

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Billy Wilburn	:	
	:	
v.	:	C-2017-2640304
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants the Complainant’s formal Complaint in part as the Complainant is entitled to a Commission-issued payment arrangement for his outstanding balance under Section 1405(d) and Section 1403 of the Public Utility Code because he was able to establish a change in his income since the prior Commission-issued payment arrangement.

However, this Initial Decision denies the Complainant’s formal Complaint in part as the Complainant failed to meet his burden of proving that PECO’s actions constituted a violation of the Public Utility Code, Commission regulations or order with respect to the termination notice issued by PECO and PECO’s refusal to accept further medical certifications.

**HISTORY OF THE PROCEEDING**

On December 18, 2017, Billy Wilburn (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant

contends that the Company was threatening to or had already shut off his utility service and requests a payment arrangement.

This matter is an appeal of a decision issued on December 17, 2017 by the Bureau of Consumer Services (BCS) at Case No. 3578050 which dismissed the informal complaint of the Complainant.

On January 17, 2018, Respondent filed an Answer denying the material allegations of the Complaint.<sup>1</sup>

By Hearing Notice dated January 29, 2018, an initial hearing was scheduled for Tuesday, March 27, 2018, at 1:30 p.m., as part of a call of the docket session, and the matter was assigned to me.

I issued a Prehearing Order on January 31, 2018. The Prehearing Order directed the parties to comply with various procedural requirements and also 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 he is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on March 27, 2018. Complainant participated *pro se* and testified. Complainant presented one exhibit, which was entered into the record. Respondent appeared and was represented by Shawane Lee, Esq., who presented the testimony of Anna Mae Migliaccio. Respondent offered ten exhibits, which were all admitted into evidence.

The hearing resulted in a 43-page transcript. The record closed on April 19, 2018, when I received the transcript of the hearing.

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<sup>1</sup> On January 18, 2018, PECO filed an Amended Answer which appears to be materially similar to its original answer.

## FINDINGS OF FACT

1. The Complainant in this case is Billy Wilburn, who resides at 3806 Bensalem Boulevard, No. 102, Bensalem, Pennsylvania 19020 (Service Address). Tr. 8.
2. The Respondent is PECO Energy Company.
3. In September 2017, the Complainant suffered from an illness which made him unable to work. Tr. 10.
4. The Complainant was unable to work for three months. Tr. 11.
5. After Mr. Wilburn returned to work, he was laid off from his employment with Amtrak as of January 11, 2018. Tr. 11-13; Complainant Exh. 1.
6. The Complainant is currently working for Uber. Tr. 13.
7. The Complainant earns between \$200-\$300 per week with Uber. Tr. 14.
8. The Complainant has no other sources of income. Tr. 15.
9. The Complainant resides alone at the Service Address. Tr. 15-16.
10. The Complainant's current household income of \$1,083.00<sup>2</sup> per month for a one-person household places his household income at 107% of the Federal Poverty guidelines.<sup>3</sup>

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<sup>2</sup> Complainant's monthly income was calculated as follows:  $(\$200 + \$300) \div 2 = \$250$  average per week x 52 weeks per year  $\div$  12 months per year = \$1,083.00 per month.

<sup>3</sup> *Federal Register*, Vol. 83, No. 12, January 18, 2018, pp. 2642-2644. Also see <http://aspe.hhs.gov/poverty>.

11. The last payment the Complainant made to his account was on February 23, 2018, in the amount of \$157.08. Tr. 26; PECO Exh. 1.
12. The Complainant made payments to his account on October 4, 2017, December 18, 2017 and January 31, 2018. Tr. 26; PECO Exh. 1.
13. The Complainant had a Commission-issued level 3 payment arrangement on June 14, 2017, requiring him to make monthly payments of \$466.78. Tr. 23, 24; PECO Exhs. 1 & 8.
14. The Commission-issued payment arrangement was the result of an informal complaint filed by the Complainant at BCS Case No. 3527301. Tr. 23; PECO Exh. 7.
15. The Complainant indicated at the time of the informal complaint that his monthly income was \$2,782.00 for a household of one. Tr. 24; PECO Exh. 7.
16. The Commission-issued payment arrangement defaulted on August 28, 2017. Tr. 25; PECO Exh. 1.
17. On November 15, 2017, the Complainant filed another informal complaint at BCS Case No. 3578050 requesting a payment arrangement and indicating a change in income. Tr. 27; PECO Exh. 9.
18. The total balance on the Complainant's account is \$1,274.90. Tr. 21; PECO Exh. 1.
19. PECO issued the Complainant a ten-day termination notice on November 8, 2017. Tr. 32; PECO Exh. 2.

20. After the Complainant filed his informal complaint with BCS on November 15, 2017, the Complainant's PECO account was suspended from collection actions. Tr. 32; PECO Exh. 2.

21. The Complainant filed three medical certifications with PECO on August 7, 2017; September 1, 2017 and October 9, 2017. Tr. 33; PECO Exh. 3.

22. The Complainant's PECO balance at the time the first medical certification was filed was \$724.65 and the Complainant has not achieved a zero balance since that time. Tr. 33; PECO Exhs. 1 & 3.

### 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, 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, 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.Cmwlth. 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.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*, 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.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*, 461 A.2d 1234 (Pa. 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).

#### Termination Notice

The Complainant asserts that he received a termination notice from PECO. However, the Complainant indicated that he currently has service with PECO. PECO indicated that it did send a termination notice but the notice is no longer in affect because the Complainant filed an informal complaint. Under the Public Utility Code, a public utility may notify a customer and terminate service provided to a customer for nonpayment of an undisputed delinquent account and/or failure to comply with the terms of a payment arrangement. 66 Pa.C.S. § 1406(a). However, based on the above, it is clear that the issue of the termination notice is moot as the Complainant has service and there is no active termination notice pending.

#### Medical Certifications

During the hearing, the Complainant contended that PECO never informed him that he was only entitled to three medical certifications. The Complainant did not appear to be

requesting another medical certification as part of his allegation. The Company contended that the Complainant has exhausted his allotment of medical certifications at this time.

The Commission allows for a customer to request a medical certification in instances where a customer or a member of the customer's household is seriously ill or where the loss of a utility service would aggravate a medical condition. 52 Pa.Code § 56.111. However, the Commission limits the number of medical certifications a customer can receive under certain circumstances.

Medical certifications may be renewed if the customer has met the obligation to pay bills. In instances when a customer has not met that obligation, the number of renewals for the customer's household is limited to two 30-day certifications filed for the same set of arrearages. When the customer eliminates these arrearages, the customer is eligible to file new medical certificates. 52 Pa.Code § 56.114(2).

According to PECO's witness, the Complainant has had three medical certifications: August 7, 2017, September 1, 2017 and October 9, 2017. Tr. 33; PECO Exh. 3. Documentation shows that the Complainant's balance has never been zero since the last medical certification. PECO Exhs. 1 & 3. The Complainant did not dispute any of these assertions.

Based on the above, it is clear that the Complainant is not entitled at this time to any further medical certifications under the Commission's regulations. The regulations clearly state that the customer is limited to one medical certification and two renewals for the same set of arrears. In this instance, the Company has provided the Complainant with three medical certifications. Further, the Complainant has not reduced his arrearage to zero since he received the last medical certification in October 2017. Therefore, the Complainant has not met his burden in this regard and this portion of the Complaint must be dismissed.

## Request for Payment Arrangement

The Complainant requests a payment arrangement in this matter. PECO indicated through its witness' testimony that the Complainant may be entitled to a Commission issued-payment arrangement.

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. Section 1405(a) of the Public Utility Code reads as follows:

### § 1405. Payment arrangements

(a) GENERAL RULE.-- The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

66 Pa.C.S. § 1405(a).

However, Section 1405(d) of the Public Utility Code prohibits the Commission from establishing a second or subsequent payment arrangement if the customer has defaulted, absent a change in income. 66 Pa.C.S. § 1405(d). Under Section 1403, a "change in income" is defined as a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level. 66 Pa.C.S. § 1403.

The Complainant is currently working for Uber. Tr. 13. The Complainant earns between \$200-\$300 per week with Uber. Tr. 14. The Complainant has no other sources of income. Tr. 15. The Complainant resides alone at the Service Address. Tr. 15-16. The Complainant's current household income of \$1,083.00<sup>4</sup> per month with one household member

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<sup>4</sup> Monthly income calculated as follows: \$250.00 per week x 52 = \$13,000 / 12 = \$1,083.00.

places the household at 107% of the Federal Poverty guidelines.<sup>5</sup> This would make the Complainant a Level 1 customer. *See* 66 Pa.C.S. § 1405(b)(1).

However, in this instance, the Complainant has had a prior Commission-issued payment arrangement upon which he defaulted on August 28, 2017. Tr. 25; PECO Exh. 1. At the time of the prior Commission-issued payment arrangement, the Complainant indicated that his monthly income was \$2,782.00 for a household of one. Tr. 24; PECO Exh. 7. The Complainant's monthly income has decreased since the prior Commission-issued payment arrangements from \$2,782.00 to \$1,083.00. This decrease is a change in income of 61%. The Complainant does meet the "change of income" criteria set out in Section 1403 of the Public Utility Code as the household income has decreased more than 10% and the household income level is under 200% (107%) of the Federal poverty level. 66 Pa.C.S. § 1403.

Accordingly, the Commission has the authority to establish a payment agreement of five (5) years for the Complainant. 66 Pa.C.S. § 1405(b)(1). Beginning with the first bill following the Commission's Final Order in this case, Complainant is required to pay his current charges plus an amount equal to one sixtieth ( $\frac{1}{60}$ <sup>th</sup>) of the balance accrued on his account. If Mr. Wilburn fails to keep this payment schedule, PECO is authorized to suspend or terminate his service consistent with the Commission's statute and regulations.

#### 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).

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<sup>5</sup> *Federal Register*, Vol. 83, No. 12, January 18, 2018, pp. 2642-2644. *Also see* <http://aspe.hhs.gov/poverty>.

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. Under the Public Utility Code, a public utility may notify a customer and terminate service provided to a customer for nonpayment of an undisputed delinquent account and/or failure to comply with the terms of a payment arrangement. 66 Pa.C.S. § 1406(a).

5. In instances when a customer has not met the obligation to pay bills, the number of renewals of medical certifications for the customer’s household is limited to two 30-day certifications filed for the same set of arrearages. When the customer eliminates these arrearages, the customer is eligible to file new medical certificates. 52 Pa.Code § 56.114(2).

6. 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.

7. Section 1405(d) of the Public Utility Code prohibits the Commission from establishing more than one payment arrangement unless there is a change in income. 66 Pa.C.S. § 1405(d).

8. Under Section 1403, a “change in income” is defined as a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level. 66 Pa.C.S. § 1403.

9. The Complainant met his burden of demonstrating that he was allowed another Commission-issued payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Billy Wilburn against PECO Energy Company at Docket No. C-2017-2640304 is granted in part, and denied in part;
2. That PECO Energy Company shall calculate the bills for Complainant in order for Complainant to pay his current charges plus an amount equal to one sixtieth ( $1/60^{\text{th}}$ ) of the balance accrued on the account, consistent with this decision;
3. That as long as Billy Wilburn keeps the payment schedule stated in this Order, PECO Energy Company shall not suspend or terminate his utility service except for valid safety or emergency reasons or assess late payments or finance charges against his account;
4. That, if Billy Wilburn does not keep the payment schedule stated in this Order, PECO Energy Company is authorized to suspend or terminate his utility service in accordance with the Commission's statute and regulations;
5. That the allegations of Billy Wilburn's Formal Complaint regarding the termination notice and medical certification are denied and dismissed; and
6. That Docket No. C-2017-2640304 be marked closed.

Date: July 5, 2018

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/s/  
Marta Guhl  
Administrative Law Judge