

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Karen Minor	:	
	:	
v.	:	C-2018-3002729
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On June 13, 2018, Karen Minor (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 boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service,” “I would like a payment agreement,” and “[i]ncorrect charges are on my bill.”

On June 28, 2018, Respondent filed an Answer denying all material allegations of fact in the Complaint. Respondent further answered: that the Complainant previously had service at 58 East Springer Street, Philadelphia PA; that the Complainant finalized service at that address on February 13, 2017, leaving an unpaid balance of \$529.47; that the Complainant established service at 1539 North Newkirk Street, Philadelphia, PA (service address) on February 8, 2017; and that her \$529.47 previously unpaid balance was transferred to her new account for service on March 1, 2017. Additionally, Respondent indicated that the Complainant's balance is \$2,047.05 and comprised of CAP arrears. Respondent requested that the Commission dismiss the Complaint pursuant to 66 Pa.C.S. § 1405(c).

By Hearing Notice dated July 2, 2018, a hearing was scheduled for August 14, 2018, at 9:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on July 12, 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.

The hearing convened as scheduled on August 14, 2018. Complainant appeared *pro se* and testified. Complainant offered one exhibit which was admitted into the record. Respondent appeared and was represented by Shawane L. Lee, Esq., who presented the testimony of Michael Begley, a PECO Regulatory Assessor. Respondent offered six exhibits (PECO Exhibits 1-4, 6-7) which were all admitted into the record.

The record in this case consists of a 50-page transcript and seven exhibits. The record closed on August 29, 2018, when I received the transcript of the August 14, 2018, hearing.

FINDINGS OF FACT

1. The Complainant in this case is Karen Minor.
2. The Respondent in this proceeding is PECO Energy Company.
3. The Complainant resides at 1539 North Newkirk Street, Philadelphia, PA (service address). Tr. 7.
4. The Complainant previously resided at 58 East Springer Street, Philadelphia, PA from September 21, 2015, until February 13, 2017. Tr. 26-27.
5. The Complainant was already enrolled in PECO's Customer Assistance Program (CAP) when she moved into the 58 East Springer Street address, having enrolled on or about May 12, 2015. Tr. 27-28.
6. On October 20, 2016, PECO set aside \$4,480.71 of the Complainant's balance for possible forgiveness under its then new CAP Fixed Credit Option (FCO) program. Tr. 28; PECO Exh. 1.
7. Pursuant to PECO's CAP FCO program, one third of the \$4,480.71 balance, or \$1,493.57, was billed in installments of \$24.89 in addition to regular monthly charges. Tr. 29; PECO Exh. 1.
8. The remaining \$2,987.14 balance was eligible for partial forgiveness if the Complainant paid her current charges and the \$24.89 installment charge in full by the due date. Tr. 12, 29.
9. If the Complainant failed to make a required payment, she would not earn the partial forgiveness. Tr. 35.

10. Following PECO's set aside of the Complainant's balance, the Complainant's billing and payment history at 58 Springer Street was as follows:

Date of Bill	Monthly Bill	Installment	Total Due	Amount Paid
11/17/2016	\$163.37	\$24.89	\$188.26	\$190.00
12/20/2016	\$245.73	\$24.89	\$270.62	\$300.00
1/24/2017	\$365.40	\$24.89	\$390.29	\$0.00
2/13/2017	\$164.07	\$24.89	\$188.96	\$51.11

PECO Exh. 2.

11. On February 13, 2017, the Complainant closed out her balance at the 58 Springer Street address. Tr. 30; PECO Exh. 1.

12. At the time the Complainant closed out her account at the 58 Springer Street address, she left a set-aside balance totaling \$4,313.92 as well as a \$529.47 balance from a previous unpaid bill. Tr. 30-31; PECO Exh. 1.

13. On February 8, 2017, the Complainant established her account for service at the service address. Tr. 31; PECO Exh. 2.

14. The Complainant's \$4,313.92 set-aside balance and her \$529.47 prior balance transferred to her new account for service at the service address, with the \$4,313.92 still set aside for possible forgiveness. Tr. 32; PECO Exh. 2.

15. The Complainant’s billing and payment history since moving to the service address has been as follows:

Date of Bill	Monthly Bill	Installment	Total Due	Amount Paid
4/20/2017	\$116.02	\$24.89	\$140.91	\$0.00
5/19/2017	\$128.97	\$24.89	\$153.86	\$40.00
6/20/2017	\$151.41	\$24.89	\$176.30	\$60.00
7/20/2017	\$166.68	\$24.89	\$191.57	\$80.00
8/23/2017	\$70.00	\$24.89	\$94.89	\$70.00
9/18/2017	\$70.00	\$24.89	\$94.89	\$100.00
10/17/2017	\$70.00	\$24.89	\$94.89	\$0.00
11/15/2017	\$70.00	\$24.89	\$94.89	\$0.00
12/18/2017	\$132.00	\$24.89	\$156.89	\$25.00
1/22/2018	\$132.00	\$24.89	\$156.89	\$60.00
2/20/2018	\$132.00	\$24.89	\$156.89	\$0.00
3/21/2018	\$132.00	\$24.89	\$156.89	\$60.00
4/19/2018	\$132.00	\$24.89	\$156.89	\$54.00
5/18/2018	\$132.00	\$24.89	\$156.89	\$156.00
6/19/2018	\$118.00	\$24.89	\$142.89	\$60.00
7/19/2018	\$41.00	\$24.89	\$65.89	\$60.00

PECO Exh. 2.

16. The Complainant has not made regular monthly payments sufficient to earn regular partial forgiveness of her set-aside balance. Tr. 33; PECO Exh. 2.

17. As of the date of the hearing, the Complainant’s past due balance, separate from her set aside balance, totaled \$1,992.94. Tr. 38-39; PECO Exh. 2.

18. The Complainant’s entire balance accumulated while she participated in PECO’s CAP program. Tr. 9.

19. On February 2, 2018, PECO issued the Complainant a Low-Income Home Energy Assistance Program (LIHEAP) Winter 10-day termination notice for non-payment. Tr. 15, 41.

20. A LIHEAP Winter 10-day termination notice is sent to low-income CAP customers who are in arrears, informing them that they can apply for a LIHEAP Crisis grant. Tr. 41.

21. The notice advised the Complainant of steps she could follow to avoid termination of service. Tr. 15-16.

22. PECO did not receive any LIHEAP payments towards the Complainant's account in 2018. Tr. 40; PECO Exh. 2.

23. PECO did not terminate the Complainant's service after sending the LIHEAP notice. Tr. 15.

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. Pa. 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.Cmwlth. 2001).

Incorrect Charges

The Complainant alleged that there are incorrect charges on her bills. Specifically, the Complainant argued that the set aside balance she is carrying through her participation in PECO's CAP balance should not be on her bill because it was forgiven.

In response, PECO Witness Michael Begley explained that PECO set aside \$4,480.71 of the Complainant's balance for possible forgiveness under its CAP program. Tr. 28; PECO Exh. 1. Mr. Begley further explained that, pursuant to PECO's CAP FCO program, one-third of the \$4,480.71 balance, or \$1,493.57, is billed in installments of \$24.89 in addition to regular charges. Tr. 29; PECO Exh. 1. The remaining \$2,987.14 balance was eligible for forgiveness only if the Complainant paid her current charges in addition to the \$24.89 installment charge in full by the due date. Tr. 29. If the Complainant failed to make the required

payments, the forgiveness amount would remain on her account and become due after 60 months. Tr. 35.

The Complainant's perception of incorrect charges on her bill stems from her misunderstanding of PECO's CAP FCO program. The Complainant is not entitled to automatic forgiveness of this set aside balance. She must earn forgiveness of the set aside balance by making the required installment and regular monthly bill payments to PECO. The record reflects that the Complainant has not made regular monthly payments sufficient to earn regular partial forgiveness of her set aside balance. Therefore, these amounts that could have been forgiven if she had made the required payments remain a part of her balance.

Since the Complainant was not able to meet her burden of demonstrating that there are incorrect charges on her bill, this portion of her Complaint must be denied.

Payment Arrangement

The Complainant seeks a Commission-issued payment arrangement. The Respondent maintains that the Complainant is not eligible for a Commission-issued payment arrangement because her outstanding balance is comprised entirely of CAP arrears.

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. In particular, Section 1405(c) of the Public Utility Code prohibits the Commission from establishing a payment arrangement on any outstanding Customer Assistance Program arrears. 66 Pa.C.S. § 1405(c).

In the present case, the record reflects that the Complainant's entire balance accrued while she participated in PECO's CAP program. Tr. 9. Since the Complainant's entire balance accrued while she participated in PECO's CAP program, the Commission cannot authorize a payment arrangement on her behalf.

Termination Notice

The Complainant also indicated that PECO issued her a termination notice in February 2018. Tr. 15. Although the Complainant did not present a copy of this termination notice for my consideration, she did testify that the notice she received advised her of the steps she could follow to avoid termination. Tr. 15-16. The Complainant further testified that PECO never terminated her service. Tr. 15. The Complainant did not offer any additional testimony regarding PECO's termination notice. Based on the limited testimony provided by the Complainant, the Complainant did not meet her burden of demonstrating that PECO improperly issued her a termination notice, or that the contents of the notice 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. Complainant failed to sustain her burden of demonstrating that there are incorrect charges on her bill.

5. Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the Commission. 66 Pa.C.S. § 1405(c).

6. Complainant failed to sustain her burden of demonstrating that she is eligible for a Commission-issued payment arrangement.

7. Complainant failed to sustain her burden of establishing that PECO improperly issued her a service termination notice and also failed to demonstrate that PECO's termination notice 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 Karen Minor against PECO Energy Company at Docket No. C-2018-3002729 is denied; and

2. That the docket at C-2018-3002729 be marked closed.

Date: November 13, 2018

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