

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Donna Damis	:	
	:	
v.	:	F-2018-3001997
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s Complaint because she failed to sustain her burden of demonstrating that she should receive a second Commission-issued payment arrangement or an extension of her previous payment arrangement, that PECO improperly issued her service termination notices, or that PECO’s termination notice did not adhere to the regulations at 52 Pa.Code § 56.91 regarding the contents of termination notices.

HISTORY OF THE PROCEEDING

On May 17, 2018, Donna Damis (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.” Under the “requested relief” section, the Complainant indicated that she could not afford her last payment arrangement and she wants PECO to put her on a payment arrangement that she can afford.

On May 31, 2018, Respondent filed an Answer denying all material allegations of fact in the Complaint. Respondent further answered: that on July 6, 2015, the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) requesting a payment arrangement on her then balance of \$1,026.41; that on July 9, 2015, BCS issued a decision granting the Complainant a Level 1 payment arrangement, pursuant to which the Complainant was required to pay a monthly budget bill of \$183.00 plus \$18.00 towards her arrearage; and that the Complainant subsequently defaulted on this payment arrangement. PECO requested that the Complainant's Complaint be dismissed pursuant to 66 Pa.C.S. § 1405(d).

By Hearing Notice dated June 1, 2018, a hearing was scheduled for July 23, 2018, at 9:30 a.m. as part of a call-of-the-docket hearing schedule, and the matter was assigned to me.

By fax dated June 7, 2018, the Complainant requested that the hearing be changed from in-person to telephonic. PECO had no objection to changing the hearing from in-person to telephonic.

I issued a Prehearing Order on June 11, 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 she is entitled to the relief requested in the Complaint.

By Hearing Cancellation/Change/Reschedule Notice dated June 15, 2018, the hearing was rescheduled for August 2, 2018, as a call-in telephonic hearing. The notice also provided instructions on how to call-in for the hearing.

The hearing convened as scheduled on August 2, 2018. Complainant appeared *pro se* and testified. Respondent appeared and was represented by Shawane L. Lee, Esq., who presented the testimony of Michael Begley, a PECO Regulatory Assessor. Respondent offered eight exhibits which were all admitted into the record.

The record in this case consists of a 67-page transcript and eight exhibits. The record closed on August 29, 2018, when I received the transcript of the August 2, 2018, hearing.

FINDINGS OF FACT

1. The Complainant in this case is Donna Damis.
2. The Respondent in this proceeding is PECO Energy Company.
3. Complainant resides at 1424 Heron Way, Chalfont, PA 18914 (service address). Tr. 11-12.
4. The PECO bill for service has been under Craig Rifkin's name since service was established on April 13, 2015. Tr. 14, 47.
5. Mr. Rifkin was the Complainant's boyfriend. Tr. 14.
6. The Complainant was subsequently added as the secondary ratepayer on the account. Tr. 47-48.
7. Complainant previously requested and received Commission-issued payment arrangements on July 8, 2015 and October 5, 2016. Tr. 12, 31-32, 35; PECO Exhs. 1 & 4.
8. The balance that was the subject of the July 8, 2015 Commission-issued payment arrangement was satisfied. Tr. 49.
9. On October 5, 2016, the Commission's Bureau of Consumer Services (BCS) granted the Complainant a payment arrangement on a \$3,192.89 balance, pursuant to which she was required to pay installments of \$53.21 in addition to her \$245.00 monthly budget bill. Tr. 49; PECO Exhs. 1 & 4.

10. When she received the October 5, 2016, Commission-issued payment arrangement, the Complainant's household consisted of herself, Mr. Rifkin and her minor son. Tr. 16.

11. At the time of the October 5, 2016, Commission-issued payment arrangement, the Complainant reported gross monthly household income of \$3,650.00. Tr. 33, 61; PECO Exh. 4.

12. On December 19, 2016, the Complainant defaulted on the October 5, 2016, Commission-issued payment arrangement. Tr. 16, 34, 50; PECO Exh. 4.

13. This payment agreement was never reinstated. Tr. 51.

14. On April 19, 2017, the Complainant received a company-issued payment arrangement on a balance of \$4,579.00 requiring her to pay installments of \$381.66 in addition to her regular monthly bill. Tr. 36-37, 51; PECO Exh. 4.

15. The Complainant's gross monthly income was \$3,420.00 for herself and her son when PECO issued her this payment arrangement. Tr. 37; PECO Exh. 4.

16. On July 25, 2017, the Company renegotiated the terms of the payment arrangement based on a change in the Complainant's income. The Complainant received a second company-issued payment arrangement on a balance of \$4,958.58 requiring her to pay installments of \$206.61 in addition to her regular monthly bill. Tr. 41, 51-52, 55; PECO Exh. 4.

17. The Complainant's gross monthly income was \$2,264.00 when PECO issued her this second payment arrangement. PECO Exh. 4.

18. In approximately August of 2017, Mr. Rifkin moved out of the service address. Tr. 18-19.

19. On August 21, 2017, the Complainant defaulted on the July 25, 2017 company-issued payment arrangement. Tr. 36, 52; PECO Exh. 4.
20. The July 25, 2017 company-issued payment arrangement was reinstated on August 23, 2017. Tr. 52.
21. On October 18, 2017, the Complainant again defaulted on the July 25, 2017 payment arrangement. Tr. 52-53.
22. The Complainant's household currently consists of the Complainant and her 14-year-old son. Tr. 15-16, 19, 22.
23. The Complainant has gross monthly household income of approximately \$2,200.00. Tr. 16-17, 19-20.
24. Between April 13, 2015 and the date of the hearing, the Complainant submitted 14 payments to PECO. Tr. 56; PECO Exh. 1.
25. In the 12-month period prior to the hearing, the Complainant submitted four payments to PECO. Tr. 56; PECO Exh. 1.
26. On an unspecified date prior to the filing of this Complaint, PECO issued the Complainant a termination notice to the Complainant for non-payment. Tr. 23-24.
27. The notice informed the Complainant of the steps she could follow to avoid termination of her service. Tr. 25.
28. PECO has not terminated the Complainant's electric service. Tr. 23, 27.
29. As of the date of the hearing, the Complainant's balance totaled \$7,272.07. Tr. 57; PECO Exh. 1.

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.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 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.Cmwlt. 2001).

Request for Commission-Issued Payment Arrangement

The Complainant has requested an affordable 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.

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

(b) Length of payment arrangements.--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).

Regarding the Complainant's request for a second Commission-issued payment arrangement, the Public Utility Code provides that "[a]bsent 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." 66 Pa.C.S. § 1405(d). A "change in income" is defined at 66 Pa.C.S. § 1403 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."

Section 1405(e) of the Public Utility Code allows for reinstatement and an extension by six months of a payment arrangement in default if the default was a result of a significant change in circumstance. 66 Pa. C.S. § 1405(e). A "significant change in circumstance" is defined as any of the following circumstances which are 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.

Regarding the Complainant's previous Commission-issued payment arrangement, the record reflects that the Complainant's then three-person household's gross monthly income was \$3,650.00. The Complainant testified that her current two-person household's gross monthly income is approximately \$2,200.00. The Complainant's gross monthly household income has decreased by 40%, ($\$3,650.00 - \$2,200 = \$1,450.00$; $\$1,450.00/\$3,650.00 = 40\%$). Since the Complainant's gross monthly household income has decreased by 40%, she clearly meets the definition of a "change in income" set out in 66 Pa.C.S. § 1403.

Although the Complainant's gross monthly household income has significantly decreased, and the Commission may authorize a second payment arrangement for her, she is not automatically entitled to a second Commission-issued payment arrangement. 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. *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 two-person household with gross monthly household income of \$2,200.00 is between 150% and 200% of the Federal poverty level.¹ Pursuant to Chapter 14, the Complainant's household income makes her eligible for a three-year payment arrangement to extinguish her outstanding balance. Under the terms of a three-year payment arrangement, the Complainant would be required to pay \$202.00 per month ($\$7,272.07 \text{ balance} / 36 \text{ months} = \202.00) in addition to her regular monthly payments. However, in order to determine the Complainant's eligibility for a second Commission-issued payment arrangement, in addition to considering the Complainant's household income, I must also consider her payment history with PECO.

The record demonstrates that between April 13, 2015 and the date of the hearing, a period of approximately 39 months, the Complainant submitted 14 payments to PECO, with only 4 payments being submitted in the 12-month period leading up to the hearing. Tr. 56, PECO Exh. 1. The record further demonstrates that the Complainant has already defaulted on one Commission-issued payment arrangement and two company-issued payment arrangements. Based on the Complainant's poor payment history, as well as her failure to keep the terms of three separate

¹ *Federal Register*, Vol. 83, No. 12, pp. 2642-2644 (January 18, 2018). Also available at: <http://aspe.hhs.gov/poverty>.

payment arrangements, I cannot conclude that she has made a good-faith effort to pay her utility bills, or that she receive a second Commission-issued payment arrangement.

Moreover, the Complainant did not present any evidence to indicate that she had a significant change in circumstance as defined under 66 Pa.C.S. § 1403 that caused her to default on her prior Commission-issued payment arrangement in December 2016. Since the Complainant did not default on her prior Commission-issued payment arrangement due to a significant change in circumstance, I cannot conclude that she is eligible for an extension of her Commission-issued payment arrangement under 66 Pa. C.S. § 1405(e).

Accordingly, the Complainant's request for a second Commission-issued payment arrangement, or a reinstatement and an extension of her previous Commission-issued payment arrangement, is denied.

Termination Notice

The Complainant also indicated that PECO issued her several termination notices. Although the Complainant did not present a copy of any of these termination notices for my consideration, she did testify that the notices she received advised her of the steps she could follow to avoid termination. Tr. 25. The Complainant did not offer any additional testimony regarding PECO's termination notices. Based on the limited testimony provided by the Complainant, the Complainant did not meet her burden of demonstrating that PECO improperly issued her termination notices, or that the contents of the notices 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. 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. 66 Pa. C.S. § 1405(d).

5. "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.

6. Section 1405(e) of the Public Utility Code allows for an extension by six months of a payment arrangement in default if the default was a result of a significant change in circumstance. 66 Pa. C.S. § 1405(e).

7. "Significant change in circumstance" is defined as any of the following circumstances which are 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; 3) loss of the customer's residence; and 4) increase in the customer's number of dependents in the household. 66 Pa.C.S. § 1403.

8. Complainant failed to sustain her burden of demonstrating that she should receive a second Commission-issued payment arrangement or an extension of her previous payment arrangement.

9. Complainant failed to sustain her burden of establishing that PECO improperly issued her service termination notices and also failed to demonstrate that PECO's termination notices 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 Donna Damis against PECO Energy Company at Docket No. F-2018-3001997 is denied; and

2. That the docket at F-2018-3001997 be marked closed.

Date: November 6, 2018

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