the Respondent indicated that it was willing to offer a payment arrangement to the Complainant. *See*, Tr. 4 and 20. I encourage the Complainant to contact PECO and work with the utility to obtain a payment arrangement.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The Complainant had the burden of proof. 66 Pa.C.S. § 332(a).
3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401, *et seq.*, applies to this proceeding.

¹ Mr. Wallace’s income of \$6,209.03 per month plus Mrs. Wallace’s income of \$5,052.15 per month produces a gross household income of \$11,261.18 per month.

4. Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. 66 Pa.C.S. § 1405(d).

5. 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 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.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Bernice Wallace against PECO Energy Company at Docket No. C-2016-2552460 is dismissed in its entirety.

2. That the Secretary mark this docket closed.

Date: October 12, 2017

_____/s/
Eranda Vero
Administrative Law Judge