

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shanice Harper	:	
	:	
v.	:	C-2019-3011627
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Complainant’s Formal Complaint as she was not able to meet her burden of establishing that her bills were incorrect. This Initial Decision also 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 Commission-issued payment arrangement.

**HISTORY OF THE PROCEEDING**

On July 18, 2019, Shanice Harper (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent). In the Complaint, Ms. Harper alleged that there were incorrect charges on her bills and sought a payment arrangement.

On July 25, 2019, PECO filed an Answer, denying the material allegations of the Complaint.

On July 26, 2019, a Hearing Notice was issued for an initial in-person hearing on Friday, September 20, 2019, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on July 30, 2019, which provided the parties with the procedures for the hearing.

The hearing convened as scheduled on September 20, 2019. The Complainant was present as well as counsel for PECO and two witnesses for PECO. However, the Complainant requested a continuance because she was unable to find childcare and did not feel she would be able to fully present her case. She also indicated that she was not receiving her mail and did not get the prehearing order. She also had concerns regarding the information that PECO had presented to her that she wanted to research further. PECO objected to the request, but I overruled the objection and granted the request on the record. Tr. 14.

By Hearing Notice dated September 20, 2019, the matter was rescheduled for a further hearing on Friday, October 25, 2019 at 10:00 a.m.

On October 2, 2019, Angela Lorenz, Esquire, entered her appearance on behalf of PECO. On October 8, 2019, Shawane Lee, Esquire, withdrew her appearance on behalf of PECO.

On October 9, 2019, Respondent sent a Motion for a Continuance for the October 25, 2019 hearing. The Complainant did not object to the request. I granted the request via an Order dated October 23, 2019.

On October 24, 2019, a Cancellation/Reschedule Hearing Notice was issued, and the matter was rescheduled for Monday, December 9, 2019 at 10:00 a.m.

The hearing convened as scheduled on December 9, 2019. The Complainant represented herself and testified on her own behalf. The Complainant also presented three exhibits at the hearing which were entered into the record. PECO was represented by counsel,

Angela Lorenz, Esquire. PECO presented the testimony of Jennifer Ortiz, a high bill field technician, and Renee Tarpley, a senior regulatory assessor, and offered nine exhibits which were entered into the record.

The record closed on January 21, 2020, when I received my copy of the 93-page hearing transcript.

### FINDINGS OF FACT

1. The Complainant is Shanice Harper, who currently lives at 46 Holland Avenue, Floor 1, Ardmore, Pennsylvania 19003. Tr. 26.
2. The Respondent is PECO Energy Company.
3. The Complainant previously resided at 6035 Agusta Street, Philadelphia, Pennsylvania 19149 (Service Address) where she received electric utility service from PECO. Tr. 26-27.
4. The Complainant resided at 6035 Agusta Street from May 2015 to August 2019. Tr. 27.
5. The Complainant's household includes her husband and two children, ages 8 and 3 years old. Tr. 39.
6. The Complainant is not working and is disabled. Tr. 38-39.
7. The Complainant's husband is working odd jobs and is earning approximately \$150.00 per week. Tr. 39-40.
8. As of the hearing date, the Complainant is awaiting approval to receive Social Security disability payments. Tr. 40.

9. The Complainant's family also receives \$660.00 per month from the Supplemental Nutrition Assistance Program (SNAP). Tr. 41.

10. The Complainant's current gross household income of \$650.00<sup>1</sup> per month with four household members places the household at 30% of the Federal Poverty guidelines.<sup>2</sup>

11. On June 6, 2019, Jennifer Ortiz, a high bill field technician, visited the Service Address on a high bill investigation. Tr. 57; PECO Exh. 7.

12. Ms. Ortiz found the following appliances at the Service Address: refrigerator, microwave, toaster oven, washing machine, two window air conditioning units, ceiling fans, one fan, electric circulator on the furnace, lighting for six to eight rooms, two televisions, cable box and home entertainment system. Tr. 57-58; PECO Exh. 7.

13. Ms. Ortiz performed a drop load test<sup>3</sup> at the Service Address and found the meter to be functioning properly. Tr. 58; PECO Exh. 7.

14. Ms. Ortiz also performed a passing load test with the microwave and found that the meter clocked 976.27 watts out of 1,000 watts. Tr. 58; PECO Exh. 7.

15. Ms. Ortiz performed a cost estimate and found potential summer usage of 1,990 kW per month and 1,132 kW per month for potential winter usage. Tr. 70; PECO Exh. 7.

16. The usage at the Service Address was in line with the potential usage. Tr. 59; PECO Exh. 1.

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<sup>1</sup> Monthly income is calculated as follows:  $\$150.00 \times 52 = \$7,800 / 12 = \$650.00$ .

<sup>2</sup> *Federal Register*, Vol. 85, No. 12, pp. 3060-3061 (January 17, 2020). See <http://aspe.hhs.gov/poverty>.

<sup>3</sup> Ms. Ortiz completed the drop load test by shutting off the appliances and getting the meter to register zero usage. Tr. 58.

17. Ms. Ortiz did not note any issues with the Service Address. Tr. 61; PECO Exh. 7.

18. The Complainant's outstanding balance for the 6035 Agusta Street address is \$4,556.79. Tr. 74; PECO Exh. 1.

19. The Complainant made four valid payments to the account for 6035 Agusta Street between 2015 and 2019. Tr. 74; PECO Exh. 1.

20. The Complainant has had two Company-issued payment arrangements, which have defaulted. Tr. 74; PECO Exh. 1 and 3.

21. The Complainant was enrolled in the Customer Assistance Program (CAP) in August 2016 and the balance of \$953.40 was set aside for forgiveness. Tr. 76; PECO Exh. 2.

22. The Complainant was removed from the CAP program in July 2019 due to failure to recertify her household income. Tr. 77; PECO Exh. 2.

23. The Complainant's balance from 6035 Agusta Street contains \$3,053.83 in CAP arrears. Tr. 78; PECO Exh. 2.

24. On October 25, 2019, PECO sent the Complainant a letter regarding her Complaint and enclosed a CAP application, but the application has not been returned. Tr. 80; PECO Exh. 9.

#### 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).

### High Bill Dispute

The Complainant asserts that her bills were too high at the 6035 Augusta Street address. She contends that there was an ongoing issue at the Service Address, which made it

uninhabitable. The Complainant did not present any evidence to show a change in her billing or an increase in her bills.

The burden of proof for “high bill” complaints has been explained in *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980), and its progeny. In *Waldron*, the Commission adopted the Michigan Public Service Commission’s (PSC’s) policy announced in *Hallifax v. O & A Electric Co-Op*, Case No. U-5825 (May 1979), which stated that, while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Commission stated that it will also consider the following factors: the billing history of the Complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100.

Consistent with the Commission's holding in *Charisse Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010), the *Waldron* Rule allows a Complainant to establish a *prima facie* case in a “high bill” complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed or by providing other relevant evidence showing that the disputed bill is unreasonably high. In evaluating a “high bill” complaint, the Commission may consider such evidence as “the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), and any other relevant facts or circumstances that come to light during the proceeding.” *Id.* at 6 (emphasis added). See *Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011) (holding that limiting the *Waldron* Rule to the three factors is too limiting).

On June 6, 2019, Jennifer Ortiz, a high bill field technician, visited the Service Address on a high bill investigation. Tr. 57; PECO Exh. 7. Ms. Ortiz found the following appliances at the Service Address: refrigerator, microwave, toaster oven, washing machine, two window air conditioning units, ceiling fans, fan, electric circulator on the furnace, lighting for six to eight rooms, two televisions, cable box and home entertainment system. Tr. 57-58; PECO

Exh. 7. Ms. Ortiz dropped the load at the Service Address and found the meter to be functioning properly. Tr. 58; PECO Exh. 7. Ms. Ortiz also performed a passing load test with the microwave and found that the meter clocked 976.27 watts out of 1,000 watts. Tr. 58; PECO Exh. 7. Ms. Ortiz performed a cost estimate and found potential summer usage of 1,990 kW per month and 1,132 kW per month for potential winter usage. Tr. 70; PECO Exh. 7. Ms. Ortiz testified that the usage at the Service Address was in line with the potential usage. Tr. 59; PECO Exh. 1. Ms. Ortiz did not see any issues with the Service Address during her visit. Tr. 61.

The Complainant did not present any evidence that her bills are too high, other than her own testimony. “Mere bald assertions ... do not constitute evidence.” *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power Supply Ass’n of Pa. v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000); *see also*, *Steffy’s Pattern Shop v. Frontier Communications of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000). During Ms. Ortiz’s high bill investigation on June 6, 2019, she found the meter to be working properly after conducting a drop load test and passing load test. Ms. Ortiz also found the potential usage to be in line with actual usage after performing a cost estimate and she did not note any issues at the Service Address. Further, PECO would not have been responsible for the condition of the Service Address, as that would have been something to be addressed between the Complainant and her landlord. Based on the above, there does not appear to be any issues with the Complainant’s bills and she has failed to meet her burden of proof in this regard.

#### Request for Payment Arrangement

The Complainant also requests a payment arrangement for her outstanding balance. 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, under the Public Utility Code, customer assistance program rates are not subject to payment arrangements negotiated or approved by the Commission. 66 Pa.C.S. § 1405(c). In this matter, the Complainant's outstanding balance from 6035 Agusta Street address is comprised of \$3,053.83 in CAP arrears, which are not subject to Commission-issued payment arrangements.

However, the remaining \$1,502.96 of the outstanding balance is not CAP arrears and the Complainant may be eligible for a payment arrangement on that amount.

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-20112273271 (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. However, she has a poor payment history. The Complainant made four valid payments to the account for 6035 Agusta Street between 2015 and 2019. Tr. 74; PECO

Exh. 1. The Complainant has had two Company-issued payment arrangements, which have defaulted. Tr. 74; PECO Exh. 1 and 3. The Complainant has not made a good faith effort to make regular payments on her account. In view of the above, I find that the establishment of a payment arrangement is not appropriate in this case. As such, the Complainant's request for a Commission-issued payment arrangement is denied.

### 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. "Mere bald assertions ... do not constitute evidence." *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power Supply Ass'n of Pa. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000); *see also*, *Steffy's Pattern Shop v. Frontier Communications of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000).

5. In evaluating a "high bill" complaint, the Commission may consider such evidence as the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), and any other relevant facts or circumstances that come to light during the proceeding. *Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011).

6. The Complainant has not met her burden of demonstrating that her bills were incorrect.

7. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, 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 for CAP arrears. 66 Pa.C.S. § 1405(c).

9. 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-20112273271 (Opinion and Order entered Sept. 12, 2013), *Dorsey v. Philadelphia Gas Works*, Docket No. F-2012-2313679 (Opinion and Order entered Nov. 22, 2013).

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

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Shanice Harper against PECO Energy Company, at Docket No. C-2019-3011627, is denied and dismissed.

2. That the docket at Docket No. C-2019-3011627 be closed.

Dated: April 20, 2020

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/s/  
Marta Guhl  
Administrative Law Judge