

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Karen Tortorella	:	
	:	
v.	:	C-2019-3012082
	:	
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 under the Public Utility Code to demonstrate that she is eligible for a second or subsequent Commission-issued payment arrangement or an extension of her prior Commission payment arrangement.

HISTORY OF THE PROCEEDING

On August 6, 2019, Karen Tortorella (Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent). In the Complaint, Ms. Tortorella alleged that the utility was threatening to or had shut off her service and sought a payment arrangement.

On August 15, 2019, PECO filed an Answer, denying the material allegations of the Complaint.

The Complaint was an untimely appeal of a Bureau of Consumer Services' (BCS) decision at Case No. 3715983, which denied the Complainant's informal Complaint under 66 Pa.C.S. § 1405(d).

On August 19, 2019, a Hearing Notice was issued for a call-of-the-docket session on Tuesday, October 1, 2019, at 1:30 p.m., and the matter was assigned to Administrative Law Judge Darlene Heep.

Judge Heep issued a Prehearing Order on August 21, 2019, which provided the parties with the procedures for the hearing.

On September 30, 2019, a Hearing Judge Change Notice was issued indicating that I would be the presiding officer in this matter.

The hearing convened as scheduled on October 1, 2019. The Complainant represented herself and testified on her own behalf. The Complainant presented three exhibits which were entered into the record at the hearing. PECO was represented by counsel, Angela Lorenz, Esquire. PECO also presented the testimony of Elsa Leung, a regulatory assessor, and offered four exhibits which were entered into the record.

The record closed on October 22, 2019, when I received my copy of the 38-page hearing transcript.

FINDINGS OF FACT

1. The Complainant is Karen Tortorella, who lives at 5026 York Road, Buckingham, Pennsylvania 18928 (Service Address). Tr. 7.
2. The Respondent is PECO Energy Company.
3. The Complainant resides at the Service Address alone. Tr. 10.

4. The Complainant is a freelance writer. Tr. 13.
5. The Complainant receives \$500.00 per week for one writing assignment.
Tr. 13.
6. The Complainant also receives \$596.00 per month in Social Security. Tr. 12; Complainant Exh. 3.
7. The Complainant's current gross household income of \$2,763.00¹ per month with one household member places the household at 265% of the Federal Poverty guidelines.²
8. The Complainant filed an informal complaint with BCS on October 10, 2018.
9. The BCS issued a decision on October 15, 2018 at Case No. 3659211. Tr. 24; PECO Exh. 4.
10. The BCS provided the Complainant with a Level 1 payment arrangement of \$144.00 (budget bill) + \$19.00 (arrearage) = \$163.00 per month. Tr. 24; PECO Exh. 4.
11. The Complainant defaulted on the Commission-issued payment arrangement. Tr. 25.
12. The Complainant's income at the time of the BCS decision was \$2,583.33. PECO Exh. 4.

¹ Monthly income is calculated as follows: $\$500.00 \times 52 = \$26,000 / 12 = \$2,167.00 + \$596.00 = \$2,763.00$.

² *Federal Register*, Vol. 84, No. 22, pp. 1167-68 (February 1, 2019). See <http://aspe.hhs.gov/poverty>.

13. The Complainant had two medical conditions (an eye and tooth infection) which affected her income in 2018 before the BCS issued the payment arrangement. Tr. 11.

14. As of the date of the hearing, the Complainant had recovered from her health conditions and was working again. Tr. 11.

15. As of the date of the hearing, the Complainant's total balance with PECO is \$2,451.08. Tr. 23; PECO Exh. 2.

16. The Complainant received a shut off notice. Tr. 8.

17. The Complainant is currently receiving service from PECO. Tr. 7.

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 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*, 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).

Termination Notice

The Complainant asserts that she received a termination notice from PECO. However, the Complainant indicated that she currently has service with PECO. PECO indicated that it did send a termination notice but the notice is no longer in affect because the Complainant filed an informal complaint and the current Complaint. Under the Public Utility Code, a public utility may notify a customer and terminate service provided to a customer for nonpayment of an undisputed delinquent account and/or failure to comply with the terms of a payment arrangement. 66 Pa.C.S. § 1406(a). However, based on the above, it is clear that the issue of the termination notice is moot as the Complainant has service and there is no active termination notice pending.

Request for 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.

Section 1405(e) of the Public Utility Code allows for an extension by six months of a payment arrangement in default if the customer defaulted on the payment arrangement as a result of a significant change in circumstance. 66 Pa.C.S. § 1405(e). "Significant change in circumstance" is defined as any of the following circumstances which are 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.

The Complainant resides at the Service Address alone. Tr. 10. The Complainant is a freelance writer. Tr. 13. The Complainant receives \$500.00 per week for one writing assignment. Tr. 13. The Complainant also receives \$596.00 per month in Social Security. Tr. 12; Complainant Exh. 3. The Complainant's current household income of \$2,763.00 per month with one household member places the household at 265% of the Federal Poverty guidelines. This makes the Complainant a Level 3 customer. *See* 66 Pa.C.S. § 1405(b)(3)³.

However, in this instance, the Complainant was granted a Commission-issued payment arrangement by decision dated October 15, 2018. Tr. 24; PECO Exh. 4. At BCS Case No. 3659211, the BCS provided the Complainant with a Level 1 payment arrangement of \$144.00 (budget bill) + \$19.00 (arrearage) = \$163.00 per month. Tr. 24; PECO Exh. 4. The Complainant's income at the time of the BCS decision was \$2,583.33. PECO Exh. 4. The Complainant defaulted on this payment arrangement. Tr. 25.

The Complainant's gross household monthly income has increased since the previous Commission-issued payment arrangement. Thus, the Complainant does not meet the "change of income" criteria set out in Section 1403 of the Public Utility Code. The Complainant has income greater than 200% of the Federal Poverty Level at 265% of the Federal Poverty Level and has not experienced a decrease in income of 20% or more. *See* 66 Pa.C.S. § 1403.

Further, the Complainant testified that she had two medical conditions which affected her income in 2018 before the BCS issued the payment arrangement. Tr. 11. Therefore, Complainant's medical conditions did not cause her to default her BCS payment arrangement as a result of a significant change in circumstance under the first criteria defined in 66 Pa.C.S. § 1403 ("the onset of a chronic or acute illness resulting in a significant loss in the customer's household income"). Further, as of the date of the hearing, the Complainant had recovered from her health conditions and was working again. Tr. 11.

³ "(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."

The Complainant did not present any evidence that would meet any of the other three “significant change in circumstance” criteria that is enumerated in Section 1403 of the Public Utility Code. Further, the Complainant is simply seeking more favorable payment arrangement terms than the one she previously received from the Commission; however, the Commission is constrained by the terms of the Public Utility Code. Based on all of the above, the Complainant’s request for a payment arrangement must be denied and the Complaint must be dismissed in this regard. Further, the Complainant is not eligible for reinstatement of her prior Commission payment arrangement.

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. Under the Public Utility Code, a public utility may notify a customer and terminate service provided to a customer for nonpayment of an undisputed delinquent account and/or failure to comply with the terms of a payment arrangement. 66 Pa.C.S. § 1406(a).

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. The Commission has the authority to establish a payment arrangement of one year for a customer if the customer's gross monthly household income exceeds 250% of the Federal poverty level and not more than 300% of the Federal poverty level. 66 Pa.C.S. § 1405(b)(3).

7. 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).

8. 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.

9. Section 1405(e) of the Public Utility Code allows for an extension by six months of a payment arrangement in default if the default was caused by a significant change in circumstance. 66 Pa.C.S. § 1405(e).

10. The Complainant has not met her burden of establishing that she is eligible for a second Commission-issued payment arrangement or reinstatement of her prior Commission-issued payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Karen Tortorella against PECO Energy Company, at Docket No. C-2019-3012082, is denied and dismissed.

2. That the docket at Docket No. C-2019-3012082 be closed.

Dated: January 14, 2020

_____/s/_____
Marta Guhl
Administrative Law Judge