

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rosanna Dickerson	:	
	:	
v.	:	C-2017-2615251
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

This decision finds that the record evidence did not support the allegation of the Complainant that the amount owed to restore service was incorrect. This decision finds that the record evidence did not support the allegation of the Complainant that her service was terminated in error. This decision finds that the record evidence did not support the allegation of the Complainant that her service had reliability, safety or quality issues. Therefore, the Complainant’s formal complaint (Complaint) is dismissed.

HISTORY OF THE PROCEEDING

On July 19, 2017, Complainant, Rosanna Dickerson, filed a Complaint with the Pennsylvania Public Utility Commission (Commission or PUC) against PECO Energy Company (PECO or Company or Respondent). The Complainant indicated that electric service from the Respondent was terminated at 5651 Malcolm Street, Philadelphia, Pennsylvania (service address). The Complainant also indicated that there are incorrect charges on her bill and there is a problem with the reliability, safety, or quality of electric service received. In 2012, the

Complainant had a water overflow problem which damaged the house and caused her to vacate the service address. Complainant desires to move back into the service address and wants her electric service restored.

The Complaint was served electronically (eService) by the Commission's Secretary on July 21, 2017, according to the audit history of the docket. The eService is pursuant to the Waiver of Section 702 program, under which the Respondent waives the service requirements in 66 Pa.C.S. § 702.

On August 9, 2017, Shawane Lee, Esquire, counsel for the Respondent, filed an Answer to the Complaint. The Answer denied that the actions of the Respondent were improper.

Specifically, the Respondent averred that the Complainant enrolled in its Customer Assistance Program (CAP) on June 23, 2011, and set aside \$12,727.13 for possible forgiveness. On August 6, 2013, the account was removed from CAP because the Complainant failed to recertify with a \$6,363.89 pre-program arrears balance defaulting back to the Complainant's service account. On April 23, 2015, the Respondent terminated the Complainant's service for a past due balance of \$5,840.43. On May 27, 2015, a final bill was sent in the amount of \$5,696.75 because restoration requirements were not met.

On September 22, 2016, the Complainant contacted the Respondent to request service at the service address. The Respondent sent a service denial notice in response to the Complainant's request noting an outstanding balance due of \$6,189.04 for service from November 8, 2010 through August 25, 2015.

The Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at Case No. 003504328 on March 6, 2017. The informal complaint disputed the amount owed for service at the service address, requested reconnection of service at the service address in the name of the Complainant and a payment arrangement. On March 20, 2017, BCS issued a decision concluding, in relevant part, that the Complainant is not eligible for a payment arrangement and the Company position stands.

The Respondent averred that the Complainant's outstanding balance of \$6,189.04 is comprised of CAP arrears, and therefore, pursuant to 66 Pa.C.S. § 1405(c), the Commission has no authority to give the Complainant a payment arrangement. The Respondent requested that the Commission find against the Complainant and dismiss the Complaint.

A Hearing Notice dated August 15, 2017, notified the parties that an initial in-person hearing was scheduled for Thursday, October 19, 2017, at 10:00 a.m. This Notice indicated that the case was assigned to the undersigned Administrative Law Judge (ALJ) as the presiding officer.

A Prehearing Order dated August 16, 2017, provided procedural rules and guidelines for the proceeding and emphasized the following:

- (1) a request to change the scheduled hearing should be sent at least five days prior to the hearing date;
- (2) the request for a hearing change is to be in writing and sent to all parties of record; and
- (3) a caution that Complainant may lose the case if he does not take part in the hearing and present evidence on the issues raised.

On October 19, 2017, a Notice of Appearance was filed, which added Edward T. Fisher, Esquire as co-counsel for the Respondent.

The evidentiary hearing convened as scheduled. At about 10:00 a.m., the Complainant called and stated that she was at her daughter's custody hearing in New Jersey and requested a continuance of this proceeding. The Respondent moved for a dismissal of the Complaint with prejudice for failure to prosecute. The undersigned stated that she would rule on the Respondent's Motion in writing and adjourned.

By Order dated October 20, 2017, the undersigned granted the request for continuance made by the Complainant as she is representing herself, she provided a reasonable explanation for her absence and the granting of the continuance does not affect the substantive rights of any party to the proceeding.

By Hearing Notice dated October 25, 2017, the evidentiary hearing was rescheduled for December 11, 2017.

The evidentiary hearing convened on December 11, 2017, as scheduled. The Complainant was present and represented herself. Attorney Lee was present and represented the Respondent. Attorney Lee was accompanied by one witness.

The Complainant testified and supported her testimony with the following six exhibits:

- (1) Complainant Exhibit 1—Insurance letter for service address claim;
- (2) Complainant Exhibit 2—Pa. Insurance Dept. letter for claim against Insurance;
- (3) Complainant Exhibit 3—Insurance letter in response to Pa. Insurance Dept.;
- (4) Complainant Exhibit 4—Complainant’s bills for January 2013, October 2014, March 2015 and January 2015;
- (5) Complainant Exhibit 5—Complainant’s 2017 Social Security Benefit; and
- (6) Complainant Exhibit 6—Spouse’s declaration for Complainant’s health benefit.

All of Complainant’s exhibits were admitted into the record without objection.

The Respondent presented one witness, Elsa Leung. Ms. Leung supported testimony for the following seven exhibits:

- (1) PECO Exhibit 1—Account Statement for service address;
- (2) PECO Exhibit 2—Collections History at service address;
- (3) PECO Exhibit 3—Financial History at service address;
- (4) PECO Exhibit 4—Service Denial Notice;
- (5) PECO Exhibit 5—Account Activity at service address;
- (6) PECO Exhibit 6—BCS Case No. 003504328 informal complaint;
- (7) PECO Exhibit 7—BCS Case No. 003504328 Decision.

All seven exhibits were admitted into the record without objection. The transcript consists of 101 pages of transcribed testimony.¹ The record closed on January 11, 2018, when the transcript was received by the undersigned. This matter is ripe for decision.

FINDINGS OF FACT

1. The Complainant is Rosanna Dickerson, who currently resides with her granddaughter in New Jersey. Tr. 11.

2. The Respondent is PECO Energy Company, a jurisdictional public utility that provides electric and gas distribution service in the Commonwealth of Pennsylvania.

3. Complainant received electric service at 5651 Malcolm Street, Philadelphia, Pennsylvania (service address). Tr. 12.

4. The electric service for the service address became inactive on May 26, 2015. Tr. 61, PECO Exhibit 1.

5. The Complainant's most current account had electric service from April 2010 to May 2015. Tr. 60-62, PECO Exhibit 1.

6. The Complainant had a water leak in the basement of the service address in September 2012, which caused her to vacate the service address. Tr. 13, Complainant Exhibits 1, 2, 3.

7. The Complainant did not want to vacate the service address, but had to leave the property because of the mold, mildew and unpleasant smell from the water damage. Tr. 48.

¹ There are two transcripts. One transcript is dated October 19, 2017 and consists of 8 pages. The other transcript is dated December 11, 2017 and consists of 93 pages. All transcript references going forward reference the transcript dated December 11, 2017.

8. The Complainant did not inform PECO that the service at the service address should be discontinued when she vacated it in 2012. Tr. 15-16, 21-22, 35.

9. The Complainant intended to return to the service address once the leak was repaired, so she did not turn off the electric appliances at the service address. Tr. 35-36.

10. The Complainant periodically went to the service address to clean up and she had a few others go to the service address to help her repair some of the damage. Tr. 36-37.

11. The Complainant spent limited time at the service address and did not sleep at the service address as a precaution against contracting health issues. Tr. 39.

12. The major electric appliances at the service address are:

- a. stove;
- b. dryer;
- c. washing machine; and
- d. refrigerator. Tr. 18-19.

13. The Complainant's gross monthly income is \$1,364.00 from Social Security and monthly pension income of \$313.00, for total gross monthly income in the amount of \$1,677.00 ($\$1,364.00 + \$313.00 = \$1,677.00$). Tr. 32-33, 52, Complainant Exhibit 5.

14. Elsa Leung has been employed by the Respondent for about 6 1/2 years as a regulatory assessor. Tr. 57-58.

15. A regulatory assessor investigates informal and formal complaints that customers file against PECO with the Commission. Tr. 57.

16. The usage at the service address was low over the period that the account was active. Tr. 61-62, 69, PECO Exhibit 1.

17. The highest usage at the service address was between September 16, 2013 through October 15, 2013 for 71 kWh which corresponded to a bill of \$18.04². Tr. 62-63, PECO Exhibit 1.

18. On June 23, 2011, the Complainant enrolled in the Customer Assistance Program (CAP) with pre-program arrears in the amount of \$12,727.13. Tr. 51, 66.

19. On August 6, 2013, the Complainant was removed from the CAP program because the Respondent did not receive the required documents to recertify the Complainant's account for CAP. Tr. 65, PECO Exhibit 1.

20. On August 6, 2013, the Complainant's unforgiven pre-program CAP arrears of \$6,363.89 were added to her account. Tr. 65-66, PECO Exhibit 1.

21. The criteria for the CAP program pre-program arrears to be forgiven are that payments need to be made on the account on-time and in full each month during enrollment in the program. If the payments are not made on-time or in full, the Complainant does not receive the forgiveness of the arrears for that month. Tr. 66-67.

22. On August 16, 2013, the Respondent gave the Complainant a payment arrangement on her balance of \$6,675.39, which was the amount owed for usage plus the unforgiven pre-program arrears balance of \$6,363.89, for 60 equal monthly installments or \$111.39 plus current monthly usage charges. Tr. 67-68, PECO Exhibit 1.

23. The payment arrangement defaulted on September 16, 2013. Tr. 68, PECO Exhibit 1.

24. In September 2014, the Complainant agreed to provide access to the service address to the Respondent to put in a meter. Tr. 44, PECO Exhibit 1.

² This amount included a customer charge of \$7.13. Tr. 63.

25. The Respondent charged the Complainant late payment charges for service rendered prior to September 2014. Tr. 69.

26. On September 17, 2014, the Respondent credited the late payment charges on the Complainant's service account in the amount of \$1,092.79. Tr. 70, PECO Exhibit 1.

27. On September 17, 2014, the Respondent credited the Complainant's service account an additional \$896.56, which reduced her usage charges. Tr. 70, PECO Exhibit 1.

28. The credits were in consideration of a settlement with the Respondent to gain access to the meter. Tr. 70, 80-82, PECO Exhibit 5.

29. After the credits were applied to the Complainant's account, the Complainant still had an outstanding balance of \$5,834.13. Tr. 71.

30. On October 10, 2014, a payment arrangement was processed on the outstanding balance of \$5,834.13. Tr. 71.

31. The terms of the October 2014 payment arrangement were: (1) \$100.00 down payment; (2) monthly payment of \$95.57 towards arrears; plus (3) timely payment of current monthly charges. Tr. 71.

32. The Complainant defaulted on the October 2014 payment arrangement on November 10, 2014, but the payment arrangement was reinstated by the Respondent on November 19, 2014. Tr. 71, PECO Exhibit 1.

33. On December 3, 2014, the Complainant submitted to the Respondent monthly income of \$1,523.11 for one person in the household with her CAP application information. Tr. 83, 84, PECO Exhibits 3, 5.

34. Based on the income submitted by the Complainant on December 3, 2014, the Respondent determined that the Complainant's income was over the amount to be eligible for the CAP program. Tr. 83, PECO Exhibit 5.

35. The Complainant defaulted on the payment arrangement on January 12, 2015. Tr. 71, 72.

36. From February 2013 through May 2015, the Complainant made a total of four payments on the service account: (1) on September 17, 2014, in the amount of \$100.00; (2) on October 17, 2014 in the amount of \$100.00; (3) on November 19, 2014, in the amount of \$109.68; and (4) on December 1, 2014, in the amount of \$68.33. Tr. 72, PECO Exhibit 1.

37. A 10-day termination notice was sent to the service address on April 9, 2015 for a past due balance of \$5,840.43. Tr. 73, PECO Exhibit 2.

38. A 72-hour notice was left at the service address on April 16, 2015. Tr. 73, PECO Exhibit 2.

39. On April 23, 2015, electric service was terminated for the service address. Tr. 73, PECO Exhibit 2.

40. The Complainant's final bill was issued on May 27, 2015, with an outstanding balance in the amount of \$5,969.75. Tr. 74, PECO Exhibit 1.

41. On November 30, 2015, the Respondent sent the account to a collections agency with a final balance of \$6,189.04.³ Tr. 61, 75.

42. The Complainant requested service to be restored to the service address on September 21, 2016. PECO Exhibit 4.

³ This final balance included late payment charges from May through November 2015.

43. The Respondent sent a service denial notice to the Complainant dated September 22, 2016, which denied the restoration request because the Complainant has an outstanding balance for service at the service address in the amount of \$6,189.04 and she did not qualify for payment terms. Tr. 76, PECO Exhibit 4.

44. The Complainant filed an informal complaint with the Commission at BCS Case No. 003504328, on March 6, 2017. Tr. 76, PECO Exhibit 6.

45. On March 6, 2017, in the BCS informal complaint at Case No. 003504328, the Complainant reported that her household of one person had a monthly income of \$1,422.00. Tr. 84.

46. The BCS informal complaint at Case No. 003504328 stated that the Complainant had water damage at the service address in September or October 2012, when the Complainant moved in with her daughter. Tr. 77, PECO Exhibit 6.

47. In the informal complaint, the Complainant requested restoration of service at the service address and disputed the amount due because the service address had not been occupied. Tr. 77, PECO Exhibit 6.

48. The decision dated March 20, 2017, at BCS Case No. 003504328 concluded that the Complainant was not eligible for a payment arrangement due to not making a good faith effort to pay her bills; and the Complainant was directed to pay \$1,939.88 to restore service. Tr. 77, PECO Exhibit 7.

49. The Respondent has no record that the Complainant contacted the Company to discontinue or terminate service at the service address. Tr. 79, PECO Exhibit 5.

50. If the Complainant would submit a CAP application, the Company is willing, if eligible, to reinstate the pre-program arrears balance under the CAP program to obtain forgiveness for timely, full payments. Tr. 82.

51. The Respondent requested payment on the total balance of the account to restore service. Tr. 82.

DISCUSSION

In this Complaint, the Complainant requested restoration of service at the service address and a payment arrangement. The Complainant disputes the amount owed for electric service at the service address. The issue in this proceeding is determined by whether the Complainant sustained her burden of proof. The Complainant has failed to sustain her burden of proof, and therefore, the Complaint is dismissed.

I. Applicable Legal Standard

As the proponent of a rule or order seeking affirmative relief from the Commission, 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. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for any problem alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

A preponderance of the evidence is that which is 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); *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).

If the Complainant presents 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.Cmwlt. 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.Cmwlt. 2001).

II. Whether Complainant Sustained Burden of Proof

1. Termination of Service

The record evidence shows that water damage occurred at the Complainant's service address in September 2012 and the Complainant left the service address to preserve her health due to mold, mildew and the unpleasant smell caused by the water damage. Tr. 48. The Complainant does not dispute that she failed to discontinue or terminate service at the service address. Tr. 15-16, 22-22, 35. To the contrary, the Complainant left the service address with the intent to return once the water damage was repaired. Tr. 35-36. Consequently, the Complainant did not shut off any electric appliance. *Id.* The Respondent has no record that the Complainant contacted the Company to discontinue or terminate service at the service address. Tr. 79, PECO Exhibit 5.

Based on the record evidence, I conclude that the Complainant did not discontinue or terminate service after the water damage occurred.

The Respondent submitted evidence of tariff provisions in place regarding discontinuance of service and, after notice of termination, liability of the customer for service until the meter is read or disconnected. PECO Exhibit 8. Both tariff provisions became effective January 1, 2016.

The Complainant vacated the service address in September 2012, well before January 1, 2016, which is the effective date of both tariffs submitted by the Respondent. The Complainant's service was terminated on April 23, 2015. Tr. 73, PECO Exhibit 2. The Complainant's service account was sent to collections on November 30, 2015. Tr. 61, 75. Consequently, the tariffs were not in effect or approved by the Commission when the Complainant vacated the service address or when the service was terminated. The service account went to collections before the tariffs were in effect. I find that the Respondent's tariffs are not relevant to this dispute.

On October 10, 2014, the Complainant and Respondent entered into a payment arrangement for an outstanding balance of \$5,834.13. Tr. 71. The terms of the payment arrangement were:

- (1) \$100.00 down payment;
- (2) \$95.57 per month towards arrears; and
- (3) Timely payment of current monthly charges.

Tr. 71. Although the Complainant defaulted on this payment arrangement on November 10, 2014, the Respondent reinstated the payment arrangement on November 19, 2014. *Id.*, PECO Exhibit 1. The Complainant defaulted on the reinstated payment arrangement on January 12, 2015. Tr. 71, 72. The Complainant provided no evidence that the Respondent's billing and amount of the outstanding balance due were erroneous or unreasonable.

Section 1406(a) of the Code states,

§ 1406. Termination of utility service

(a) Authorized termination.—A public utility may notify a customer and terminate service provided to a customer after notice as provided in subsection (b) for any of the following actions by the customer:

(1) **Nonpayment of an undisputed delinquent account.**

(2) Failure to comply with the material terms of a payment arrangement.

(3) Failure to complete payment of a deposit, provide a guarantee of payment or establish credit

(4) Failure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading.

66 Pa.C.S. § 1406(a)(emphasis added).

The Complainant did not rebut the evidence that she failed to comply with the terms of the October 2014 payment arrangement. Thus, the Complainant failed to comply with material terms of a payment agreement pursuant to 66 Pa.C.S. § 1406(a). The Respondent sent a 10-day termination notice to the service address on April 9, 2015. Tr. 73, PECO Exhibit 2. The Respondent sent a 72-hr notice to the service address on April 16, 2015. Tr. 73, PECO Exhibit 2. The Respondent terminated service on April 23, 2015. *Id.* The Complainant did not rebut the evidence of the notices that the Respondent provided concerning termination of service.

I find that the record evidence supports that the Respondent complied with Commission regulations and statutes in terminating electric service at the service address. Consequently, in the termination of service at the service address, I find that the Respondent was authorized to terminate the service at the Complainant's service address.

2. Restoration of Service

Section 1407(d) of the Code addresses reconnection of service when an outstanding balance exists for the premises and states,

(d) Payment of outstanding balance at premises.—A public utility may also require the payment of any outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there.

The final outstanding balance in the amount of \$6,189.04, was sent by the Respondent to a collection agency on November 30, 2015. Tr. 61, 75. The Complainant requested restoration of electric service at the service address on September 21, 2016. PECO Exhibit 4. The Commission's regulations at 52 Pa.Code § 56.191(d), state more specifically,

(d) Payment of outstanding balance at premises as a condition to restore service. A public utility may require the payment of any outstanding balance or portion of an outstanding balance if the applicant or customer resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant or customer resided there, not exceeding 4 years prior to the date of requesting that service be restored. The 4-year limit does not apply in instances of fraud and theft.

The Complainant's outstanding balance accrued within four years of the Complainant's request for restoration of service. Pursuant to 52 Pa.Code § 56.191(d), the Respondent is permitted to request payment of a portion of the outstanding balance as a condition of restoration of service. I find that the Respondent acted consistent with Commission regulations to condition restoration of electric service at the service address on payment toward the outstanding balance due.

3. Amount due for Restoration of Service

Section 1407(c) of the Code addresses payment for reconnection of service and states,

(c) Payment to restore service.

- (1) A public utility shall provide for and inform the applicant or customer of a location where the customer can make payment to restore service.
- (2) A public utility may require:

- (i) Full payment of any outstanding balance incurred together with any reconnection fees by the customer or applicant prior to reconnection of service if the customer or applicant has an income exceeding 300% of the Federal poverty level or has defaulted on two or more payment agreements. If a customer or applicant with household income exceeding 300% of the Federal poverty level experiences a life event, the customer shall be permitted a period of not more than three months to pay the outstanding balance required for reconnection. For purposes of this subparagraph, a life event is:

- (A) A job loss that extends beyond 9 months.
 - (B) A serious illness that extends beyond 9 months.
 - (C) Death of the primary wage earner.

- (ii) Full payment of any reconnection fees together with repayment over 12 months of any outstanding balance incurred by the customer or applicant, if the customer or applicant has an income exceeding 150% of the Federal poverty level but not greater than 300% of the Federal poverty level.

- (iii) Full payment of any reconnection fees together with payment over 24 months of any outstanding balance incurred by the customer or applicant if the customer or applicant has an income not exceeding 150% of the Federal poverty level....

The Complainant provided evidence of gross monthly household income of \$1,677.00. Tr. 32-33, 52, Complainant Exhibit 5. The Complainant provided the following testimony:

Q. Now, when you—if you are successful in getting the electric and water put on, will you be the only one living at [the service address?]

A. No. Because my children don't want me there by myself. I would have to have my—[either] my granddaughter, somebody, would be one.

Q. So there would be another adult with you living there?

A. I'm talking about a temporary tenant.

Q. So there will be another occupant living with you there?

A. Yes. And not necessarily living with me, but sometimes spending the night so I won't be by myself.

Tr. 24. Based on this testimony the household size is one person. The Federal poverty income guidelines for 2018 set the gross monthly income for a household size of one person corresponding to 300% at \$3,035.00 and the gross monthly income for the same size household corresponding to 150% at \$1,517.50. 83 FR 2642-44 (January 13, 2018). The Complainant's monthly household income of \$1,677.00 for a household size of one exceeds 150% of the Federal poverty level (FPL) but is not greater than 300% of the FPL.

The Commission's regulations state at 52 Pa.Code § 56.191(c),

(c) Payment to restore service.

(1) A public utility shall provide for and inform the applicant or customer of a location where the customer can make payment to restore service. A public utility shall inform the applicant or customer that conditions for restoration of service may differ if someone in the household is a victim of domestic violence with a protection from abuse order. A public utility shall also inform the applicant or customer that the timing and conditions for restoration of service may differ if someone in the household is seriously ill or affected by a medical condition which will be aggravated without utility service.

(2) A public utility may require:

(i) Full payment of any outstanding balance incurred together with any reconnection fees by the customer or applicant prior to reconnection of service if the customer or applicant has an income exceeding 300% of the Federal poverty level or has defaulted on two or more payment agreements. For purposes of this section, neither a payment agreement intended to amortize a make-up bill under § 56.14 (relating to previously unbilled public utility service) or the definition of “billing month” in § 56.2 (relating to definitions), nor a payment agreement that has been paid in full by the customer, are to be considered a default. Budget billing plans and amortization of budget plan reconciliation amounts under § 56.12(7) (relating to meter reading; estimated billing; customer readings) may not be considered a default for the purposes of this section.

(ii) If a customer or applicant with household income exceeding 300% of the Federal poverty level experiences a life event, the customer shall be permitted a period of not more than 3 months to pay the outstanding balance required for reconnection. For purposes of this subparagraph, a life event is:

- (A) A job loss that extends beyond 9 months.
- (B) A serious illness that extends beyond 9 months.
- (C) Death of the primary wage earner.

(iii) Full payment of any reconnection fees together with repayment over 12 months of any outstanding balance incurred by the customer or applicant, if the customer or applicant has an income exceeding 150% of the Federal poverty level but not greater than 300% of the Federal poverty level. The initial payment required toward the outstanding balance as a condition of restoration cannot exceed 1/12 of the outstanding balance.

(iv) Full payment of any reconnection fees together with payment over 24 months of any outstanding balance incurred by the customer or applicant if the customer or applicant has an income not exceeding 150% of the Federal poverty level. The initial payment required toward the outstanding balance as a condition of restoration cannot exceed 1/24 of the outstanding balance. A customer or applicant of a city natural gas distribution operation whose household income does not exceed 135% of the Federal poverty level shall be reinstated under this subsection only if the customer or applicant enrolls in the customer assistance program of the city natural gas distribution operation. This

requirement may not apply if the financial benefits to the customer or applicant are greater if served outside of that assistance program.

In compliance with 66 Pa.C.S. §1407(c)(2)(ii) and 52 Pa.Code § 56.191(c)(iii),⁴ the Respondent may require, for restoration of service, full payment of any reconnection fee and 1/12 of the outstanding balance due. One twelfth of the Complainant's outstanding balance is \$515.75 ($\$6,189.04 \div 12 = \515.75). The Complainant would have to pay any reconnection fee plus \$515.75 to restore service. Subsequent to the payment of the reconnection fee plus \$515.75, the Complainant would pay over a period of the next 11 months current charges plus \$515.75 towards her outstanding balance. This would be a payment arrangement. The record evidence does not show that the Complainant has received a Commission-issued payment arrangement.

It is noted, however, that the Complainant's outstanding balance of \$6,189.04 is comprised of CAP arrears. On August 6, 2013, the Complainant was removed from CAP with a balance of \$6,363.89 in CAP arrears. Tr. 65-66, PECO Exhibit 1. The Complainant's balance on September 15, 2014, was \$7,923.51. PECO Exhibit 1. The Complainant did not make any payments between August 6, 2013 and September 14, 2014. Consequently, of the \$7,923.51 amount owed by the Complainant on September 15, 2014, she owed \$1,559.62 in non-CAP arrears ($\$7,923.51 - \$6,363.89 = \$1,559.62$) and \$6,363.89 in CAP arrears.

The Respondent credited the Complainant's account on September 17, 2014, in the amounts of \$1,092.79 for waiver of late fees and an additional \$896.59 for a total of \$1,989.38 ($\$1,092.79 + \$896.59 = \$1,989.38$). Tr. 70, PECO Exhibit 1. The credits by the Respondent reduced the CAP arrears to \$5,934.13 ($\$1,559.62$ (non-CAP balance) $-1,989.38 = \$429.76$ credit; $\$6,363.89$ (CAP arrears) $-\$429.76$ (credit) = $\$5,934.13$). Thus, the Complainant's outstanding balance was only comprised of CAP arrears. The Complainant made a payment of \$100.00 on September 17, 2014, which reduced the CAP arrears to \$5,834.13 ($\$5,934.13 - \$100.00 = \$5,834.13$). PECO Exhibit 1.

⁴ It is noted that 52 Pa.Code § 56.191(c)(i) applies in this circumstance as the Complainant has defaulted on two payment arrangements. However, 52 Pa.Code § 56.191(c)(iii) is more favorable to the Complainant, and the analysis of this Complaint pursued the applicable law most favorable to the Complainant.

On October 10, 2014, the amount owed by the Complainant was \$5,834.13 in CAP arrears and the Complainant agreed to a payment arrangement to make monthly payments in the amount of \$95.57 towards the CAP arrears, with an upfront payment of \$100.00 ($\100.00 on October 10, 2014 + $\$95.57$ on October 14, 2014 = $\$195.57$). Tr. 71, PECO Exhibit 1.

The Complainant made the following payments after the October 10, 2014 payment arrangement: (1) on October 17, 2014, in the amount of \$100.00; (2) on November 19, 2014, in the amount of \$109.68; and (3) on December 1, 2014, in the amount of \$68.33. Tr.72, PECO Exhibit 1. The \$100.00 payment made by the Complainant on October 17, 2014 reduced the CAP arrears to $\$5,734.13$ ($\$5,834.13 - \$100.00 = \$5,734.13$).

On November 10, 2014, the Complainant defaulted on the payment arrangement, but on December 15, 2014, the Complainant was reinstated to a payment arrangement with a \$95.57 monthly payment towards her CAP arrears. The payment made by the Complainant on November 19, 2014 in the amount of \$109.68, is the charge for electric service in October of \$14.11 plus the payment agreement term of \$95.57 for monthly payment ($\$95.57 + 14.11 = \109.68). PECO Exhibit 1. Thus, the Complainant's arrears are reduced by \$95.57 with the November 19, 2014 to $\$5,638.56$ ($\$5,734.13 - 95.57 = \$5,638.56$).

As stated above on December 1, 2014, the Complainant made a payment of \$68.33, which was the amount of her electric service charged for November 2014, \$11.96 plus a \$56.37 late fee ($\$11.96 + \$56.37 = \$68.33$). This payment did not reduce the CAP arrearage which remained at $\$5,638.56$. On January 12, 2015, the Complainant defaulted on the payment arrangement. PECO Exhibit 1.

On January 20, 2015, the Complainant owed $\$5,713.49$, which is ($\$5,638.56$ CAP arrears) + $\$10.44$ (December 2014 late fees) + $\$54.04$ (January 2015 late fees) + $\$10.45$ (January 2015 payment for service) = $\$5,713.49$. PECO Exhibit 1. The Complainant made no payments from January 12, 2015, until the service account was sent to collections on November 30, 2015. As of November 30, 2015, the Complainant owed $\$6,189.04$, which is ($\$5,638.56$ (CAP arrears) + $\$59.49$ (charges for electric service rendered) + $\$490.99$ (late fees) = $\$6,189.04$. Tr. 61, 75,

PECO Exhibit 1. Thus, the arrearage is mixed with \$5,638.56 in CAP arrears and \$550.48 in non-CAP arrears ($\$59.49 + \$490.99 = \$550.48$).

A payment arrangement is defined as, “An agreement whereby a customer who admits liability for billed service is permitted to amortize or pay the unpaid balance of the account in one or more payments.” 66 Pa.Code § 1403.

Section 1405(c) of the Code states, “Customer assistance program 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).

To follow the Commission regulation at 52 Pa.Code § 56.191(c)(2)(iii) and the statute at 66 Pa.C.S. § 1407(c)(2)(ii), would result in a payment arrangement for the Complainant on an outstanding balance of \$6,189.04 comprised of \$5,638.56 in CAP arrears and \$550.48 in non-CAP arrears.

While Section 1407 sets out the terms a utility may impose upon a customer seeking restoration of service, subsection 1407(c) does not “divest the Commission of its duty to act as the final arbiter of a utility customer’s rights with respect to payment disputes.” *Crawford v. National Fuel Gas Dist. Corp.*, Docket No. C-20066348 (Order entered December 6, 2007). The Commission retains “the authority under Section 1405 of the [Public Utility] Code to establish a payment agreement for a customer who was lawfully disconnected for nonpayment.” *Rognito v. UGI Utilities, Inc.*, Docket No. F-02263457 (Order entered December 3, 2008). Thus, consistent with 66 Pa.C.S. § 1405(c), the Commission does not have the authority to provide the Complainant with a payment arrangement on the CAP arrears in the amount of \$5,638.56. The Commission statute at 66 Pa.C.S. § 1405(c) prohibits granting a payment arrangement that would have resulted from the application of 66 Pa.C.S. § 1407(c)(2)(ii) and 52 Pa.Code § 56.191(c)(2)(iii).

The Complainant has not had a Commission-issued payment arrangement. Although Section 1405(c) of the Public Utility Code, 66 Pa.C.S. § 1405(c), prohibits the

Commission from setting a payment arrangement on an arrearage accrued under customer assistance program rates, when a Complainant has a mixed arrearage, the Commission may bifurcate the arrearage and establish a payment arrangement on the non-CAP arrearage. Thus, the Commission is not prohibited from establishing a payment arrangement over the Complainant's non-CAP arrearage in the amount of \$550.48. Nevertheless, the Commission is not required to set a payment arrangement on a bifurcated arrearage and may decline to do so if the Complainant has exhibited a poor payment history and inability to keep prior payment agreements with the company. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Order entered September 12, 2013) (*Hewitt*). Furthermore, a payment arrangement issued on a non-CAP arrearage in a scenario where the Complainant is likely to default is not in the customer's best interest. *Turner v Philadelphia Gas Works*, Docket No. C-2013-2388319 (Order entered June 19, 2014) (*Turner*).

In *Hewitt*, the Commission determined that the complainant, a former CAP-customer, was not entitled to a payment arrangement for her non-CAP arrearages because of her poor payment history and her inability to keep prior payment arrangements.

In this matter, the Complainant has had three Company-issued payment arrangements over the period from March 2013 until the service account went to collection in November 2015. The Complainant defaulted on all three payment arrangements. The Complainant made four payments over the same period from March 2013 to November 2015. The Complainant has shown a poor payment history. Consistent with *Hewitt*, the Complainant is not entitled to a Commission-issued payment arrangement on her non-CAP arrears.

I note that based on the payment history of the Complainant, it would be unreasonable to offer a payment arrangement on the non-CAP arrears amount of \$550.48, and direct payment for the CAP arrears amount of \$5,638.56. I find, consistent with *Turner*, it is not in the best interest of the Complainant to issue a payment arrangement on the non-CAP arrears and direct payment on the CAP arrears.

The Respondent sent a service denial notice to the Complainant dated September 22, 2016, which denied the restoration requested by the Complainant because the Complainant has an outstanding balance for service at the service address in the amount of \$6,189.04 and she did not qualify for payment terms. Tr. 76, PECO Exhibit 4. The Complainant defaulted on September 16, 2013, November 10, 2014 and January 12, 2015, on three distinct Company-issued payment arrangements. Tr. 68, 71, 72, PECO Exhibit 1. The Respondent complied with 1407(c)(2)(i), and 52 Pa.Code § 56.191(c)(2)(i), respectively with its denial notice to the Complainant.

I find that the communication contained in the Respondent's denial notice regarding restoration of service after having lawfully disconnected service did not violate Commission regulations, statutes or precedents.

4. Allegations of Reliability, Safety, or Quality Issues

The Complainant alleged a problem with the reliability, safety, or quality of electric service received. The Complainant did not provide any evidence regarding this allegation. Thus, the Complainant failed to sustain her burden of proof that there was a problem with the reliability, safety, or quality of electric service received at the service address.

5. Conclusion

I find that the Complainant failed to sustain her burden of proof regarding the incorrect amount due to restore service to the service address and failed to sustain her burden of proof regarding the Respondent's action to terminate service at the service address. I find that the Complainant failed to sustain her burden of proof that the Respondent provided service with reliability, safety or quality problems.

CONCLUSIONS OF LAW

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

2. “Burden of proof” means a duty to establish one’s case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

3. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

4. A public utility may notify a customer and terminate service provided to a customer after proper notice if the customer fails to comply with the material terms of a payment arrangement. 66 Pa.C.S. § 1406(a); 52 Pa.Code § 56.81(4).

5. A public utility may require the payment of any outstanding balance or portion of an outstanding balance if the applicant or customer resided at the property for which service is required during the time the outstanding balance accrued and for the time the applicant or customer resided there, not exceeding four years prior to the date of requesting that service be restored. 66 Pa.C.S. § 1407(d); 52 Pa.Code § 56.191(d).

6. A public utility may require full payment of any reconnection fees together with repayment over 12 months of any outstanding balance incurred by the customer or applicant, if the customer or applicant has an income exceeding 150% of the federal poverty level but not greater than 300% of the federal poverty level. The initial payment required toward the outstanding balance as a condition of restoration cannot exceed 1/12 of the outstanding balance. 66 Pa.C.S. § 1407(c)(2)(ii); 52 Pa.Code § 56.191(c)(2)(iii).

7. A public utility may require full payment of any outstanding balance incurred together with any reconnection fees by the customer or applicant prior to reconnection of service if the customer or applicant has...defaulted on two or more payment arrangements. 66 Pa.C.S. § 1407(c)(2)(i); 52 Pa.Code § 56.191(c)(2)(i).

8. Customer assistance program 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).

9. Where there is a mixed arrearage, the Commission has held that it retains authority to issue a payment arrangement on the non-customer assistance program portion of the arrearage. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Order entered September 12, 2013).

10. In a scenario where the Complainant is likely to default, the Commission has found a payment agreement on a non-customer assistance program arrearage is not in the customer's best interest. *Turner v. Philadelphia Gas Works*, Docket No. C-2013-2388319 (Order entered June 19, 2014).

11. The Complainant failed to sustain her burden of proof.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Rosanna Dickerson against PECO Energy Company at Docket No. C-2017-2615251 is dismissed.

2. That the Secretary's Bureau mark Docket No. C-2017-26105251 closed.

Dated: February 15, 2018

_____/s/
Angela T. Jones
Administrative Law Judge