

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tania White	:	
	:	
v.	:	C-2019-3011857
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

The Complainant did not establish that PECO Energy Company incorrectly billed her or that she is eligible for a Commission-issued payment arrangement. Therefore, the Complaint will be dismissed.

HISTORY OF THE PROCEEDING

On July 29, 2019, Tania White (Complainant) filed a Formal Complaint against PECO Energy Company (Respondent, PECO or Company). In her Complaint, she avers that PECO is threatening to shut off her service for unpaid charges incurred on Farragut Street (service address) after January 16, 2015, for which she is not responsible. She would also like a payment arrangement and all charges for service on Farragut Street after January 15, 2015 removed from her bill.

PECO filed an Answer on August 16, 2019. PECO denied all material allegations of fact in the Complaint. The Company also averred that the Complainant established electric

service at the service address effective May 15, 2013, and the service was discontinued effective May 16, 2015 after a new customer applied for service. The Complainant's balance from the service address was transferred to Complainant's PECO account at another address on August 5, 2016.

A hearing notice dated August 20, 2019 set an in-person hearing for October 4, 2019. A pre-hearing order setting forth various procedural matters applicable to this hearing was issued on August 21, 2019.

On September 27, 2019, PECO requested a continuance and by notice dated October 9, 2019, a telephonic hearing was scheduled for November 21, 2019.

The hearing convened by telephone as scheduled. PECO was represented by Angela Lorenz, Esquire. The Complainant did not call into the hearing. The undersigned called the Complainant, who stated that, due to medical reasons, she could not participate in the hearing. The hearing was rescheduled to a telephonic hearing on January 10, 2020.

The January 10, 2020 telephonic hearing convened as scheduled. The Complainant represented herself and presented no witnesses or exhibits.

PECO was represented by Angela Lorenz, Esquire, who presented one witness, Dana McCollum, a PECO Regulatory Assessor and eight exhibits. The exhibits are:

- | | |
|----------------|--|
| PECO Exhibit 1 | Complainant Account Activity 40 th Street |
| PECO Exhibit 2 | Complainant Account Activity Farragut Street |
| PECO Exhibit 3 | Utility Report |
| PECO Exhibit 4 | Collection History |
| PECO Exhibit 5 | Payment Agreement History |
| PECO Exhibit 6 | Customer Assistance Program (CAP) History |
| PECO Exhibit 7 | Bureau of Consumer Services (BCS) Case Report |
| PECO Exhibit 8 | BCS Decision |

During the hearing, the Complainant stated that she had sent PECO copies of documentation showing that she was forced out of the service address prior to her end-billing date. She was allowed until ten days after the hearing to submit a copy of that documentation to the undersigned. (Tr. 38-39). No documentation was sent by the Complainant.

All PECO exhibits will be admitted in the Ordering paragraphs below. The record in this matter closed on January 27, 2020, upon receipt of the 40-page transcript.

FINDINGS OF FACT

1. The Complainant is Tania White.
2. The Respondent is PECO Energy Company.
3. The Complainant is currently a PECO customer on 40th Street, Philadelphia, Pennsylvania (current address). (Tr. 4,6).
4. The Complainant was previously a PECO customer at 216 Farragut Street, Philadelphia, Pennsylvania (service address). (Tr. 4, 6).
5. The Complainant established PECO service at the service address effective May 15, 2013. (PECO Exhibit 6).
6. On May 16, 2015, PECO discontinued service for the Complainant at the service address when a new customer applied for PECO service at the service address. (PECO Exhibit 2).
7. The Complainant established PECO service at her current address in August of 2016. (PECO Exhibit 1).

8. When the Complainant began PECO service at her current address, she had an unpaid PECO balance of \$1,062.67 from the service address. (Tr. 22, PECO Exhibit 1).

9. PECO transferred the Complainant's unpaid balance from the service address to her current address PECO account. (PECO Exhibits 1 & 2).

10. The Complainant was not billed for any charges from the service address after May of 2015.

11. At the time of the hearing, the Complainant's account balance was \$2,712.45. (Tr. 22).

12. The Complainant received Customer Assistance Program (CAP) rates at the service address and is receiving CAP rates at the current address. (PECO Exhibit 4; Tr. 26-27).

13. Complainant's balance in its entirety has been accumulated under the CAP program.

DISCUSSION

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant in violation of the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S.A. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal.

If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95 (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992).

In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

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).

BALANCE TRANSFER AND ACCOUNT BALANCE

The Complainant was the PECO customer of record at the service address from May of 2013 until May 16, 2015. On August 5, 2016, the Complainant established service at her current address. Also on August 5, 2016, the Complainant's balance from the service address, \$1,062.67, was transferred to the account for her current address. (PECO Exhibit 2; Tr. 22).

The Complainant filed this Complaint and asserted during the hearing that the transferred amount is incorrect because PECO charged her for services at the service address when she did not live there. Although in the Complaint Ms. White states that she was forced to leave the service address in 2015, she testified that she was forced to leave the service address in January of 2016, referencing a document in her possession, and believes that PECO improperly charged her for services from January of 2016 until May of 2016. (Tr. 7-8, 11). The

record supports a finding that the Complainant is mistaken, and that PECO properly transferred the correct balance from the service address to the current address.

PECO did not bill the Complainant for services after May of 2015, when a new customer requested service at the service address. (PECO Exhibits 1 & 2, Tr. 25). Therefore, PECO did not include in the Complainant's bills any charges for the service address that accrued after January of 2016 because she was not the customer of record after May of 2015.

Even if the Complainant is mistaken in her testimony that she was forced out of the service address in 2016 but was in fact forced out in January of 2015, PECO correctly transferred the charges accrued through May 2015 to the Complainant's current address account.

The law provides as follows:

§ 56.35. Payment of outstanding balance.

(a) A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly.

52 Pa. Code § 56.35(a). Additionally, a customer is required to give notice to the utility when moving to another address or be responsible for subsequent charges. Specifically, Commission regulations require that:

§ 56.16. Transfer of accounts.

(a) A customer who is about to vacate premises supplied with public utility service or who wishes to have service discontinued shall give at least 7 days notice to the public utility and a noncustomer occupant, specifying the date on which it is desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered. . . .

52 Pa. Code § 56.16(a).

The Complainant had an outstanding balance of \$1,062.67 when the new customer applied for service in May of 2015. (Tr. 21-22). This outstanding balance was transferred to the Complainant's new account in accordance with 52 Pa. Code § 56.35. (PECO Exhibits 1 and 2).

Additionally, the Complainant did not notify PECO that she wanted the service terminated or that she was forced out of the service address on any date. There is no record of the Complainant contacting PECO to disconnect service and, when asked at the hearing, the Complainant stated that she was not sure. (Tr. 12). Although the Complainant had the misfortune of being required to leave the service address, the regulations at this time make no exception for a customer's duty to contact the utility to disconnect service at least seven days in advance of their departure or be responsible for services rendered after that date. Therefore, she was responsible for the PECO service rendered thereafter until the new customer enrolled for service. 52 Pa. Code § 56.16. The Complainant has not proven any violations by PECO here.

PAYMENT ARRANGEMENT

The Complainant is seeking a payment arrangement. Payment arrangements issued by the Commission are strictly limited by The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.* (the Act or Chapter 14). Customer assistance program (CAP) rates are not subject to payment arrangements negotiated or approved by the Commission. 66 Pa.C.S. § 1405(c). In other words, the Commission cannot issue payment arrangements for outstanding balances accumulated under a utility CAP program.

Here, the Complainant has an outstanding balance of \$2,772.45, all of which accrued while she participated in PECO's CAP. (Tr. 27). Therefore, the Complainant is not eligible for a Commission-issued payment arrangement in accordance with 66 Pa.C.S. § 1405(c).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The Complainant has the burden of proof. 66 Pa.C.S. § 332(a).
3. A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly. 52 Pa. Code § 56.35(a).
4. PECO correctly transferred outstanding charges from the Complainant's previous service address to the Complainant's current service address account.
5. A customer who does not advise a utility to discontinue services is responsible for services rendered. 52 Pa. Code § 56.16(a).
6. The Commission cannot issue payment arrangements for outstanding balances accumulated under a CAP. 66 Pa.C.S. § 1405(c).

ORDER

THEREFORE,

IT IS ORDERED:

1. That PECO Exhibits 1-8 are admitted as marked.

