

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gioavonda and Rasheed Gilliard ¹	:	
	:	
v.	:	C-2022-3032753
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses with prejudice the Formal Complaint of electric service customers seeking a payment arrangement because the customers have defaulted on one Commission-issued payment arrangement and two Company-issued payment arrangements, and the customers have not made a good faith effort to pay their utility bill. Also, this Initial Decision bars the Complainants from filing further informal or formal complaints related to the Complainants' current outstanding balance, which currently exceeds \$9,000.

HISTORY OF THE PROCEEDING

On June 1, 2022, Gioavonda and Rasheed Gilliard (Complainants) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Company, or Respondent) in which they stated that PECO is

¹ Pursuant to Ordering paragraph No. 1, Rasheed Gilliard was added to the caption since his name also appears on the PECO account at issue and he appeared at the hearing on behalf of himself and his wife. Tr. 5.

threatening to shut off their utility services, that there are incorrect charges on their electric bill and that they are requesting a payment agreement.

On June 22, 2022, PECO filed an Answer (Answer) which admitted in part and denied in part various material allegations of the Complaint. PECO admitted that the Complainants established electrical service with PECO at 6720 Dorel St., Philadelphia, PA 19142 (Service Address), in 2018. PECO alleged that the Complainants have had three prior payment arrangements, a Company-issued payment agreement in February 2019, a Commission-issued payment agreement in November 2019, and a second Company-issued payment agreement in May 2020, all of which, the Complainants defaulted on the terms. PECO also alleged that the Complainants have filed thirteen prior Informal Complaints against PECO Energy in an effort to delay termination of services. PECO further alleged that the Complainants last Ten-Day Termination Notice was issued on May 27, 2022, for the balance of \$8,839.87 and the Complainants have not made a payment on their account since August 25, 2020. Finally, PECO stated there are no incorrect charges on the Complainants' account. PECO requested the Complaint be dismissed.

By Hearing Notice dated June 24, 2022, an Initial Call-In Telephonic Hearing was scheduled for August 30, 2022, and the matter was assigned to me.

A Prehearing Order was issued on August 16, 2022, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On August 30, 2022, the hearing convened as scheduled. Rasheed Gilliard appeared *pro se*, testified on behalf of the Complainants, and offered no exhibits for the record. Khadijah Scott, Esquire, appeared on behalf of PECO and presented the testimony of one witness, Anna Mae Migliaccio, a Regulatory Assessor at PECO. Ms. Migliaccio sponsored the following four (4) exhibits, which were admitted into the record without objection:

PECO Exhibit 1 – Account Activity Statement
PECO Exhibit 2 – CAP History
PECO Exhibit 3 – Payment Agreement History
PECO Exhibit 4 – BCS Decision Report

The record closed on September 23, 2022, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainants are Gioavonda and Rasheed Gilliard, who reside at 6720 Dorel St., Philadelphia, Pennsylvania 19142. Tr. 4-5.
2. The Respondent is PECO Energy Company, a jurisdictional public utility, which provides electric service to the Complainants at the Service Address.
3. On February 20, 2019, the Complainants received a Company-issued payment arrangement, upon which they defaulted on April 15, 2019. Tr. 20-21; PECO Ex. 3.
4. On October 16, 2019, the Complainants received a Commission-issued payment arrangement (BCS #3740162), upon which they defaulted on February 12, 2020. Tr. 20-21; PECO Ex. 3.
5. On May 4, 2020, the Complainants received a second Company-issued payment arrangement, upon which they defaulted on January 11, 2021. Tr. 20-21; PECO Ex. 3.
6. The Complainants have filed 13 informal complaints against PECO. Tr. 21.
7. Since August 25, 2020, the Complainants have made only two payments on their account. Tr. 18; PECO Ex. 1.

8. On August 25, 2020, the Complainants made a payment for \$208.42, and on August 25, 2022, they made a payment of \$672.00. Tr. 18; PECO Ex. 1.

9. The Complainants' monthly income is approximately \$1,400.00 to \$1,500.00 per month. Tr. 7.

10. The Complainants' total outstanding balance, as of the date of the hearing, was \$9,175.87. Tr. 18; PECO Ex. 1.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 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 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). A complainant can meet that burden if he presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Selling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. 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. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Cntr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

In the instant matter, the Complainants request a second Commission-issued payment arrangement. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401–1419, applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued. 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, Section 1405(d) of the Public Utility Code regarding payment arrangements reads in pertinent part:

(d) Number of payment arrangements.

Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or

decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

66 Pa.C.S. § 1405(d). Furthermore, a payment arrangement, which prevents service termination if the complainant complies with it, is a privilege, not a right. *Mandell v. Duquesne Light Co.*, Docket No. C-20030234 (Opinion and Order entered Mar. 17, 2004). The Commission is not required to award a payment arrangement, and may decline to do so, if the complainant exhibits a poor payment history, inability to pay, and/or likeliness to default. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013); *see also*, *Getz v. Metro. Edison Co.*, Docket No. C-20142459964 (Final Order entered May 28, 2015). Therefore, even though 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. *Id.*; *Crawford v. Nat'l Fuel Gas Distrib. Corp.*, Docket No. C-20066348 (Opinion and Order entered Dec. 6, 2007).

Here, the record does not support awarding the Complainants a payment arrangement. The Complainants have already received a Commission-issued payment arrangement upon which they defaulted on February 12, 2020. The Complainants did not present any evidence that they experienced a change in income since they received the Commission-issued payment arrangement. Thus, the Commission is barred from issuing another payment arrangement pursuant to 66 Pa.C.S. § 1405(d).

Next, I will address the Complainants' apparent abuse and/or manipulation of the Commission's administrative process in order to avoid termination or payment of their utility bills.

The Commission has consistently held that a party can be precluded from filing additional formal or informal complaints if there is an abuse of the administrative process. *See*, *Sanford v. Phila. Gas Works*, Docket No. C-2019-3009831 (Final Order entered Aug. 10, 2020); *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Opinion and Order entered Apr. 23, 2014); *see also*, *Argento's Pizza v. Phila. Gas Works*, Docket No. C-2009-2138055 (Final Order entered Oct. 1, 2010) (*Argento's Pizza*). In *Seidenstricker v. Metropolitan Edison Co.*, Docket

No. F-2008-2019388 (Final Order entered July 28, 2009), the Commission precluded the filing of further complaints pertaining to the same account until the arrearage was paid in full after finding that Complainant had abused the system by using the Commission's procedures to prevent termination of service while receiving utility service and accruing a large outstanding balance. Similarly, in *Manu v. The Bell Telephone Company of Pennsylvania*, Docket No. F-09029141 (Final Order entered May 9, 1994), the Commission found an abuse of process had occurred and it precluded Complainants from filing further complaints, formal or informal, until their arrearages were paid in full. The factors to be considered as put forth in the *Argento's Pizza* case include the following: 1) the number and nature of complaints; 2) the number of defaulted payments; 3) the use of tactics to avoid payments and service terminations that became due; and 4) the history of payments.

Here, as was noted above, the Complainants have already defaulted on two PECO-issued payment arrangements and one Commission-issued payment arrangement. Further, since August 25, 2020, the Complainants have made only two payments on their account, which now has a total outstanding balance of \$9,175.87. Instead of payments, the Complainants have filed 13 informal complaints against PECO.

I conclude, based on the undisputed record evidence, that the Complainants are abusing the Commission's administrative due process and procedures to avoid payment and to delay the termination of their service due to non-payment. The Complainants have shown a pattern of filing numerous complaints with the Commission in order to avoid service termination, defaulting on both company-issued and Commission-issued payment arrangements, and have a very poor payment history. As a result, PECO has been unable to obtain payment for its electric service due to applicable laws requiring it to provide a stay of termination while a dispute/complaint is pending before the Commission. 52 Pa. Code § 5.63(b).

By law, a public utility is entitled to receive payment for the service it provides, and the Complainants must pay the Respondent for the service they consume. *Scaccia v. W. Penn Power Co.*, 55 Pa.P.U.C. 637 (1982); *Kea v. Peoples Nat. Gas Co.*, 60 Pa.P.U.C. 215 (1985); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982). The Respondent has

the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303; *Neal v. Phila. Gas Works*, Docket No. Z-00871874, (Final Order entered Jan. 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa.P.U.C. 213 (1990). Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. *Bolt v. Duquesne Light Co.*, Docket No. Z-08721758 (Opinion and Order entered Apr. 8, 1988). The record in this case highlights a disturbing trend in the Complainants use of the Commission's informal and formal complaint procedures to avoid paying their electric bills while evading the company's termination procedures.

Due to the high amount of the Complainants' outstanding balance, and in order to prevent the unnecessary expenditure of any additional Commission resources, the Complainants will be prohibited from filing any further informal or formal complaints with the Commission until such time as the current outstanding balance on their PECO account is paid in full. Further, PECO is authorized to terminate the Complainants' electric service upon issuance of a final order by the Commission in this case.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over the parties to and subject matter of this case. 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 Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419, applies to this proceeding.

5. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).

6. The Commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision absent a change in income. 66 Pa.C.S. § 1405(d).

7. In cases where the Commission is authorized by law to establish a payment arrangement between a customer and a utility, the Commission will 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 v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013).

8. The Commission may decline to issue a payment arrangement because of a complainant's poor payment history and an inability to keep prior payment arrangements with the utility. *Dorsey v. Phila. Gas Works*, Docket No. F-2012-2313679 (Opinion and Order entered Nov. 22, 2013).

9. The Complainants have failed to carry their burden of proof that they are eligible for a second Commission-issued payment arrangement. 66 Pa.C.S. §§ 332(a), 1405.

10. The Commission may preclude a party from filing further informal or formal complaints when the party has abused the Commission's complaint procedures in order to avoid the termination of his or her service. *Sanford v. Phila. Gas Works*, Docket No. C-2019-3009831 (Final Order entered Aug. 10, 2020); *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Opinion and Order entered Apr. 23, 2014); *Argento's Pizza v. Phila. Gas Works*, Docket No. C-2009-2138055 (Final Order entered Oct. 1, 2010); *Seidenstricker v. Metro. Edison Co.*, Docket No. F-2008-2019388 (Final Order entered July 28, 2009); and *Manu v. Bell Tel. Co. of Pa.*, Docket No. F-09029141 (Final Order entered May 9, 1994).

11. The Complainants have abused the administrative due process by filing multiple similar complaints, incurring a substantial outstanding balance, and evidencing a poor payment history, in an attempt to avoid termination and payment for services. *Sanford v. Phila. Gas Works*, Docket No. C-2019-3009831 (Final Order entered August 10, 2020); *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Opinion and Order entered April 23, 2014); *Argento's Pizza v. Phila. Gas Works*, Docket No. C-2009-2138055 (Final Order entered October 1, 2010); *Seidenstricker v. Metro. Edison Co.*, Docket No. F-20082019388 (Final Order entered July 28, 2009); and *Manu v. Bell Tel. Co. of Pa.*, Docket No. F-09029141 (Final Order entered May 9, 1994).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Rasheed Gilliard shall be added to the caption as a named Complainant in the Complaint filed at Docket No. C-2022-3032753.
2. That the Complaint of Gioavonda and Rasheed Gilliard at *Gioavonda and Rasheed Gilliard v. PECO Energy Company*, Docket No. C-2022-3032753 is denied and dismissed with prejudice.
3. That Gioavonda Gilliard and/or Rasheed Gilliard be, and hereby are, precluded from filing further complaints with the Pennsylvania Public Utility Commission, whether of an informal or formal nature, regarding the arrearages on PECO Account No. 93609-89027 for electric service provided by PECO Energy Company, until such time as the entire outstanding account balance is paid in full, and that, further, the filing of any complaint pertaining to the arrearages which are the subject of this proceeding shall be dismissed without further proceedings.

4. That Commission staff (including but not limited to the Bureau of Consumer Services and the Secretary's Bureau) shall reject any formal or informal complaints that Gioavonda Gilliard and/or Rasheed Gilliard, or any person acting on their behalf, may attempt to file with the Commission, pertaining to PECO Account No. 93609-89027, until the entire outstanding account balance is paid in full.

5. That the filing of any other pleading in this case, concerning the same subject matter be, and hereby is, deemed not to stay implementation of this Order.

6. That PECO Energy Company shall file a notice with the Commission, with a copy to all Parties to this proceeding, at Docket Number C-2022-3032753, within seven days of the date that the Gilliard's outstanding account balance is paid in full.

7. That the failure of the Gilliards to pay all arrearages on their account (PECO Account No. 93609-89027), shall be, and hereby is, deemed to be grounds for termination of service upon issuance of a final order by the Commission in this case.

8. That a copy of this decision shall be served to the Bureau of Consumer Services and the Secretary's Bureau.

9. That Docket No. C-2022-3032753 be marked closed.

Date: December 7, 2022

/s/
F. Joseph Brady
Administrative Law Judge