

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Guagenti

v.

PECO Energy Company

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F-2018-3001891

INITIAL DECISION

Before
Darlene D. Heep
Administrative Law Judge

INTRODUCTION

Complainant Michael Guagenti filed this Complaint seeking a payment arrangement and questioning why he is receiving higher budget bills although he is using less energy. He also questions PECO removing him from its Budget Billing program and not reenrolling him in the Customer Assistance Program (CAP). During the hearing, he withdrew his request for a payment arrangement.

This decision finds that although Mr. Guagenti is correct that he is being charged more for using less energy, there is no violation here because the Commission approved the change from PECO CAP to PECO CAP- Fixed Credit Option (CAP-FCO) that resulted in the higher charges. This decision also finds PECO committed no violations with respect to the Complainant's Budget Billing and CAP enrollment.

HISTORY OF THE PROCEEDING

On April 27, 2018, Michael Guagenti (Complainant) filed a formal Complaint against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Mr. Guagenti stated that he would like a payment arrangement that he can afford. He also stated that his Budget Billing monthly bill increased from \$62.00 per month to \$95.00 per month and then, without his request, he was removed from Budget Billing and he received a monthly bill of \$247.00. He also states that he was particularly surprised by the bill increases because he had received letters congratulating him for using less energy and stating that the less energy he used, the less he would pay. This is a timely appeal of a Bureau of Consumer Services decision, BCS Case Number 3583250. The Complaint was served on PECO on May 16, 2018.

On June 1, 2018, PECO filed an Answer to the Complaint. PECO denied all material allegations of fact in the Complaint. PECO also stated that the Complainant re-enrolled in PECO's CAP on June 7, 2016, that his CAP account was transitioned to the CAP-Fixed Credit Option on November 24, 2016, that the Complainant is actively enrolled in CAP, and that the Complainant was scheduled to recertify in CAP at the time the Answer was filed.

PECO further stated that on November 9, 2017, PECO removed the Complainant from the Budget Billing program when the Complainant contacted PECO to dispute his Budget and stated that he could no longer afford it. When PECO removed the Complainant from the Budget Billing program, the charges that were deferred under the Budget Billing program, \$212.66, became due.

In the Answer, PECO further stated that the Complainant filed an informal Complaint, BCS Case Number 3583250, on December 28, 2017 and the instant appeal on April 27, 2018. The Complainant reenrolled in Budget Billing on May 1, 2018 and, at the time that the Answer was filed, the Complainant's budget bill was \$68.00 per month. PECO also asserted that the bills sent to the Complainant were correct and that his budget bill changed to

\$95.00 for a period because budget bills are based on a customer's average usage over 12 months.

PECO also stated that the Complainant's outstanding balance of \$282.88 is comprised entirely of CAP arrears. PECO asserted that 66 Pa.C.S. § 1405(c) prohibits the Commission from awarding a payment arrangement on CAP arrears and therefore the Complainant is not entitled to a payment arrangement.

A Hearing Notice was issued on June 5, 2018, notifying all parties that a hearing would be held on July 31, 2018.

A Pre-Hearing Order was issued on June 18, 2018, reminding the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

Upon agreement of the parties, the July 31, 2018 hearing was held by telephone. Mr. Guagenti represented himself and presented no exhibits at that time. PECO was represented by Shawane Lee, Esq., who presented as a witness Dana McCallum, a PECO Regulatory Assessor. Ms. Lee also introduced six exhibits. They are:

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|--------|---------------------------|
| PECO 1 | Account Balance Statement |
| PECO 2 | PECO Bill |
| PECO 3 | CAP History Record |
| PECO 4 | Budget Billing Statement |
| PECO 5 | Case Details Report |
| PECO 6 | BCS Decision Report |

During the hearing, Mr. Guagenti stated that he is not seeking a payment arrangement. (Tr. 5). Therefore, a payment arrangement will not be addressed herein.

Also, during the hearing, Mr. Guagenti stated that he had received a letter from PECO the week before the hearing stating that he had been removed from the CAP program. He requested to be reenrolled in CAP, which provides lower rates to income qualified customers.

The Complainant was allowed to pursue this additional claim with no objection from PECO. (Tr. 6-7).

Near the close of the hearing, the parties were directed to submit late-filed Exhibits and provide each party with a copy. On August 8, 2018, PECO filed:

PECO 7	CAP-Fixed Credit Option Calculations
PECO 8	Letter to CAP Customer explaining monthly CAP credit program

On August 9, 2018, the Complainant submitted Complainant Exhibit 1, copies of 5 letters from PECO congratulating the Complainant on reducing his energy usage. No objections to the late-filed exhibits were filed by the August 24, 2018 deadline given. (Tr. 55).

All exhibits were admitted into the record. The record closed on August 24, 2018, the deadline for receipt of any responses to late-filed exhibits. The record includes a 58-page transcript and nine exhibits.

FINDINGS OF FACT

1. The Complainant in this proceeding is Michael Guagenti, who receives PECO electric service at 2544 South Jessup Street, Philadelphia, Pennsylvania. (service address).
2. The Respondent in this proceeding is PECO Energy Company.
3. The Complainant, his wife and son live at the service address. (Tr. 13-14, 35).
4. The Complainant is not seeking a payment arrangement in this proceeding. (Tr. 5).

5. Mr. Guagenti received letters from PECO congratulating him for reducing his energy consumption following an energy survey conducted at the service address by PECO. (Complainant Exhibit 1).

6. The letters from PECO regarding his energy usage can be summarized as follows:

Date	Monthly Average Usage Prior to PECO Energy Survey	Reduced Monthly Average Usage After Energy Survey
6/6/2017	322 kWh	290 kWh
7/11/2017	385 kWh	325 kWh
8/8/2017	464 kWh	389 kWh
9/6/2017	532 kWh	430 kWh
10/10/2017	578 kWh	487 kWh

Complainant Exhibit 1.

7. In December of 2005, the Complainant was enrolled in PECO's CAP program. (Tr. 34; PECO 3).

8. PECO's CAP provides service at a lower rate to qualified income customers.

9. During the time that the Complainant participated in PECO's CAP program, the Complainant reenrolled approximately every two years. (PECO 3; Tr. 34).

10. Reenrollment requires recertification of income. (Tr. 34).

11. PECO changed its CAP to the Customer Assistance Program - Fixed Credit Option (CAP-FCO) in October of 2016. (Tr. 50).

12. Prior to implementation of the CAP-FCO, the Complainant paid less for more kilowatt hours. (Tr. 51).

13. PECO removed the Complainant from its CAP-FCO on July 20, 2018 because he did not recertify his income. (Tr. 34).

14. On November 9, 2017, the Complainant contacted PECO and stated that he could not afford the proposed Budget Billing increase from \$63.00 per month to \$98.00 dollars per month. (PECO 4; Tr. 42).

15. Complainant was removed from Budget Billing on November 9, 2017 by a customer service representative who informed Mr. Guagenti that he could always reenroll in Budget Billing. (PECO 4).

16. Complainant was reinstated in Budget Billing upon his request in May of 2018. (PECO 4).

DISCUSSION

The Pennsylvania Public Utility Code (“Code”) requires each public utility to provide the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission. . . .

66 Pa.C.S. § 1501.

The statutory definition of “service” is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa.Cmwlt. 1995).

“Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them .

...

66 Pa.C.S. § 102.

Any offense alleged by the Complainant must be a violation of the Public Utility Code ("Code"), the Commission's regulations, or an outstanding order of the Commission.

66 Pa.C.S. § 701. 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 Code, 66 Pa.C.S.A. § 332(a).

In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S.A. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95, *vacated* on other grounds, 666 A.2d 744 (Pa.Cmwlth. 1995) (*Poorbaugh*). 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).

Additionally, public utility tariffs have the force and effect of law and are binding on the public utility and its customers. *Pennsylvania Electric Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa.Cmwlth. 1995). Complainants have a "heavy" burden when challenging the reasonableness of a tariff provision. *Shenango Township Board of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996), "Tariff provisions that have been properly submitted to and approved by the Commission are *prima facie* reasonable." *Id.*

The claims at issue are: 1) PECO removing the Complainant from Budget Billing 2) reenrollment of the Complainant in the CAP program and 3) whether Complainant's budget bills are correct.

Budget Billing

In the Complaint, Mr. Guagenti stated that he was removed from Budget Billing without his request. He testified that he called PECO to say that he could not afford a proposed increase in Budget Billing and was removed from the Budget Billing program although he did not ask to be removed. He also testified that he was told that he had to pay the balance accumulated when he was not on Budget Billing, about \$200.00, before he could be placed back on Budget Billing. He further testified that he called PECO again a few days later and informed the Company that he was on disability and would like to be placed on Budget Billing. According to the Complainant, a customer service representative placed him back on Budget Billing and informed him that he did not have to pay the \$200.00 balance first. (Tr 8-9; 26-27).

Based on the testimony and the record, it appears that this was a case of misunderstanding rather than unreasonable service in violation of 66 Pa.C.S. § 1501 or a violation of any Code provision, Commission Order or regulation. In February of 2017, the Complainant was notified that his monthly Budget Billing amount would increase from \$73.00 per month to \$98.00 per month as of March 2017. (PECO 4). The Complainant contacted PECO on March 30, 2017 and April 5, 2017 and stated that he could not afford the budget

amount increase. (PECO 4). PECO then offered the Complainant a reduction of the budget amount or to cancel Budget Billing. (PECO 3). Budget Billing was reduced and maintained for the Complainant. (PECO 4).

In October of 2017, the Complainant received a notice stating that his Budget Billing amount would be increased from \$63.00 per month to \$93.91 per month as of November 2017. (PECO 4). The Complainant called PECO on November 6, 2017 and stated that he could not afford the Budget Billing increase. A PECO customer service representative then removed the Complainant from Budget Billing and informed him that he could always reenroll in Budget Billing. (PECO 4; Tr. 42).

According to PECO records, the Complainant did not call PECO and ask to be placed on Budget Billing again until May 1, 2018. On May 1, 2018, upon his request, the Complainant was reenrolled in Budget Billing. (Tr. 9-10, 22,42; PECO 3).

Section 1501 requires reasonable service, not perfect service. The company removing the Complainant from Budget Billing, while perhaps not what the customer intended when he called PECO in November of 2017, does not rise to the level of a violation. Further upon the Complainant contacting PECO months later and asking to receive Budget Billing, the company honored his request immediately and placed him back on Budget Billing. There is no violation here.

CAP Reenrollment

The Complainant would also like to be reenrolled in the CAP program. He testified that prior to the hearing, he received a letter from PECO stating that he would be removed from the CAP program. When he called PECO, a PECO representative informed him that the company was waiting for a copy of his wife's benefits award letter, which is a letter from an assistance agency stating how much financial assistance the Complainant's wife receives. (Tr. 8;13).

Dana McCollum, PECO Regulatory Assessor, testified that CAP participants are to recertify their income every two years. (Tr. 34). This requires submitting documents showing the last 30 days of household income. (Tr. 36).

PECO had throughout the years sent the Complainant recertification notice letters, and the Complainant has recertified several times during his CAP enrollment, from 2005 to 2018. (PECO 3). He last recertified on June 7, 2016. (PECO 3; Tr. 35). On May 8, 2018, as the two-year renewal period approached, PECO sent the Complainant a recertification notice letter. PECO sent another recertification notice letter on May 23, 2018.

The Complainant lives with his wife and son. (FOF 3). By July 20, 2018, the Complainant had sent to PECO income documentation for himself and his son but had not provided the documentation of his wife's income and was removed from the CAP Program. (Tr. 35-36; PECO 3).

Ms. McCollum explained that if a CAP customer does not timely provide the required income documentation, they will be removed from the program. Once PECO receives the required documents, the customer is placed back in the CAP program. In the case of the Complainant, he never provided PECO with his wife's income information and, therefore, his household income information was incomplete. (Tr. 36-37).

As of the date of the hearing, the Complainant still had not provided a copy of his wife's benefits letter. The Complainant acknowledged during the hearing that he had not provided the documentation. (Tr. 30). There is no other impediment to the Complainant participating in the CAP program. Moreover, the Complainant did not offer anything to establish that PECO violated the Code, a Commission Order or Commission regulations by requiring that the household provide income statements before reenrollment in the CAP program. There was no violation by PECO.

The Complainant cannot prevail on this claim.

Incorrect budget bills

Mr. Guagenti is also contesting his budget amount. He contends that although he has reduced his energy consumption, PECO is issuing higher budget bills to him.

The Complainant testified that when he signed up for Budget Billing, he was told that the less energy he used, the lower his budget bill would be. As examples, he stated that at one time his budget bill was \$64.00 and then \$54.00, \$44.00 and \$42.00 per month at various times. (Tr. 29). Letters from PECO establish that Mr. Guagenti reduced his energy usage during the period May 2017 through October 2017. (Complainant 1; FOF 6). Mr. Guagenti is concerned that his budget bills increased even though he used less energy as evidenced by the PECO letters of congratulations on his reduced energy usage. (*Id.*; Tr. 4-6; 11). The Complainant established a *prima facie* case.

In rebuttal, Ms. McCollum testified and presented documents regarding the Complainant's Budget Billing history. On July 25, 2016, the Complainant's budget amount was \$71.00. On December 22, 2016, it changed to \$73.00. On March 7, 2017, it changed to \$98.00. On April 25, 2017, it changed to \$64.00. And on July 25, 2017, it changed to \$63.00. (Tr. 43-44; PECO 1). Ms. McCollum explained that the Budget Billing amount is a way to "equalize" a customer's payments. It is reviewed every four months and changes based on the customer's usage and balance during that period. (Tr. 46).

Ms. McCollum also acknowledged that Mr. Guagenti can and does pay more for his service now than he did in the past even though he used the same amount of energy or less. (Tr. 49). She looked at the Complainant's energy usage for the period June 23, 2016 through July 25, 2016 and found that he had used 1,219 kilowatt hours with revenue to PECO in the amount of \$140.20. For the period June 23, 2017 through July 23, 2017, the Complainant used less energy, 1,114 kilowatt hours, but revenue to PECO was \$156.97. (Tr. 51). Ms. McCollum attributed this to the Commission's approval of the change in the PECO CAP program to the CAP-fixed credit option, or CAP-FCO. (Tr. 50).

Under CAP-FCO, PECO determines a customer's maximum allowed energy burden, or amount that a low-income customer must or should be able to pay for energy, using the energy burden percentages table found at 52 Pa. Code § 69.265(2). PECO's CAP-FCO program was approved by the Commission. *PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, Docket No. M-2015-2507139 (Order Entered August 11, 2016); 2016 Pa. PUC LEXIS 249 (Pa. PUC 2016). at 7.

Under CAP-FCO, Mr. Guagenti is no longer receiving a 25% discount from the total revenue bill as he did under the previous program. (Tr. 51). Therefore, although Mr. Guagenti is correct that he is in fact paying more for using less energy, there is no violation here because the Commission approved the CAP program changes with this result. See Docket Number M 2015-2507139, a revised tariff section reflecting its change from CAP to CAP FCO; PECO Supplement No 20 to Tariff Electric Pa. P.U.C. No. 5. This tariff provision, and the PECO CAP-FCO program contained therein, is *prima facie* reasonable. *Shenango Township, supra*.

PECO provided documents showing the Company's CAP-FCO calculations. (PECO 7). There is no basis upon which to find that PECO's calculations are in error based on the law and regulations as they now stand. Given that there is no basis upon which to find that PECO committed an offense in violation of the Code, the Commission's regulations, or an outstanding order of the Commission, the Complainant cannot prevail here. 66 Pa.C.S. § 701.

CONCLUSIONS OF LAW

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

2. As the proponent of a rule or order, the Complainant in this proceeding has the burden of proof pursuant to Section 332(a) of the Code, 66 Pa.C.S.A. § 332(a).

3. The Complainant did not establish a *prima facie* case on his claims regarding his removal from the Budget Billing program and the Customer Assistance Program. *Id.*

4. The Complainant established a *prima facie* case that he is charged more for service although he is using less energy. *Id.*

5. PECO Energy Company presented rebuttal evidence that the charges were authorized by its Commission-approved CAP-FCO, which the Complainant did not rebut. *PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, Docket No. M-2015-2507139 (Order Entered August 11, 2016); *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95, *vacated* on other grounds, 666 A.2d 744 (Pa.Cmwlth. 1995).

6. Complainant did not present a preponderance of the evidence to counter PECO's rebuttal of the *prima facie* case. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95, *vacated* on other grounds, 666 A.2d 744 (Pa.Cmwlth. 1995).

7. The Complainant did not establish that PECO violated the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed in *Michael Guagenti v. PECO Energy Company* at Docket Number F-2018-3001891 is dismissed; and

2. That the matter be marked closed.

Date: November 13, 2018

/s/
Darlene Heep
Administrative Law Judge