

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Hafiza Edwards

v.

PECO Energy Company

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F-2020-3021836

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s Complaint because she failed to sustain her burden of demonstrating that PECO is responsible for her high bills, that she should receive a Commission-issued payment arrangement, that PECO improperly issued her a service termination notice, or that PECO’s termination notice did not adhere to the regulations regarding the contents of termination notices at 52 Pa.Code § 56.91.

HISTORY OF THE PROCEEDING

On August 10, 2020, Hafiza Edwards (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the box indicating “[t]he utility is threatening to shut off my service or has already shut off my service,” under which the Complainant wrote in that “[e]very winter my bills are severely high.” The Complainant also placed a checkmark in the box marked “[o]ther,” and wrote in that her 2016 lease

provided she was supposed to have gas heating, yet when she moved in, she discovered electric space heaters in every room, which makes her bills unaffordable. As relief, the Complainant indicated that she wants to complain about her landlord changing the heating system without her knowledge, and that she would like to make payments of \$50.00 per month towards her bills, rather than be required to pay her current bills plus a back bill. The Complainant indicated that she never agreed to a payment arrangement because the arrangement was unaffordable.

On September 28, 2020, the Respondent filed an Answer denying all material allegations of fact in the Complaint.

By Call-In Telephone Hearing Notice dated October 27, 2020, a call-in telephonic hearing was scheduled for December 3, 2020 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on October 27, 2020. The Prehearing Order directed the parties to comply with various procedural requirements and explained that the complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on December 3, 2020. The Complainant appeared *pro se* and testified. The Respondent also appeared and was represented by Khadijah Scott, Esquire, who presented the testimony of Michael Begley, a PECO Regulatory Assessor. The Respondent offered four exhibits, all of which were admitted into the record (PECO Exhs. 1-4).

The record consists of a 43-page transcript and four exhibits. The record closed on December 15, 2020 upon my receipt of the hearing transcript.

FINDINGS OF FACT

1. The Complainant in this case is Hafiza Edwards.

2. The Respondent in this case is PECO Energy Company.

3. The Complainant and her two children currently reside at 5735 N. Woodstock Street, Philadelphia, PA (service address). Tr. 16, 18.

High Bills

4. The Complainant's electric usage increases during the winter months. Tr. 37; PECO Exh. 1.

5. An increase in electric usage during winter months is an indication of electric heating. Tr. 37-38.

6. The Complainant uses eight space heaters to heat the service address during the winter months. Tr. 23-24, 26.

Company-Issued Payment Arrangements

7. Since May 2017, PECO has entered into five payment agreements with the Complainant. Tr. 33; PECO Exh. 2.

8. The Complainant defaulted on the first four payment agreements with PECO. PECO Exh. 2.

9. On July 17, 2020, PECO entered into the fifth payment agreement with the Complainant. Tr. 34; PECO Exh. 2.

10. PECO set the Complainant up on this fifth payment agreement as a result of a crisis grant posting to her account. Tr. 34.

11. When a customer receives a crisis grant and has a past due balance, PECO sets the balance up on a payment agreement, so the account is taken out of collection. Tr. 34.

12. The July 17, 2020 Company-issued payment agreement is still active. Tr. 33-34; PECO Exh. 2.

Commission-Issued Payment Arrangement

13. The Complainant participates in PECO's Customer Assistance Program (CAP). Tr. 21.

14. The Complainant has been enrolled in PECO's Customer Assistance Program (CAP) since June 24, 2005. Tr. 25-26, 35; PECO Exh. 3..

15. The Complainant's balance at the time of the hearing totaled \$747.70. Tr. 32; PECO Exh. 1.

16. The Complainant's entire outstanding balance accumulated while she participated in PECO's CAP. Tr. 22, 35-36.

Termination of Service

17. On an unspecified date in February 2020, PECO issued the Complainant a termination notice for a past due balance. Tr. 17.

18. The Complainant did not read the contents of the February 2020 termination notice. Tr. 18.

19. PECO has never terminated the Complainant's service. Tr. 17.

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, the 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 Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 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 Transp. 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 & W. Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Cntr.*, 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).

High Bills

The Complainant indicated during the hearing that her bills during the winter are very high. However, the Complainant acknowledged that her bills are high during the winter period because her landlord's actions—namely, that when she signed the lease the service address was heated by oil and radiators but when she moved in, the landlord had removed the radiators and placed several space heaters in the service address to use for heat. Tr. 22-24. The Complainant further acknowledged that PECO is not responsible for her bills being high. Tr. 24. Since the Complainant acknowledged that PECO is not responsible for her high bills, her Complaint must be denied as it relates to the issue of high bills.¹

Payment Arrangement

The Complainant seeks a Commission-issued payment arrangement, stating that she would like to make payments of \$50.00 per month towards her bills. 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. In particular, 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).

In the present case, the record reflects that the Complainant's entire balance accrued while she participated in PECO's CAP program. Tr. 22, 35-36. Since the Complainant's entire balance accrued while she participated in PECO's CAP program, the Commission cannot authorize

¹ The Commission does not have jurisdiction over landlord/tenant contractual disputes. The Complainant would have to take any contractual dispute she is having with her landlord to a Magisterial District Court or Court of Common Pleas.

a payment arrangement on her behalf. Accordingly, the Complainant is encouraged to keep the terms of her currently active company-issued payment arrangement to extinguish her outstanding balance.

Termination Notice

The Complainant also indicated that PECO issued her a termination notice in February 2020. Tr. 17. The Complainant did not present a copy of this termination notice for my consideration and testified that after she determined it was a shut off notice for non-payment, she did not read it any further. Tr. 18. The Complainant further testified that PECO never terminated her service. Tr. 17. The Complainant did not offer any additional testimony regarding PECO's termination notice. Based on the limited testimony provided by the Complainant, the Complainant did not meet her burden of demonstrating that PECO improperly issued her a termination notice, or that the contents of the notice issued failed to meet the notice requirements set out in 52 Pa.Code § 56.91.

Accordingly, the Complainant's Complaint is denied in its entirety.

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 Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

4. The Complainant failed to sustain her burden of demonstrating that PECO is responsible for her high bills.

5. Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the Commission. 66 Pa.C.S. § 1405(c).

6. The Complainant failed to sustain her burden of demonstrating that she is eligible for a Commission-issued payment arrangement.

7. The Complainant failed to sustain her burden of establishing that PECO improperly issued her service termination notice and also failed to demonstrate that PECO's termination notice did not adhere to the regulations regarding the contents of termination notices at 52 Pa.Code § 56.91.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Hafiza Edwards against PECO Energy Company at Docket No. F-2020-3021836 is denied; and

2. That the record at F-2020-3021836 be marked closed.

Date: March 5, 2021

/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge