

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dinlitha Banks	:	
	:	
v.	:	C-2018-3002575
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Complainant’s request for a Commission-issued payment arrangement pursuant to 66 Pa.C.S. § 1405(c) because her entire outstanding balance accrued while she participated in PECO Energy Company’s Customer Assistance Program.

**HISTORY OF THE PROCEEDING**

On June 7, 2018, Dinlitha Banks (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO, Company, or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the box indicating “I would like a payment agreement.”

On June 18, 2018, Respondent filed an Answer denying all material allegations of fact in the Complaint. Respondent further answered that the Complainant participates in the Company’s Customer Assistance Program (CAP) and that the Complainant’s \$1,224.46 balance is

comprised entirely of CAP arrears. Respondent requested that the Commission dismiss the Complaint pursuant to 66 Pa.C.S. § 1405(c).

By Hearing Notice dated June 22, 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 June 27, 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. The Complainant appeared *pro se* and testified. The Respondent appeared and was represented by Shawane L. Lee, Esq., who presented the testimony of Michael Begley, a PECO Regulatory Assessor. Respondent offered five exhibits (PECO Exhibits 1-5) which were all admitted into the record.

The record in this case consists of a 24-page transcript and five 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 Dinlitha Banks.
2. The Respondent in this proceeding is PECO Energy Company.
3. The Complainant resides at 5931 Cedar Avenue, Philadelphia, PA 19143 (service address). Tr. 7, 12.
4. The Complainant's balance at the time of the hearing totaled \$1,314.22. Tr. 16, 20.

5. The Complainant has participated in PECO's Customer Assistance Program (CAP) since March 15, 2006. Tr. 8, 12; PECO Exh. 2.

6. The Complainant's entire outstanding balance accumulated while she participated in PECO's CAP. Tr. 8, 20-21.

### 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).

The Complainant seeks a Commission-issued payment arrangement to help her pay her outstanding balance. The Respondent maintains that the Complainant is not entitled to 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 CAP arrears. 66 Pa.C.S. § 1405(c).

In the present case, the record reflects that the Complainant has participated in PECO's CAP since March 15, 2006, and that her entire balance accrued while she participated in PECO's CAP. Tr. 8, 12, 20-21; PECO Exh. 2. Since the Complainant's entire outstanding balance accrued while she participated in PECO's CAP, pursuant to 66 Pa.C.S. § 1405(c), the Commission cannot authorize a payment arrangement on her behalf.

Accordingly, the Complainant's Complaint is denied.

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. 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Dinlitha Banks against PECO Energy Company at Docket No. C-2018-3002575 is denied; and

2. That the docket at C-2018-3002575 be marked closed.

Date: November 8, 2018

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