

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Erica Parker	:	
	:	
v.	:	F-2016-2569422
	:	
PECO Energy Company	:	

INITIAL DECISION

Presided over by
Marta Guhl, Administrative Law Judge

Adjudicated by
F. Joseph Brady, Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complaint of Erica Parker against PECO Energy Company because she failed to carry her burden of proving that she is entitled to a change to her Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On September 22, 2016, Erica Parker (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission against PECO Energy Company (PECO, Respondent, or Company) requesting a new payment arrangement.

The Complaint is a timely appeal of a decision from the Bureau of Consumer Service (BCS), dated August 12, 2016, at Case No. 3437968, which granted the Complainant a Level 2 payment arrangement requiring her to pay a monthly budget bill of \$139.00 plus \$16.00 towards her arrears.

On October 18, 2016, PECO filed an Answer indicating that the Complainant has an account for electric service at 7225 Shearwater Place, Philadelphia, PA and that the Commission's BCS granted the Complainant a payment arrangement on August 12, 2016. PECO alleges this is the most favorable arrangement the Complainant is entitled to receive and that the Complaint be dismissed.

A Hearing Notice dated November 8, 2016, notified the parties that an initial hearing was scheduled for Monday, January 9, 2017, at 9:30 a.m., as part of the morning session of a call-of-the-docket hearing before Administrative Law Judge (ALJ) Marta Guhl.

A Prehearing Order was issued on November 9, 2016, advising 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 hearing convened as scheduled on January 9, 2017, and was presided over by ALJ Guhl. The Complainant appeared *pro se* and testified on her own behalf. She did not present any exhibits. Shawane L. Lee, Esquire represented the Respondent, and presented the testimony of Dana McCollum, who is a regulatory assessor with PECO in charge of reviewing and investigating formal complaints filed with the Commission. During the hearing, the Complainant indicated she no longer wished to proceed without legal representation. ALJ Guhl granted the Complainant leave to obtain counsel and continued the matter for a further hearing.

A Hearing Notice dated January 17, 2017, notified the parties that a further hearing was scheduled for Wednesday, March 8, 2017, at 10:00 a.m. before ALJ Guhl.

The second hearing convened as scheduled on March 8, 2017 and was presided over by ALJ Guhl. Edward T. Fisher, Esquire appeared for the Respondent and was prepared to proceed. The Complainant did not appear for the second hearing. The Respondent sponsored six (6) exhibits, which were admitted into the record.

The record closed on March 21, 2017 upon receipt of the transcript from the March 8, 2017 hearing.

On November 17, 2017, Chief ALJ Charles Rainey reassigned this case to the undersigned ALJ for adjudication.

FINDINGS OF FACT

1. The Complainant is Erica Parker, who resides at 7225 Shearwater Place, Apartment 1B, Philadelphia, PA 19153 (Service Address). N.T. p. 9.

2. The Respondent is PECO Energy Company. N.T. p. 4.

3. The Complainant receives electric service from PECO at the Service Address. N.T. p. 9.

4. The Complainant resides alone at the Service Address. N.T. p. 14.

5. On February 20, 2013, the Complainant was given a Company-issued payment agreement for a balance of \$601.38, which she failed to keep. N.T. p. 33; PECO Exh. 2.

6. On May 15, 2014, the Complainant was given another Company-issued payment agreement for a balance of \$171.25, which she failed to keep. N.T. p. 33; PECO Exh. 2.

7. On May 9, 2016, the Complainant filed an informal complaint with the Commission's BCS seeking a payment arrangement to avoid service termination. Tr. 33-34; PECO Exh. 3.

8. At the time the Complainant contacted BCS, the Complainant indicated that she had gross monthly income of \$2,166.67 for a one-person household. PECO Exh. 3.

9. On August 12, 2016, the Commission's Bureau of Consumer Services (BCS) established a payment arrangement on behalf of the Complainant at BCS Case No. 003437968, upon finding she was a Level 2 income customer. N.T. p. 34; PECO Exh. 4.

10. The Commission-issued payment arrangement was for \$155.00 per month (budget bill of \$139 plus \$16 toward arrearages). N.T. p. 34.

11. On September 13, 2016, the Complainant defaulted on the Commission-issued payment arrangement. N.T. p. 34; PECO Exh. 1.

12. On December 8, 2016, the payment arrangement was reinstated due to the fact the Complainant received a Low-Income Home Energy Assistance Program (LIHEAP) payment in the amount of \$661.00, which left her with a balance of \$443.55. N.T. pp. 34-35; PECO Exh. 1.

13. The Commission-issued payment arrangement was reduced to \$152.86 per month because the amount the Complainant owed toward arrearages decreased from \$16.00 to \$13.86 (budget bill of \$139 plus \$13.86 toward arrearages = \$152.86). N.T. p. 35; PECO Exh. 1.

14. On January 9, 2017, the hearing in this matter was convened as scheduled and was presided over by ALJ Guhl. N.T. p. 4.

15. The Complainant appeared *pro se*, testified on her own behalf, and was subject to cross-examination by Shawane L. Lee, Esquire, who appeared on behalf of the Respondent. N.T. pp. 4, 19.

16. The Complainant's household is still a one-person household. N.T. p. 14.

17. The Complainant is employed and works approximately 25 hours per week. N.T. p. 12.
18. The Complainant's hourly rate is \$15. N.T. p. 13.
19. The Complainant receives \$192.00 per month in Supplemental Nutrition Assistance Program (SNAP) benefits. N.T. p. 13.
20. The Complainant's average gross monthly income is now \$1,692.¹ N.T. pp. 11-13.
21. The Complainant's current household income for a single person household places the household at 168% of the 2017 Federal Poverty Guidelines.²
22. As of the January 9, 2017 hearing, the Commission-issued payment arrangement for \$152.86 per month was still in effect. N.T. p. 36; PECO Exh. 1.
23. A Hearing Notice dated January 17, 2017, notified the parties that a further hearing was scheduled for Wednesday, March 8, 2017, at 10:00 a.m. before ALJ Guhl.
24. The Complainant did not appear for the March 8, 2017 hearing. N.T. p. 42.
25. The Complainant did not settle or withdraw this Complaint prior to the scheduled hearing date or obtain a continuance.

¹ 25 hours x 4 weeks x \$15/hr = \$1500 + \$192 SNAP = \$1692 average gross monthly income.

² *Federal Register*, Vol. 82, No. 19, January 31, 2017, pp. 8831-8832. Also see <http://aspe.hhs.gov/poverty>.

DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving by substantial evidence that she is entitled to the requested relief. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, 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.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 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*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. 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 her 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).

All customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. *Bolt v. Duquesne Light Co.*, Docket No. Z-8721758 (Opinion and Order entered April 8, 1988). A payment arrangement, which prevents service termination as long as the Complainant complies with it, is a privilege, not a right. *Mandell v. Duquesne Light Co.*, Docket No. C-20030234, (Opinion and Order entered March 17, 2004).

In this case, the Complainant seeks a lower payment arrangement than the one issued by the Commission because her employment status changed. In her Complaint, the Complainant alleges the Commission issued payment arrangement exceeds her income.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued and the length of the payment arrangement.

Section 1405(b) of the Public Utility Code regarding payment arrangements reads in pertinent part:

The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

- (1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.
- (2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

- (3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.
- (4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

66 Pa.C.S. § 1405(b).

Here, the Complainant testified that her household is still a one-person household. She is employed and works approximately 25 hours per week at an hourly rate of \$15. In addition, she receives \$192.00 per month in SNAP benefits. In total, the Complainant's average gross monthly income is now \$1,692. This places her household at 168% of the 2017 Federal Poverty Guidelines, making her a level 2 income customer eligible for a 3-year payment arrangement under the Public Utility Code. *See* 66 Pa.C.S. § 1405(b).

The Complainant is seeking a payment arrangement where she would be required to pay significantly less per month to satisfy her unpaid balance than what BCS originally determined on August 12, 2016 because she experienced a change in income. However, pursuant to the Public Utility Code and the Complainant's gross monthly household income, the Complainant remains a level 2 income customer. As a level 2 income customer, the Commission can only grant a three-year payment arrangement for her to eliminate her unpaid balance. This is precisely the amount of time BCS gave the Complainant in its August 12, 2016 decision on her informal complaint. Since I cannot authorize a longer term for the Complainant to eliminate her unpaid balance, and correspondingly, a reduced amount she must pay each month towards her arrearage, her Complaint must be denied.

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. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401, *et seq.*, applies to this proceeding.

5. Regarding the length of payment arrangements, the Public Utility Code provides that the length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the Commission and is entered into by a public utility and a customer shall not extend Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level. 66 Pa.C.S. 1405(b)(2).

6. Complainant's arrearages are subject to a three-year Commission-ordered payment arrangement because Complainant's gross household income is 168% of the Federal poverty level.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Erica Parker against PECO Energy Company at Docket No. F-2016-2569422 is denied; and

2. That the case at Docket No. F-2016-2569422 be marked closed.

Date: December 5, 2017

/s/
F. Joseph Brady
Administrative Law Judge