

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Wayne O. Aultman, Jr.	:	
	:	
v.	:	F-2017-2601961
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene D. Heep
Administrative Law Judge

INTRODUCTION

The Complainant paid a discounted rate under the previous PECO Customer Assistance Program (CAP). PECO changed its program to a CAP Fixed Credit Option (CAP-FCO), which resulted in the Complainant paying a non-discounted rate despite his essentially unchanged modest income. Given that the Commission approved the change in the CAP, PECO committed no violation and the Complainant cannot prevail under the law as it stands today.

HISTORY OF THE PROCEEDING

On April 24, 2017, Wayne O. Aultman, Jr. (Complainant) filed a formal Complaint against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Mr. Aultman states that he would like the Commission to invalidate PECO's newly adopted structure for low income individuals. Mr. Aultman contends that the new program "eviscerates" the low income assistance because in the calculation of what a low income customer can pay for PECO services, there is no deduction for

or consideration of other standard living expenses such as rent. This is a timely appeal of a Bureau of Consumer Services decision, BCS Case Number 3494910.

On April 24, 2017, PECO filed an Answer denying the material allegations of the Complaint. PECO also asserted that the Complainant enrolled in the PECO Customer Assistance Program, or CAP, on December 2, 2014, and that the Complainant was transferred to the new Customer Assistance Program Fixed Credit Option, or CAP-FCO, on November 21, 2016, and that PECO has complied with all program and notification requirements. PECO also stated in its Answer that at that time, the Complainant had a balance of \$250.96.

A Hearing Notice was issued on May 18, 2017, notifying all parties that a hearing would be held on July 7, 2017. A Pre-Hearing Order issued on May 30, 2017, reminded the parties of the date and time of the scheduled hearing and informed them of the procedures applicable to this proceeding.

The hearing was held by telephone upon request of PECO and no objection by the Complainant. The Complainant represented himself and did not offer exhibits.

PECO was represented by Shawane Lee, Esq., who presented as a witness Monica Smith, a PECO employee in the Universal Services Department that works with low income customers on the CAP rate program. Ms. Lee also introduced seven exhibits. They are:

- | | |
|--------|-----------------------------|
| PECO 1 | Account Transaction History |
| PECO 2 | CAP History |
| PECO 3 | Spreadsheet |
| PECO 4 | Script |
| PECO 5 | Calculation |
| PECO 6 | Case Details Report |
| PECO 7 | BCS Decision Report |

The record closed on August 7, 2017, upon receipt of the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this proceeding is Wayne O. Aultman, Jr., who receives PECO electric residential heating service at his home in Chester, Pennsylvania. (service address).
2. The Respondent in this proceeding is PECO Energy Company.
3. Complainant was enrolled in the PECO Customer Assistance Program or CAP on rate Option D-1 for electric residential heating service on December 2, 2014. (Tr. 13).
4. The CAP provides service at a lower rate to low income customers.
5. In the fall of 2016, the Complainant received a letter from PECO stating that the CAP was being restructured and that he no longer qualified for a reduction. (Tr. 39).
6. Complainant was enrolled in CAP FCO on October 24, 2016. (Tr. 23).
7. Complainant paid for PECO service at a discounted rate under the CAP program.
8. At 76% of the federal poverty level, under CAP rate D-1, Complainant received a 32% rate discount on the first 650 kilowatt hours of his bill. (Tr. 21-22; PECO 2).
9. The Complainant is charged a non-discounted rate for service under the CAP-FCO program.
10. Complainant lives alone and his monthly income is \$757 per month. (Tr.7).

11. Complainant's monthly income has increased by approximately \$2.00 since he was originally enrolled in the CAP in 2014, from \$755.10 to \$757. (Tr. 22).

12. For a household of one person, 100% of the Federal Poverty level is \$1,005. (hhs.gov)

13. Complainant has resided in the same home since he was enrolled in CAP in 2014. (Tr. 12).

14. The Complainant conserves energy. (Tr. 28).

DISCUSSION

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. 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 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).

Additionally, public utility tariffs have the force and effect of law and are binding on the public utility and its customers. *Pennsylvania Electric Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa.Cmwlth. 1995). Complainants have a "heavy" burden when challenging the reasonableness of a tariff provision. *Shenango Township Board of Supervisors v. Pa. P.U.C.*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996), "Tariff provisions that have been properly submitted to and approved by the Commission are *prima facie* reasonable." *Id.*

Complainant would like the Commission to invalidate PECO's new CAP structure, the CAP-FCO. He contends that the new calculations do not consider standard living expenses and that by failing to do so, the CAP-FCO "eviscerates low income assistance." (Complaint). He further contends that he is using less energy than before but is paying more.

PECO did not dispute Mr. Aultman's contention that he is paying more under the CAP-FCO than he did under the previous CAP program and that his income, number of persons in his household and home have essentially not changed. PECO stated that it was unfortunate and that Mr. Aultman can contact the company for a recalculation at any time. (Tr. 46-47).

PECO responded that the company changed its CAP program because the old CAP program did not meet the regulatory affordability guidelines. (Tr. 23). PECO employee Monica Smith testified that three items are considered under the CAP fixed credit option program (CAP-FCO). They are 1) household income, or federal poverty level, 2) household energy burden, i.e., the amount of energy that a customer uses, and 3) historic usage. (Tr. 24, PECO 4). With these figures, PECO then determines a customer's maximum allowed energy burden, or amount that a low income customer must or should be able to pay for energy, using the energy burden percentages table found at 52 Pa. Code Section 69.265(2). (Tr. 24-25; PECO 2, p.3).

Mr. Aultman receives electric residential heating service from PECO and has an income of 76% of the poverty level. The regulations generally addressing his energy burden provides in pertinent part:

(i) *Percentage of income plan.* Total payment for total electric and natural gas home energy under a percentage of income plan is determined based upon a scheduled percentage of the participant's annual gross income. The participating household's gross income and family size place the family at a poverty level based on Federal poverty income guidelines.

(A) Generally, maximum payments for electric nonheating service should be within the following ranges:

(II) Household income between 51—100% of poverty at 4%—6% of income. . . .

(B) Generally, maximum payments for gas heating should be within the following ranges: . . .

(II) Household income between 51—100% of poverty at 7%—10% of income. . . .

(C) Generally, maximum payments for electric heating or gas heating and electric nonheating combined should not exceed the following guidelines: . . .

(II) Household income between 51—100% of poverty at 11%—16% of income.

52 Pa.Code § 69.265(2)(C)(i). (Emphasis added).

The maximum payment ranges found in the Commission's regulation at 52 Pa.Code § 69.265(2)(C)(i) were removed from the energy burden percentages used by PECO in the Joint Settlement in *PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, Docket No. M-2015-2507139 (Order Entered August 11, 2016); 2016 Pa. PUC LEXIS 249 (Pa. PUC 2016). There, the parties agreed to the following:

ALLOWABLE ENERGY BURDEN PECO PLAN (2016-2018)

Federal Poverty Level	Electric Non-Heating	Electric Heating	Gas Heating
0-50%	5%	13%	13%
51-100%	6%	16%	16%
101-150%	7%	17%	17%

Id at 7.

Based on Mr. Aultman's annual income of approximately \$9,060, and multiplying it by the flat 16% in the Joint Settlement numbers as opposed to the 11-16% range in the regulations, PECO determined that he should be able to afford \$1,449.60 annually towards his utility bill. (Tr. 25; PECO 2, p. 4; PECO 3). Without the CAP discount, from April of 2016 through March of 2017, Mr. Aultman used \$1,095.85 of residential heating energy. (Tr. 27-28; PECO 3). According to PECO, Mr. Aultman's usage is "pretty low" and he is conserving a lot of energy. (Tr. 28).

As a result of Mr. Aultman conserving energy, his actual annual usage, \$1,095.85, was less than his annual energy burden, \$1,449.60. Therefore, under CAP-FCO, his bill is considered affordable and therefore Mr. Aultman does not receive a credit under the CAP FCO program and he pays the non-discounted rate. (Tr. 28).

Because he did not receive a credit when he was removed from the discounted rate program, Mr. Aultman was considered a "faze out" customer and received a transition benefit of \$50 that was spread out over 12 months. Based on this, PECO credited Mr. Aultman with \$4.17 on his monthly bill for a 12-month period, through October of 2017. (Tr. 30; Tr. 33; Tr. 35).

The PECO computer system recalculates the appropriate credit every three months based on the three factors discussed above. (Tr. 35). If Mr. Aultman uses more than his calculated energy burden of \$1,449.60 at discounted rates, he would receive a credit to reduce the amount that he has to pay to no more than \$1,449.60 annually. (Tr. 36-37).

On October 5, 2016, PECO filed, in Case Docket Number M-2015-2507139, a revised tariff section reflecting its change from CAP to CAP FCO, the basis for the company's calculation of Mr. Aultman's energy burden. See PECO Supplement No 20 to Tariff Electric Pa. P.U.C. No. 5. This tariff provision, and the PECO CAP-FCO program contained therein, is *prima facie* reasonable. *Shenango Township, supra*.

Nevertheless, Mr. Aultman's contention requires further consideration. It does not appear reasonable that a person on CAP with such limited and unchanged income would have to pay more for service in what is purportedly a CAP program improvement, and partly because he conserves energy. One may also ponder the utility of a 12-month \$4.17 per month transition credit for a customer with supplemental security income (SSI) of less than \$800 per month. Also, when directly questioned, PECO presented no evidence or explanation regarding how this new program, the CAP-FCO, meets regulatory affordability guidelines when the previous CAP program did not. (Tr. 52-53).

However, the Commission did not find that the PECO CAP changes were unlawful, unjust, unreasonable, or contrary to the public interest. The CAP-FCO was approved by the Commission and in its approval, the Commission accepted that approximately 40,000 people would no longer receive discounted rates. *PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018*, 2016 Pa. PUC LEXIS 249 at 19. Also, PECO calculated Mr. Aultman's energy burden as an electric heating customer as 16% of his income. (Tr. 54). This percentage falls under the authorized percentages set forth in 52 Pa. Code Section 69.265(2)(i) and is the percentage agreed to in the Commission approved settlement in the *PECO Energy Company Universal Service and Energy Conservation Plan. Id.*

There is no basis upon which to find that PECO's calculation was in error based on the law and regulations as they now stand through 2018 under the PECO Universal Service and Energy Conservation Plan (2016-2018). The Commission approved PECO's change to the CAP-FCO program and the tariff reflecting that change. Given that the Complainant did not establish by a preponderance of the evidence that PECO committed an offense in violation of the

Public Utility Code ("Code"), the Commission's regulations, or an outstanding order of the Commission, the Complainant cannot prevail here. 66 Pa.C.S. § 701.

CONCLUSIONS OF LAW

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

2. As the proponent of a rule or order, the Complainant in this proceeding has the burden of proof pursuant to Section 332(a) of the Code, 66 Pa.C.S.A. § 332(a).

3. The Complainant established a prima facie case that the rate he is charged increased under the new PECO CAP-FCO. *Id.*

4. Complainant did not present a preponderance of the evidence to counter PECO's rebuttal of the *prima facie* case. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95 (*Poorbaugh*).

5. The Complainant did not establish that PECO violated the Public Utility Code ("Code"), the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. The Complaint does not set forth “an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.” 52 Pa.Code § 5.22(a)(4).

