

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jacquelyn Aman	:	
	:	
v.	:	F-2019-3012672
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision grants Jacquelyn Aman’s formal Complaint against PECO Energy Company and establishes a payment arrangement on her behalf.

HISTORY OF THE PROCEEDING

On August 23, 2019, Jacquelyn Aman (Ms. Aman or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) alleging that she is unable to pay her gas and electricity bills to PECO and requesting a payment arrangement.

This Complaint is a timely appeal of a decision issued by the Commission’s Bureau of Consumer Services at BCS Case No. 3715150, which issued a payment arrangement on behalf of the Complainant.

On September 17, 2019, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

A Hearing Notice dated September 19, 2019, notified the parties that an initial hearing was scheduled in this matter for October 22, 2019, at 1:30 p.m. A Prehearing Order issued on October 7, 2019, reminded the parties of the date and time of the scheduled hearing, informed them of the procedures applicable to this proceeding, and directed the submission of documents prior to the hearing.

On the day of the hearing, Jacquelyn Aman appeared *pro se*, via telephone, and testified in support of the Complaint. Angela Lorenz, Esq., represented the Respondent, and presented the testimony of Teresa Ferrier, who is a senior regulatory assessor for PECO. Tr. 15-16. The Respondent sponsored five exhibits, which were admitted into the record.

The record was closed upon receipt of the hearing transcript on November 20, 2019.

FINDINGS OF FACT

1. The Complainant is Jacquelyn Aman, who resides at 434 East 8th Avenue, Conshohocken, PA 19428. Tr. 8.
2. The Respondent is PECO Energy Company.
3. Ms. Aman resides at the Service Address with her eight-year-old son. Tr. 9, 10-11.
4. Ms. Aman's son suffers from asthma and regularly uses a nebulizer machine at home. Tr. 8-9.
5. Until recently, Ms. Aman was unemployed due to a severe medical condition. Tr. 9.
6. Ms. Aman is employed now and receives an income of \$3,338.00 per month. Tr. 11, 19, 23, PECO Exhibit 4.

7. Ms. Aman's employment is the sole source of income for her household. Tr. 11.

8. The Complainant has not received on a prior Commission-issued payment arrangement. Tr. 18-20.

9. During the period from December 1, 2017 - October 2, 2019, Ms. Aman made five payments towards her account with PECO. Tr. 20, PECO Exhibit 1.

10. As of the day of the hearing, Ms. Aman's outstanding balance with PECO was \$3,047.54. Tr. 17, PECO Exhibit 1.

DISCUSSION

In this formal Complaint, Ms. Aman alleged that she is unable to pay her gas and electricity bills to PECO and requesting a payment arrangement. This Complaint is a timely appeal of a decision issued by the Commission's Bureau of Consumer Services at BCS Case No. 3715150, which issued a payment arrangement on behalf of the Complainant.

A timely appeal from an informal decision of the BCS is reviewed *de novo*. 52 Pa. Code §§ 56.173(a), 56.403(a). *De novo* means that there is no part of the record in the informal proceeding that can be relied upon in the formal proceeding. In a *de novo* appeal from a decision of the BCS, the burden of proof remains with the party who filed the original informal complaint, except for legal or policy issues raised by the utility on appeal. *See* 52 Pa. Code § 56.173(f); *see also Rafferty v. Verizon Pennsylvania, Inc.*, Docket No. F-02211831 (Order entered December 22, 2008); *Claypool v. T.W. Phillips Gas & Oil Company*, 1995 Pa. PUC LEXIS 160 (Order entered December 22, 1995)

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.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.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*, 501 Pa. 433, 461 A.2d 1234 (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).

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 of the Public Utility Code regarding payment arrangements reads in pertinent part:

(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) and (b). In addition, "Household income" is defined in section 1403 as "[t]he combined gross income of all adults in a residential household who benefit from the public service." 66 Pa.C.S. § 1403 (Definition of "Household income").

In cases where the Commission is authorized by law to establish a payment arrangement between a customer and a utility, it has the responsibility to exercise its authority very judiciously. Specifically, the Commission should exercise its discretion to issue payment

arrangements only on behalf of customers who have demonstrated some evidence of good faith effort to pay their utility bills or who have experienced a significant change of circumstances beyond their control. *Crawford v. National Fuel Gas Distribution Corp.*, C-20066348 (Opinion and Order entered December 6, 2007), *see also Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013), *Dorsey v. Philadelphia Gas Works*, Docket No. F-2012-2313679 (Opinion and Order entered Nov. 22, 2013).

In the present case, the Complainant has not received a prior Commission-issued payment arrangement. Tr. 18-20. However, she has a poor payment history, having made only five successful payments towards her account with PECO during the period from December 1, 2017 to October 2, 2019. Tr. 20, PECO Exhibit 1. Ms. Aman explained that she had been unemployed until recently due to a severe medical condition. Tr. 9. She is back to work now and looking into obtaining supplemental income by working additional hours. Tr. 23. She also testified to using a wood burning stove to keep her heating expenses low. Tr. 23. In addition, her young son suffers from asthma and regularly uses a nebulizer machine at home. Tr. 8-9. In view of the above, I find that the establishment of a payment arrangement is appropriate in this case.

The Complainant's monthly household income is \$3,338.00 for a household of two. Tr. 11, 19, 23, PECO Exhibit 4. Ms. Aman's household income falls between 150% and 250% of the Federal poverty level.¹ As a Level 2 income customer, Ms. Aman is required to retire her balance with PECO within three years, or 36 months. *See* 66 Pa.C.S. § 1405(b)(2).

Therefore, Jacquelyn Aman shall be ordered to make monthly payments consisting of her budget bill plus 1/36th of the balance accrued on her account with PECO, beginning with the first billing due date following the entry of a final Commission Order in this case.

¹ Federal Register, Vol. 84, No. 22 at 1168 (February 1, 2019). Also available at <http://aspe.hhs.gov/poverty> (providing that for a household of two, 150% of the Federal poverty level is \$2,114 per month and 250% is \$3,523 per month).

CONCLUSIONS OF LAW

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

2. The party filing the Complaint bears the burden of proving that she is entitled to relief from the Commission. 66 Pa.C.S. § 332(a).

3. "Burden of proof" means a duty to establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

4. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, applies to this proceeding.

5. The Commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established in Chapter 14 of the Pennsylvania Public Utility Code. 66 Pa.C.S. § 1405.

6. It is Commission policy to exercise its discretion to issue payment arrangements when customers have demonstrated some evidence of a good-faith effort in paying utility bills or when customers have experienced a change of circumstances outside of their control. *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 at 15-16 (Order entered December 6, 2007), see also *Susan Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271, (Opinion and Order entered Sept. 12, 2013).

7. "Household income" is defined as "[t]he combined gross income of all adults in a residential household who benefit from the public service." 66 Pa.C.S. § 1403.

8. Complainant has met her burden that she is eligible for a Commission-issued payment arrangement. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Jacquelyn Aman's formal Complaint against PECO Energy Company at Docket No. F-2019-3012672 is granted.
2. That Jacquelyn Aman shall make monthly payments consisting of her budget bill plus one-thirty-sixth (1/36) of the balance accrued on her account, beginning with the first billing due date following the entry of a final Commission Order in this case.
3. That as long as Jacquelyn Aman keeps the payment schedule stated in this order, PECO Energy Company shall not suspend or terminate her utility service except for valid safety or emergency reasons or assess late payments or finance charges against her account.
4. That, if Jacquelyn Aman does not keep the payment schedule stated in this order, PECO Energy Company is authorized to suspend or terminate her utility service in accordance with the Commission's statute and regulations.
5. That the Secretary mark this docket closed.

Date: February 24, 2020

_____/s/_____
Eranda Vero
Administrative Law Judge