

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Iona Scott	:	
	:	
v.	:	C-2018-3003098
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Complainant’s formal Complaint as the Complainant failed to establish that she is eligible for a payment arrangement. The Complainant’s entire balance is subject to customer assistance program rates and must be timely paid, pursuant to Section 1405(c) of the Public Utility Code. The Complainant has also failed to meet her burden of demonstrating that PECO Energy Company violated a Commission statute, regulation or order with respect to the changes in her budget billing, her right to additional medical certifications, or her right to switch electric suppliers.

**HISTORY OF THE PROCEEDING**

On June 29, 2018, Iona Scott (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant contends that the Company was threatening to shut off, or had already shut off, her utility service and requests a payment arrangement. The Complainant also indicates that there are incorrect charges on her bills. The

Complainant requests a thorough review of her billing, an affordable payment arrangement, and the option to use another provider.

On July 16, 2018, Respondent filed an Answer alleging that the Complainant is not entitled to a payment arrangement because her balance is comprised of Customer Assistance Program (CAP) arrears. The Respondent denied the other material allegations of the Complaint.

By Hearing Notice dated July 30, 2018, an initial hearing was scheduled for Tuesday, August 28, 2018, at 9:30 a.m., as part of a call of the docket, and the matter was assigned to me.

I issued a Prehearing Order on August 2, 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.

On August 17, 2018, the Complainant contacted my office requesting a continuance of her hearing on August 28, 2018, due to issues with her work and not being approved for time off. PECO did not oppose her request which I granted.

On September 10, 2018, via a Hearing Cancellation/Reschedule Notice, the matter was rescheduled for an initial hearing on October 1, 2018 at 2:00 p.m.

The hearing convened as scheduled on October 1, 2018. Complainant participated *pro se* and testified. Complainant presented one exhibit which was entered into the record. Respondent appeared and was represented by Shawane Lee, Esq., who presented the testimony of Michael Begley. Respondent offered six exhibits which were all admitted into evidence.

The hearing resulted in a 40-page transcript. The record closed on November 8, 2018, when I received the transcript of the hearing.

### FINDINGS OF FACT

1. The Complainant in this case is Iona Scott who resides at 1561 Woodland Avenue, Folcroft, Pennsylvania 19032 (Service Address). Tr. 6.

2. The Respondent is PECO Energy Company.

3. The Complainant resides with five children, ages fifteen, fifteen, ten, seven and three, at the Service Address. Tr. 11.

4. The Complainant started employment with the Children's Hospital of Philadelphia on May 7, 2018. Tr. 10.

5. The Complainant works part-time at an hourly rate of \$22.06. Tr. 10-11.

6. The Complainant works approximately 24 hours per week. Tr. 10.

7. The Complainant has no other sources of income. Tr. 11.

8. The Complainant's current household income of \$2,294.24<sup>1</sup> per month with six household members places the household at 80% of the Federal Poverty guidelines.<sup>2</sup>

9. On June 1, 2018, PECO issued a 10-day termination notice to the Complainant for the past due balance of \$416.09. Tr. 32; PECO Exh. 4.

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<sup>1</sup> Monthly income is calculated as follows: \$529.44 (24 x \$22.06) per week x 52 weeks = \$27,530.88 per year / 12 months = \$2,294.24 per month.

<sup>2</sup> *Federal Register*, Vol. 84, No. 22 at 1168 (February 1, 2019); also available at: <https://aspe.hhs.gov/poverty-guidelines>.

10. On June 12, 2018, PECO contacted the Complainant with a 72-hour termination notice telephone call. Tr. 32; PECO Exh. 4.

11. On June 29, 2018, the Complainant's account was taken out of collections by PECO due to the filing of the Complainant's formal Complaint. Tr. 32-33; PECO Exh. 4.

12. On September 19, 2014, the Complainant enrolled in the CAP program. Tr. 21; PECO Exh. 2.

13. In October 2016, PECO converted the CAP program to the CAP fixed credit option (CAP FCO) program. Tr. 21; PECO Exh. 2.

14. On October 17, 2016, PECO set aside \$3,435.67 of the Complainant's outstanding balance, two-thirds of which is eligible for forgiveness if payments are timely made. Tr. 21-22; PECO Exhs. 1 and 2.

15. In the CAP FCO program, PECO uses the household income and energy usage to calculate the yearly energy burden of the household. Tr. 23.

16. Once the energy burden is calculated, it is subtracted from the usage from the previous 12-month period and the difference is the credit or discount to which the household is entitled. Tr. 24-25.

17. The Complainant was also on PECO's budget billing plan. Tr. 25; PECO Exh. 1.

18. Budget billing is based on the customer's last 12 months of usage and the amount is averaged based on the 12-month period. Tr. 25.

19. If the customer's actual usage is greater than the budget billing amount, then the customer ends up with a deferred balance. Tr. 27.

20. The budget billing amount is reviewed by PECO every four months, and adjustments will be made to reduce any deferred balance. Tr. 27.

21. In May 2017, PECO increased the Complainant's monthly budget billing amount to eliminate her deferred balance of \$2,177.54. Tr. 26-27; PECO Exh. 1.

22. The Complainant's monthly bills also increased due to the change from CAP to CAP FCO. Tr. 26; PECO Exh. 1.

23. The total balance on the Complainant's account is \$7,840.69. Tr. 20; PECO Exh. 1.

24. The Complainant's entire balance is composed of CAP arrears. Tr. 23.

25. The Complainant received medical certifications from PECO on October 11, 2017, November 27, 2017 and June 29, 2018. Tr. 31; PECO Exh. 4.

26. CAP FCO customers are not allowed to shop for an electric supplier under PECO's current tariff. Tr. 38.

### 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.Cmwlt. 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.Cmwlt. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlt. 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.Cmwlt. 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.Cmwlt. 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.Cmwlt. 2001).

#### Incorrect Charges/Budget Billing

The Complainant alleges that there were issues with her budget billing and incorrect charges on her bills. Specifically, the Complainant noticed an increase in her budget billing amount and the amount of her bills in general.

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.Cmwlth. 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.

PECO’s witness, Mr. Michael Begley, testified that on September 19, 2014, the Complainant enrolled in the CAP program. Tr. 21; PECO Exh. 2. Mr. Begley noted that in October 2016, PECO converted the CAP to the CAP fixed credit option (CAP FCO) program. Tr. 21; PECO Exh. 2. On October 17, 2016, PECO set aside \$3,435.67 of the Complainant’s outstanding balance, two-thirds of which is eligible for forgiveness if payments are timely made. Tr. 21-22; PECO Exhs. 1 and 2. In the CAP FCO program, PECO uses the household income and energy usage to calculate the yearly energy burden of the household. Tr. 23. Once the energy burden is calculated, it is subtracted from the usage from the previous 12-month period and the difference is the credit or discount to which the household is entitled. Tr. 24-25. Mr. Begley stated that the Complainant’s monthly bills increased due to the change from CAP to CAP FCO. Tr. 26; PECO Exh. 1.

Mr. Begley also noted that the Complainant is on PECO’s budget billing plan. Tr. 25; PECO Exh. 1. Mr. Begley explained that budget billing is based on the customer’s last 12 months of usage and the amount is averaged based on the 12-month period. Tr. 25.

Mr. Begley noted that if the customer's actual usage is greater than the budget billing amount, then the customer ends up with a deferred balance. Tr. 27. The budget billing amount is reviewed by PECO every four months, and adjustments will be made to reduce any deferred balance. Tr. 27. Mr. Begley explained that in May 2017, PECO increased the Complainant's monthly budget billing amount to eliminate her deferred balance of \$2,177.54. Tr. 26-27; PECO Exh. 1.

Based on the above, it is clear that there were changes in the Complainant's bills and budget billing amount. However, these changes were related to the changes in PECO's CAP which converted to the CAP FCO program in October 2016. The changes in the budget billing amount were related to the Complainant's accumulated deferred balance and the Company's effort to reduce that balance in May 2017. There is nothing to establish that PECO failed to provide reasonable service to the Complainant in this matter or that PECO violated any other statutes, regulations or Commission orders. As such, the Complainant's Complaint in this regard must be dismissed.

#### Shut Off Notice

The Complainant indicated that PECO was threatening to shut off service at the Service Address. However, the Complainant stated that service was never terminated at the Service Address. Tr. 7. PECO indicated that on June 1, 2018, it issued a 10-day termination notice to the Complainant for the past due balance of \$416.09. Tr. 32; PECO Exh. 4. On June 12, 2018, PECO contacted the Complainant with a 72-hour termination notice telephone call. Tr. 32; PECO Exh. 4. On June 29, 2018, the Complainant's account was taken out of collections by PECO due to the filing of the Complainant's Formal Complaint. Tr. 32-33; PECO Exh. 4. There is nothing to indicate that PECO violated any Commission statute, regulation or order. The Company did not violate the Commission's regulations regarding termination notices by issuing the notices to the Complainant. The Complainant is currently receiving service and this issue is moot. As such, the Complaint must be dismissed in this regard.

### Request for Payment Arrangement

The Complainant requests a payment arrangement in this matter. PECO alleges that the Complainant is not eligible for 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 comprised of CAP arrears. As such, the Commission cannot grant the Complainant a payment arrangement on this amount.

### Medical Certifications

The Complainant indicated that there is a serious health issue in the household. PECO contends that the Complainant is not entitled to any further medical certifications.

The Commission allows for a customer to request a medical certification in instances where a customer or a member of the customer's household is seriously ill or where the loss of a utility service would aggravate a medical condition. 52 Pa.Code § 56.111. However, the Commission limits the number of medical certifications a customer can receive under certain circumstances.

Medical certifications may be renewed if the customer has met the obligation to pay bills. In instances when a customer has not met that obligation, the number of renewals for the customer's household is limited to two 30-day certifications filed for the same set of arrearages. When the customer eliminates these arrearages, the customer is eligible to file new medical certificates. 52 Pa.Code § 56.114(2).

According to PECO's witness, the Complainant received medical certifications from PECO on October 11, 2017, November 27, 2017 and June 29, 2018. Tr. 31; PECO Exh. 4. Documentation shows that the Complainant's balance has never been reduced to zero since the last medical certification. PECO Exh. 1. The Complainant did not dispute any of these assertions.

Based on the above, it is clear that the Complainant is not entitled at this time to any further medical certifications under the Commission's regulations. The regulations clearly state that the customer is limited to one medical certification and two renewals for the same set of arrears. In this instance, the Company has provided the Complainant with one medical certification and two renewals. Further, the Complainant has not reduced her arrearage to zero since she received the last medical certification in June 2018. Therefore, the Complainant has not met her burden in this regard and this portion of the Complaint must be dismissed.

### Switching Electric Supplier

The Complainant requests that she be allowed to shop for a new electric supplier or switch providers. PECO maintains that CAP FCO customers are not allowed to shop under their current tariff. The Complainant is currently enrolled in the CAP FCO program. The issue

of allowing CAP customers to shop for electric suppliers is currently pending before the Commission in the matter at Docket No. P-2012-2283641, *Petition of PECO Energy Company for Approval of its Default Service Program (Customer Assistance Program Shopping Plan) (DSP II)*. As such, this issue has not yet been resolved by the Commission and this portion of the Complainant's Complaint should be dismissed without prejudice at this time.

### 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. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement.

5. 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).

6. In instances when a customer has not met the obligation to pay bills, the number of renewals of medical certifications for the customer's household is limited to two 30-day certifications filed for the same set of arrearages. When the customer eliminates these arrearages, the customer is eligible to file new medical certificates. 52 Pa.Code § 56.114(2).

