

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Cynthia Young-Nelson	:	
	:	
v.	:	F-2019-3009953
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This initial decision denies the Complainant’s request for a payment arrangement because she did not satisfy her burden to demonstrate that she is eligible for a payment arrangement under the Public Utility Code. This decision also finds that the Complainant has failed to meet her burden of proof that the Respondent violated the Public Utility Code, Commission regulations or orders with respect to her account billing.

HISTORY OF THE PROCEEDING

On May 13, 2019, Cynthia Young-Nelson (Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent). In the Complaint, Ms. Young-Nelson indicated there were issues with her billing and sought a payment arrangement.

On May 23, 2019, PECO filed an Answer, denying the material allegations of the Complaint.

On May 28, 2019, a Hearing Notice was issued for an initial in person hearing on Friday, July 12, 2019, at 10:00 a.m. and the matter was assigned to me.

A Prehearing Order was issued on June 5, 2019, which provided the parties with the procedures for the hearing.

The hearing convened as scheduled on July 12, 2019. The Complainant represented herself and testified on her own behalf. She offered one exhibit which was entered into the record. PECO was represented by counsel, Shawane Lee, Esquire. PECO also presented the testimony of Teresa Ferrier, a regulatory assessor, and offered seven exhibits which were entered into the record.

The record closed on August 19, 2019, when I received my copy of the 105-page hearing transcript.

FINDINGS OF FACT

1. The Complainant is Cynthia Young-Nelson, who lives at 43 Lamport Road, Upper Darby, Pennsylvania 19082 (Service Address). Tr. 8.
2. The Respondent is PECO Energy Company.
3. The Complainant resides at the Service Address with her daughter, age 20. Tr. 20-21.
4. The Complainant is disabled and does not work. Tr. 17.
5. The Complainant receives \$771.00 per month in Social Security Disability payments. Tr. 18; Complainant Exh. 1.

6. The Complainant also receives \$22.50 per month in cash Public Assistance. Tr. 19.
7. The Complainant's daughter is a student and does not work. Tr. 20.
8. The Complainant's current household income of \$793.50¹ per month with two household members places the household at 56% of the Federal Poverty guidelines.²
9. The Complainant first enrolled in PECO's Customer Assistance Program (CAP) on April 13, 1999. Tr. 61; PECO Exh. 4.
10. The Complainant last recertified for the CAP program in April 2018 and is currently enrolled in the program at the Service Address. Tr. 74; PECO Exh. 4.
11. The Complainant has been receiving regular monthly bills from PECO. Tr. 59-60; PECO Exhs. 1-3.
12. On October 11, 2018, the Complainant had one estimated bill at the previous service address of 153 Wayne Avenue, Collingdale, Pennsylvania 19023, but all other readings were based on actual usage. Tr. 71-72; PECO Exhs. 1-3.
13. The Complainant was on budget billing at a prior service address of 1208 Nate Ellis Drive, Chester, Pennsylvania 19013 where she resided from February 2014 to October 2018. Tr. 82; PECO Exh. 1.
14. The Complainant was removed from budget billing when she moved to 153 Wayne Avenue, after November 2018 and is not on budget billing at her current Service Address. Tr. 80-82; PECO Exhs. 2-3.

¹ Monthly income is calculated as follows: $\$771.00 + \$22.50 = \$793.50$ per month for Complainant.

² *Federal Register*, Vol. 84, No. 22, February 1, 2019, pp. 1167-1168. See <http://aspe.hhs.gov/poverty>.

15. On March 11, 2019, the Complainant visited PECO's office to request a name change from Cynthia Young to Cynthia Young-Nelson. Tr. 79.

16. PECO made the name change to the Complainant's account when it received the formal Complaint. Tr. 79.

17. PECO has no records that the Complainant contacted PECO before March 2019 about the name change. Tr. 80.

18. The Complainant has had five prior Company-issued payment arrangements which defaulted in 2011, 2013, 2015, 2016 and 2018. Tr. 83-84; PECO Exh. 5.

19. To apply for a crisis grant, the Complainant needs to receive a ten-day notice from PECO. Tr. 77.

20. The Complainant did not need a shut off notice to apply for the Low Income Home Energy Assistance Program (LIHEAP). Tr. 77.

21. The Complainant did not receive a shut off notice from PECO because she had an informal complaint pending with the Bureau of Consumer Service (BCS) from July 2018 to March 2019 and the Company suspended any collection activities related to her account. Tr. 72-73, 76; PECO Exh. 6.

22. The Complainant received a LIHEAP grant in March 2019. Tr. 86; PECO Exh. 3.

23. The Complainant's total balance with PECO is \$4,244.63, all of which are CAP arrears. Tr. 78-79; PECO Exh. 3.

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, the 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 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*, 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.Cmwlth. 2001).

Billing Issues

The Complainant alleged that she had billing issues related to her account with PECO. PECO denies that there were any problems with the Complainant's billing.

As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa.C.S. § 1501 requires public utilities to provide reasonable and adequate, not perfect service. The statute at 66 Pa.C.S. § 1501, provides, in relevant part:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

Interpreting this provision in *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa.Cmwlth. 1984), the Commonwealth Court stated:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility. (footnote omitted).

478 A.2d at 949.

The statutory definition of “service” is to be broadly construed.³ *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm’n*, 654 A.2d 72 (Pa.Cmwlth. 1995). In applying the facts to the law, the issue becomes whether PECO’s actions as described in the Complaint rise to the level of inadequate service that constitutes a violation of the Public Utility Code.

The Complainant contends that she was receiving estimated bills from PECO for years and was not receiving her bills on a consistent basis. However, the Complainant did not present any evidence beyond her own testimony to demonstrate that this was taking place. It is well settled, “[m]ere bald assertions . . . do not constitute evidence.” *Mid-Atlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000) (citing *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987)); see also, *Steffy’s Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, Docket No. R 00994808 (Opinion and Order entered March 3, 2000).

Further, PECO’s witness testified that the Complainant has been receiving regular monthly bills from PECO. Tr. 59-60; PECO Exhs. 1-3. While the Complainant had one estimated bill at the previous service address of 153 Wayne Avenue, all other readings were based on actual usage at the current service address. Tr. 71-72; PECO Exhs. 1-3. Based on the above, the Complainant has not met her burden of proof in this matter and her Complaint must be dismissed in this regard.

The Complainant also alleged that her name was listed incorrectly on her bills and that she had tried to correct it over the years. However, the PECO witness indicated in her testimony that on March 11, 2019, the Complainant visited PECO’s office to request a name change from Cynthia Young to Cynthia Young-Nelson. Tr. 79. PECO made the name change to

³ “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.

the Complainant's account when it received the formal Complaint. Tr. 79. PECO has no records that the Complainant contacted PECO before March 2019 about the name change. Tr. 80.

Since PECO has made the change to the Complainant's name, the matter is now moot. As such, this portion of the Complainant's Complaint must be dismissed.

The Complainant also alleged that she did not want to be on budget billing. However, the evidence presented by PECO indicated that the Complainant was on budget billing at a prior service address of 1208 Nate Ellis Drive. Tr. 82; PECO Exh. 1. The Complainant was removed from budget billing when she moved to 153 Wayne Avenue, after November 2018, and is not on budget billing at the Service Address. Tr. 80-82; PECO Exhs. 2-3. Since the Complainant is not on budget billing, this issue is moot. Therefore, the Complainant's Complaint must be dismissed in this regard.

Lastly, the Complainant asserted that PECO would not issue a shut off notice to her, which prevented her from applying for LIHEAP, and that PECO issued her a large bill after LIHEAP closed. The Complainant did not present any evidence to support this claim.

PECO's witness testified that the Complainant could have requested a ten-day notice from PECO in order to apply for a crisis grant. Tr. 77. However, she also indicated that the Complainant did not need a shut off notice to apply for LIHEAP. Tr. 77. Ms. Ferrier also testified that the Complainant did not receive a shut off notice from PECO because she had an informal complaint pending with BCS from July 2018 to March 2019 and the Company suspended any collection activities related to her account during this period. Tr. 72-73, 76; PECO Exh. 6. Ms. Ferrier also noted that the Complainant did receive a LIHEAP grant in March 2019. Tr. 86; PECO Exh. 3.

Based on the above, the Complainant has not met her burden of establishing that there were any issues with how PECO handled the Complainant's account related to LIHEAP. PECO suspended collection activities on the Complainant's account because there was an informal complaint pending from July 2018 to March 2019. A public utility may not mail or

deliver a notice of termination if there has been an informal complaint filed and is unresolved and if the subject matter of the dispute is the basis for the proposed termination. 52 Pa.Code § 56.92. However, the Complainant still managed to receive a LIHEAP grant in March 2019. Accordingly, there is nothing in the record to indicate that PECO violated any statute, regulation or order in this regard and the Complaint must be dismissed.

Request for Payment Arrangement

The Complainant also requested a payment arrangement in this case. PECO alleged that the Complainant was not eligible for a payment arrangement in this matter.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.* (Chapter 14), applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. Chapter 14 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 CAP arrears. 66 Pa.C.S. § 1405(c). The Complainant's entire current outstanding balance is composed of CAP arrears. As such, the Commission cannot grant the Complainant a payment arrangement on her outstanding balance.

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 Public Utility Code at 66 Pa.C.S. § 1501 requires public utilities to provide reasonable and adequate service, not perfect service. 66 Pa.C.S. § 1501.
5. The statutory definition of "service" is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995).
6. The Complainant has not met her burden of establishing that PECO provided her with unreasonable or inadequate service, or that there was a problem with PECO's billing practices.
7. 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.
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 is not eligible for a payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Cynthia Young-Nelson against PECO Energy Company, at Docket No. F-2019-3009953, is denied and dismissed.
2. That the formal Complaint at Docket No. F-2019-3009953 be closed.

Date: November 5, 2019

_____/s/_____
Marta Guhl
Administrative Law Judge