

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---------------------|---|----------------|
| Eunice Williams | : | |
| | : | |
| v. | : | C-2022-3033573 |
| | : | |
| PECO Energy Company | : | |

ERRATA NOTICE

This Errata Notice is to advise all parties of record that Administrative Law Judge Katrina L. Dunderdale’s Initial Decision dated January 30, 2023 and served on January 30, 2023 contains typographical errors. The utility is incorrectly identified as “Pennsylvania Electric Company” instead of “PECO Energy Company.” On Page 8, first paragraph, line 2 “Penn Power” should be “PECO Energy Company.”

Please find the corrected Initial Decision attached to this Errata.

The Initial Decision on the PA PUC website will be corrected as indicated above. This correction will not affect the exceptions dates established by the Secretary Letter dated January 30, 2023.

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INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the formal complaint of Eunice Williams, filed with the Pennsylvania Public Utility Commission against PECO Energy Company, for failure of Complainant to meet the burden of proof concerning allegations the electric distribution company improperly threatens to terminate electric service, has incorrect charges on her bills and has created a reliability, safety or quality problem with her utility service.

HISTORY OF THE PROCEEDING

On July 1, 2022, Eunice Williams (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company - Electric (PECO or Respondent) alleging PECO was threatening to terminate electric service, there were incorrect charges on her bill, and she was having a reliability, safety or quality problem with her utility service. Ms. Williams averred she was on a payment arrangement, but the company continually sends her termination notices.

On July 25, 2022, PECO filed its Answer, in which PECO generally denied the allegations but acknowledged it has provided electric service to Complainant since September 2011. PECO asserted there is an outstanding balance on the account, but Ms. Williams was not entitled to an additional payment arrangement. PECO contended Ms. Williams received a Commission-payment arrangement in March 2022, which Complainant did not appeal and on which Ms. Williams defaulted. PECO avers Ms. Williams is not entitled to receive another payment arrangement from the Commission.

By Call-In Telephone Hearing Notice dated August 12, 2022, the Office of Administrative Law Judge (OALJ) notified the parties an initial call-in telephonic hearing in this case was scheduled for September 27, 2022. On August 16, 2022, the presiding officer issued a Prehearing Order setting forth various procedural matters, including how parties may request a continuance.

On September 19, 2022, Complainant contacted the office of the presiding officer, via a written correspondence, and requested a continuance. PECO indicated it had no objection to the continuance request. Thereafter, by Corrected Telephonic Hearing Notice dated September 21, 2022, the Office of Administrative Law Judge scheduled an initial call-in telephonic hearing in this matter for October 25, 2022.

On October 25, 2022, the presiding officer convened the initial hearing as scheduled, at which Complainant appeared *pro se*, and Respondent appeared represented by Khadijah Scott, Esquire. Complainant testified on her own behalf. Attorney Scott presented the testimony of one witness and sponsored four exhibits, which were marked as PECO Exhibits 1¹

¹ PECO Exhibit 1 is an account summary consisting of 5 pages providing account information on the service account for the service address from the dates of December 10, 2015 to August 12, 2019. At the hearing, counsel for Respondent noted the error in the dates provided and asked to admit into evidence a revised account summary which would include activities on the account from 2019 to the date of the hearing. The presiding officer advised counsel to file a petition for a late-filed exhibit after the hearing, to provide Complainant with a knowing opportunity to either object or consent to its admission. After the initial hearing on October 25, 2022, counsel provided two documents via email to the presiding officer and requested admission as late-filed exhibits. Complainant was not copied on the email. Counsel was advised to file a petition for a late-filed exhibit. Counsel did not file a petition.

through 4 and admitted into evidence. Complainant and Respondent issued final statements on the hearing record in lieu of filing briefs.

Having received the transcript on November 16, 2022, and there being no need for additional proceedings or hearings, the presiding officer issued the Interim Order Closing the Record on November 18, 2022. The record consists of a 63-page transcript of the testimony from the October 25, 2022, hearing and four exhibits.

FINDINGS OF FACT

1. Complainant, Eunice Williams, resides in an apartment located at 6515 North Broad Street, Philadelphia, Pennsylvania (service address), where she has lived for ten years. (Tr. 8).

2. Respondent, PECO Energy Company, provides residential electric service at the service address and has been Complainant's electric distribution company for ten years. (Tr. 8, 34; PECO Exhibits 1 and 2).

3. On March 18, 2022, the Commission's Bureau of Consumer Services provided Complainant with a Level One payment arrangement (March 2022 payment arrangement) which required Complainant to pay the monthly budget bill amount (\$65) plus \$17.86 towards the arrears, which totaled \$1,051.28. (Tr. 20, 21; PECO Exhibit 4).

4. The March 2022 payment arrangement provided Complainant was to make 45 monthly payments to eliminate the arrears on the electric service account and specified Complainant was to make the first payment with her May 2022 bill due date. (Tr. 30; PECO Exhibits 2 & 4).

5. After the March 2022 payment arrangement, Respondent issued a bill on April 13, 2022, which covered the billing period from March 15 to April 13, and required Complainant to pay \$82.86 on or before May 5, 2022. (Tr. 42, 43).

6. Complainant did not appeal the March 2022 payment arrangement and did not make a payment on or before May 5, 2022, which was the due date for the May 2022 bill. (PECO Exhibit 4).

7. On May 10, 2022, Respondent issued a 10-day termination notice to Complainant because Respondent did not receive a payment from Complainant pursuant to the March 2022 payment arrangement. (Tr. 21; PECO Exhibit 4).

8. PECO's termination notice indicated Complainant had to pay \$449.30 before PECO would reinstate the March 2022 payment arrangement. (Tr. 31).

9. After May 10, 2022, Complainant received recorded telephone calls from Respondent advising Complainant to pay the amount due on her bill to avoid termination of electric service. (Tr. 21).

10. Complainant made a successful payment totaling \$82.86 on May 16, 2022. (Tr. 48).

11. On May 16, 2022, Complainant filed an informal complaint against Respondent requesting a bill explanation. (Tr. 47).

12. On June 6, 2022, Complainant made a payment of \$66.86 to Respondent but the payment was returned due to non-sufficient funds. (Tr. 23, 48).

13. Since January 2022, Complainant made three payments: in February, May and June. (Tr. 25).

14. Complainant has participated in Respondent's Customer Assistance Program (CAP) but needed to recertify her participation as of the date of the hearing.² (Tr. 31-33; PECO Exhibit 3).

² No evidence was provided about current or recent CAP arrears.

15. On June 16, 2022, the Commission's Bureau of Consumer Services (BCS) issued a decision on an informal complaint filed by Complainant at BCS Case No. 003838800, in which BCS noted Complainant failed to pay \$82.86 by May 5, 2022, and had a past due amount of \$66.58 which was not paid on June 5, 2022 because it was returned for non-sufficient funds. (Tr. 34, 35; PECO Exhibit 4).

16. Complainant sent unsuccessful payments to Respondent in February 2022 and June 2022. (Tr. 46, 48).

17. The ten-day termination notice Respondent issued on May 10, 2022, was the only ten-day termination notice it issued for the service address in 2022. (Tr. 47).

18. From June 6, 2022, until the date of the hearing (October 25, 2022), Complainant did not make any payment to Respondent. (Tr. 49).

19. From June 6, 2022, until the date of the hearing, Complainant contacted Respondent ten times. (Tr. 50).

20. On six occasions when Complainant contacted Respondent from June 6, 2022, until the date of the hearing, Respondent's representatives advised Complainant that she would have to make payments ranging between \$248 and \$331.58 to return to paying under the March 2022 payment arrangement, or she would have to pay the entire unpaid balance which totaled over \$1,000. (Tr. 51, 52).

21. As of the date of the hearing, the unpaid balance was \$1,163.78 on Complainant's account. (Tr. 52).

DISCUSSION

Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof. Ms. Williams is the party seeking affirmative relief from the Commission, and, therefore, has the burden of proof. Ms. Williams has the duty to establish a fact by a preponderance of the evidence and must show that PECO is responsible or accountable for the problem described in the complaint.³ Additionally, care must be exercised to ensure the Commission's decision is supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁴

Ms. Williams alleged PECO repeatedly insisted she had to pay the entire unpaid balance and would not permit her to use the March 2022 payment arrangement. She also alleged PECO improperly issued many termination notices before she had an opportunity to make any payment on the account. She claimed PECO's employees repeatedly told her to delay making a first payment on previous payment arrangements until she received a bill, but before she received a bill the utility would initiate termination of the electric service by claiming Complainant did not make a timely payment. Complainant asserts she wants the same payment arrangement which is to pay her monthly budget bill amount plus \$12 each month.

PECO does not contest that Complainant is eligible to receive a payment arrangement but PECO asserts Complainant is entitled to receive the Commission payment arrangement from March 2022, which includes paying the budget amount plus \$17.86 monthly.⁵ PECO contends this arrangement is consistent with the provisions of the *Responsible Utility Customer Protection Act* (Act 201).⁶ However, PECO asserts Complainant cannot receive a

³ *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950); *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

⁴ *See, e.g.*, 2 Pa.C.S. § 704; *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (1961); and *Murphy v. Dept. of Public Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth 1984).

⁵ See Tr. at 62.

⁶ 66 Pa.C.S. §§ 1401–1419.

lower payment arrangement than what is provided for by Chapter 14 in Act 201. PECO also argues Complainant first must catch up by paying the missed payments that should have been made from the time of the default in May 2022 until the date of the hearing in October 2022.

Applicable Law

By law, a public utility is entitled to receive payment for the service it provides.⁷ Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay.⁸ No public utility may receive a greater or lesser rate than the one set forth in its tariff on file with this Commission.⁹ Neither may a public utility unreasonably discriminate for or against a particular customer by establishing a special rate for them.¹⁰

Any decision in this proceeding must be consistent with the provisions of Act 201, which directs how the Commission must establish any payment arrangement. "Payment Arrangement" is defined as:

[a]n agreement whereby a customer who admits liability for billed service is permitted to amortize or pay the unpaid balance of the account in one or more payments.¹¹

Act 201 also defines a "customer" as a "natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills

⁷ *Scaccia v. West Penn Power Co.*, 55 Pa.P.U.C. 637 (1982).

⁸ *Bolt v. Duquesne Light Co.*, Docket No. Z-8712758 (Order entered April 8, 1988).

⁹ *See* 66 Pa.C.S. § 1303.

¹⁰ *See* 66 Pa.C.S. § 1304.

¹¹ *See* 66 Pa.C.S. § 1403.

rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested.”¹²

Section 1405(a) in Title 66 of Pennsylvania Statutes¹³ authorizes the Commission to investigate complaints regarding payment disputes between a public utility (such as PECO) and its customers (such as Complainant). This statute authorizes the Commission to establish payment arrangements between a public utility and its customers.¹⁴ In addition, the Public Utility Code permits the Commission to grant one payment arrangement and dictates its terms.¹⁵

Pursuant to 66 Pa.C.S. § 1405(d), the Commission will not establish or order a public utility to establish a subsequent payment arrangement if a customer defaulted on a previous payment agreement, absent a change in income. While a public utility may, at its discretion, enter into a subsequent payment agreement with a customer, the Commission cannot grant a subsequent payment arrangement to Ms. Williams if she defaulted on a prior payment arrangement.¹⁶

Payment Arrangement

Complainant’s initial allegations did not comport with the evidence presented. Ms. Williams indicated she wanted to return to a payment arrangement that predated the Commission’s payment arrangement in March 2022, which required her to pay only \$12 monthly to pay down the arrears. Complainant received a Commission payment arrangement in March 2022 which required her to pay her monthly budget bill amount plus pay \$17.86 towards her unpaid balance. In addition, a review of the March 2022 payment arrangement shows Complainant was directed on what to pay and how to direct the payment to be made with the

¹² See 66 Pa.C.S. § 1403.

¹³ 66 Pa.C.S. § 1405(a)

¹⁴ 66 Pa.C.S. § 1405(a).

¹⁵ 66 Pa.C.S. § 1405(b).

¹⁶ 66 Pa.C.S. § 1405(d).

May 2022 bill. Complainant had plenty of time in which to inquire with Respondent if she did not receive the bill in April for payment in May, and the evidence did prove that Complainant's practice has been to call Respondent whenever she has questions or concerns. She did not call to inquire about the billing statement for May 2022.

Incorrect Charges

Complainant's allegation about incorrect charges on her bills stems from her misconception that she was compliant with the payment arrangement to pay the monthly current bills plus \$17.86 each month. Complainant insisted she wanted to pay only \$12 per month on the arrears. However, the Commission payment arrangement, which Ms. Williams did not contest, from March 2022, required her to pay \$17.86 per month. Ms. Williams did not prove that she is entitled to pay a lower amount each month to pay down the arrears. Further, Complainant failed to prove her bills were improperly rendered, or incorrect.

Customer Service

Ms. Williams complained PECO had no right to send her termination notices because she had a payment arrangement. While it is correct that Complainant had a payment arrangement, Complainant failed to be compliant with that payment arrangement. Ms. Williams was required to pay \$17.86 per month to pay down her arrears, plus she was required to make her monthly payment for current service. Unfortunately, Complainant did not make any timely payments and only made one successful payment in May 2022. Accordingly, PECO issued a termination notice because Complainant failed to make the required payments. PECO was not in error to send the termination notice. Complainant had not appealed the Commission arrangement and PECO was correct to insist that Ms. Williams had to make a timely payment. Ms. Williams' failure to make a timely payment justified PECO's action to issue a termination notice. Ms. Williams did not prove Respondent was incorrect to issue a termination notice in May 2022, after she failed to make a timely payment on the March 2022 payment arrangement.

In addition to her disagreement with PECO about the termination notices, Ms. Williams contended PECO's employees caused the problem. Complainant insists she was told by Respondent that she should hold off on paying until after she receives a bill, but the evidence does not support her claim. Complainant failed to prove PECO's employees told her not to pay anything until getting a bill. In addition, Complainant failed to prove PECO did not send her monthly bills.

Conclusion

Ms. Williams failed to prove the allegations from the formal complaint. PECO was correct to expect her to comply with the March 2022 Commission payment arrangement. PECO was also correct to consider her to be non-compliant with the payment arrangement when she did not make a timely payment in May 2022, as agreed upon. PECO's bills, as rendered, correctly indicated the amounts Ms. Williams needed to pay and when to make those payments. Further, the Commission payment arrangement remains in effect.

However, to avoid receiving termination notices and to continue to receive electric service, Complainant has two options. First, Complainant may pay the unpaid balance (\$1,163.78). In the alternative, Complainant may return to the terms of the March 2022 payment arrangement but only if Complainant does the following: (1) pay the amount of missed installment payments since the last default in May 2022 (which was \$449.30 as of the date of the hearing); and (2) resume using the March 2022 payment arrangement for the next 45 months or until the arrears are paid in entirety.¹⁷

What Complainant cannot do is fail to make payments in full and on time. If Complainant wants to avoid termination of electric service to her residence, she needs to pay for the electric service Respondent provides to her.

¹⁷ Pursuant to 66 Pa.C.S. § 1407(c)(2)(ii), a public utility may require a customer to pay any reconnection fee together with repayment over "12 months of any outstanding balance incurred by the customer or applicant if the customer or applicant has an income exceeding 150% of the Federal poverty level but not greater than 300% of the Federal poverty level. In addition, pursuant to 66 Pa.C.S. § 1407(c)(3), a "public utility may require a customer or applicant to cure a dishonored payment, as provided for in section 1406(h), as a condition of entering into a payment agreement with the customer or applicant for a remaining account balance."

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. Complainant has the burden of proving Respondent is not providing reasonable and adequate service in its refusal to give her a lower payment arrangement than the Commission payment arrangement specified in the BCS decision at BCS No. 3824580. 66 Pa.C.S. § 332(a).

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

4. The Public Utility Code permits the Commission to grant one payment arrangement and dictates its terms. 66 Pa.C.S. § 1405(b).

5. The Complainant has failed to carry her burden of proof that Respondent failed to provide reasonable and adequate service when it issued a termination notice in May 2022. 66 Pa.C.S. § 1501.

6. Complainant did not meet her burden of proving she was entitled to a new payment arrangement or to receive any payment arrangement other than the payment arrangement provided on March 24, 2022, by the Bureau of Consumer Services. 66 Pa.C.S. § 1405.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Eunice Williams v. PECO Energy Company at Docket No. C-2022-3033573, is denied.
2. That the Secretary shall mark the formal complaint of Eunice Williams against PECO Energy Company at Docket No. C-2022-3033573 as closed.

Date: January 30, 2022

/s/
Katrina L. Dunderdale
Administrative Law Judge