

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Senesie	:	
	:	
v.	:	F-2018-3000619
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal Complaint of James Senesie against PECO Energy Company because he failed to carry his burden of proving that he is entitled to a new or subsequent Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On March 8, 2018, James Senesie (Mr. Senesie or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Mr. Senesie checked the boxes next to “I would like a payment agreement” and “Incorrect charges are on my bill.”

The Complaint is a timely appeal of the decision issued by the Commission’s Bureau of Consumer Services (BCS) on January 23, 2018 at BCS Case No. 3570201. BCS found the Complainant’s bills were correct and dismissed the Complainant’s informal complaint.

On April 3, 2018, PECO filed an Answer with New Matter and a notice to plead attached. PECO averred *inter alia* that the same parties to this proceeding, Mr. Senesie and PECO, already litigated the issues raised in this Complaint in a prior complaint proceeding.¹ PECO attached a copy of the Commission's Order to its answer and new matter as Exhibit 7.

The Complainant did not file a response to PECO's New Matter.

By Hearing Notice dated May 21, 2018, a hearing was scheduled for July 2, 2018, and the matter was assigned to me.

On May 17, 2018, PECO filed a Motion for Judgment on the Pleadings requesting that the complaint be dismissed based on the doctrine of *res judicata*. The Motion included a notice to plead. The Complainant did not file an answer to the Motion.

On June 22, 2018, I issued an Order denying PECO's Motion for Judgment on the Pleadings, but limiting the scope of the hearing to facts, events, and circumstances that occurred after November 4, 2016.²

The hearing convened as scheduled on July 2, 2018. The Complainant appeared *pro se* and testified on his own behalf. The Complainant offered no exhibits.

The Respondent appeared and was represented by Shawane Lee, Esquire, who presented the testimony of Elsa Leung, a Regulatory Assessor at PECO. During the hearing, the Respondent offered the following four exhibits, all of which were entered into the record:

- PECO 1: Account Activity Statement (2 pages)
- PECO 3: Payment Agreement History (1 page)
- PECO 4: Case Details Report (1 page)
- PECO 5: BCS Informal Complaint (#3546887) (1 page)

The record closed on August 6, 2018, when I received a copy of the transcript.

¹ *James Senesie v. PECO Energy Company*, Docket No. F-2016-2551332 (Opinion and Order entered April 6, 2017).

² The hearing was limited to any issues that arose while Mr. Senesie continued to receive service from PECO after the record closed in the prior case on November 4, 2016.

FINDINGS OF FACT

1. The Complainant is James Senesie.
2. The Respondent is PECO Energy Company, an electric utility under the jurisdiction of the Pennsylvania Public Utility Commission.
3. In his Complaint, Mr. Senesie checked the boxes next to “I would like a payment agreement” and “Incorrect charges are on my bill.”
4. The Complainant no longer disputes the charges on his bill and only seeks a payment arrangement. Tr. 22.
5. The Complainant receives service at 2659 S. 69th Street, Philadelphia, Pennsylvania (Service Address). Tr. 22.
6. The Complainant resides at the Service Address along with his wife and three children. Tr. 22.
7. On November 5, 2015, the Complainant received a Commission-issued payment arrangement on an outstanding balance of \$2,774.05, based on a gross monthly income of \$1,863.00 and a household size of four³. Tr. 28, 40; PECO Exh. 3.
8. On December 9, 2015, the Complainant defaulted on the Commission-issued payment arrangement. Tr. 28, 41.
9. The Complainant’s current gross monthly income is \$1,920.00. Tr. 25.
10. As of the date of the hearing, the Complainant’s outstanding balance was \$8,952.63. Tr. 39; PGW 1.

³ The Complainant’s youngest child was born this year. Tr. 22.

DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving by substantial evidence that he is entitled to the requested relief. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking

affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlt. 2001).

By law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Co.*, 55 Pa. PUC 637 (1982); *Kea v. Peoples Natural Gas Co.*, 60 Pa. PUC 215 (1985); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlt. 1982). Consequently, the Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303; *Neal v. PECO Energy Company*, Docket No. Z-00871874, (Final Order entered January 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa. PUC 213 (1990).

Additionally, all customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. *Bolt v. Duquesne Light Co.*, Docket No. Z-8721758 (Opinion and Order entered April 8, 1988). A payment arrangement, which prevents service termination as long as the Complainant complies with it, is a privilege, not a right. *Mandell v. Duquesne Light Co.*, Docket No. C-20030234, (Opinion and Order entered March 17, 2004).

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued and the length of the payment arrangement.

Section 1405(d) of the Public Utility Code regarding payment arrangements reads in pertinent part:

(d) *Number of payment arrangements.*

Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. A

public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

66 Pa.C.S. § 1405(d)(emphasis added). "Change in income" is defined as:

A decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or 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(emphasis added). Thus, the Commission may only order a second payment arrangement if the Complainant demonstrates a decrease in income.

In this case, the Complainant was already the beneficiary of a Commission-issued payment arrangement on November 5, 2015, which he defaulted on only a month later on December 9, 2015. The Complainant also confirmed that he has not experienced a decrease in household income since the Commission-issued payment arrangement, but rather, an increase from \$1,863.00 to 1,920.00 per month. Therefore, pursuant to 66 Pa.C.S. § 1405(d), the Commission cannot establish or order PECO to issue another payment arrangement.

Also, the Complainant is not entitled to an extension of the Commission-issued payment arrangement. Section 1405(e) of the Public Utility Code regarding payment arrangements reads in pertinent part:

(e) Extension of payment arrangements.

If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

66 Pa.C.S. § 1405(e)(emphasis added). “Significant change in circumstance” is defined as:

Any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income.
- (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household.
- (3) Loss of the customer's residence.
- (4) Increase in the customer's number of dependents in the household.

66 Pa.C.S. § 1403.

Here, the Complainant did not default on the Commission-issued payment arrangement as a result of a significant change in circumstance.⁴ Consequently, the Commission may not reinstate the payment arrangement issued on November 5, 2015 and extend the remaining term.

Based on the foregoing, I find that the Complainant has failed to carry his burden of proving that he is entitled to a second or subsequent Commission-issued payment arrangement or to an extension of the previous payment arrangement. Accordingly, the Complaint is dismissed.

CONCLUSIONS OF LAW

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

⁴ Although the Complainant experienced a change in household size, the birth of his youngest child occurred this year, therefore, this additional dependent could not be considered a significant change in circumstance that caused him to default on his payment arrangement in 2015.

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418, applies to this proceeding.

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

5. Absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. 66 Pa.C.S. § 1405(d).

6. If a customer defaults on a payment arrangement established by the Commission under 66 Pa.C.S. § 1405(a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown. 66 Pa.C.S. § 1405(e).

7. “Significant change in circumstance” is defined as: “Any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level: (1) the onset of a chronic or acute illness resulting in a significant loss in the customer's household income; (2) catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household; (3) loss of the customer's residence; (4) increase in the customer's number of dependents in the household. 66 Pa.C.S. § 1403.

8. The Complainant has failed to carry his burden of proving that he is entitled to a second or subsequent Commission-issued payment arrangement or to an extension of the previous payment arrangement. 66 Pa.C.S. §§ 1405(d), 1405(e).

