

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Audrey Boyd	:	
	:	
v.	:	C-2017-2621052
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s Complaint because she failed to sustain her burden of showing that she is entitled to receive a Commission-issued payment arrangement, failed to sustain her burden of establishing that the Respondent improperly issued her a service termination notice, and failed to sustain her burden of establishing that Respondent’s termination notice did not adhere to the regulations regarding the contents of termination notices at 52 Pa.Code § 56.91.

HISTORY OF THE PROCEEDING

On August 23, 2017, Audrey Boyd (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed checkmarks in the boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service,” and “I would like a payment agreement.”

On September 13, 2017, Respondent filed an Answer denying all material allegations of fact in the Complaint. PECO indicated that the Complainant's balance is \$11,929.63, and that the majority of the balance accrued while she participated in PECO's Customer Assistance Program (CAP). PECO averred that the Complainant is not eligible for a Commission-issued payment arrangement pursuant to 66 Pa.C.S. § 1405(c).

By Hearing Notice dated September 18, 2017, a hearing was scheduled for November 30, 2017 at 1:00 p.m., and the matter was assigned to me.

I issued a Prehearing Order on September 25, 2017. The Prehearing Order directed the parties to comply with various procedural requirements and explained that the complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on November 30, 2017. Complainant appeared *pro se* and testified. Respondent appeared and was represented by Shawane L. Lee, Esq., who presented the testimony of Teresa Ferrier, a Senior Regulatory Assessor. Respondent offered six exhibits which were all admitted into the record.

The record in this case consists of a 47-page transcript and six exhibits. The record closed on January 3, 2018, when I received the transcript of the November 30, 2017 hearing.

FINDINGS OF FACT

1. The Complainant in this case is Audrey Boyd.
2. The Respondent in this proceeding is PECO Energy Company.
3. The Complainant resides at 733 North Holly Street, Philadelphia, Pennsylvania (service address). Tr. 7-8.

4. The Complainant has owned the service address since at least 2002. Tr. 16.
5. On July 3, 2017, PECO issued the Complainant a termination notice for non-payment on a balance of \$11,445.94. Tr. 9, 40.
6. The notice advised the Complainant of steps she could follow to avoid termination of service. Tr. 10.
7. PECO has never terminated the Complainant's electric service. Tr. 8.
8. Complainant resides at the service address with her son and her great granddaughter. Tr. 20.
9. Complainant receives monthly Social Security Income of \$1,653. Tr. 20.
10. Complainant's son receives \$192 each month in food stamps. Tr. 21.
11. PECO entered into payment agreements with the Complainant on the following dates: April 14, 2008; April 7, 2009; April 18, 2011; February 16, 2012;¹ and July 26, 2012.² Tr. 44; PECO Exh. 4.
12. The Complainant defaulted on each of these payment agreements. Tr. 44; PECO Exh. 4.
13. On October 3, 2013, PECO entered into a payment agreement with the Complainant on a balance of \$7,091.79 to settle a formal Complaint at Docket Number F-2013-2369391. Tr. 32; PECO Exh. 1.

¹ Although the transcript indicates that Ms. Ferrier stated "February 15, 2012," a review of PECO Exh. 4 demonstrates that PECO entered into this payment agreement with the Complainant on February 16, 2012. Tr. 44.

² Although the transcript indicates that Ms. Ferrier stated "July 6, 2012," a review of PECO Exh. 4 demonstrates that PECO entered into this payment agreement with the Complainant on July 26, 2012. Tr. 44.

14. On November 19, 2013,³ the payment agreement defaulted after the Complainant failed to make a payment. Tr. 32; PECO Exh. 1.

15. For the calendar year 2014, the Complainant made two payments towards her PECO electric bill. Tr. 32; PECO Exh. 1.

16. For the calendar year 2015, the Complainant made three payments towards her PECO electric bill. Tr. 33; PECO Exh. 1.

17. For the calendar year 2016, the Complainant made two payments towards her PECO electric bill. Tr. 34; PECO Exh. 1.

18. For the calendar year 2017, as of the date of the hearing on November 30th, the Complainant had made eight payments towards her PECO electric bill. Tr. 34; PECO Exh. 1.

19. On October 22, 2014, the Complainant filed a petition for bankruptcy. Tr. 35; PECO Exh. 1.

20. On October 22, 2014, PECO set aside \$9,350.55 of the Complainant's balance pending the result of her bankruptcy filing. Tr. 35; PECO Exh. 1.

21. On May 11, 2015,⁴ the Complainant's bankruptcy petition was dismissed. Tr. 35; PECO Exh. 1.

22. On May 11, 2015, PECO placed the set-aside balance back on the Complainant's account. PECO Exh. 1.

³ Although the transcript indicates that Ms. Ferrier stated "October 19, 2013," a review of PECO Exh. 1 demonstrates that the Complainant defaulted on her payment agreement on November 19, 2013. Tr. 32.

⁴ Although the transcript indicates that Ms. Ferrier stated "1/11/2015", a review of PECO Exh. 1 demonstrates that the Complainant's bankruptcy petition was dismissed on May 11, 2015. Tr. 35.

23. On May 27, 2015, the Complainant filed a second petition for bankruptcy. Tr. 36; PECO Exh. 1.

24. On May 27, 2015, PECO set aside \$10,638.88 of the Complainant's balance pending the result of her bankruptcy filing. Tr. 36; PECO Exh. 1.

25. On September 21, 2015, the Complainant's second bankruptcy petition was dismissed. Tr. 35; PECO Exh. 1.

26. On September 21, 2015, PECO placed the set-aside balance back on the Complainant's account. PECO Exh. 1.

27. On April 26, 2016,⁵ the Complainant filed a third petition for bankruptcy. Tr. 36; PECO Exh. 1.

28. On April 26, 2016, PECO set aside \$11,538.37 of the Complainant's balance pending the result of her bankruptcy filing. Tr. 36; PECO Exh. 1.

29. On March 27, 2017, the Complainant's third bankruptcy petition was dismissed. Tr. 37; PECO Exh. 1.

30. As of the date of the hearing, the Complainant's balance totaled \$12,096.79. Tr. 37, 42; PECO Exh. 1.

31. The Complainant participated in PECO's Customer Assistance Program (CAP) from December 28, 2007 until November 12, 2010 and again from July 26, 2012 until May 17, 2016. Tr. 37-38; PECO Exh. 2.

⁵ Although the transcript indicates that Ms. Ferrier stated "April 26, 2015", a review of PECO Exh. 1 demonstrates that the Complainant filed her third bankruptcy petition on April 26, 2016. Tr. 36.

32. Of the Complainant's \$12,096.79 balance, \$7,999.90 is comprised of CAP arrears. Tr. 38.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, the Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent public 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). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlt. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence 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). 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.Cmwlt. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlt. 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*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlt. 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.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.Cmwlth. 2001).

In the present case, the Complainant has indicated that she is seeking a Commission-issued payment arrangement. The Complainant's balance totaled \$12,096.79, including CAP arrears of \$7,999.90, as of the date of the hearing. The Complainant also indicated that, although her electric service is currently on, PECO previously issued her a termination notice for non-payment.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401, *et seq.* (the Act or Chapter 14), applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow in handling customer complaints.

Regarding the length of payment arrangements, the Public Utility Code provides the following:

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).

Additionally, Section 1405(c) of the Public Utility Code prohibits the Commission from establishing a payment arrangement on any outstanding Customer Assistance Program arrears. 66 Pa.C.S. § 1405(c). Of the Complainant's current outstanding balance, \$7,999.90 is composed of CAP arrears. As such, the Commission cannot grant the Complainant a payment arrangement on this amount.

The remaining amount of non-CAP arrears is \$4,096.89, on which the Commission may issue a payment arrangement. However, in cases where the Commission is authorized by law to establish a payment arrangement between a customer and a utility, it has the responsibility to exercise its authority very judiciously. Specifically, the Commission will exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of a good faith effort to pay their utility bills or who have experienced a significant change of circumstances beyond their control. *George Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007).

The 2018 Federal Poverty Guidelines provide that a three-person household with a gross monthly household income of \$2,597.50 is at 150% of the Federal poverty level. The Complainant's gross monthly household income for her three-person household at the time of the hearing was \$1,845, placing her below 150% of the Federal poverty level. Pursuant to Chapter 14, the Complainant's household income makes her eligible for a five-year payment arrangement to extinguish her outstanding non-CAP balance. 66 Pa.C.S. § 1405(b)(1). However, to determine the Complainant's eligibility for a Commission-issued payment arrangement, in addition to considering the Complainant's household income, I must also consider the Complainant's payment history with PECO.

The record demonstrates that between 2014 and the date of the hearing, the Complainant made only fifteen payments towards her electric service. The record further demonstrates that the Complainant has already defaulted on six company issued payment arrangements. Based on the Complainant's poor payment history, as well as the Complainant's failure to keep the terms of six separate company issued payment arrangements, it is unlikely that she would be able to make the \$7,999.90 lump sum payment necessary to satisfy the CAP portion of

her outstanding balance and also be able to keep the terms of a five-year payment arrangement where she would be required to pay \$68.28 per month ($\$4,096.89 \text{ non-CAP balance} / 60 \text{ months} = \68.28) in addition to her regular monthly payments.

Accordingly, the Complainant's request for a Commission-issued payment arrangement is denied.

The Complainant also indicated that PECO issued her a termination notice. Although the Complainant did not present a termination notice for my consideration, she did testify that the notice she received advised that the threatened termination was due to non-payment, and also advised her of steps she could follow to avoid termination. The Complainant did not offer any additional testimony regarding PECO's termination notice. Based on the limited testimony provided by the Complainant, the Complainant did not meet her burden of demonstrating that PECO improperly issued her a termination notice, or that the contents of the notice issued failed to meet the notice requirements set out in 52 Pa.Code § 56.91.

As such, the Complainant's Complaint is denied in its entirety.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon 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. Section 1405(c) of the Public Utility Code prohibits the Commission from establishing a payment arrangement on any outstanding Customer Assistance Program arrears. 66 Pa.C.S. § 1405(c).

5. In cases where the Commission is authorized by law to establish a payment arrangement between a customer and a utility, the Commission will exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of a good faith effort to pay their utility bills or who have experienced a significant change of circumstances beyond their control. *George Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007).

6. Complainant failed to sustain her burden of demonstrating that she should receive a Commission-issued payment arrangement.

7. Complainant failed to sustain her burden of establishing that the Respondent improperly issued her a service termination notice and also failed to demonstrate that Respondent's termination notice did not adhere to the regulations regarding the contents of termination notices at 52 Pa.Code § 56.91.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Audrey Boyd against PECO Energy Company at Docket No. C-2017-2621052 is denied; and

2. That the record at Docket No. C-2017-2621052 be marked closed.

Date: March 19, 2018

_____/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge