

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MacDonald Taylor	:	
	:	
v.	:	C-2016-2544747
	:	
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 dismisses the Complaint of MacDonald Taylor because he failed to demonstrate: (1) that he should receive a Commission-issued payment arrangement; (2) that the balance owed on his account is incorrect; or (3) that the Company is required to honor a medical certification renewal.

**HISTORY OF THE PROCEEDING**

On May 10, 2016, MacDonald Taylor (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission against PECO Energy Company (PECO, Respondent, or Company) alleging that PECO had threatened to shut off his service or had already shut off his service. The Complainant further alleged that PECO refused to process a payment made, as well as, refused to honor a medical certification renewal. The Complainant requests that PECO be directed to reinstate him in their Customer Assistance Program (CAP) and honor his medical certification renewal.

On May 31, 2016, the Respondent filed an Answer denying all material allegations of the Complaint.

A Telephone Hearing Notice dated June 13, 2016, advised the parties that an initial telephonic hearing was scheduled for Wednesday, July 13, 2016, at 10:00 a.m., before Administrative Law Judge (ALJ) Marta Guhl. A Prehearing Order was issued on June 15, 2016, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

The initial telephonic hearing convened as scheduled on July 13, 2016. At the outset, the Complainant made a Motion for a Continuance due to a recent hospitalization. The Respondent did not object and ALJ Guhl granted the Motion on the record.

A Telephone Hearing Notice dated December 22, 2016, advised the parties that a telephonic hearing was scheduled for Monday, February 6, 2017, at 10:00 a.m.

The hearing convened as scheduled on February 6, 2017 and was presided over by ALJ Guhl. The Complainant appeared *pro se* and testified on his own behalf. Shawane L. Lee, Esquire represented the Respondent, and presented the testimony of Michael Begley, who is a regulatory assessor with PECO in charge of reviewing and investigating formal complaints filed with the Commission. The Respondent sponsored eleven (11) exhibits all of which were admitted into the record in this matter.

The record closed on March 3, 2017, upon receipt of the transcript.

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

## FINDINGS OF FACT

1. The Complainant is MacDonald Taylor, who resides at 376 Wembly Road, Upper Darby, PA 19082 (Service Address). Tr. 6.
2. The Respondent is PECO Energy Company.
3. The Complainant receives gas and electric service from PECO at the Service Address. Tr. 6.
4. The Complainant was first enrolled in the Company's CAP on September 17, 2013 for service at 513 Broadview Road, Upper Darby, PA 19082. Tr. 22; PECO Exh. 3.
5. On December 5, 2014, the Complainant transferred service to 7118 Penarth Avenue, Upper Darby, PA 19082, along with enrollment in the Company's CAP and a balance of \$2,389.24. Tr. 22-23; PECO Exh. 1.
6. On July 27, 2015, the Complainant transferred service to 376 Wembly Road, Upper Darby, PA 19082 (Service Address), along with enrollment in the Company's CAP and a balance of \$3,080.89. Tr. 23; PECO Exh. 2.
7. The Complainant was removed from the CAP on September 6, 2016 for failure to recertify. Tr. 23.
8. The Complainant owes \$4,367.65 in CAP arrears. Tr. 26.
9. As of the date of the hearing, the last payment the Complainant made on his account was on November 3, 2016, in the amount of \$455.00. Tr. 17.

10. As of the date of the hearing, the Complainant's outstanding non-CAP balance is \$766.16. Tr. 26.

11. Since opening the account at the Service Address on July 27, 2015, the Complainant has only made four payments that were not returned. Tr. 26; PECO Exh. 2.

12. PECO provided the Complainant with a payment agreement for each service address and he defaulted on all three. Tr. 27-28; PECO Exh. 5.

13. The Respondent has granted the Complainant a thirty-day collection exception for a medical certificate three times – June 19, 2014, November 5, 2015, and April 13, 2015. Tr. 29; PECO Exh. 4.

#### DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving by substantial evidence that he 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 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).

#### Payment Arrangement

In this case, the Complainant seeks a payment arrangement for his outstanding balance. The Complainant owes \$4,367.65 in CAP arrears and \$766.16 in non-CAP arrears.

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. Title 66 Pa.C.S. § 1405(c) provides:

- (c) Customer assistance programs. – Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.

Accordingly, the Commission is prohibited from setting a payment arrangement on the \$4,367.65 in CAP arrears owed by the Complainant. Nevertheless, when a Complainant has an arrearage composed of both CAP and non-CAP arrearages, the Commission may bifurcate the arrearage and establish a payment arrangement on the non-CAP arrearage. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Order entered September 12, 2013). However, the Commission is not required to do so, and may decline to do so if the Complainant exhibits a poor payment history, inability to pay, and/or likeliness to default. *Hewitt*. In *Hewitt*, the Commission discussed why bifurcating an arrearage is not recommended in most cases:

Even if bifurcating an arrearage is feasible, it may not be practical. Typically, CAP assistance is the best, most affordable payment plan for an eligible, low-income customer. If a customer cannot afford and does not pay a CAP bill, which is service provided at a discount, the customer most likely cannot afford and will not pay his or her current/budget bill plus an additional payment on an accrued balance, which is the typical structure of a payment agreement. Given the limitations in the Code in Section 1405(d) on the number of payment agreements that the Commission may issue for a customer, issuing a payment agreement where the customer will likely default is not in the customer's best interest. *Id.* at 11.

Furthermore, by law, a public utility is entitled to receive payment for the service it provides and the Complainant must pay the Respondent for the service he consumes. *Scaccia v. West Penn Power Co.*, 55 Pa. PUC 637 (1982); *Kea v. Peoples Natural Gas Co.*, 60 Pa. PUC 215 (1985); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982). The Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303, *Neal v. Philadelphia Gas Works*, Docket No. Z 00971874, (Final Order entered January 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa. PUC 213 (1990). 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 if 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).

The Commission has previously held that it may refuse to order a payment arrangement for customers who do not make good faith efforts to pay their bills. See, e.g., *Stephen Getz v. Metropolitan Edison Company*, Docket No. C-20142459964 (Final Order entered May 28, 2015); *Susan Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013). In both of these cases, the Commission refused to exercise its discretion to order a payment arrangement for a customer where the customer had a poor payment history and/or demonstrated an inability or unwillingness to comply with payment arrangements established by the utility.

Here, the record does not support awarding the Complainant a payment arrangement for the \$766.16 in non-CAP arrears. Since opening the account at the Service Address on July 27, 2015, the Complainant has only made four payments over a span of eighteen months. In addition, PECO has already provided the Complainant with a payment agreement for each service address and he defaulted on all three. The Complainant has a poor payment history and has demonstrated an inability or unwillingness to comply with payment arrangements established by PECO.

Based on the foregoing, I conclude that the Complainant has not demonstrated that he is entitled to a Commission-issued payment arrangement. Accordingly, with respect to the Complainant's request for a payment arrangement, the Complaint is dismissed.

#### Billing Dispute

Next, the Complainant alleges that he mailed a Cashier's Check in the amount of \$1,460.00 to the Respondent on or around April 18, 2016, which the Respondent has failed to credit to his account. However, the Respondent has never received any documentation verifying the Complainant submitted a Cashier's Check on or around April 18, 2016. Furthermore, to this date, the Complainant has not provided any documentation verifying this claim. It is axiomatic that "[m]ere bald assertions ... do not constitute evidence." *MidAtlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa.Cmwlth.

2000)(citing *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12, 14 (Pa. 1987)).

Without any verifiable evidence for his claim, the Complainant has failed to sustain his burden to prove that he sent, or PECO received, a Cashier's Check in the amount of \$1,460.00 on or around April 18, 2016. Accordingly, with respect to the Complainant's billing dispute, the Complaint is dismissed.

### Medical Certification

Lastly, the Complainant requests that his medical certification exception be restored. The applicable Regulations regarding medical certifications are as follows:

#### **52 Pa. Code § 56.111. General provision.**

A public utility may not terminate service, or refuse to restore service, to a premises when a licensed physician or nurse practitioner has certified that the customer or an applicant seeking restoration of service under § 56.191 (relating to payment and timing) or a member of the customer's or applicant's household is seriously ill or afflicted with a medical condition that will be aggravated by cessation of service. The customer shall obtain a letter from a licensed physician verifying the condition and promptly forward it to the public utility. The determination of whether a medical condition qualifies for the purposes of this section resides entirely with the physician or nurse practitioner and not with the public utility. A public utility may not impose any qualification standards for medical certificates other than those specified in this section.

#### **52 Pa. Code § 56.116. Duty of customer to pay bills.**

Whenever service is restored or termination postponed under the medical emergency procedures, the customer shall retain a duty to make payment on all current undisputed bills or budget billing amount as determined under § 56.12(7) (relating to meter reading; estimated billing; customer readings).

**52 Pa. Code § 56.114. Length of postponement; renewals.**

Service may not be terminated for the time period specified in a medical certification; the maximum length of the certification shall be 30 days.

(2) *Renewals.* Certifications may be renewed in the same manner and for the same time period as provided in §§ 56.112 and 56.113 (relating to postponement of termination pending receipt of certificate; and medical certifications) and this section if the customer has met the obligation under § 56.116 (relating to duty of customer to pay bills). In instances when a customer has not met the obligation in § 56.116 to equitably make payments on all bills, the number of renewals for the customer's household is limited to two 30-day certifications filed for the same set of arrearages. **In these instances the public utility is not required to honor a third renewal of a medical certificate** and is not required to follow § 56.118(3) (relating to right of public utility to petition the Commission). The public utility shall apply the dispute procedures in §§ 56.151 and 56.152 (relating to public utility company dispute procedures). When the customer eliminates these arrearages, the customer is eligible to file new medical certificates.  
(Emphasis added)

In this case, the Respondent has already granted the Complainant a thirty-day collection exception for a medical certificate *three* times – June 19, 2014, November 5, 2015, and April 13, 2015. However, the Complainant has failed to maintain his duty to make payments on all current undisputed bills pursuant to 52 Pa. Code § 56.116. As of the date of the hearing, the last payment the Complainant made was on November 3, 2016, which leaves him with an outstanding non-CAP balance of \$766.16. Thus, pursuant to 52 Pa. Code § 56.114(2), the Respondent is not required to honor what would be the *fourth* renewal of a medical certificate for the Complainant. Accordingly, the Complaint is dismissed.

CONCLUSIONS OF LAW

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

2. The burden of proof in this proceeding is on 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. Section 1401-1418, applies to this proceeding.

5. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).

6. CAP rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the Commission. 66 Pa.C.S. § 1405(c).

7. When a Complainant has an arrearage composed of both CAP and non-CAP arrearages, the Commission may bifurcate the arrearage and establish a payment arrangement on the non-CAP arrearage. However, the Commission is not required to do so, and may decline to do so if the Complainant exhibits a poor payment history, inability to pay, and/or likeliness to default. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Order entered September 12, 2013).

8. The Complainant failed to sustain his burden of demonstrating that he should receive a Commission-issued payment arrangement. 66 Pa.C.S. § 332(a).

9. "Mere bald assertions ... do not constitute evidence." *MidAtlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000)(citing *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12, 14 (Pa. 1987)).

10. Whenever service is restored or termination postponed under the medical emergency procedures, the customer shall retain a duty to make payment on all current undisputed bills or budget billing amount. 52 Pa. Code §56.116.

11. In instances when a customer has not met the obligation in 52 Pa. Code § 56.116 to equitably make payments on all bills, the number of renewals for the customer's household is limited to two 30-day certifications filed for the same set of arrearages, and the public utility is not required to honor a third renewal of a medical certificate. 52 Pa. Code § 56.114(2).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of MacDonald Taylor against PECO Energy Company at Docket No. C-2016-2544747 is dismissed; and
2. That the case at Docket No. C-2016-2544747 be marked closed.

Date: November 28, 2017

\_\_\_\_\_/s/  
F. Joseph Brady  
Administrative Law Judge