

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tony O’Quinn	:	
	:	
v.	:	F-2018-3003101
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

This Initial Decision denies the Complainant’s Formal Complaint because he failed to meet his burden of proof that his billing from PECO Energy Company contained incorrect charges.

HISTORY OF THE PROCEEDING

On June 19, 2018, Tony O’Quinn (Mr. O’Quinn or Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (Respondent, PECO or the Company) with the Pennsylvania Public Utility Commission (Commission) alleging that there were incorrect charges on his bills starting in February 2017. He requested that PECO provide him with accurate billing statements.

The Formal Complaint is a timely appeal of a Bureau of Consumer Services (BCS) revised decision at Case No. 3582702 which was issued on May 2, 2018 and which denied the Complainant’s informal complaint.

On July 18, 2018, the Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated July 24, 2018, notified the parties that an initial hearing was scheduled for Friday, September 21, 2018, at 10:00 a.m.

A Prehearing Order was issued on August 8, 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 September 21, 2018. Mr. O'Quinn appeared *pro se* and testified in support of the Complaint. The Complainant sponsored three exhibits, which were admitted into the record in this matter. Shawane Lee, Esq., represented the Respondent, and presented the testimony of two witnesses, Anna Mae Migliaccio and Moneka Smith. The Respondent sponsored ten exhibits, all of which were admitted into the record.

The hearing resulted in a hearing transcript of 129 pages. The record closed on October 22, 2018, when I received a copy of the hearing transcript.

FINDINGS OF FACT

1. The Complainant, Tony O'Quinn, resides at 3267 Morrell Avenue, Philadelphia, Pennsylvania 19114 (Service Address). Tr. 7.
2. The Respondent is PECO Energy Company.
3. The Complainant owns the Service Address. Tr. 10.
4. The Service Address is a duplex with the Complainant living in one unit and renting out the other unit. Tr. 10.

5. The Complainant's rental income from the Service Address was his only source of income but he currently does not have a renter in the other unit. Tr. 9-10.

6. The Complainant established electric service in his name at the Service Address, Floor 1 on September 8, 2016. Tr. 25; PECO Exh. 1.

7. The Complainant is currently enrolled in PECO's Customer Assistance Program (CAP). Tr. 25; PECO Exh. 1.

8. The Complainant was initially enrolled in the CAP program on December 19, 2008 in Tier B based on zero income for a one-person household. Tr. 52; PECO Exh. 2.

9. The Complainant last enrolled in the CAP program on September 19, 2016 in Tier D1. Tr. 25-26; PECO Exh. 2.

10. At that time, the Complainant had a verified income of \$850.00 per month for one adult. Tr. 27; PECO Exh. 2.

11. A customer must recertify for the CAP program once every two years. Tr. 27.

12. The Complainant was sent recertification letters from PECO on August 20, 2018 and September 4, 2018. Tr. 27; PECO Exh. 2.

13. The recertification letters contained information on how to recertify for the CAP program and a CAP application. Tr. 27.

14. If a customer has no income, then he/she would need to fill out a new CAP application and submit a no income form. Tr. 28.

15. The Complainant has a current balance of \$563.94. Tr. 28; PECO Exh. 1.
16. PECO's CAP program changed from the tier system to the Fixed Credit Option in October 2016. Tr. 51; PECO Exh. 2.
17. On November 20, 2016, PECO charged off \$420.64 from the Complainant's account due to the change in the CAP program from the tier system to the Fixed Credit Option (FCO). Tr. 30; PECO Exh. 1.
18. On December 6, 2016, the Complainant received a payment arrangement on his remaining balance of \$210.32 for \$5.84 over a period of 36 months. Tr. 29-30; PECO Exhs. 1 and 8.
19. On September 26, 2017, the Complainant contacted PECO in regard to the CAP program and his past due balance. Tr. 33; PECO Exh. 3.
20. On November 7, 2017, the Complainant contacted PECO regarding his CAP status and change in his CAP credit. PECO Exh. 3.
21. During the November 7, 2017 contact with PECO, the Complainant was advised on the change in the CAP program. PECO Exh. 3.
22. On November 29, 2017, the Complainant contacted PECO and said that he would fax in his proof of income. PECO Exh. 3.
23. On December 4, 2017, the Complainant contacted PECO and was upset that his proof of income was not noted in his records. Tr. 34-35; PECO Exh. 3.
24. On December 6, 2017, the Complainant was advised that he sent the proof of income to the wrong fax number and was given the correct fax number for CAP. PECO Exh. 3.

25. On December 8, 2017, PECO received the Complainant's proof of income (lease agreement). PECO Exh. 3.

26. The lease that the Complainant faxed to the Company was not complete and was for the time period of May 1, 2017 to June 1, 2017 for \$900.00 per month. Complainant Exh. 1.

27. The Complainant did not include a CAP application with his proof of income. PECO Exh. 3.

28. PECO compared the Complainant's bills under the CAP FCO and CAP Tier D1 programs as follows: PECO Exhs. 1 and 4.

Date--KWH	CAP FCO	CAP Tier D1
1/1/2018--520	\$80.06	\$28.45
2/1/2018--381	\$60.17	\$21.66
3/1/2018--288	\$47.20	\$17.00
4/1/2018--290	\$47.61	\$17.09
5/1/2018--161	\$30.22	\$10.84
6/1/2018--151	\$29.20	\$10.47
7/1/2018--154	\$29.59	\$10.62
8/1/2018--157	\$30.01	\$10.77
9/1/2018--203	\$35.61	\$12.78

29. Prior to the CAP FCO program being implemented, PECO sent out letters to CAP customers explaining the changes to the CAP program. Tr. 56; PECO Exhs. 5 and 6.

30. A customer's credit under the CAP FCO program was calculated by using the customer's income, usage and annual energy burden. Tr. 56.

31. PECO used the Complainant's income from his recertification in September 2016 of \$850.00 per month to calculate his credit under the CAP FCO program. Tr. 57; PECO Exh. 2.

32. PECO multiplied the monthly income by 12 to determine an annual income of \$10,200 per year which was 85% of the Federal Poverty Level in 2016. Tr. 59; PECO Exh. 2.

33. Under the Universal Service Plan that PECO submitted to the Commission on February 17, 2017, the Complainant's Energy Burden Percentage is 6%. Tr. 60-61, 63; PECO Exhs. 2 and 7.

34. The Complainant's 2016 annual income was multiplied by 6% to determine the Complainant's energy burden of \$612.00. Tr. 60-61; PECO Exh. 2.

35. The Complainant has not exceeded his energy burden and is not entitled to a credit under the new CAP FCO program. Tr. 61; PECO Exh. 1.

36. If the Complainant verifies with PECO that he has no income, then he may be entitled to a credit under the CAP FCO program. Tr. 69-70.

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 his 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).

Incorrect Charges Dispute

The Complainant contends that his bills contained incorrect charges. Specifically, the Complainant contends there was an issue with the Company's calculation of his CAP benefits because PECO did not use the correct income to calculate his credit under the CAP program, and that the billed CAP amount suddenly changed.

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 Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

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.Cmwlt. 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.Cmwlt. 1996), "Tariff provisions that have been properly submitted to and approved by the Commission are prima facie reasonable." *Id.*

Under the Public Utility Code, a public utility must provide a Universal Service and Energy Conservation plan. The public utility must outline policies, protections and services that help low-income customers to maintain electric service, including customer assistance programs, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs, application of renewable resources and consumer education. 66 Pa.C.S. § 2803.

Specifically, under the Commission's regulations, the public utility should create customer assistance programs that are designed as alternatives to traditional collection methods for low income, payment troubled customers. Customers participating in CAP programs agree to make monthly payments based on household family size and gross income. Customers make regular monthly payments, which may be for an amount that is less than the current bill for utility service, in exchange for continued provision of the service. 52 Pa.Code § 69.261.

A utility should develop a CAP program consistent with the guidelines provided in the Commission's regulations and CAP programs should be submitted to the Bureau of Consumer Services and the Commission for review and approval before implementation. 52 Pa.Code §§ 69.263 (a) and (c).

The CAP program should have certain design elements which are outlined in Section 69.265 of the Commission's regulations. 52 Pa.Code § 69.265. Specifically, CAP payments for electric and gas home energy usage should not exceed 17% of the CAP customer's annual income. 52 Pa.Code § 69.265 (2).

Under a percentage of income plan, total payment for total electric and natural gas home energy is determined based upon a scheduled percentage of the participant's annual gross income. The participating household's gross income and family size place the family at a particular poverty level based on Federal poverty income guidelines. 52 Pa.Code § 69.265 (2)(i).

The regulation further states the following:

- (A) Generally, maximum payments for electric nonheating service should be within the following ranges:
 - (I) Household income between 0—50% of poverty at 2%—5% of income.
 - (II) Household income between 51—100% of poverty at 4%—6% of income.
 - (III) Household income between 101—150% of poverty at 6%—7% of income.

52 Pa.Code § 69.265 (2)(i)(A).

PECO presented the testimony of Anna Mae Migliaccio who testified that the Complainant established electric service in his name at the Service Address, Floor 1 on September 8, 2016. Tr. 25; PECO Exh. 1. She noted that the Complainant is currently enrolled in PECO's CAP. Tr. 25; PECO Exh. 1. It was also noted that the Complainant was initially enrolled in the CAP program on December 19, 2008 in Tier B based on zero income for a one-person household. Tr. 52; PECO Exh. 2. Ms. Migliaccio also stated that the Complainant last enrolled in the CAP program at the Service Address on September 19, 2016, in Tier D1. Tr. 25-26; PECO Exh. 2. At that time, the Complainant had a verified income of \$850.00 per month for one adult. Tr. 27; PECO Exh. 2. Ms. Migliaccio explained that a customer must recertify for the CAP program once every two years, and the Complainant was sent recertification letters from PECO on August 20, 2018 and September 4, 2018. Tr. 27; PECO Exh. 2. The recertification letters contained information on how to recertify for the CAP program and a CAP application. Tr. 27. Further, Ms. Migliaccio testified that if a customer has no income, then he/she would need to fill out a new CAP application and submit a no income form. Tr. 28.

Moreover, Ms. Migliaccio testified that the Complainant has a current balance of \$563.94. Tr. 28; PECO Exh. 1. She noted that on November 20, 2016, PECO charged off \$420.64 from the Complainant's account due to the change in the CAP program from a rate program to the FCO. Tr. 30; PECO Exh. 1. On December 6, 2016, the Complainant received a payment arrangement on his remaining balance of \$210.32 for \$5.84 over a period of 36 months. Tr. 29-30; PECO Exhs. 1 and 8.

Ms. Migliaccio also testified regarding the Complainant’s contacts with PECO about his CAP status. She noted that on September 26, 2017, the Complainant contacted PECO in regard to the CAP program and his past due balance. Tr. 33; PECO Exh. 3. On November 7, 2017, the Complainant contacted PECO regarding his CAP status and change in his CAP credit. During that contact, the Complainant was advised on the change in the CAP program. PECO Exh. 3. On November 29, 2017, the Complainant contacted PECO and said that he would fax in his proof of income. PECO Exh. 3. On December 4, 2017, the Complainant contacted PECO and was upset that his proof of income was not noted in his records. Tr. 34-35; PECO Exh. 3. On December 6, 2017, the Complainant was advised that he sent the proof of income to the wrong fax number and was given the correct fax number for the CAP program. PECO Exh. 3. On December 8, 2017, PECO received the Complainant’s proof of income (lease agreement). PECO Exh. 3. It was noted that the lease that the Complainant faxed to the Company was not complete and was for the time period of May 1, 2017 to June 1, 2017 for \$900.00 per month. Complainant Exh. 1. The Complainant also did not include a CAP application with his proof of income. PECO Exh. 3.

PECO also presented the testimony of Ms. Moneka Smith, who testified regarding the CAP FCO program. PECO’s CAP program changed from the tier system to FCO in October 2016. Tr. 51; PECO Exh. 2. PECO compared the Complainant’s bills under the CAP FCO and CAP Tier D1 programs. PECO Exhs. 1 and 4.

Date--KWH	CAP FCO	CAP Tier D1
1/1/2018--520	\$80.06	\$28.45
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7/1/2018--154	\$29.59	\$10.62
8/1/2018--157	\$30.01	\$10.77
9/1/2018--203	\$35.61	\$12.78

Prior to the CAP FCO program being implemented, PECO sent out letters to CAP customers. Tr. 56; PECO Exhs. 5 and 6. A customer's credit under the CAP FCO program was calculated by using the customer's income, usage and annual energy burden. Tr. 56. PECO used the Complainant's income from his recertification in September 2016 of \$850.00 per month. Tr. 57; PECO Exh. 2. PECO multiplied the monthly income by 12 to determine an annual income of \$10,200 per year which was 85% of the Federal Poverty Level in 2016. Tr. 59; PECO Exh. 2. Under the Universal Service Plan that PECO submitted to the Commission on February 17, 2017, the Complainant's Energy Burden Percentage is 6%. Tr. 60-61, 63; PECO Exhs. 2 and 7. The Complainant's 2016 annual income was multiplied by 6% to determine the Complainant's energy burden of \$612.00. Tr. 60-61; PECO Exh. 2. The Complainant has not exceeded his energy burden and is not entitled to a credit under the new CAP FCO program. Tr. 61; PECO Exh. 1.

Ms. Smith also discussed the issue of the Complainant's change in income. Ms. Smith explained that if the Complainant verifies with PECO that he has no income and provides a new CAP application, then he may be entitled to a credit under PECO's CAP FCO. Tr. 69-70.

It appears that the increase in the Complainant's billing is related to PECO's change from the CAP Tier program to the CAP FCO program. A comparison between the Complainant's bills under the CAP FCO and CAP Tier D1 programs shows there was a marked increase in his billing under the CAP FCO program as opposed to the CAP Tier program. *See* PECO Exhs. 1 and 4, and *see above* Table. The Complainant only indicated that the Company incorrectly calculated his income for the purposes of CAP. However, the Complainant did not challenge the CAP FCO program.

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).

Under the new CAP program, the Complainant is no longer receiving the discount from the total revenue bill as he did under the previous program. Therefore, although the Complainant is correct that he is in fact paying more for similar energy usage, 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. 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. The Complainant has not established that PECO failed to provide reasonable service in this matter as required under Section 1501 of the Public Utility Code. *See* 66 Pa.C.S. § 1501. 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. As such, the Complaint is dismissed.

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. A public utility must provide a Universal Service and Energy Conservation plan. The public utility must outline policies, protections and services that help low-income customers to maintain electric service, including customer assistance programs, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs, application of renewable resources and consumer education. 66 Pa.C.S. § 2803.

5. The Complainant did not meet his burden of demonstrating that PECO Energy Company incorrectly billed him for his electric utility service.

6. The Complainant has failed to meet his burden of establishing that PECO Energy Company incorrectly calculated his CAP benefits.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Tony O'Quinn against PECO Energy Company at Docket No. F-2018-3003101 is denied and dismissed;

2. That the docket at Docket No. F-2018-3003101 be marked closed.

Date: January 11, 2019

/s/
Marta Guhl
Administrative Law Judge