

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Charita Kent	:	
	:	
v.	:	F-2018-3002919
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complainant’s formal Complaint because she failed to sustain her burden of proof to establish that PECO Energy Company violated any Commission orders or regulations concerning charges on her bill. The Decision also denies the Complainant’s request for a payment arrangement under Section 1405(c) of the Public Utility Code.

HISTORY OF THE PROCEEDING

On June 11, 2018, Charita Kent (Complainant or Ms. Kent) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant indicated that there were incorrect charges on her bill and that her bills were too high. The Complainant also disputed charges that were transferred to her current account from two previous residences.

This Complaint is a timely appeal of a Bureau of Consumer Services (BCS) decision issued at Case No. 3588924 which denied the Complainant's informal complaint.

On July 5, 2018, Respondent filed an Answer denying the material allegations of the Complaint.

On July 19, 2018, a Hearing Notice was issued which indicated an initial hearing was scheduled in the matter for Monday, August 13, 2018, at 10:00 a.m., and the case was assigned to me. I issued a Prehearing Order on July 20, 2018.

On July 26, 2018, via a Hearing Cancellation/Reschedule Notice, the August 13, 2018 hearing was rescheduled to September 7, 2018, due to a conflict in the presiding officer's schedule.

The initial hearing in this matter was held as scheduled on September 7, 2018. The Complainant appeared *pro se* and testified on her own behalf. Respondent appeared and was represented by Shawane Lee, Esq., who presented the testimony of two witnesses, Renee Tarpley and Thomas Lerro. Respondent offered 12 exhibits which were entered into the record at the time of the hearing.

The hearing resulted in a transcript of 139 pages. The record closed on October 11, 2018, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Charita Kent, who resides at 6610 North 8th Street, Apartment A103, Philadelphia, Pennsylvania 19126 (Service Address). Tr. 13.
2. The Respondent in this case is PECO Energy Company.
3. The Complainant rents the Service Address. Tr. 21.

4. The Complainant resides at the Service Address alone. Tr. 22.

5. The Service Address is a one bedroom and one bathroom apartment.
Tr. 23.

6. The Complainant has electric heat, an air conditioner, refrigerator, microwave, TV, radio, and a fan. Tr. 25-27.

7. The Complainant previously resided at 3400 North 17th Street, Philadelphia, Pennsylvania and had electric service in her name from July 25, 2012 until February 9, 2017. Tr. 83, 90; PECO Exh. 1.

8. While at 3400 North 17th Street, the Complainant had a payee and bills were sent to the payee. Tr. 90.

9. At 3400 North 17th Street, the Complainant was on budget billing, which looks at a customer's previous 12-month usage history and takes the average. Tr. 84.

10. The budget billing is reviewed quarterly to ensure that the budget billing amount is in line with the customer's actual usage and can be adjusted. Tr. 84-85.

11. If the customer uses less than his/her budget billing amount, then the customer would have a credit which would be applied to future bills. Tr. 85.

12. If the customer uses more than the budget billing amount, then PECO would set the difference aside as a deferred budget balance. Tr. 85.

13. The Complainant's budget billing amount changed during the time she resided at 3400 North 17th Street. Tr. 86; PECO Exh. 1.

14. When the Complainant's account was closed for 3400 North 17th Street on February 9, 2017, the Complainant had a deferred budget balance of \$400.06, which was not paid. Tr. 88-89; PECO Exh. 1.

15. The Complainant established electric service at 514 West Coulter Street, 3rd Floor, Philadelphia, Pennsylvania on February 9, 2017. Tr. 91; PECO Exh. 2.

16. The balance from 3400 North 17th Street was transferred to the Complainant's 514 West Coulter Street account on March 7, 2017. Tr. 92; PECO Exh. 2.

17. On February 3, 2018, the Complainant discontinued service at 514 West Coulter Street with an account balance of \$806.07. Tr. 96-97; PECO Exh. 2.

18. The Complainant established service at the Service Address on February 2, 2018. Tr. 97-98; PECO Exh. 3.

19. On March 5, 2018, the balance from 514 West Coulter Street was transferred to the account for the Service Address. Tr. 98, PECO Exh. 3.

20. The Complainant was first enrolled in PECO's Customer Assistance Program (CAP) on September 19, 2012 when she resided at 3400 North 17th Street. Tr. 99; PECO Exh. 5.

21. The Complainant's CAP status was transferred to her accounts at her subsequent addresses. Tr. 100; PECO Exh. 5.

22. On October 17, 2016, PECO introduced a redesigned CAP program (fixed credit option or FCO) which is based on the customer's historic usage and his or her income and provides the customer with a credit towards his or her energy burden. Tr. 100-101.

23. The Complainant is receiving an annual fixed credit of \$124.70 under the CAP FCO. Tr. 104; PECO Exh. 5.

24. At 514 West Coulter Street, the Complainant did not make full payments or pay on time. PECO Exh. 2.

25. The Complainant is no longer on budget billing. PECO Exhs. 2 and 3.

26. The Complainant has had one payment arrangement with the Company which was issued on June 1, 2017 and upon which she defaulted. Tr. 105; PECO Exh. 6.

27. On September 5, 2018, Eric Riley, a field service technician with PECO, visited the Service Address for a high bill investigation. Tr. 64; PECO Exh. 11.

28. Mr. Riley found a top/bottom refrigerator, a microwave, an air conditioner, a standing fan, two wall heater units, and a TV during this visit. Tr. 65-66; PECO Exh. 11.

29. Mr. Riley did a cost analysis at the Service Address and found a potential usage for the summer of 487 Kwh and a potential usage for the winter of 1753 Kwh. PECO Exh. 11.

30. PECO analyzed the Complainant's usage and found that it was seasonal in nature and well within her potential usage at the Service Address.

Billing Period	Kwh Usage
2/2/2018- 2/13/2018	290
2/13/2018- 3/14/2018	734
3/14/2018- 4/12/2018	890
4/12/2018- 5/11/2018	389
5/11/2018- 6/13/2018	92
6/13/2018- 7/13/2018	123
7/13/2018- 8/10/2018	164

Tr. 71-72; PECO Exh. 3.

31. Mr. Riley performed an idle meter test which showed there was no foreign wiring. Tr. 74; PECO Exh. 11.

32. Mr. Riley also performed a passing load test on the air conditioner which was 480 watts and it was clocked at 475, within the acceptable range for the meter. Tr. 73; PECO Exh. 11.

33. Mr. Riley found no meter mix up at the Service Address. Tr. 74; PECO Exh. 11.

34. On July 17, 2018, PECO technician, Aaron Sanders, conducted a meter test at the Service Address. Tr. 75-76; PECO Exh. 12.

35. Mr. Sanders tested Meter No. 121883163 at the Service Address. Tr. 76; PECO Exh. 12.

36. The meter tests were run on a full load and light load. Tr. 76-77.

37. The tests were performed three times and the full load tested 99.99%, 98.99% and 99.5% accurate and the light load tested 100.00%, 99.99% and 99.99% accurate. Tr. 77; PECO Exh. 12.

38. The Complainant's current outstanding balance is \$818.16. Tr. 99; PECO Exh. 3.

39. The Complainant's current outstanding balance is comprised entirely of CAP arrears. Tr. 130.

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. Commonwealth, 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).

High Bill Dispute

The Complainant contends that her bills are inconsistent for the amount of electricity she is using. The Complainant asserts that she barely uses any electricity and that she is living alone in a small apartment.

The burden of proof for “high bill” complaints has been explained in *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980), and its progeny. In *Waldron*, the Commission adopted the Michigan Public Service Commission’s (PSC’s) policy announced in *Hallifax v. O & A Electric Co-Op*, Case No. U-5825, May 1979, which stated that, while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Commission stated that it will also consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100.

The Commission explained the burden of proof set forth in *Waldron* as follows:

[T]he *Waldron* Rule allows a complainant to establish a *prima facie* case in a “high bill” complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed *or by providing other relevant evidence showing that the disputed bill is unreasonably high*. In evaluating a “high bill” complaint, the Commission may consider such evidence as “the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), *and any other relevant facts or circumstances that come to light during the proceeding.*”

Nehemiah B. Thomas v. PECO Energy Company, Docket No. C-2010-2187197, at 5 (Order entered November 15, 2011) (emphasis in original).

PECO analyzed the Complainant’s usage and found that it was seasonal in nature and well within her potential usage at the Service Address. Tr. 71-72; PECO Exh. 3.

Billing Period	Kwh Usage
2/2/2018-2/13/2018	290
2/13/2018-3/14/2018	734
3/14/2018-4/12/2018	890
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6/13/2018-7/13/2018	123
7/13/2018-8/10/2018	164

On September 5, 2018, Eric Riley, a field service technician with PECO, visited the Service Address for a high bill investigation. Tr. 64; PECO Exh. 11. Mr. Riley found a top/bottom refrigerator, a microwave, an air conditioner, a standing fan, two wall heater units, and a TV during this visit. Tr. 65-66; PECO Exh. 11. Mr. Riley did a cost analysis at the Service Address and found a potential usage for the summer of 487 Kwh and a potential usage for the winter of 1753 Kwh. PECO Exh. 11. Mr. Riley performed an idle meter test which showed there was no foreign wiring. Tr. 74; PECO Exh. 11. Mr. Riley also performed a passing load test on the air conditioner which was 480 watts and it was clocked at 475, within the

acceptable range for the meter. Tr. 73; PECO Exh. 11. Mr. Riley found no meter mix up at the Service Address. Tr. 74; PECO Exh. 11.

On July 17, 2018, PECO technician, Aaron Sanders, conducted a meter test at the Service Address. Tr. 75-76; PECO Exh. 12. Mr. Sanders tested Meter No. 121883163 at the Service Address. Tr. 76; PECO Exh. 12. The meter tests were run on a full load and light load. Tr. 76-77. The tests were performed three times and the full load tested 99.99%, 98.99% and 99.5% accurate and the light load tested 100.00%, 99.99% and 99.99% accurate. Tr. 77; PECO Exh. 12.

PECO also presented the testimony of Ms. Renee Tarpley who testified that the Complainant was first enrolled in PECO's CAP on September 19, 2012, when she resided at the 3400 North 17th Street. Tr. 99; PECO Exh. 5. The Complainant's CAP status was transferred to her accounts at her other addresses. Tr. 100; PECO Exh. 5. On October 17, 2016, PECO introduced a redesigned CAP program, which is based on the customer's historic usage and his/her income and provides the customer with a credit towards his/her energy burden. Tr. 100-101; PECO Exh. 5. The Complainant is receiving her proper credit under the CAP FCO. Tr. 104; PECO Exh. 5.

While the Complainant contends that she does not use enough electricity to warrant the increase in her billing, it is clear that the electricity that the Complainant is using is within her energy usage potential. PECO performed a high bill investigation at the Service Address. The PECO technician performed a potential usage survey and found that the electricity the Complainant was using was within her potential usage and had not exceeded her potential usage at the Service Address. Further, the technician also performed testing on the meter which established that it was running properly and that there was no meter mix up or foreign wiring. The meter itself was also tested and found to be running within Commission standards.¹

¹ See 52 Pa.Code § 57.20(c) ("No watt-hour meter which has an error in registration of more than 2.0% at light load or heavy load may be placed in service or allowed to remain in service without adjustment").

It appears that the balance on the account is due to the prior balances that were transferred to her account from her prior residences. At 514 West Coulter Street, the Complainant did not make full or on time payments. *See* PECO Exh. 2. It also appears that the Complainant is no longer on budget billing as she was at 3400 North 17th Street address. *See* PECO Exhs. 2 and 3. Based on all of the above, the Complainant has failed to meet her burden of proof on her claim of high billing, and as such, the Complaint is dismissed.

Transfer of Prior Balances to Current Service Address

The Complainant contends that PECO incorrectly transferred the balances from her prior residences to her current account. The Complainant contends that a payee was paying her bills at the 3400 North 17th Street address and there should be no balance from that address.

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.

Section 56.35(a) of the Commission’s regulations state in pertinent part that:

(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.

52 Pa.Code § 56.35(a).

In order to address this issue, PECO presented the testimony of Ms. Tarpley. Ms. Tarpley testified that the Complainant resided at 3400 North 17th Street, Philadelphia, Pennsylvania and had electric service in her name from July 25, 2012 until February 9, 2017. Tr. 83, 90; PECO Exh. 1. While at 3400 North 17th Street, the Complainant had a payee and bills were sent to the payee. Tr. 90. At 3400 North 17th Street, the Complainant was on budget billing, which looks at a customer's previous 12-month usage history and takes the average of the usage. Tr. 84. Ms. Tarpley explained that the budget billing is reviewed quarterly to ensure that the budget billing amount is in line with the customer's actual usage and can be adjusted. Tr. 84-85. She also testified that if the customer uses less than his or her budget billing amount, then the customer would have a credit which would be applied to future bills. Tr. 85. Ms. Tarpley explained that if the customer uses more than the budget billing amount then PECO would set the difference aside as a deferred budget balance. Tr. 85. Ms. Tarpley noted that the Complainant's budget billing amount changed during the time she resided at 3400 North 17th Street. Tr. 86; PECO Exh. 1. When the Complainant's account was closed for 3400 North 17th Street on February 9, 2017, the Complainant had a deferred budget balance of \$400.06, which was not paid. Tr. 88-89; PECO Exh. 1.

Ms. Tarpley noted that the Complainant established electric service at 514 West Coulter Street, 3rd Floor, Philadelphia, Pennsylvania on February 9, 2017. Tr. 91; PECO Exh 2. The balance from 3400 North 17th Street was transferred to the Complainant's 514 West Coulter Street account on March 7, 2017. Tr. 92; PECO Exh. 2. On February 3, 2018, the Complainant discontinued service at 514 West Coulter Street with an account balance of \$806.07. Tr. 96-97; PECO Exh. 2. The Complainant established service at the Service Address on February 2, 2018. Tr. 97-98; PECO Exh. 3. On March 5, 2018, the balance from 514 West Coulter Street was transferred to the account for the Service Address. Tr. 98, PECO Exh. 3.

PECO's witness established that the Complainant accumulated a deferred budget balance while at 3400 North 17th Street which was then transferred to her account at 514 West Coulter Street. As was noted above, the Complainant was not making full or on time payments to her account at 514 West Coulter Street. The balance from 514 West Coulter Street was then transferred to her account at the Service Address when she established service there in February 2018. The Complainant did not dispute that she failed to make payments while at the 514 West Coulter Street address. As such, the Complainant has not established that there was any error with balances from the Complainant's previous accounts.

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 52 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 the payment of outstanding balances in order to furnish service to an applicant, if the applicant is legally responsible and properly billed for the balance within the four year limit). Therefore, the Complainant has not demonstrated that PECO violated the Public Utility Code, Commission regulations, or a Commission Order by transferring the balances to her account at the Service Address and her Complaint must be dismissed in this regard.

Payment Arrangement

The Complainant also requested a payment arrangement. However, PECO contends that she is not entitled to a payment arrangement because her balance is comprised 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. Therefore, the Complainant's request must be 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.

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. The accuracy of the meter is an important factor in resolving billing disputes, but it is not the sole criterion. The Commission stated that it will also consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980).

5. “[T]he Commission may consider such evidence as “the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), and any other relevant facts or circumstances that come to light during the proceeding.” *Nehemiah B. Thomas v. PECO Energy Company*, Docket No. C-2010-2187197, at 5 (Order entered November 15, 2011).

6. 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. 52 Pa.Code § 56.35(a).

7. 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. 52 Pa.Code § 56.16(b).

8. 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).

9. The Complainant failed to demonstrate that the billing at her residences was inaccurate.

10. The Complainant did not meet her burden of establishing that PECO erred or violated any statute, regulation or Commission Order in transferring the balances to her accounts.

11. The Complainant did not meet her burden of demonstrating that she is eligible for a payment arrangement from the Commission.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Charita Kent against PECO Energy Company at Docket No. F-2018-3002919 is denied and dismissed;

2. That the docket at Docket No. F-2018-3002919 be marked closed.

Date: January 4, 2019

/s/
Marta Guhl
Administrative Law Judge