

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Farassa Floyd	:	
	:	
v.	:	F-2018-3001465
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Complainant’s formal Complaint because she failed to meet her burden of proving that the Respondent erred in transferring the balance from a previous account to her current account, or that the Respondent failed to properly credit her for the Customer Assistance Program and Low Income Home Energy Assistance Program grants. The Complainant did not establish that the Respondent violated the Public Utility Code, or a Commission regulation or Order regarding its actions in this matter.

This Initial Decision also denies the Complainant’s formal Complaint related to the request for a payment arrangement because the Complainant is not eligible for a payment arrangement under Section 1405(c) of the Public Utility Code.

**HISTORY OF THE PROCEEDING**

On April 19, 2018, Farassa Floyd (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent or Company) with the

Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant contends that there are incorrect charges on her bill and requests a payment arrangement.

This matter is an appeal of a decision issued on March 13, 2018, by the Bureau of Consumer Services (BCS) at Case No. 3559959 which dismissed the informal complaint of the Complainant.

On May 15, 2018, Respondent filed an Answer denying the material allegations of the Complaint.

By Hearing Notice dated May 17, 2018, an initial hearing was scheduled for Wednesday, July 11, 2018, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on May 18, 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.

Via a Cancellation/Reschedule Notice dated July 2, 2018, the matter was rescheduled for a hearing on Tuesday, August 21, 2018, at 10:00 a.m.<sup>1</sup>

The hearing convened as scheduled on August 21, 2018. Complainant participated *pro se* and testified. Respondent appeared and was represented by Edward Fisher, Esq.,<sup>2</sup> who presented the testimony of Dana McCollum. Respondent offered eight exhibits, which were all entered into the record.

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<sup>1</sup> The matter was rescheduled due to a conflict in the presiding officer's schedule with the Application of Aqua Wastewater Inc., Docket No. A-2018-3001582.

<sup>2</sup> Mr. Fisher entered his appearance on behalf of PECO with the Secretary's Bureau on August 21, 2018.

The hearing resulted in a 57-page transcript. The record closed on September 28, 2018, when I received the transcript of the hearing.

### FINDINGS OF FACT

1. The Complainant in this case is Farassa Floyd, who resides at 6647 Blakemore Street, Apartment B, Philadelphia, Pennsylvania 19119 (Service Address). Tr. 10.
2. The Respondent is PECO Energy Company.
3. The Complainant previously resided at 2522 West Somerset Street, Philadelphia, PA in 2013-2014. Tr. 10.
4. The Complainant resided at 2522 West Somerset Street with a roommate. Tr. 13.
5. The Complainant established electric service in her name at 2522 West Somerset Street on September 12, 2013. Tr. 26; PECO Exh. 1.
6. The final balance on the Complainant's account at 2522 West Somerset Street was \$2,477.09. Tr. 31; PECO Exh. 1.
7. PECO transferred the balance from 2522 West Somerset Street to the Service Address on March 22, 2017. Tr. 34; PECO Exhs. 2 and 3.
8. The Complainant is currently receiving service from PECO at the Service Address. Tr. 11.
9. In May or June of 2014, there was a burglary at the 2522 West Somerset Street address and the Complainant left the address. Tr. 11.

10. The electric service at 2522 West Somerset Street was terminated on June 25, 2014, due to non-payment. Tr. 37; PECO Exh. 6.

11. The Complainant did not contact PECO at the time she left 2522 West Somerset Street to have service taken out of her name. Tr. 37; PECO Exh. 6.

12. The Complainant is not employed. Tr. 19.

13. The Complainant does not have any income. Tr. 19-21.

14. The Complainant's current household income of zero dollars per month for a one-person household places the household income at 0% of the Federal Poverty guidelines.<sup>3</sup>

15. The Complainant received Low Income Home Energy Assistance Program (LIHEAP) grants for the Service Address on March 28, 2017 for \$209, April 6, 2017 for \$500, September 28, 2017 for \$95 and December 29, 2017 for \$592. Tr. 32; PECO Exh. 2.

16. The Complainant currently participates in PECO's Customer Assistance Program (CAP). Tr. 33; PECO Exh. 2.

17. The Complainant was initially enrolled in CAP on January 30, 2014, at the 2522 West Somerset Street address and then was enrolled in the CAP Fixed Credit Option (FCO) on April 12, 2017, at the Service Address. Tr. 35; PECO Exh. 5.

18. Based on the Complainant's income level from August 16, 2017, (when she last recertified) and her energy usage, her annual fixed credit is zero. Tr. 36.

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<sup>3</sup> *Federal Register*, Vol. 83, No. 12, January 18, 2018, pp. 2642-2644. Also see <http://aspe.hhs.gov/poverty>.

19. The Complainant received a Company issued payment arrangement on June 7, 2017, which defaulted on February 19, 2018. Tr. 33, 35; PECO Exhs. 2 and 4.

20. The Complainant's current balance is \$2,359.29 for the Service Address. Tr. 32-33; PECO Exh. 2.

21. The Complainant's entire balance is composed of CAP arrears. Tr. 37.

### 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, 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, 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*, 461 A.2d 1234 (Pa. 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).

#### Transfer of Prior Balance to Service Address

The Complainant alleges that PECO erred in transferring the balance from a prior account in her name at 2522 West Somerset Street because she left the premises in May or June of 2014 and contacted PECO to have service discontinued in her name. The Complainant also alleges that she had a roommate at that address and insinuated that she may have been a victim of identity theft. PECO maintains that it properly transferred the balance to her account for the Service Address and that it has no records of her contacting the Company to discontinue service in her name in 2014, or of her contacting the Company to allege that her roommate stole her identity.

Section 1403 of the Public Utility Code defines “Applicant” and “Customer” as follows:

“Applicant.” A natural person not currently receiving service who applies for residential service provided by a public utility or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested.

and

“Customer.” A natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested.

66 Pa.C.S. § 1403.

The Complainant asserts that she is not responsible for charges from 2522 West Somerset Street because she moved from that address and contacted PECO to discontinue service. However, the Complainant did not provide any additional evidence to establish that she was living elsewhere during the time period at issue. “Mere bald assertions ... do not constitute evidence.” *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power Supply Association of Pa. v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000); see also, *Steffy’s Pattern Shop v. Frontier Communications of Pa., Inc.*, Docket No. R 00994808 (Opinion and Order entered March 3, 2000). Complainant has not established a *prima facie* case. Contrary to the Complainant’s assertions, the record reflects that service was established under her name at 2522 West Somerset Street on September 12, 2013, and service was terminated for non-payment on July 8, 2014. See PECO Exhs.1, 3 and 6. Moreover, the Complainant is listed as the customer of record for 2522 West Somerset Street according to PECO records. As such, the Complainant fits the definition of a customer under the law.

While she asserts that her roommate may have assumed her identity, the Complainant did not present any evidence that she was the victim of identity theft. The Complainant’s statements alone are not sufficient to meet her burden of proof in this matter. The Commission has no regulations regarding identity theft. *In re: Identity Theft*, Docket No. M 00041811 (Order entered Sept. 21, 2005). It is not unreasonable, however, that PECO requires a customer who alleges they have been a victim of identity theft to provide documentation to establish they lived elsewhere to show that they are making a good faith claim of identity theft. See, *MacDougall v. Verizon North, Inc.*, Docket No. F-01339719 (Opinion and Order entered August 23, 2004); *Spancake v. Metropolitan Edison Company*, Docket No. C-2012-2337599 (Final Order entered June 19, 2013).

While the Complainant contends that she contacted PECO to discontinue the service at 2522 West Somerset Street, PECO has no records that the Complainant contacted it in 2014 to discontinue service. The Commission has determined that a customer of record who does not take reasonable action to remove service from her name is responsible for the unpaid arrearage, even when that customer does not reside at the service address. *Nixon v. PECO Energy Co.*, Docket No. C-2011-2240763 (Opinion and Order entered February 16, 2012). If the Complainant had concerns about her roommate assuming her identity, she should have followed up with PECO to make sure that the service was terminated in her name.

Based on all of the above, it is clear that the Complainant has failed to meet her burden of proof under the law to establish that she was not responsible for the charges that were accrued at 2522 West Somerset Street. The Complainant was the customer of record for the service address at 2522 West Somerset Street for the time period at issue according to the PECO records and the Complainant was not able to establish that she resided at another location during the same time period or that she was a victim of identity theft. Therefore, as the Complainant was the customer of record for 2522 West Somerset Street, she is liable for the charges on that account.

In so much as the Complainant is liable for the charges, PECO is permitted to transfer the charges to the Complainant's new service account. Pursuant to 56 Pa.Code § 56.16, transfers of accounts:

(a) A customer who is about to vacate premises supplied with public utility service or who wishes to have service disconnected shall give at least 7 days notice to the public utility and a noncustomer occupant, specifying the date on which it is desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered.

(b) In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a new residential service account of the same customer.

*See also* 52 Pa.Code § 56.35(a) (A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly).

The Company was entitled to transfer the balance from the 2522 West Somerset Street address to the active account at the Service Address. It is not unreasonable for PECO to request that the Complainant pay her outstanding balance. There is nothing that the Company has done in this case that is in violation of a Commission rule, regulation or an order. As such, the Complainant is responsible for the outstanding balance from 2522 West Somerset Street and her Complaint is denied with respect to this issue.

#### CAP Enrollment Status

During the hearing, the Complainant contended she was eligible for CAP but that she had not received any documentation from PECO indicating her CAP status with the Company. However, Ms. McCollum, PECO's witness, testified that the Complainant is currently participating in PECO's CAP. Tr. 33; PECO Exh. 2. Ms. McCollum also testified that the Complainant was initially enrolled in CAP on January 30, 2014, at the 2522 West Somerset Street address and then was enrolled in PECO's CAP FCO on April 12, 2017, at the Service Address. Tr. 35; PECO Exh. 5. Moreover, based on the Complainant's income level from August 16, 2017 (when she last recertified), and her energy usage, her annual fixed credit is zero. Tr. 36. While it does not appear that the Complainant is currently receiving a credit under the CAP FCO, the Complainant is clearly a CAP customer. Therefore, the Complainant's allegations in this regard are moot and her Complaint on this issue must be dismissed.

#### LIHEAP Grants

The Complainant also alleges that LIHEAP grants she received were not properly credited to her account balance. However, PECO indicates that the Complainant received LIHEAP grants for the Service Address on March 28, 2017 for \$209, April 6, 2017, for \$500,

September 28, 2017, for \$95 and December 29, 2017, for \$592. Tr. 32; PECO Exh. 2. These grants all appeared on the account statement for the Service Address provided by PECO and were properly credited to her account. See PECO Exh. 2. The Complainant did not allege that there were additional grants from LIHEAP that PECO should have credited to her account. As such, the Complainant has failed to meet her burden of proof that there was any violation of the Public Utility Code, Commission regulations or a Commission Order in this regard, and the Complainant's Complaint on this issue must be dismissed.

### Request for Payment Arrangement

The Complainant requests a payment arrangement in this matter. PECO alleges that the Complainant is not entitled to a payment arrangement because her entire balance is composed 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. Section 1405(a) of the Public Utility Code reads as follows:

#### § 1405. Payment arrangements

(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.

66 Pa.C.S. § 1405(a).

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). Of the Complainant's current outstanding balance, the entire balance is

composed of CAP arrears. As such, the Commission cannot grant the Complainant a payment arrangement on this amount.

### 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. A "customer" is defined as a natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested. 66 Pa.C.S. § 1403.

5. A customer who is about to vacate a premise supplied with public utility service or who wishes to have service disconnected shall give at least seven days' notice to the public utility, specifying the date on which it is desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered. 56 Pa.Code § 56.16(a).

6. In the event of discontinuance or termination of service at a residence or dwelling, a public utility may transfer an unpaid balance to a new residential service account of the same customer. 56 Pa.Code § 56.16(b).

7. “Mere bald assertions ... do not constitute evidence.” *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power Supply Association of Pa. v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000); *see also, Steffy’s Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000).

8. 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.

9. 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).

10. The Complainant did not meet her burden of establishing that PECO violated the Public Utility Code, Commission regulations or a Commission Order regarding the transfer of the balance from the prior address to her current account.

11. The Complainant did not meet her burden of proving that PECO violated the Public Utility Code, Commission regulations or a Commission Order regarding her CAP enrollment status or the LIHEAP grants.

12. The Complainant did not meet her burden of demonstrating that she was eligible for a Commission-issued payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Farassa Floyd against PECO Energy Company at Docket No. F-2018-3001465 is denied and dismissed and;
2. That Docket No. F-2018-3001465 be marked closed.

Date: December 13, 2018

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/s/  
Marta Guhl  
Administrative Law Judge