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July 6, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

RE: Salwa Mohamed v. PECO Energy Company
Docket No. F-2018-3001318

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the *Brief of PECO Energy Company Supporting the Imposition of Late Payment Charges on Customer Assistance Program Accounts* with regard to the matter referenced above.

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,



Shawane L. Lee
Counsel for PECO Energy Company

SL/ab
Enclosure

cc: Honorable Eranda Vero, ALJ

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SALWA MOHAMED	:	
Complainant	:	
	:	
v.	:	DOCKET NO. F-2018-3001318
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**BRIEF OF PECO ENERGY COMPANY SUPPORTING THE IMPOSITION OF
LATE PAYMENT CHARGES ON CUSTOMER ASSISTANCE PROGRAM
ACCOUNTS**

PECO Energy Company (“PECO” or “Respondent”) hereby submits that PECO’s Universal Services Three-Year Plan regarding late payment charges is consistent with § 1409 of the Public Utility Code, that § 1409 of the Public Utility Code does not prohibit PECO from imposing late charges on low income Customer Assistance Program (“CAP”) customers, and that § 1409 of the Public Utility Code and 52 Pa. Code § 56.22 do not conflict with PECO’s Universal Services Three-Year Plan.

I. INTRODUCTION

The Complainant, a CAP customer, disputed late payment charges assessed to her account at her service address 1071 Levick Street, Philadelphia, PA. The Complainant connected service at 1071 Levick Street effective December 6, 2013. Practically every month since that day to present, she has incurred a monthly late payment charge for failing to pay her bills on time and in full each month. PECO avers that the company is permitted to impose late payment charges on CAP accounts, which is supported by Section 17.5 of PECO’s Electric Service Tariff, PECO’s Three-Year Universal Services Plan, 52 Pa. Code § 56.22, and § 1409 of the Public Utility Code, and Commission case

law. While an Administrative Law Judge has the option to waive late payment charges for low income customers, there is nothing in the tariff or law that prohibits PECO from imposing the charges.

II. PROCEDURAL HISTORY

The Complainant ratepayer, Salwa Mohamed, filed a formal complaint with the Public Utility Commission on April 9, 2018. In her formal complaint, Complainant disputes PECO's Customer Assistance Program – Fixed Credit Option (“CAP-FCO”) program and states that she is not receiving the credit she did prior to the program being initiated. The Complainant additionally disputes late payment charges assessed to her account. PECO filed an Answer to the Complaint on April 23, 2018. The matter was assigned to Administrative Law Judge Eranda Vero for hearing scheduled to take place, June 21, 2018. The hearing proceeded on June 21, 2018, as scheduled. The parties appeared and gave testimony. PECO presented the testimony of Senior Regulatory Assessor, Renee Tarpley and motioned the company's hearing exhibits into the record. The Complainant did not testify, but rather, Mr. Ahmed Abdulrahman presented the case and testimony on Ms. Mohamed's behalf. Mr. Abdulrahman proposed Exhibit C-1 to be entered into the record. On June 25, 2018, PECO filed late filed Exhibit 7 (PECO's Universal Services Three-Year Plan, page 50) and Exhibit 8 (PECO Tariff – Customer Assistance Rider).

III. LEGAL ARGUMENT

“Where a Complaint involves an existing, Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule is no longer reasonable.” *William Wilmot v. PECO Energy Company*, No. F-2013-2382003, 2014 WL 2776541, at *8 (Pa. P.U.C. 2014) (citing *Brockway Glass Co. v. Pa. Pub. Util. Comm’n*, 437 A.2d 1067, 63 Pa. Commw. 238 (Pa. Cmwlth 1981)). To establish a *prima facie* case, Complainant must show that the utility breached some duty owed to Complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. *Lesette Bartell v. PECO Energy Company*, No. C-2016-2542213, 2017 WL 1406795, at *5 (Pa. P.U.C. 2017) (citing 66 Pa. C.S. § 701). “If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility’s case by a preponderance of the evidence.” *Id.* (citing *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95). The party meeting the preponderance of the evidence standard is the party whose evidence is more convincing than that presented by the other party. *Id.* (citing *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. *Id.* (citing *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980)).

“A Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and customer. The burden of proof is on the Complainant to show that the application of the existing tariff at issue is applied unreasonably.” *William Wilmot v. PECO Energy Company*, No. F-2013-2382003, 2014 WL 2776541, at *8 (Pa. P.U.C. 2014) (citing 66 Pa.C.S. § 316; *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067, 63 Pa.Comm.w. 238 (Pa.Cmwlt. 1981); and *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlt. 1997)).

A. Relevant Statutory Provisions

The statute concerning termination of utility service, 66 Pa. C.S. § 1409, provides:

A public utility shall waive late payment charges on any customer accounts if the charges were improperly assessed. The commission may order a waiver of any late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level.

The statute governing the accrual of late payment charges, 52 Pa. Code § 56.22,

Provides:

- (a) Every public utility subject to this chapter is prohibited from levying or assessing a late charge or penalty on any overdue public utility bill, as defined in § 56.21 (relating to payment), in an amount which exceeds 1.5 % interest per month on the overdue balance of the bill. These charges are to be calculated on the overdue portions of the bill only. The interest rate, when annualized, may not exceed 18% simple interest per annum.
- (b) An additional charge or fixed fee designed to recover the cost of a subsequent rebilling may not be charged by a regulated public utility.

- (c) Late payment charges may not be imposed on disputed estimated bills, unless the estimated bill was required because public utility personnel were willfully denied access to the affected premises to obtain an actual meter reading.
- (d) A public utility may waive late payment charges on any customer accounts. The Commission may only order a waiver of late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level. See 66 Pa.C.S. § 1409 (relating to late payment charge waiver).

B. PECO's Universal Services Three-Year Plan regarding late payment charges is consistent with Section 1409 of the Public Utility Code

PECO's Three-Year Plan explicitly states that a customer is eligible for PECO's Customer Assistance Program (CAP) if they "[p]ay their CAP Rate bills on time and in full each month, or *late charges will be assessed on past-due balances and service may be terminated.*" See PECO Energy Company Universal Services Three-Year Plan 2016 to 2018. Section 17.5 of PECO's Tariff permits PECO to charge late payment fees and does not exclude low income customers: "If payment is made at a Company office or authorized payment agency after the due date shown on the bill, a late fee will be added to the unpaid balance until the entire bill is paid. If payment is made by mail, the late fee will be added if the payment is received by the Company more than five days after the due date shown on the bill. For Rates R, R-H, RS-2, POL and GS this late fee will be 1-1/2 % per month; for all other rates the late fee will be 2% per month." PECO Tariff Electric PA, P.U.C. No. 5, at Section 17.5.

Additionally, § 1303 of the Public Utility Code emphasizes strict adherence to public utility tariffs, which "have the force and effect of law, and are binding on the customer as well as the utility." *Philadelphia Suburban Water Co. v. Pennsylvania Public Utility Commission*, 808 A.2d 1044, 1052 (Pa. Commw. Ct. 2002) (citing 66

Pa.C.S.A. § 1303). Notably, PECO's Tariff No. 5 includes a CAP Rider, which directs to PECO's Three-Year Plan. *See* Supplement No. 20 to Tariff Electric Pa. P.U.C. No. 5. On page 50, the Three-Year Plan specifically allows for the imposition of late charges where it states that "late charges will be assessed on past-due balances ..." Thus, the language of the tariff and the related CAP Rider, the details of which are included in the Three-Year Plan, has the effect of binding law. A public utility is prohibited "from straying from its approved tariff 'directly or indirectly, by any device whatsoever, or in anywise....'" *Philadelphia Suburban Water Co.* at 1052. Furthermore, "[a]dministrative agencies do not have the authority to order a regulated company to change lawful conduct on the theory that it is in the best interest of their customers." *Id.* at 1056.

C. **Section 1409 of the Public Utility Code does not prohibit PECO from imposing late charges on low income Customer Assistance Program Customers**

Section 1409 of the Public Utility Code clearly states that a public utility is only required to waive late payment charges on customer accounts *if the charges were improperly assessed*. *See* 66 Pa.C.S. § 1409 (emphasis added). Thus, where charges were properly assessed, as is the case here, PECO is not required to waive late payment charges. In *Lesette Bartell v. PECO Energy Co.*, Docket No. C-2016-2542213 (Initial Decision entered February 15, 2017), Your Honor found that late payment charges imposed on a CAP customer's account were properly assessed and did not violate a "Commission statute, regulation, or PECO's own Tariff by assessing late payment charges on a finalized account with an unpaid outstanding balance." While Your Honor ultimately waived the late payment charges, there is no law cited in your opinion stating that PECO was required to do so, or that PECO may not impose late payment charges on CAP program customers. Additionally, the latter half of 66 Pa.C.S. § 1409 states that the

commission *may* order a waiver of any late payment charges levied against customers with a gross monthly household income not exceeding 150% of the Federal poverty level. Because 66 Pa.C.S. § 1409 clearly states that a public utility is only required to waive late payment charges if the charges were improperly assessed, and the use of the word *may* in the statute means that PECO can exercise discretion when it comes to waiving late payment charges for CAP Rate customers, there is no support for the argument that PECO is prohibited from imposing late charges on low income Customer Assistance Program Customers.

D. Section 1409 of the Public Utility Code and 52 Pa. Code § 56.22 do not conflict with PECO's Universal Services Three-Year Plan

PECO's Tariff No. 5., which directly addresses the CAP Rider, states that "[b]ased on the applicable level of income, number of household members, and their historical usage CAP customers will receive a Fixed Credit Option ('FCO') based upon that individual household's need. The details of the FCO calculation can be found in the PECO Universal Service and Energy Conservation Plan (the "Three-Year Plan") at Docket No. M-2015-2507139." The Three-Year Plan explicitly states that a customer is eligible for the CAP Rate program if they pay their CAP Rate bills on time and in full each month, and that *late charges will be assessed if the bills are not paid on time* (emphasis added).

As detailed above, 66 Pa.C.S. § 1409 clearly states that a public utility is only required to waive late payment charges if the charges were improperly assessed and that the commission *may* order a waiver of any late payment charges levied against customers with a gross monthly household income not exceeding 150% of the Federal poverty level.

Thus, the language of the Three-Year Plan and 66 Pa.C.S. § 1409 clearly do not conflict, but rather complement one another, because 66 Pa.C.S. § 1409 suggests that late payment waivers on low-income customers by the Commission are discretionary, and taking this argument to its logical conclusion, late payments can be imposed on low-income customers.

With respect to the accrual of late payment charges, 52 Pa. Code § 56.22(a) reads that public utilities are prohibited from levying late charges or penalties on any overdue public utility bill that exceeds 1.5% interest per month on the overdue balance of the bill. This language in no way says that public utilities are prohibited from imposing late payment charges on low income customer accounts. Additionally, 52 Pa. Code § 56.22(d) explicitly states that “[a] public utility *may* waive late payment charges on any customer accounts” and that the “Commission may only order a waiver of late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level” (emphasis added). 52 Pa. Code § 56.22(d). Once again, because this language states that a public utility *may* waive the late payment, it is necessarily implying that late payment charges are otherwise allowed to be imposed on customers with a gross monthly household income not exceeding 150% of the Federal poverty level.

This is supported by the Commission in the matter *Renee Chatmon v. PECO Energy Company*, Docket No. C-2014-2426964 (Opinion and Order entered December 3, 2015). In that case, Ms. Chatmon, a CAP customer, alleged that PECO improperly applied late payment charges to her account. The Commission upheld Administrative

Law Judge Cynthia William Fordham's Initial Decision, which dismissed the Complainant's complaint. The Commission stated:

We find nothing on the record to support the Complainant's assertions regarding unwarranted charges. The Complainant's account activity statements indicate that late payment charges were properly applied when payments submitted by the Complainant were not sufficient to cover the total amount of the bill issued, including past due balances.

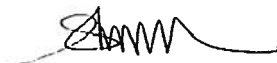
See Chatmon, supra, at p. 9.

V. CONCLUSION

When properly viewed, the evidence in this case supports the imposition of late payment charges on the Complainant's account because she has not paid her bill in full, or on time. Thus, PECO respectfully requests that the Commission grant its request for imposition of late payment charges on the Complainant's account pursuant to PECO's Universal Services Three-Year Plan because it is consistent with § 1409 of the Public Utility Code, § 1409 of the Public Utility Code does not prohibit PECO from imposing late payment charges on low income Customer Assistance Program Customers, and § 1409 of the Public Utility Code and 52 Pa. Code § 56.22 do not conflict with PECO's Universal Services Three Year Plan.

Dated: July 6, 2018

Respectfully submitted,



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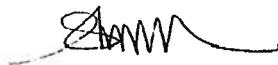
CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Legal Brief in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Salwa Mohamed
1071 Levick Street
Philadelphia, PA 19111

Eranda Vero, Adm. Law Judge
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

Dated at Philadelphia, Pennsylvania, July 6, 2018.



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