

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Arvis Beard	:	
	:	
v.	:	C-2021-3029696
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Gail M. Chiodo  
Administrative Law Judge

**INTRODUCTION**

This decision sustains the complaint of an electric service customer because the customer has met her burden of proof that she is eligible for her first Commission payment arrangement under Chapter 14 of the Public Utility Code.

**HISTORY OF THE PROCEEDING**

On November 19, 2021, Arvis Beard (“Complainant”) filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission”) against PECO Energy Company (“PECO” or “Company”) alleging that the Company is threatening to shut off her electric service. As relief, Ms. Beard requests an affordable Commission payment arrangement.

On December 10, 2021, PECO timely filed an answer and on December 13, 2021, refiled its answer, noting that the previous answer contained an error.<sup>1</sup> In its answer, PECO

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<sup>1</sup> PECO’s original answer had an exhibit attached to it that did not pertain to this case.

alleged that Complainant is not eligible for a Commission payment arrangement since her past due balance of \$3,243.76 includes customer assistance program (CAP) arrears of \$488.90. The Company also averred that Complainant was removed from CAP in 2017 because Complainant did not reverify her income. The Company requested that the complaint be dismissed.

On December 16, 2021, a Call-In Telephone Hearing Notice was issued scheduling a hearing on January 27, 2022 before Special Agent (SA) Alphonso Arnold, III as the presiding officer. The hearing convened as scheduled at which time Angela M. Lorenz, Esquire, appeared on behalf of PECO, but Complainant did not appear. The hearing proceeded in Complainant's absence. No testimony was taken and no exhibits were introduced, following which SA Arnold closed the record. Tr. 6. However, later that same day, Complainant called the Office of Administrative Law Judge (OALJ) and told a staff member that she was confused about the paperwork she received and did not intentionally miss the scheduled hearing. Subsequently, through an exchange of emails with attorney Lorenz concerning Complainant's call, counsel advised SA Arnold that PECO had no objection to scheduling a further hearing.

On February 10, 2022, a Further Call-In Telephone Hearing Notice was issued scheduling a further call-in hearing on March 31, 2022 and assigning me as the presiding officer in place of SA Arnold.<sup>2</sup> In anticipation of the hearing, a prehearing Order was served this same day setting forth various procedural rules that would govern the hearing.

On March 31, 2022, the hearing convened as scheduled. Ms. Beard appeared *pro se* and testified in support of her complaint. She did not offer any exhibits. Attorney Lorenz appeared on behalf of PECO and presented the testimony of one witness, Renee Tarpley, a PECO senior regulatory assessor. Ms. Tarpley sponsored the following three exhibits, all of which were admitted into the record:

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<sup>2</sup> Mr. Arnold no longer serves as a Special Agent in the OALJ.

- PECO Exhibit 1. Account Statement from 10/31/2019 to 3/8/2022 . (3 pages) <sup>3</sup>
- PECO Exhibit 2. Payment Agreement History . . . . . (1 page)
- PECO Exhibit 3. BCS Decision Case No. 003803256. . . . . (1 page)

The record in this case consists of the transcript of the January 27, 2022 hearing (pp. 1-7) and the transcript of the further hearing held on March 31, 2022 (pp. 8-35). The record closed on April 14, 2022, the date the further hearing transcript was filed with the Commission. For the reasons discussed below, Ms. Beard’s complaint will be granted.

FINDINGS OF FACT

1. The Complainant is Arvis Beard.
2. The Respondent is PECO Energy Company.
3. The service address is 4209 Teleford Road, Philadelphia, Pennsylvania (service address). Tr. 19; PECO Exhibit 1.
4. PECO has been providing electric service to Complainant at the service address since October 2019. Tr. 19; PECO Exhibit 1.
5. PECO Exhibit 1 is Complainant’s account history for the service address from October 31, 2019 to March 8, 2022, and reflects the Company’s charges for services during each billing period, meter read information, payments made and the running balance on the account. Tr. 19; PECO Exhibit 1.
6. PECO Exhibit 1 shows that on October 31, 2019, PECO transferred an outstanding balance of \$537.90 to Complainant’s account that Complainant accumulated at a prior location at which PECO had provided electric service to Complainant. Tr. 19; PECO Exhibit 1.

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<sup>3</sup> The pages of this three-page exhibit are numbered “page 1 of 5”, “page 2 of 5”, and “page 3 of 5”. Ms. Tarpley explained that there were no pages 4 and 5 since they were blank. Tr. 26-27.

7. Complainant was enrolled in PECO's customer assistance program (CAP) at the prior location on April 8, 1999. Tr. 25-26.

8. Complainant was removed from CAP on August 30, 2017 because Complainant did not reverify her income, as required by PECO to remain on CAP. Tr. 26.

9. From October 2019 to March 2022, six payments, including a Low Income Home Energy Assistance Program (LIHEAP) grant, were credited to Complainant's account on the following dates and amounts:

- (i) 3/5/2021 for \$40;
- (i) 4/16/2021 for \$40;
- (ii) 5/4/2021 for \$50;
- (iii) 6/7/2021 for \$50;
- (iv) 12/10/2021 for \$500 (LIHEAP); and
- (v) 3/4/2022 for \$52

PECO Exhibit 1.

10. On February 15, 2021, PECO and Complainant entered into a payment agreement on a balance of \$1,915.70, which called for a monthly installment of \$79.82, plus current charges; Complainant defaulted on this payment agreement. Tr. 21; PECO Exhibit 2.

11. On August 19, 2021, PECO and Complainant entered into a second payment agreement on a balance of \$2,605.96, which called for a monthly installment of \$108.58, plus current charges; Complainant defaulted on this payment agreement. Tr. 21; PECO Exhibit 2.

12. PECO will reinstate the August 19, 2021 payment agreement if Complainant makes a significant payment upfront of approximately \$850. Tr. 22.

13. PECO has not received any income verification from Complainant since Complainant opened an account at the service address. Tr. 22.

14. PECO's Universal Services Program representative for low-income customers has been trying to work with Ms. Beard to get her re-enrolled in CAP, including the CAP Fixed Credit Option Program. Tr. 22.

15. PECO always had one employee, Ms. Jru, contacting Complainant to help her get re-enrolled in CAP. Tr. 26.

16. Ms. Beard's gross monthly household income is \$850, which she receives from her Supplemental Social Security Income (SSI) benefits. Tr. 17.

17. Ms. Beard's household size consists of herself. Tr. 17.

18. Ms. Beard stated she has been applying for CAP, or any low-income PECO program available for the last three years but PECO keeps telling her that her application is incomplete for one reason or another. Tr. 15.

19. Complainant's outstanding balance as of March 8, 2022 was \$3,209.54. Tr. 19; PECO Exhibit 1.

20. At the time of the hearing, none of Complainant's outstanding balance of \$3,209.54 consists of CAP arrears. Tr. 19-20, 25.

### DISCUSSION

As the proponent of a rule or order, a complainant bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish one's case by a preponderance of the evidence which requires presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosier v. Margulies*, 70 A.2d 854 (Pa. 1950). To satisfy the burden of proof against a utility, a complainant must show that the utility is responsible or accountable for the problem described in the complaint, *Feinstein v. Phila.*

*Suburban Water Co.*, 50 Pa. PUC 300 (1976), and that the utility has violated either its duty under the Code or the orders or regulations of the Commission. 66 Pa.C.S. § 701. Additionally, the Commission’s decision must be supported by substantial evidence. 2 Pa.C.S. § 704; *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Id.*

Ms. Beard, as the proponent of a rule or order, bears the burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

The Responsible Utility Customer Protection Act, as codified in Chapter 14 of the Code at 66 Pa.C.S. §§ 1401-1419 (Chapter 14), applies to complainants alleging inability to pay and requesting a Commission payment arrangement. Chapter 14 provides strict guidelines that the Commission must follow, including the length and number of payment arrangements it may issue, as well as which account balances cannot be subject to payment arrangements. 66 Pa.C.S. § 1405(b)-(d). Further, customers seeking a payment arrangement must also demonstrate some evidence of a good faith effort to pay their utility bills. *Hewitt v. PECO Energy Co.*, F-2011-2273271 (Opinion and Order entered Sept. 12, 2013) (*Hewitt*).

Regarding the number of payment arrangements the Commission may issue, Chapter 14 limits the Commission to grant only one payment arrangement with limited exceptions. 66 Pa.C.S. § 1405(d). In the instant case, all of the prior payment agreements were offered by the Company. There is no evidence that Ms. Beard ever received a prior Commission payment arrangement. Therefore, Complainant meets this eligibility criteria.

Next, regarding which account balances cannot be subject to payment arrangements, Section 1405(c) provides that “customer assistance program rates . . . shall not be the subject of payment arrangements negotiated or approved by the [C]ommission.” 66 Pa.C.S. § 1405(c). In the instant case, PECO’s witness testified that at the time of the hearing, none of Complainant’s outstanding balance of \$3,209.54 consists of CAP arrears. Tr. 19-20, 25. Therefore, Complainant meets this eligibility criteria.

Next, regarding the length of payment arrangements, pursuant to Chapter 14, the length of a payment arrangement that the Commission may grant is determined by the customer's household income in relation to where the customer falls on the Federal poverty level.

Specifically, Chapter 14 provides, in relevant part:

**(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.

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66 Pa.C.S. § 1405(b)(1).

Ms. Beard testified about her household size and income. Ms. Beard resides by herself and her gross monthly household income is \$850, which she receives from her SSI benefits. Tr. 17. Pursuant to the Federal Poverty Level Guidelines (FPL), Complainant's gross monthly household income is below 150% of the Federal poverty level.<sup>4</sup> Therefore, I find that Ms. Beard is a level one customer and as such, may be granted the maximum amount of time available under Chapter 14 to repay the arrearage, which is five years. 66 Pa.C.S. § 1405(b)(1).

Next, Ms. Beard's payment history must be considered because 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 a good faith effort to pay their utility bills or who have experienced a significant change of circumstances beyond their control. *Hewitt*.

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<sup>4</sup> See, *Federal Register*, Vol. 87, No. 14 at 3316 (Jan. 21, 2022) (providing that a gross monthly household income of \$1,699 for a household of one is 150% of the Federal poverty level). This places Ms. Beard at 50% of the FPL. ( $\$850 / \$1699 = 50\%$ ). These guidelines are also available at <http://aspe.hhs.gov/poverty-guidelines>.

I recognize that Ms. Beard's payment history over the approximately last 28 months includes only five monthly payments between \$40 and \$52, and a \$500 credit from a LIHEAP grant. PECO Exhibit 1. I also recognize that Complainant defaulted on two Company payment agreements in 2021. PECO Exhibit 2. Nonetheless, considering the totality of the circumstances, I find that discretion is warranted to grant Ms. Beard her first Commission-issued payment arrangement.

First, discretion is warranted because as a level one customer, Complainant can be given the maximum amount of time available under Chapter 14 to repay the arrearage, which is five years, or sixty (60) months. When her outstanding balance of \$3,209.54 is amortized over 60 months, this calculates to a monthly installment of approximately \$53 per month.<sup>5</sup> This is significantly less than her prior Company payment agreements which called for monthly installments of \$79.82 and \$108.58 respectively. Second, as to going forward with her current charges, there was agreement that since Ms. Beard was most likely eligible for PECO's CAP rates, it was in her best interests to complete PECO's re-verification of income process. Tr. 30-31. I find both PECO's testimony credible that efforts have been made on their part to assist Ms. Beard in completing the process, and Ms. Beard's testimony that she has been trying to do so. It is encouraging that Ms. Beard was able to apply for a LIHEAP grant and was awarded a \$500 grant which was credited to her account in December 2021. Further, discussions were held to clarify for Ms. Beard how to move forward with the re-verification process.<sup>6</sup>

Therefore, in light of all of the above, I find that discretion is warranted to grant Ms. Beard her first Commission payment arrangement. As a level one customer, Complainant can be given the maximum amount of time available under the Act to repay the arrearage, which is five years, or sixty (60) months. 66 Pa.C.S. § 1405(b)(1).

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<sup>5</sup> \$3,209.54 / 60 months = \$53.49.

<sup>6</sup> See, e.g., Tr. 23, 30-33.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.
2. As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a).
3. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).
4. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419, applies to this proceeding.
5. The Responsibility Utility Customer Protection Act permits the Commission to grant one payment arrangement and dictates its terms. 66 Pa.C.S. § 1405(a).
6. The Complainant has met her burden that she is eligible for a payment arrangement.
7. Complainant can be granted the maximum amount of time available under the Responsibility Utility Customer Protection Act, which is five years, to repay the arrearage. 66 Pa.C.S. § 1405(b)(1).

## ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Arvis Beard against PECO Energy Company at Docket No. C-2021-3029696 is granted.

2. That Arvis Beard shall make monthly payments consisting of her current bill plus one-sixtieth (1/60<sup>th</sup>) of the balance accrued on her account, beginning with the first billing date following the entry of a final Commission Order in this case.

2. That as long as Arvis Beard 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.

3. That, if Arvis Beard 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 statutes and regulations.

4. That the docket at Docket No. C-2021-3029696 be marked closed.

Date: June 15, 2022

\_\_\_\_\_/s/  
Gail M. Chiodo  
Administrative Law Judge