



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
400 North Street, Harrisburg, Pennsylvania 17120

IN REPLY PLEASE
REFER TO OUR FILE

April 18, 2019

VIA eService and First-Class Mail

Mr. Miro Kamenik
3901 Charter Club Drive
Doylestown, Pennsylvania 18902

RE: Kamenik v. PECO Energy Company
Docket Number C-2017-2630577

Dear Mr. Kamenik:

In response to your letter dated April 13, 2019, your formal complaint at the above docket number was closed on March 5, 2019.

On January 30, 2019, you and your attorney were served with the Initial Decision of Administrative Law Judge Marta Guhl. The Commission's records indicate that both you and your attorney, Alan Kane, agreed to accept electronic service (eService) of documents during the litigation of your complaint case. *Please see* the enclosed Secretarial Letter setting the time period in which you, or your attorney, were required to file exceptions with the Commission if you were not satisfied with the Judge's decision. Also enclosed is 1) the Initial Decision of Judge Guhl; 2) the Final Order closing the docket; and, 3) the service list used by the Commission provided by you and your attorney on how and where you wished to be served. Since no exceptions were ever filed timely within the twenty days required, by February 19, 2019, the Initial Decision of Judge Guhl became final on March 5, 2019.

On April 16, 2019, Attorney Alan Kane called my office stating he had never received service of Judge Guhl's Initial Decision. The Commission's electronic records confirm that all the Parties were served with the Initial Decision on January 30, 2019, and with the Final Order on March 5, 2019. The Commission's electronic records confirm that eService to Attorney Kane was successful on both January 30, 2019 and again on March 5, 2019.

Please know that the time period in which to appeal the Final Order has expired.

Sincerely,

Rosemary Chiavetta
Secretary

Enclosures

cc: Alan Kane, Counsel for Complainant
Shawane Lee, Esq., Counsel for PECO Energy Company

C-2017-2630577 MIRO & COLLEEN KAMENIK v. PECO ENERGY COMPANY
UPDATED 1-30-19

MIRO KAMENIK
3901 CHARTER CLUB DR
DOYLESTOWN PA 18902
267.247.5233
ACCEPTS E-SERVICE

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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Miro and Colleen Kamenik

v.

PECO Energy Company

:
:
:
:
:

C-2017-2630577

FINAL ORDER

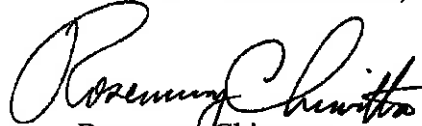
In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge Marta Guhl dated January 25, 2019, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Miro and Colleen Kamenik against PECO Energy Company at Docket No. C-2017-2630577 is denied and dismissed;
2. That the docket at Docket No. C-2017-2630577 be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ENTERED: March 5, 2019



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
400 NORTH STREET, HARRISBURG, PA 17120

IN REPLY PLEASE
REFER TO OUR FILE

January 30, 2019

C-2017-2630577

Miro and Colleen Kamenik
v.
PECO Energy Company

TO ALL PARTIES:

Enclosed is a copy of the Initial Decision of the Office of Administrative Law Judge.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Your signed Exceptions to the decision, if any, must be: 1) filed with the Secretary of the Commission, and 2) mailed or hand-delivered to each party of record, **within twenty (20) days** of the date of this letter.

To file Exceptions with the Secretary of the Commission, you must mail or hand-deliver them as follows:

If using U.S. Postal Service:

Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

If using Overnight or Hand Delivery Service:

Secretary
Pa. Public Utility Commission
400 North Street
Commonwealth Keystone Building, 2nd Floor
Harrisburg, PA 17120

Or, instead of mailing or hand-delivering your Exceptions, you may electronically file them with the Secretary of the Commission. To do so, you need to establish an account on the Commission's eFiling system, which may be accessed at <http://www.puc.state.pa.us/efiling/default.aspx>. Please note that Exceptions sent to the Commission by fax or e-mail will **not** be accepted for filing.

In addition to filing your Exceptions with the Secretary of the Commission, a courtesy copy of your Exceptions should be e-mailed to the Commission's Office of Special Assistants (OSA) at ra-OSA@pa.gov. If the document is too large to e-mail, please mail or hand-deliver a copy on CD-ROM or DVD (or other data storage media), in Microsoft Word 2010 format or other compatible format to either address noted above.

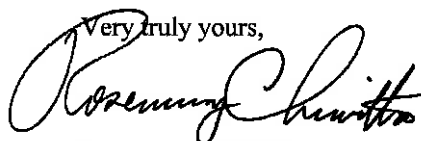
Replies to Exceptions, if any, must be filed with the Secretary of the Commission and served on each party of record and the Commission's OSA, in the manner described above. **They are due within ten (10) days of the date when Exceptions are due.**

It is your responsibility to serve all the parties with your Exceptions and Replies to Exceptions. Failure to do so may render your filing unacceptable. A certificate of service (see format in 52 Pa. Code §1.58) shall be attached to the filed Exceptions or Replies to Exceptions.

Exceptions and Replies to Exceptions shall follow 52 Pa. Code §§5.533 and 5.535 particularly the 40-page limit for Exceptions and the 25-page limit for Replies to Exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)". Any reference to specific sections of the Administrative Law Judge's Initial Decision shall include the page number(s) of the cited section of the decision.

If no Exceptions are received, the decision of the Administrative Law Judge could become final without further Commission action. You will receive written notification if this occurs. However, even if no exceptions are received, the Commission may review and change the decision pursuant to Section 332(h) of the Public Utility Code, 66 Pa. C.S. § 332(h).

RS
Enclosures
Certified Mail
Receipt Requested

Very truly yours,

Rosemary Chiavetta
Secretary

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Miro and Colleen Kamenik

v.

PECO Energy Company

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:
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:
:

C-2017-2630577

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainants' Formal Complaint as the Complainants failed to establish that they meet the criteria for a change in income under Section 1405(d) and Section 1403 of the Public Utility Code. The Formal Complaint is also denied because the Complainants failed to meet their burden of demonstrating that there was a violation of the Commission's statute, regulations or orders with respect to the termination of their service and their request for additional medical certifications.

HISTORY OF THE PROCEEDING

On October 23, 2017, Miro and Colleen Kamenik (Complainants) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainants contend that the Company was threatening to, or had already shut off, their utility service and request a payment arrangement. The Complainants indicated in their Complaint that there was a serious health condition in the household.

This matter is an appeal of a decision issued on October 20, 2017, from the Bureau of Consumer Services (BCS) at Case No. 3568720 which dismissed the informal complaint of the Complainants under Section 1405(d) of the Public Utility Code, because they had a prior Commission-issued payment arrangement. *See* 66 Pa.C.S. § 1405(d).

On November 7, 2017, Respondent filed an Answer alleging that the Complainants are not entitled to a payment arrangement because they defaulted on a prior Commission-issued payment arrangement.

By Corrected Hearing Notice dated November 14, 2017, an initial hearing was scheduled for Monday, January 29, 2018, at 1:30 p.m., as part of a call of the docket, and the matter was assigned to me.

On December 27, 2017, I received a written request from the Complainants requesting a continuance of the hearing scheduled for January 29, 2018, due to the fact that Miro Kamenik was still in his probationary period for his new employment until March 6, 2018. PECO had no objection and I granted the request via electronic mail.

The matter was rescheduled for an initial hearing on May 3, 2018, by Hearing Notice dated March 2, 2018.

I issued a Prehearing Order on March 8, 2018. The Prehearing Order directed the parties to comply with various procedural requirements and also explained that the Complainants bear the burden of proof to establish that the Respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that they are entitled to the relief requested in the Complaint.

On April 30, 2018, I received an email from PECO counsel advising that the Complainants were requesting another continuance for the May 3, 2018, hearing due to Miro Kamenik's work schedule and his mother's health issues. PECO indicated that it had no objection. I granted the request via email.

On June 26, 2018, via a Call-In Telephonic Hearing Notice, the matter was rescheduled for an initial telephonic hearing on July 25, 2018, at 1:00 p.m.

On July 24, 2018, the Complainants requested another continuance as they had just retained counsel for the case and counsel needed more time to prepare for the matter. PECO did not object to this request, and the request was granted via telephone.

On September 11, 2018, a Call-In Telephonic Hearing Notice was issued, and the matter was scheduled for an initial call in telephonic hearing on October 10, 2018.

The hearing convened as scheduled on October 10, 2018. Miro Kamenik participated, on behalf of the Complainants, and was represented by counsel, Alan B. Kane, Esquire¹. Respondent appeared and was represented by Shawane Lee, Esq., who presented the testimony of Elsa Leung, a Customer Review Officer. Respondent offered nine exhibits which were all admitted into evidence.

The hearing resulted in a 62-page transcript. The record closed on November 6, 2018, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainants in this case are Miro and Colleen Kamenik who reside at 3901 Charter Club Drive, Doylestown, Pennsylvania 18902 (Service Address). Tr. 8.
2. The Respondent is PECO Energy Company.
3. The Complainants currently receive gas and electric service from PECO at the Service Address. Tr. 8-9.

¹ Mr. Kane entered his appearance with the Commission on behalf of the Complainants on October 11, 2018.

4. The Complainants reside at the Service Address together. Tr. 20.
5. Mr. Kamenik is currently employed by the U.S. Postal Service, full-time.
Tr. 10.
6. Mr. Kamenik's gross monthly income is \$2,700.00 per month. Tr. 12.
7. Mrs. Kamenik works for BNP Paribas. Tr. 11.
8. Mrs. Kamenik has a gross monthly income of \$5,500.00 per month.
Tr. 11.
9. The Complainants' current household income of \$8,200.00² per month with two household members places the household at 582% of the Federal Poverty guidelines.³
10. The Complainants defaulted on two Company-issued payment arrangements. Tr. 33-35; PECO Exh. 3.
11. The Complainants had a Commission-issued payment arrangement starting on February 15, 2013 and defaulting on March 1, 2013. Tr. 30-31; PECO Exh. 3.
12. The Commission-issued payment arrangement was the result of a Formal complaint filed at Docket No. F-2012-2281997 where the Complainants reported an income of \$8,000 for a three-person household. Tr. 44; PECO Exh. 4.
13. The total balance on the Complainants' account is \$11,744.89. Tr. 35; PECO Exh. 1.

² Monthly income is calculated as follows: \$2,700 + \$5,500 = \$8,200.00.

³ The Federal Poverty Guidelines have not been published in the Federal Register as of the date of this decision due to the federal government shut down. See <http://aspe.hhs.gov/poverty>.

14. PECO terminated service at the Service Address on August 2, 2018. Tr. 42; PECO Exh. 2.

15. The Company had issued a ten-day notice on July 13, 2018 and a 72-hour notice on July 24, 2018, on an outstanding balance of \$297.36. Tr. 42-43; PECO Exh. 2.

16. This balance accrued after the formal Complaint was filed in this matter. PECO Exh. 1.

17. The Complainants have received medical certifications from PECO on April 5, 2016, March 26, 2013, July 27, 2011, June 14, 2011 and May 2, 2011. Tr. 44-45.

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, Complainants have 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, Complainants 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.Cmwlt. 1984).

Upon the presentation by the Complainants of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainants shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainants have not satisfied their burden of proof. The Complainants 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).

Termination of Service

The Complainants indicated that PECO was threatening to shut off service at the Service Address. PECO indicated that there was a termination of service on August 2, 2018. Tr. 42; PECO Exh. 2. The Company had issued a ten-day notice on July 13, 2018 and a 72-hour notice on July 24, 2018, on an outstanding balance of \$297.36. Tr. 42-43; PECO Exh. 2. This balance accrued after the formal Complaint was filed in this matter. PECO Exh. 1. Since the Complainants indicated that they are currently receiving service at the Service Address, it appears that service was reinstated at some point. Tr. 8-9.

Under Section 1405(f) of the Public Utility Code, a customer shall be obligated to pay that portion of the bill which is not in dispute and subsequent bills which are not in dispute. 66 Pa.C.S. § 1405(f). There is nothing to indicate that PECO violated any Commission statute, regulations or order in terminating the Complainants' service for their failure to pay the portion of their bill which was not in dispute. As such, the Complaint must be dismissed in this regard.

Request for Payment Arrangement

The Complainants request a payment arrangement in this matter. PECO contends that the Complainants are not entitled to a payment arrangement because they defaulted on a prior Commission-issued payment arrangement.

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).

However, Section 1405(d) of the Public Utility Code prohibits the Commission from establishing a second or subsequent payment arrangement if the customer has defaulted on a Commission-issued payment arrangement, absent a change in income. 66 Pa.C.S. § 1405(d). Under Section 1403, a “change in income” is defined as a decrease in household income of 20% or more if the customer's household income level is greater than 200% of the Federal poverty level. 66 Pa.C.S. § 1403.

The Complainants reside at the Service Address together. Tr. 20. Mr. Kamenik is currently employed by the U.S. Postal Service, full-time. Tr. 10. Mr. Kamenik's gross monthly income is \$2,700.00 per month. Tr. 12. Mrs. Kamenik works for BNP Paribas. Tr. 11. Mrs. Kamenik has a gross monthly income of \$5,500.00 per month. Tr. 11. The Complainant's

current household income of \$8,200.00⁴ per month with two household members places the household at 582% of the Federal Poverty guidelines. This would make the Complainants Level 4 customers. *See* 66 Pa.C.S. § 1405(b)(4).

The Complainants had a Commission-issued payment arrangement starting on February 15, 2013 and defaulting on March 1, 2013. Tr. 30-31; PECO Exh. 3. The Commission-issued payment arrangement was the result of a Formal complaint filed at Docket No. F-2012-2281997 where the Complainants reported an income of \$8,000 for a three-person household. Tr. 44; PECO Exh. 4. The Complainants' income has increased since the previous Commission-issued payment arrangement. The Complainants do not meet the "change of income" criteria set out in Section 1403 of the Public Utility Code. The Complainants have income greater than 200% of the Federal Poverty Level at 582% of the Federal Poverty Level and have not experienced a decrease in income of 20% or more. *See* 66 Pa.C.S. § 1403. As such, the Complainants' request for a payment arrangement must be denied and the Complaint must be dismissed in this regard.

Medical Certifications

The Complainants indicated that there is a serious health issue in the household. Specifically, Mr. Kamenik has sleep apnea. Tr. 15. PECO contends that the Complainants are 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.

⁴ Monthly income is calculated as follows: \$2,700 + \$5,500 = \$8,200.00.

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 Complainants have received medical certifications from PECO on April 5, 2016, March 26, 2013, July 27, 2011, June 14, 2011 and May 2, 2011. Tr. 44-45. Documentation shows that the Complainant's balance has never been reduced to zero since the last medical certification. PECO Exh. 1. The Complainants did not dispute any of these assertions.

Based on the above, it is clear that the Complainants are not eligible 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 Complainants with five medical certifications. Further, the Complainants have not reduced their arrearage to zero since they received the last medical certification in April 2016. Therefore, the Complainants have not met their burden in this regard and this portion of the Complaint must be 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. 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 shall be obligated to pay that portion of the bill which is not in dispute and subsequent bills which are not in dispute. 66 Pa.C.S. § 1405(f).

5. 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.

6. Section 1405(d) of the Public Utility Code prohibits the Commission from establishing more than one payment arrangement unless there is a change in income. 66 Pa.C.S. § 1405(d).

7. Under Section 1403, a “change in income” is defined as a decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level. 66 Pa.C.S. § 1403.

8. 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).

9. The Complainants have not met their burden of establishing that PECO violated any Commission statute, regulations or order when it terminated service on August 2, 2018.

10. The Complainants have not met their burden of demonstrating that they are eligible for another Commission-issued payment arrangement.

11. The Complainants have not met their burden of establishing that they are eligible to another medical certification under the Commission's regulations.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Miro and Colleen Kamenik against PECO Energy Company at Docket No. C-2017-2630577 is denied and dismissed;
2. That the docket at Docket No. C-2017-2630577 be marked closed.

Date: January 25, 2019

_____/s/
Marta Guhl
Administrative Law Judge