

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tracy Mazique	:	
	:	
v.	:	F-2018-3002091
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This decision awards the Complainant a payment arrangement.

HISTORY OF THE PROCEEDINGS

On May 4, 2018, Tracy Mazique (Complainant or Ms. Mazique) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). This matter is the timely appeal of a decision from the Bureau of Consumer Services (BCS) dated March 23, 2018, Case No. 3593391. The Complainant avers that the monthly payments required under the payment arrangement issued by BCS on March 23, 2018, are too high. As relief, she requested a payment arrangement with a monthly payment of \$300.

On June 8, 2018, PECO filed an Answer to the Complaint. In its Answer, PECO denies all material allegations of fact and conclusions of law in the Complaint. PECO also requests that the matter be dismissed pursuant to 66 Pa.C.S. § 1405(d), which provides that, 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 established by a Commission order or decision.

By Hearing Notice dated June 13, 2018, an initial in-person hearing was scheduled for July 31, 2018 at 9:30 a.m.

A Prehearing Order was issued on June 15, 2018, advising the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

The hearing convened as scheduled on July 31, 2018. The Complainant appeared *pro se* and testified on her own behalf. The Complainant offered no exhibits.

The Respondent appeared and was represented by Shawane Lee, Esquire, who presented the testimony of Dana McCollum. During the hearing, the Respondent offered the following four exhibits, all of which were entered into the record:

- PECO 1: Account Balance History
- PECO 2: Payment Agreement History
- PECO 3: Case Report
- PECO 4: BCS Decision Report

The record in this case consists of a 23-page transcript and four exhibits. The record closed on August 21, 2018, upon receipt of a copy of the transcript.

FINDINGS OF FACT

1. The Complainant is Tracy Mazique, a PECO electric customer at 5856 Chew Avenue, Philadelphia, PA 19138 (service address).

2. The Respondent is PECO Energy Company.
3. On March 20, 2018, Ms. Mazique filed an informal complaint with BCS, Case No. 3593391, seeking a payment arrangement. (Tr. 10; PECO 3).
4. At that time, the Complainant had arrears of \$4,575.97. (PECO 4).
5. In March of 2018, BCS recorded the service address as a three-person household, consisting of two adults and one child, with a monthly household income of \$3,500. (Tr. 11; PECO 3).
6. On March 23, 2018, BCS issued to the Complainant a Level 2 payment arrangement requiring monthly payments of her \$309 budget amount, plus \$128 toward arrears, for a total of \$437 per month. (PECO 4).
7. The payments were to begin with the May 2018 bill due date. (PECO 4).
8. The May bill payment, and first payment agreement installment, were due on June 12, 2018. (PECO 1).
9. On May 4, 2018, the Complainant filed the instant matter appealing the payment arrangement issued. (Complaint).
10. At the time of the hearing, the service address was a household of four, including three adults and one child, with a monthly income of \$4,800. (Tr. 8).
11. The household income for the service address at the time of the hearing included \$3,600 per month from the Complainant, plus \$300 per week from another adult in the household, for a total of \$4800 per month. (Tr. 12).

12. The Complainant's balance at the time of the hearing was \$5,349.18.
(Tr. 19).

DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving that she is entitled to the requested relief. 66 Pa.C.S. § 332(a). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, 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.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 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*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

As for payment arrangement requests, the Commission has the authority to establish a payment arrangement pursuant to 66 Pa.C.S. § 1405(a), which states:

- (a) General Rule – The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

The Act also provides strict guidelines regarding payment arrangements allowed to be issued by the Commission:

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).

The Commission has the discretion not to issue a payment arrangement where there is no good faith effort by the customer to pay his or her utility bills. *See Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 at 15-16 (Order entered December 6, 2007), *see also Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013).

The Act also provides that a Complainant who has defaulted on a previous Commission-issued payment arrangement is not eligible for a second payment arrangement except under particular circumstances such as a change in income or significant change in circumstance. *See* 66 Pa.C.S. §§ 1405(d), (e). BCS awarded the Complainant a payment arrangement requiring monthly payments of \$437. The Complainant filed a timely appeal of that payment arrangement. Therefore, there has been no default and Sections 1405(d) and (e) are not applicable here. The evidence on the record indicates that the Complainant has not received a Commission-issued payment arrangement prior to the one currently under appeal.

At the time of the hearing, Ms. Mazique had a monthly household income of \$4,800 and a household of four. The Federal Poverty Level for a household of four is \$2,092 per month. *Federal Register*, Vol. 83, No 12, p. 2643 (January 18, 2018). At \$4,800 per month, the household income of the Complainant is approximately 230 percent of the Federal Poverty Level. Therefore, under the guidelines, Ms. Mazique is eligible for a Level 2, three-year payment arrangement. See 66 Pa.C.S. § 1405(b)(2).¹

PECO presented evidence that the Complainant defaulted on three payment arrangements with the Company. (PECO Exhibit 2). However, a review of the Complainant's payment statement shows that she has made efforts to pay her PECO bill. (PECO 1). She is not a customer that has made no payments for many months or years. (PECO 1). See *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 at 15-16 (Order entered December 6, 2007), see also *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013).

The Complainant sought a payment arrangement consisting of payments of \$300 per month and during the hearing she sought payments of \$350 per month. (Complaint ¶5; Tr. 14). That is not attainable under the strict guidelines of the Act. The bulk of her \$437 monthly payment in the payment arrangement issued by BCS was the budget billing amount of \$309 per month, which is determined by the Complainant's consumption history with PECO. The Complainant should meet with PECO to discuss her usage and budget billing, and to obtain information regarding PECO Energy Audits. See *Stiffler; v. Metropolitan Edison Company*, C-2016-2553324 (Final Order entered July 12, 2017).

The Complainant will be awarded a payment arrangement requiring her to make monthly payments consisting of her budget bill plus one thirty-sixth (1/36th) of the balance accrued on her account, beginning with the first billing due date following the entry of a final Commission Order in this case.

¹ <https://www.masslegalservices.org/content/federal-poverty-guidelines-2018>.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding. 66 Pa.C.S.A. § 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.A. § 332(a).

3. The Complainant has not defaulted on a Commission-issued payment arrangement. *Diorazio v. North East Heat & Light Company*, F 2008-2052918 (Final Order entered June 15, 2009); and *Kalamets v. Columbia Gas of Pennsylvania, Inc.*, Z-01701441 (Final Order entered October 14, 2005); See also *Reed v. West Penn Power Company*, C-2017-2616261 (Final Order entered August 23, 2018).

4. "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).

5. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, applies to this proceeding.

6. The Commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established in Chapter 14 of the Pennsylvania Public Utility Code. 66 Pa.C.S. § 1405.

7. It is Commission policy to exercise its discretion to issue payment arrangements when customers have demonstrated some evidence of a good-faith effort in paying utility bills or when customers have experienced a change of circumstances outside of their control. *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 at 15-16

(Order entered December 6, 2007), see also *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint of Tracy Mazique against PECO Energy Company at Docket No. F-2018-3002091 seeking a payment arrangement is granted.
2. That Tracy Mazique shall make monthly payments consisting of her budget bill plus one thirty-sixth (1/36th) of the balance accrued on her account, beginning with the first billing due date following the entry of a final Commission Order in this case.
3. That as long as Tracy Mazique keeps the payment schedule stated in this order, PECO Energy Company shall not suspend or terminate her utility service except for valid safety or emergency reasons or assess late payments or finance charges against her account.
4. That if Tracy Mazique does not keep the payment schedule stated in this order, PECO Energy Company is authorized to suspend or terminate her utility service in accordance with the Commission's statute and regulations.
5. That the Secretary mark this docket closed.

Date: November 15, 2018

/s/
Darlene Davis Heep
Administrative Law Judge