

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kimberly Vohrer	:	
	:	
v.	:	C-2018-3001422
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision denies in part, and grants in part Kimberly Vohrer’s formal Complaint against PECO Energy Company at Docket No. C-2018-3001422. This Initial Decision finds that Ms. Vohrer failed to carry her burden of proving that her outstanding balance with PECO Energy Company was incorrect and that the utility’s collection activity was improper. This Initial Decision finds that Ms. Vohrer failed to carry her burden of proving that she qualifies for a Commission-issued payment arrangement. The Complaint is granted in so far as the Initial Decision waives the late payment charges assessed against Ms. Vohrer’s account during the period from July 14, 2016 to March 27, 2017.

HISTORY OF THE PROCEEDING

On April 19, 2018, Kimberly Vohrer (Ms. Vohrer or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission) at Docket No. C-2018-3001422 alleging: that the utility is threatening to shut off her electricity service; that the outstanding balance in her

account with PECO is incorrect; that her credit or discount under PECO's Customer Assistance Program (CAP) and her budget billing were not updated or reviewed by PECO when she had no income for months; that her payments to PECO are not reducing her outstanding balance; that she stopped making payments to PECO because the Respondent failed to honor a payment arrangement established by the Commission; and that she is unable to pay her gas and electricity bill to PECO. As relief, the Complainant requests: that PECO cease collection activities against her account; that the Commission establish a payment arrangement on her behalf; and that the balance in her account with PECO correctly reflect the payments that she has made.

On May 15, 2018, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated May 18, 2018, notified the parties that an initial hearing was scheduled in this matter for Friday, June 29, 2018, at 10:00 a.m.

A Prehearing Order was issued on May 24, 2018, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

On June 29, 2018, the initial hearing convened as scheduled. Ms. Vohrer appeared *pro se* and testified in support of the Complaint. Edward T. Fisher, Esq., represented the Respondent, and presented the testimony of Renee Tarpley, who is a Regulatory Assessor for PECO. The Respondent sponsored 13 exhibits (PECO Exhibits 1-13), which were admitted into the record.

At the hearing, I granted Ms. Vohrer two weeks, or until July 13, 2018, to file any late-filed exhibits in support of her testimony regarding the amounts reflected on termination notices received from PECO, as well as, any payments made but not reflected in her account with the Respondent. Tr. 116-17. PECO was also granted the same amount of time to file a revised version of PECO Exhibit 1. Tr. 122-23. The parties were granted an additional two

weeks, or until July 27, 2018, to file any objections to the opposing party's late-filed exhibits. Tr. 117.

On July 5, 2018, PECO submitted its revised PECO Exhibit 1. As of the day of this Initial Decision, Ms. Vohrer has not submitted any late-filed exhibits, or any written objections to PECO's revised PECO Exhibit 1.

The record in this matter closed on August 1, 2018, upon receipt of my copy of the hearing transcript.

FINDINGS OF FACT

1. The Complainant is Kimberly Vohrer, who resides at 700 Market Street, Marcus Hook, PA 19061 (Service Address). Tr. 9-10.

2. The Respondent is PECO Energy Company.

3. Ms. Vohrer resided at 1544 Huddell Avenue, Linwood, PA (Huddell Avenue Address) until September 21, 2015. Tr. 25-26, PECO Exhibit 7.

4. While residing at the Huddell Avenue Address, Ms. Vohrer was enrolled in PECO's Customer Assistance Program from June 21, 2013 to July 23, 2015. Tr. 45, PECO Exhibit 3.

5. On January 25, 2016, PECO initiated electricity service in Ms. Vohrer's name at 307 Taylor Avenue, Upper Chichester, PA 19061 (Taylor Avenue Address) and transferred the outstanding balance of \$846.94 from her Huddell Avenue account to her Taylor Avenue account. Tr. 26-27, PECO revised Exhibit 1.

6. On April 19, 2016, Ms. Vohrer re-enrolled in PECO's CAP. PECO Exhibit 3.

7. In July of 2016, PECO and Ms. Vohrer were able to resolve the issues raised by Ms. Vohrer in her informal complaint filed on July 11, 2016 with the Commission's Bureau of Consumer Services (BCS), BCS Case # 3457473. Tr. 33-34, PECO Exhibit 7.

8. In accordance with the terms of the July 2016 resolution, PECO credited Ms. Vohrer's account \$268.20, thus holding Ms. Vohrer responsible for services at the Huddell Avenue Address only up to September 21, 2015. Tr. 34, PECO Exhibit 7.

9. Also, in accordance with the terms of the July 2016 resolution, PECO waived \$67.84 in late payment charges assessed against Ms. Vohrer's account. Tr. 34, 39, PECO Exhibit 7 and PECO revised Exhibit 1.

10. On July 14, 2016, PECO credited Ms. Vohrer's account an additional amount of \$338.26 which represented her regular budget bill credit collected in her account. PECO revised Exhibit 1.

11. Following these adjustments, Ms. Vohrer's account with PECO had an outstanding balance of \$989.86. Tr. 39, PECO Exhibit 4.

12. In accordance with the terms of the July 2016 resolution, PECO established a payment arrangement on Ms. Vohrer's behalf, which required the Complainant to pay monthly installments of \$41.24 towards arrearages, in addition to her regular budget billing. Tr. 39, PECO Exhibit 4.

13. On October 18, 2016, PECO implemented its CAP Fixed Credit Option (CAP-FCO). Tr. 45, PECO Exhibit 3.

14. Pursuant to the terms of PECO's CAP-FCO, \$912.90 of the outstanding balance was set aside, with a third of that amount placed on a 60-month agreement to be paid off in installments of \$5.07 per month. Tr. 45-56, PECO Exhibit 3.

15. Also, pursuant to the terms of PECO's CAP-FCO, Ms. Vohrer would receive a \$10.14 per month forgiveness for every bill paid by the due date. PECO Exhibit 3.

16. On November 14, 2016, Ms. Vohrer initiated service at the Service Address. Tr. 36, PECO Exhibit 2.

17. On November 21, 2016, PECO issued a bill for service at the Taylor Avenue Address, covering the period October 20, 2016 to November 18, 2016, showing a post-program balance of \$239.88, in addition to the pre-program arrearage of \$912.90, and a late payment charge of \$1.87. Tr. 33, PECO revised Exhibit 1.

18. During the period July 14, 2016 to March 27, 2017, Ms. Vohrer was assessed the following late payment charges for services at Taylor Avenue:

Date	Amount
11/21/2016	\$1.87
1/4/2017	\$17.30
1/31/2017	\$17.30
3/1/2017	\$17.30
Total	\$53.77

See PECO revised Exhibit 1.

19. On March 27, 2017, PECO transferred the outstanding balance from Ms. Vohrer's Taylor Avenue account to her new account for the Service Address. PECO Exhibit 2.

20. By March 27, 2017, Ms. Vohrer's outstanding balance in her Taylor Avenue account consisted of \$912.90 in pre-program arrearages and \$293.78 in post-program charges. Tr. 45, 49, PECO revised Exhibit 1 and PECO Exhibit 2.

21. Ms. Vohrer made five payments towards her PECO account during the period of November 14, 2016 to June 4, 2018, for a total of \$535.36:

Date	Amount
1/9/2017	\$27.93
3/3/2017	\$100.00
3/24/2017	\$91.76
5/11/2017	\$195.67
8/18/2017	\$120.00
Total	\$535.36

Tr. 42, 66, PECO Exhibit 2.

22. Ms. Vohrer made no payments towards her PECO account during the period of September 2017 to June 2018. Tr. 50, 75, PECO Exhibits 2 and 5.

23. On February 22, 2018, Ms. Vohrer's account with PECO had an outstanding balance of \$2,898.85, consisting of a budget bill deferred amount balance of \$474.02, \$1,592.04 in post-program arrearages, and \$832.79 in pre-program arrearages. PECO Exhibit 2.

24. On March 27, 2018, PECO initiated collection activities against Ms. Vohrer by issuing a ten-day termination notice. PECO Exhibit 5.

25. The March 27, 2018 termination notice showed a balance due of \$1,550.78 and did not include any pre-program arrearages. Tr. 74-75, 84, PECO Exhibit 5.

26. On May 14, 2018, Ms. Vohrer was removed from PECO's CAP-FCO due to her failure to re-certify. Tr. 46, PECO Exhibit 3.

27. During the period of November 14, 2016 to May 14, 2018, PECO assessed and cancelled the following late payment charges against Ms. Vohrer's account for the Service Address:

Date	Amount
12/19/2016	\$0.33
1/18/2017	\$1.43
2/21/2017	\$2.86
3/22/2017	\$2.81
4/24/2017	\$2.86
5/23/2017	\$5.58
Total	\$15.87

PECO Exhibit 2.

28. As of the day of the hearing, the outstanding balance in Ms. Vohrer's account with PECO was \$3,669.04 and included \$3,596.68 in CAP arrears. Tr. 48, PECO Exhibits 2 and 3.

DISCUSSION

In her formal Complaint, Ms. Vohrer alleged: that the utility is threatening to shut off her electricity service; that the outstanding balance in her account with PECO is incorrect; that her credit or discount under PECO's Customer Assistance Program (CAP) and her budget billing were not updated or reviewed by PECO when she had no income for months; that the payments that she is making to PECO are not reducing her outstanding balance; that she stopped making payments to PECO because the Respondent failed to honor a payment arrangement established by the Commission; and that she is unable to pay her gas and electricity bill to PECO. As relief, the Complainant requests: that PECO cease collection activity against her

account; that the Commission establish a payment arrangement on her behalf; and that the balance in her account with PECO correctly reflect the payments that she has made.

As the proponent of a rule or order, 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.A. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems 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). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing 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.*, 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).

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 her 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.Cmwlth. 2001).

Billing Accuracy and Collection Activity

Ms. Vohrer resided at 1544 Huddell Avenue, Linwood, PA until September 21, 2015. Tr. 25-26, PECO Exhibit 7. While residing at the Huddell Avenue Address, Ms. Vohrer was enrolled in PECO's CAP from June 21, 2013 to July 23, 2015. Tr. 45, PECO Exhibit 3.

On January 25, 2016, PECO initiated electricity service at the Taylor Avenue Address in Ms. Vohrer's name and transferred the outstanding balance of \$846.94 from her Huddell Avenue account to her Taylor Avenue account. Tr. 26-27, PECO revised Exhibit 1. On April 19, 2016, Ms. Vohrer re-enrolled in PECO's CAP program. PECO Exhibit 3.

In July of 2016, PECO and Ms. Vohrer were able to resolve the issues raised by Ms. Vohrer in her informal complaint filed on July 11, 2016 with the Commission's BCS, BCS Case # 3457473. Tr. 33-34, PECO Exhibit 7. In accordance with the terms of the July 2016 resolution, PECO credited Ms. Vohrer's account \$268.20, thus holding Ms. Vohrer responsible for services at the Huddell Avenue Address only up to September 21, 2015. Tr. 34, PECO Exhibit 7. In addition, PECO waived \$67.84 in late payment charges assessed against Ms. Vohrer's account. Tr. 34, 39, PECO Exhibit 7 and PECO revised Exhibit 1. PECO also credited Ms. Vohrer's account an additional amount of \$338.26, which represented her regular budget bill credit collected in her account. PECO revised Exhibit 1. Following these adjustments, Ms. Vohrer's account with PECO had an outstanding balance of \$989.86. Tr. 39, PECO Exhibit 4. In accordance with the terms of the July 2016 resolution, PECO established a payment arrangement on Ms. Vohrer's behalf, which requested the Complainant to pay monthly installments of \$41.24 towards arrearages, in addition to her regular budget billing. Tr. 39, PECO Exhibit 4.

On October 18, 2016, PECO implemented its CAP-FCO. Tr. 45, PECO Exhibit 3. Pursuant to the terms of PECO's CAP-FCO, \$912.90 of the outstanding balance was set aside, with a third of that amount placed on a 60-month agreement to be paid off in installments of \$5.07 per month. Tr. 45-56, PECO Exhibit 3. Ms. Vohrer would receive a \$10.14 per month forgiveness for every bill paid by the due date. PECO Exhibit 3.

On November 14, 2016, Ms. Vohrer initiated service at the Service Address. Tr. 36, PECO Exhibit 2. On November 21, 2016, PECO issued a bill for service at the Taylor Avenue Address, covering the period October 20, 2016 - November 18, 2016, showing a post-program balance of \$239.88, in addition to the pre-program arrearage of \$912.90, and a late payment charge of \$1.87. Tr. 33, PECO revised Exhibit 1.

Also, on or around November 21, 2016, PECO issued a bill for gas and electric service at the Service Address, covering the period November 14, 2016 to November 18, 2016. PECO Exhibit 2.

PECO assessed three late payment charges of \$17.30 each, on January 4, 2017, January 31, 2017, and March 31, 2017 against Ms. Vohrer's Taylor Avenue account. PECO revised Exhibit 1. On March 27, 2017, PECO transferred the outstanding balance from Ms. Vohrer's Taylor Avenue account to her new account for the Service Address. PECO Exhibit 2. By March 27, 2017, Ms. Vohrer's outstanding balance in her Taylor Avenue account consisted of \$912.90 in pre-program arrearages and \$293.78 in post-program charges. Tr. 45, 49, PECO revised Exhibit 1 and PECO Exhibit 2.

Ms. Vohrer made five payments towards her PECO account during the period of November 14, 2016 to June 4, 2018, for a total of \$535.36:

Date	Amount
1/9/2017	\$27.93
3/3/2017	\$100.00
3/24/2017	\$91.76
5/11/2017	\$195.67
8/18/2017	\$120.00
Total	\$535.36

Tr. 42, 66, PECO Exhibit 2. Ms. Vohrer made no payments towards her PECO account during the period of September 2017 to June 2018. Tr. 50, 75, PECO Exhibits 2 and 5. On

February 22, 2018, Ms. Vohrer's account with PECO had an outstanding balance of \$2,898.85, consisting of a budget bill deferred amount balance of \$474.02, \$1,592.04 in post-program arrearages, and \$832.79 in pre-program arrearages. PECO Exhibit 2. On March 27, 2018, PECO initiated collection activities against Ms. Vohrer by issuing a ten-day termination notice for a balance due of \$1,550.78, which did not include any pre-program arrearages. Tr. 74-75, 84, PECO Exhibit 5.

At the hearing Ms. Vohrer testified that she made more payments towards her account with PECO for the Service Address than the five payments reflected in PECO Exhibit 2. Tr. 17-18, 23. However, she was unable to submit any documentation to substantiate that claim despite being provided additional time to do so. In addition, Ms. Vohrer stated that the termination notice issued by PECO against her account for the Service Address improperly demanded payment for the pre-program portion of her outstanding balance. Tr. 84. Again, Ms. Vohrer was unable to submit any documentation to substantiate this claim despite being provided additional time to do so. After carefully reviewing the evidence collected on the record, I find that the Complainant has failed to carry her burden of proving that her outstanding balance with PECO is incorrect or that the Respondent's termination notices improperly included pre-program arrearages in violation of the terms of CAP-FCO. In view of the above, the Complaint is denied to the extent it challenges the accuracy of the Complainant's PECO bills and the Respondent's collection activity against the Complainant's account.

Payment Arrangement

In her Complaint, Ms. Vohrer averred that PECO had failed to honor the terms of a Commission-issued payment arrangement. The record collected in this matter indicates that Ms. Vohrer has received one company-issued payment arrangement as a result of the resolution of an informal complaint filed with BCS at BCS Case # 3457473. Tr. 35. That payment arrangement was set aside in favor of the more beneficial terms she received when PECO's CAP-FCO was implemented in October of 2016. Tr. 35, 45. As of the day of the hearing, the outstanding balance in Ms. Vohrer's account with PECO was \$3,669.04 and included \$3,596.68 in CAP arrears. Tr. 48, PECO Exhibits 2 and 3.

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 requests for Commission-issued payment arrangements. This law provides strict guidelines that the Commission must follow in handling customer complaints.

The Commission has no authority to establish a payment arrangement on amounts subject to customer assistance program (CAP) rates. 66 Pa.C.S. § 1405(c). Section 1403 of the Public Utility Code defines a CAP as follows:

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by Section 2202 (relating to definitions) or Section 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

66 Pa.C.S. § 1403 (Definition of “Customer Assistance Program”).

The provision at 66 Pa.C.S. § 1405(c) states as follows:

(c) Customer Assistance Programs. – Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.

PECO’s CAP-FCO meets the requirements of 66 Pa.C.S. § 1403, and therefore, the Commission lacks the authority to establish a payment arrangement on that portion of Ms. Vorher’s outstanding balance which consists of CAP arrears. The amount of \$3,596.68 must be timely paid, pursuant to 66 Pa.C.S. § 1405(c).

The only amount eligible for a Commission-issued payment arrangement consists of the difference between Ms. Vohrer’s outstanding balance of \$3,669.04 and \$3,596.68 in CAP arrears, or \$72.36. At the hearing, Ms. Vohrer acknowledged that under these circumstances, a Commission-issued payment arrangement would be of no assistance to her and essentially withdrew her request for a payment arrangement. Tr. 109.

In view of the above, the Complaint is denied as to the Complainant’s request for a payment arrangement on her outstanding balance.

Late Payment Charges

The Pennsylvania Public Utility Code (Code) and the Commission’s regulations allow the Commission to “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.” 66 Pa.C.S. § 1409, 52 Pa.Code § 56.22(d).

Ms. Vohrer was continuously enrolled in PECO’s CAP and CAP-FCO from April 19, 2016 until May 14, 2018. Because only PECO customers whose household income does not exceed 150% of the Federal poverty level are eligible for enrollment in PECO’s CAP and CAP-FCO,¹ it is reasonable to conclude that Ms. Vohrer’s household income was below 150% of the Federal poverty level during the period of April 19, 2016 – May 14, 2018. On July 14, 2016, PECO cancelled \$67.84 in late payment charges assessed against Ms. Vohrer’s account for Taylor Avenue. See PECO revised Exhibit 1. During the period of July 14, 2016 to March 27, 2017, Ms. Vohrer was assessed the following late payment charges for services at Taylor Avenue:

Date	Amount
11/21/2016	\$1.87
1/4/2017	\$17.30
1/31/2017	\$17.30
3/1/2017	\$17.30
Total	\$53.77

See PECO revised Exhibit 1.

¹ See PECO Tariff Electric PA. P.U.C. No. 5, Supplement No. 20, 5th Revised Page No. 71.

During the period of November 14, 2016 to May 14, 2018, PECO assessed and cancelled the following late payment charges against Ms. Vohrer's account for the Service Address:

Date	Amount
12/19/2016	\$0.33
1/18/2017	\$1.43
2/21/2017	\$2.86
3/22/2017	\$2.81
4/24/2017	\$2.86
5/23/2017	\$5.58
Total	\$15.87

PECO Exhibit 2. Therefore, the only late payment charges assessed against Ms. Vohrer's accounts with PECO while she was enrolled in CAP and not yet cancelled or credited to her account are those assessed during the period July 14, 2016 to – March 27, 2017, in the amount of \$53.77. This amount shall be credited to Ms. Vohrer's account in accordance with the provisions of 66 Pa.C.S. § 1409 and 52 Pa.Code § 56.22(d).

In view of the above, Ms. Vohrer's Complaint against PECO Energy Company shall be denied in regard to her claims of balance inaccuracy, improper collection activity, and request for a Commission-issued payment arrangement. Ms. Vohrer's Complaint shall be granted to the extent it challenges the late payment charges PECO assessed during the period of July 14, 2016 to March 27, 2017.

CONCLUSIONS OF LAW

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

2. The party filing the Complaint bears the burden of proving that she is entitled to relief from the Commission. 66 Pa.C.S. § 332(a).

3. "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).

4. The Commission has no authority to establish a payment arrangement on amounts subject to customer assistance program rates. 66 Pa.C.S. § 1405(c).

5. The Pennsylvania Public Utility Code and the Commission's regulations allow the Commission to "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." 66 Pa.C.S. § 1409, 52 Pa.Code § 56.22(d).

ORDER

THEREFORE,

IT IS ORDERED:

1. That PECO revised Exhibit 1 is admitted into the record to replace the original PECO Exhibit 1.

2. That the Formal Complaint filed by Kimberly Vohrer against PECO Energy Company at Docket No. C-2018-3001422 is granted, in part, and denied, in part.

3. That the Formal Complaint filed by Kimberly Vohrer against PECO Energy Company at Docket No. C-2018-3001422 is denied to the extent it challenges the accuracy of her outstanding balance and the propriety of PECO Energy Company's collection activities.

4. That the Formal Complaint filed by Kimberly Vohrer against PECO Energy Company at Docket No. C-2018-3001422 is denied to the extent it requests a payment arrangement.

5. That the Formal Complaint filed by Kimberly Vohrer against PECO Energy Company at Docket No. C-2018-3001422 is granted to the extent it challenges the late payment charges assessed during the period of July 14, 2016 to March 27, 2017.

6. That PECO Energy Company shall cancel \$53.77 in late payment charges assessed against Kimberly Vohrer's account.

7. That the Secretary mark this docket closed.

Date: October 25, 2018

_____/s/
Eranda Vero
Administrative Law Judge