

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thaddeus Picklo	:	
	:	
v.	:	C-2022-3032205
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

In this Initial Decision, the Complainant’s request for a payment arrangement is denied because he failed to carry his burden of proving that he is entitled to a second Commission-issued payment arrangement or a reinstatement or extension of the previous one.

HISTORY OF THE PROCEEDING

On April 22, 2022, Thaddeus Picklo (Complainant or Mr. Picklo) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Mr. Picklo alleged that the utility is threatening to shut off his electric and gas services and that he is unable to pay his utility bills to PECO. As relief, the Complainant requested an affordable payment arrangement.

On May 9, 2022, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

By Hearing Notice dated May 11, 2022, a hearing was scheduled for June 23, 2022, at 10:00 a.m. and the matter was assigned to me.

A Prehearing Order was issued on June 13, 2022, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

On June 17, 2022, Mr. Picklo submitted a written request for a continuance of the scheduled hearing, citing work-related obligations as reasons for the request. By email dated June 21, 2022, counsel for PECO indicated that the Respondent had no objection to Mr. Picklo's request. A Hearing Cancellation Notice dated June 21, 2022, informed the parties that the June 23, 2022, hearing was cancelled.

By Hearing Notice dated July 7, 2022, the initial call-in telephonic hearing was rescheduled for September 1, 2022, at 10:00 a.m.

The initial hearing convened as scheduled on September 1, 2022. The Complainant appeared *pro se* and testified in support of the Complaint. Mr. Picklo sponsored two exhibits, which were admitted into the record. Khadijah Scott, Esq. represented the Respondent, and presented the testimony of Lauren Evans, who is a regulatory assessor in charge of investigating formal and informal complaints filed with the Commission against PECO. The Respondent sponsored seven exhibits, which were admitted into the record.

The record in this matter closed upon receipt of the hearing transcript on September 23, 2022.

FINDINGS OF FACT

1. The Complainant is Thaddeus Picklo, who resides at 400 Howell Road, Exton, Pennsylvania 19341 (Service Address). Tr. 7.

2. The Respondent is PECO Energy Company.
3. Mr. Picklo receives gas and electric residential services from PECO at the Service Address. Tr. 32.
4. Mr. Picklo resides at the Service Address with his wife, his 15-year-old daughter, and his 27-year-old stepson. Tr. 14.
5. Between five and seven years ago, Mr. Picklo's stepson began suffering from a medical condition that required prolonged treatments and several hospital visits. Tr. 46.
6. Mr. Picklo is the sole income provider for his family of four. Tr. 14-15.
7. Mr. Picklo works full-time as a product manager for a European-based medical device company. Tr. 20.
8. Mr. Picklo's gross monthly pay is \$8,960.58.¹ Picklo Exhibit 1.
9. Mr. Picklo's current total household income of \$8,960.58 per month is between 350% and 400% of the Federal poverty level for a household size of four.² Picklo Exhibit 1.
10. On July 7, 2021, the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 003793609 established a payment arrangement on behalf of the Complainant. Tr. 36; PECO Exhibit 5.

¹ This amount does not include the \$743.63, Mr. Picklo receives each month in car allowance and expense reimbursements from his employer. Picklo Exhibit 1.

² See, Federal Register, Vol. 87, No. 14 at 3316 (Jan. 21, 2022). See also, <https://aspe.hhs.gov/sites/default/files/documents/4b515876c4674466423975826ac57583/Guidelines-2022.pdf>.

11. In BCS Case No. 003793609, BCS found Mr. Picklo to be a level 3 income customer. PECO Exhibit 5.

12. As a level 3 income customer, the BCS established a payment arrangement which required the Complainant to pay a special budget bill of \$748.00 per month consisting of his regular budget bill of \$406.00 per month, plus \$342.00 per month towards the arrearages, beginning with his August 2021 PECO bill due date. PECO Exhibit 5.

13. On September 29, 2021, Mr. Picklo defaulted on the Commission-issued payment arrangement. PECO Exhibit 2.

14. From May 6, 2020, to April 26, 2021, Mr. Picklo made nine partial payments to his PECO account for a total amount of \$1,550.00. PECO Exhibit 1.

15. From May 28, 2021, to August 28, 2021, Mr. Picklo made no payments to his account with PECO. PECO Exhibit 1.

16. From September 30, 2021, to August 22, 2022, Mr. Picklo made 11 payments to his account with PECO, for a total amount of \$590.07. Tr. 25; PECO Exhibit 1.

17. Six of the 11 payments made during the period September 30, 2021, and August 22, 2022, were in the amount of \$15.00 each. Tr. 25; PECO Exhibit 1.

18. The total amount paid in Mr. Picklo's account with PECO during the period May 2020 to August 22, 2022, was \$2,140.07. PECO Exhibit 1.

19. As of August 22, 2022, Mr. Picklo had an outstanding balance of \$13,722.01 in his account with PECO. Tr. 23-33.

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. *Se-Ling 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 Rev.*, 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).

By law, a public utility is entitled to receive payment for the service it provides. *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). Consequently, the Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303; *Neal v. Metro. Edison Co.*, Docket No. Z-00871874 (Final Order entered Jan. 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa.P.U.C. 213 (1990).

Additionally, all customers are obligated to pay for utility service. 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). A payment arrangement, which prevents service termination as long as 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).

In the instant matter, the Complainant requests 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, the Act provides limitations that the Commission must follow including the number of payment arrangements and circumstances that may result in the extension of an existing payment arrangement. In regard to the former limitation, section 1405(d) of the Responsible Utility Customer Protection Act 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). Here, the Complainant has already received a Commission-issued payment arrangement upon which he defaulted for non-payment. The Complainant has a poor payment history as evidenced by the number of his missed or partial payments and his accrued outstanding balance of \$13,722.01 with PECO. In addition, the Complainant did not present any evidence that he experienced a “change in income” since he received the Commission-issued payment arrangement on July 7, 2021. Section 1403 of the Public Utility Code defines “change in income” as a decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level. 66 Pa.C.S. § 1403. Mr. Picklo’s current gross household income is \$8,960.58 per month. This amount falls between 350% and 400% of the Federal poverty level for a household of four, and not only makes Mr. Picklo a level 4 income customer but is an obvious increase over the level 3 income reported to BCS in July of 2021. Picklo Exhibit 1; PECO Exhibit 2.

At the September 1, 2022, hearing, Mr. Picklo testified that his stepson experienced a life-threatening medical condition in the past, which resulted in large medical bills that depleted his family’s savings and created emotional and financial hardships. Tr. 24, 28, 44, 46-47. Mr. Picklo argued that his accrued outstanding balance with PECO resulted, at least in part, from the financial burden created by his son’s medical condition. *Id.* Section 1405(e) of the Responsible Utility Customer Protection Act reads:

(e) *Extension of payment arrangements.* — If the customer defaults on a payment arrangements established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

66 Pa.C.S. § 1405(e). In addition, a “significant change in circumstance” is defined as any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level: (1) the onset of a chronic or acute illness resulting in a significant loss in the customer’s household income; (2) catastrophic damage to the customer’s residence resulting in a significant net cost to the customer’s household; (3) loss of the customer’s residence; or (4) increase in the customer’s number of dependents in the household. 66 Pa.C.S. § 1403 (emphasis added). In the present case, Mr. Picklo’ last Commission-issued payment arrangement may not be reinstated or extended. Not only does his current household income exceed 300% of the Federal poverty level, but the onset of his stepson’s illness pre-dates the issuance of the last Commission-issued payment arrangement on July 7, 2021. According to Mr. Picklo, his stepson’s medical condition occurred “over a 5- to 7-year period involving multiple hospital visits.” Tr. 46. Additionally, the illness caused financial hardship and a depletion of savings for the Picklo household, but the record contains no evidence that it resulted “in a significant loss in the [Complainant’s] household income.” 66 Pa.C.S. § 1403. Therefore, pursuant to 66 Pa.C.S. §§ 1405(d)-(e), the Commission cannot establish a second Commission-issued payment arrangement on behalf of the Complainant, nor can it reinstate or extend Mr. Picklo’ last Commission-issued payment arrangement.

Based on the foregoing, I find that the Complainant has failed to carry his burden of proving that he is entitled to a second Commission-issued payment arrangement or a reinstatement or extension of the previous one.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419, applies to this proceeding.

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

5. 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. 66 Pa.C.S. § 1405(d).

6. “A change in income” is defined as a decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level. 66 Pa.C.S. § 1403.

7. If a customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the Commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown. 66 Pa.C.S. § 1405(e).

8. A “significant change in circumstance” is defined as any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level: (1) the onset of a chronic or acute illness resulting in a significant loss in the customer’s household income; (2) catastrophic damage to the customer’s residence resulting in a significant net cost to the customer’s household; (3) loss of the customer’s residence; or (4) increase in the customer’s number of dependents in the household. 66 Pa.C.S. § 1403.

9. The Complainant has failed to carry his burden of proving that he is entitled to a second Commission-issued payment arrangement. 66 Pa.C.S. §§ 332(a), 1405(d).

10. The Complainant has failed to carry his burden of proving that he is entitled to a reinstatement or extension of the previous Commission-issued payment arrangement. 66 Pa.C.S. §§ 332(a), 1405(e).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Thaddeus Picklo at Thaddeus Picklo v. PECO Energy Company, Docket No. C-2022-3032205 is denied.
2. That Docket No. C-2022-3032205 be marked closed.

Date: December 21, 2022

_____/s/_____
Eranda Vero
Administrative Law Judge