

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shirley Foster	:	
	:	
v.	:	C-2019-3008348
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Alphonso Arnold III  
Special Agent

**INTRODUCTION**

A customer of an electric distribution company filed a Complaint alleging that there are incorrect charges on her bill and requesting a subsequent payment arrangement. This Initial Decision finds that the customer did not meet her burden of proving that there are incorrect charges on her bill. The customer also did not meet her burden of proving that she experienced a change of income making her eligible for a subsequent payment arrangement or experienced a significant change in circumstance making her eligible for reinstatement and extension of a prior Commission-issued payment arrangement.

**HISTORY OF THE PROCEEDING**

On March 7, 2019, Shirley Foster (Complainant or Ms. Foster) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO). Ms. Foster alleged that her current outstanding balance was incorrect, stating that she is making payments when her PECO bills are due. For relief, Ms. Foster stated that she would like a reasonable payment plan that she could afford if her

outstanding balance is correct. Additionally, Ms. Foster listed six payments that she made towards her PECO account:

- 6/23/2018 - \$148.00
- 8/30/2018 - \$116.89
- 10/22/2018 - \$11.94
- 11/26/2018 - \$200.00
- 1/25/2019 - \$92.15
- 3/1/2019 - \$143.20

Complaint ¶ 5.

On March 18, 2019, PECO filed its Answer. PECO averred that Ms. Foster should not be granted a payment arrangement per 66 Pa.C.S. § 1405(c)<sup>1</sup> and due to her poor payment history. PECO requested that the Commission dismiss the Complaint.

By Hearing Notice served on the parties on March 22, 2019, the Commission scheduled this matter for a telephonic hearing on April 22, 2019, at 10:00 a.m., and assigned the case to me as presiding officer.

A Prehearing Order was served on the parties on April 1, 2019, addressing, inter alia, the procedures applicable to the hearing.

I conducted the April 22, 2019, telephonic hearing as scheduled. Ms. Foster was present for the hearing and testified on her own behalf. Ms. Foster sponsored no exhibits for the record during the hearing.<sup>2</sup> Attorney Shawane L. Lee was present at the hearing on behalf of PECO and presented the testimony of Dana C. McCollum. Ms. McCollum sponsored the following five exhibits, all of which were admitted into the record:

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<sup>1</sup> (c) **Customer assistance programs.**--Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.

<sup>2</sup> Ms. Foster submitted proposed exhibits for the hearing but choose not to present them during the hearing. (Tr.11).

- PECO Exhibit 1 – Account Statement (6/15/17 - 10/29/18)
- PECO Exhibit 2 – Account Statement (10/1/18 – 4/3/19)
- PECO Exhibit 3 – Payment Arrangement History
- PECO Exhibit 4 – BCS No. 3329630 Case Details Report
- PECO Exhibit 5 – BCS No. 3329630 Decision Report

During the hearing, Ms. Foster expressed a desire to submit late-filed exhibits. Therefore, through Interim Order issued on April 22, 2019, both parties were given until May 6, 2019 to submit any late-filed exhibits, and until May 20, 2019 to submit objections to any late-filed exhibits. On May 2, 2019, Ms. Foster submitted late-filed exhibits. PECO did not submit any late-filed exhibits, nor did it submit any objection to Ms. Foster's late-filed exhibits. As such, Ms. Foster's late-filed exhibits will be admitted into the record in the Ordering paragraphs of this Initial Decision. Ms. Foster's five late-filed exhibits will be marked and identified as follows:

- Foster Exhibit 1 – Earnings Statement
- Foster Exhibit 2 – Apartment Lease Contract
- Foster Exhibit 3 – Utility charges (March 1, 2019 – March 31, 2019)
- Foster Exhibit 4 – 2019 Social Security Cost of Living Adjustment
- Foster Exhibit 5 – Unemployment Compensation Board of Review Notice of Hearing.

The record closed on May 20, 2019, the date that objections to any late-filed exhibits were due. The record in this matter consists of the April 22, 2019 hearing transcript (Tr.), PECO's five exhibits admitted into the record, and Ms. Foster's five exhibits that will be admitted into the record through this Initial Decision. For the reasons explained below, the Complaint will be dismissed.

#### FINDINGS OF FACT

1. The Complainant is Shirley Foster.
2. The Respondent is PECO Energy Company.

3. Ms. Foster receives electric service from PECO at 1224 West Chester Pike, Apartment B1, West Chester, Pennsylvania (service address). (Tr. 33).

4. Ms. Foster lives alone at the service address. (Tr. 8).

5. Ms. Foster receives \$505.68 per month from her current part-time employment.<sup>3</sup> (Foster Exhibit 1).

6. Ms. Foster receives \$1,162 per month in social security. (Tr. 38; Foster Exhibit 4).

7. Ms. Foster was let go from her previous employment on February 28, 2019 and is currently seeking unemployment compensation from that employer. (Tr. 20; Foster Exhibit 5).

8. PECO witness Dana C. McCollum is employed as a regulatory assessor for PECO whose duties entail reviewing Formal Complaints. (Tr. 28).

9. On April 1, 2015, Ms. Foster filed an Informal Complaint with the Commission's Bureau of Consumer Services (BCS) at BCS No. 3329630 disputing her outstanding balance and seeking a payment arrangement. (PECO Exhibit 4).

10. Ms. Foster's income verified at BCS No. 3329630 was \$1,276 for a household of one. (Tr. 36, 37; PECO Exhibit 5).

11. On September 1, 2015, the BCS at BCS No. 3329630 issued Ms. Foster a payment arrangement, whereby Ms. Foster was to pay a special budget amount of \$84 (\$34 budget bill + \$50 towards arrears) a month, beginning with the October 2015 bill due date. (PECO Exhibit 5).

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<sup>3</sup> Ms. Foster receives \$232.75 biweekly from her employment.  $(365/7/12/2) * \$232.75 = \$505.68$

12. Ms. Foster defaulted on the BCS payment arrangement issued at BCS No. 3329630. (PECO Exhibit 3).

13. Ms. Foster has defaulted upon two Commission-issued payment arrangements and one Company-issued payment arrangement. (Tr. 31; PECO Exhibit 3).

14. Ms. Foster established service with PECO at 1320 Valley Drive, West Chester, PA (old service address) on June 15, 2017. (Tr. 30; PECO Exhibit 1, p. 1)

15. Ms. Foster discontinued service at her old service address and established service at her current service address on September 22, 2018. (Tr. 33, 34).

16. The balance remaining from Ms. Foster's old service address in the amount of \$2,728.99 was transferred to her current service address. (PECO Exhibit 2, p. 1).

17. Ms. Foster has made ten payments on her account since establishing service with PECO. (PECO Exhibit 1; PECO Exhibit 2).

18. Ms. Foster's current balance, as of the date of the hearing, was \$2,613.91. (Tr, 35; PECO Exhibit 2, p. 1).

19. No portion of Ms. Foster's current balance is made up of customer assistance program arrears. (Tr. 35).

### DISCUSSION

Section 701 of the Public Utility Code provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission. 66 Pa.C.S. § 701.

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must show that the named 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). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the Complainant will prevail. If the utility rebuts the Complainant's evidence, the burden of going forward with the evidence shifts back to the Complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a Complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlt. 2001); see also, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlt. 1982).

Additionally, this Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980).

### **Incorrect charges**

Ms. Foster in her Complaint alleged that there are incorrect charges on her bill. Specifically, Ms. Foster alleged that her outstanding balance was incorrect. The burden of proof is on Ms. Foster to show that PECO has violated a section of the Code, Commission Regulation or Order, or Commission-approved tariff as it relates to these allegations.

Ms. Foster did not present any evidence at the hearing to support her incorrect charges allegation. No matter how honest and strong the Complainant's assertions are, they cannot form a basis for a finding of fact in her favor. Mere bald assertions, personal opinions or perceptions do not constitute evidence to bolster a claim. MidAtlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm'n, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000). Ms. Foster did not present any evidence to show that her current balance of \$2,613.91 was incorrect. Review of Ms. Foster's account statements show that the payments that Ms. Foster has been making on her account for her current charges have been properly credited towards her account. (PECO Exhibit 1; PECO Exhibit 2). The six specific payments that Ms. Foster highlighted in her Complaint (Complaint ¶ 5) have been properly credited to her account. (PECO Exhibit 1; PECO Exhibit 2). Ms. Foster's current balance of \$2,613.91 consists primarily of the balance that was transferred from her old service address to her current service address. (Id.). Since establishing service at her current service address, Ms. Foster has made payments in amounts to satisfy her current charges, but not in amounts to satisfy the balance that was transferred from her old service address. (Tr. 35; PECO Exhibit 2).

Ms. Foster has not met her burden of proving that there are incorrect charges on her bill. The payments that Ms. Foster has made towards her account have been properly credited on her account, and Ms. Foster's account balance of \$2,613.91 is correct.

### **Payment arrangement**

Additionally, Ms. Foster requested a Commission-issued payment arrangement. The burden of proof is on Ms. Foster to show that she is eligible for a Commission-issued payment arrangement.

By law, a public utility is entitled to receive payment for the service it provides. Scaccia v. West Penn Power Co., 55 Pa. PUC 637 (1982); Kea v. Peoples Natural Gas Co., 60 Pa. PUC 215 (1985); Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa. Cmwlth. 1982). Public utilities are entitled to bill and receive payment for the utility service actually supplied. 66

Pa.C.S. § 1303; Neal v. Philadelphia Gas Works, Docket No. Z-00871874 (Final Order entered January 4, 2002); Angie's Bar v. Duquesne Light Co., 72 Pa. PUC 213 (1990). All customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. Bolt v. Duquesne Light Co., Docket No. Z-8721758 (Opinion and Order entered April 8, 1988). A payment arrangement, which prevents service termination as long as the Complainant complies with it, is a privilege, not a right. Mandell v. Duquesne Light Co., Docket No. C-20030234 (Opinion and Order entered March 17, 2004).

Requests for payment arrangements are governed by The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 (Chapter 14). This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued and the length of the payment arrangement.

#### **§ 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.

**(b) Length of payment arrangements.**--The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

- (1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.
- (2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.
- (3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.
- (4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

66 Pa.C.S. § 1405(a)-(b). “Household income” is defined as the following:

**§ 1403. Definitions**

**“Household income.”** The combined gross income of all adults in a residential household who benefit from the public utility service.

66 Pa.C.S. § 1403.

Generally, the Commission is permitted to establish only one payment arrangement between a customer and a utility. The Commission may only issue a second or subsequent payment arrangement under a specific set of circumstances.

**§ 1405. Payment arrangements**

**(d) Number of payment arrangements.--**Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

66 Pa.C.S. § 1405(d). “Change in income” is defined as the following:

**§ 1403. Definitions**

**“Change in income.”** A decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level.

66 Pa.C.S. § 1403. Additionally, the Commission may reinstate and extend a defaulted upon payment arrangement under a specific set of circumstances.

**§ 1405. Payment arrangements**

**(e) Extension of payment arrangements.--**If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant

change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

66 Pa.C.S. § 1405(e). “Significant change in circumstance” is defined as the following:

### § 1403. Definitions

“**Significant change in circumstance.**” Any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income.
- (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household.
- (3) Loss of the customer's residence.
- (4) Increase in the customer's number of dependents in the household.

66 Pa.C.S. § 1403.

Ms. Foster has defaulted on two previously Commission-issued payment arrangements, the most recent being the arrangement issued to Ms. Foster at BCS No. 3329630. The arrangement issued at BCS No. 3329630 became a Commission-issued payment after Ms. Foster failed to appeal the BCS decision,<sup>4</sup> and the arrangement defaulted when Ms. Foster failed to make payments under its terms. Given her default on two prior Commission-issued payment arrangements, Ms. Foster in this matter is seeking to be issued a third Commission-issued payment arrangement. As stated, the Commission is permitted to establish only one payment arrangement for a customer. Following the default of a Commission-issued payment arrangement, the Commission can only establish a subsequent payment arrangement if the customer has experienced a change in income as defined in 66 Pa.C.S. § 1403, cited above.

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<sup>4</sup> (3) *Resolution*. Commission staff resolution of informal complaints is binding upon the parties unless formal proceedings are initiated under §§ 56.171--56.174 (relating to formal complaints). 52 Pa. Code § 56.163(3).

Ms. Foster testified that she receives \$1,162 a month from social security. Regarding her wages, Ms. Foster testified during the hearing that she had not yet received her first payment from her current employment. (Tr. 9). However, Ms. Foster has since begun receiving wages from her employment, as evidenced by Ms. Foster's late-filed exhibit, Foster Exhibit 1, which shows that she received \$232.75 on April 25, 2019 for the period starting on April 5, 2019 and ending on April 18, 2019. (Foster Exhibit 1). Using this evidence, Ms. Foster receives \$232.75 biweekly from her employment or \$505.68 a month. Therefore, Ms. Foster's gross monthly household income is \$1,667.68<sup>5</sup> for a household of one.

Ms. Foster's gross monthly household income reported in BCS No. 3329630 was \$1,276 for a household of one. Thus, Ms. Foster's gross monthly household income has increased following the issuance of her last Commission-issued payment arrangement. As cited, "change in income" is defined as having experienced a decrease in household income, not an increase in household income. 66 Pa.C.S. § 1403. Therefore, Ms. Foster has not experienced the change of income required to be granted a subsequent Commission-issued payment arrangement.<sup>6</sup>

Although the Commission cannot establish a subsequent Commission-issued payment arrangement for Ms. Foster, the Commission may reinstate and extend a previously defaulted upon Commission-issued payment arrangement if a customer defaulted on the Commission-issued payment arrangement as a result of experiencing a significant change in circumstance. Ms. Foster did not present any evidence at the hearing that would lead to a finding that Ms. Foster experienced one of the four "significant change in circumstance" criteria, as cited above in 66 Pa.C.S. § 1403.

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<sup>5</sup>         $\$1,162 + \$505.68 = \$1,667.68$

<sup>6</sup>        I note that had Ms. Foster not submitted Foster Exhibit 1 as a late-filed exhibit, only Ms. Foster's social security of \$1,162 would have been included as her gross monthly household income. This would have meant that Ms. Foster's income decreased since the last payment arrangement (\$1,276). Even had this been the case, Ms. Foster would still have not suffered the change in income necessary to be granted a subsequent payment arrangement because the decrease would not have been a decrease of 10% or more ( $\$1,162 / \$1,276 = 9\%$  decrease in income).

Lastly, concerning Ms. Foster's eligibility for a payment arrangement, I note that Ms. Foster did provide as evidence her rent expenses (Foster Exhibit 2) and her utility expenses for the month of March (Foster Exhibit 3). However, Chapter 14 does not permit the Commission to consider these expenses when determining whether a customer is eligible for a subsequent Commission-issued payment. Furthermore, neither rent or utility expenses are one of the four "significant change in circumstance" criteria to be considered when determining if a customer is eligible for reinstatement and extension of a Commission-issued payment arrangement.

Ms. Foster has not met her burden of proving that she is eligible for a subsequent Commission-issued payment arrangement or to reinstatement and extension of a prior Commission-issued payment arrangement.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. Mere bald assertions, personal opinions or perceptions do not constitute evidence to bolster a claim. MidAtlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm'n, 746 A.2d 1196, 1200 (Pa.Cmwlt. 2000).

4. The Complainant did not meet her burden of proving that there are incorrect charges on her bill.

5. By law, a public utility is entitled to receive payment for the service it provides. Scaccia v. West Penn Power Co., 55 Pa. PUC 637 (1982); Kea v. Peoples Natural Gas Co., 60 Pa. PUC 215 (1985); Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa. Cmwlt. 1982).

6. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419, applies to this proceeding. 66 Pa.C.S. §§ 1401-1419.

7. The Commission is authorized to establish a payment arrangement between a public utility, customers and applicants. 66 Pa.C.S. § 1405(a).

8. Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. 66 Pa.C.S. § 1405(d).

9. 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 or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level. 66 Pa.C.S. § 1403.

10. If a customer defaults on a payment arrangement as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. 66 Pa.C.S. § 1405(e).

11. A “significant change in circumstance” is any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level: (1) the onset of a chronic or acute illness resulting in a significant loss in the customer's household income, (2) catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household, (3) loss of the customer's residence, or (4) increase in the customer's number of dependents in the household. 66 Pa.C.S. § 1403.

12. The Complainant did not meet her burden of proving that she is eligible for a subsequent Commission-issued payment arrangement, or to reinstatement and extension of a prior Commission-issued payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That that following late-filed exhibits are admitted into the record in this matter:
  - Foster Exhibit 1 – Earnings Statement
  - Foster Exhibit 2 – Apartment Lease Contract
  - Foster Exhibit 3 – Utility charges (March 1, 2019 – March 31, 2019)
  - Foster Exhibit 4 – 2019 Social Security Cost of Living Adjustment
  - Foster Exhibit 5 – Unemployment Compensation Board of Review Notice of Hearing.
2. That the Formal Complaint filed by Shirley Foster against PECO Energy Company at Docket No. C-2019-3008348 is dismissed.
3. That the docket at Docket No. C-2019-3008348 is marked closed.

Date: May 20, 2019

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/s/  
Alphonso Arnold III  
Special Agent