

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held March 2, 2023

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Thaddeus Picklo

C-2022-3032205

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Thaddeus Picklo (Complainant), on January 20, 2023,¹ to the Initial Decision (I.D.) of Administrative Law Judge (ALJ)

¹ The due date to file Exceptions was extended to January 23, 2023, at the Complainant's request and without objection by PECO Energy Company (PECO), in order to provide the Complainant with an opportunity to review the transcript of the hearing. In addition, the Commission's Secretary issued a notice to the Parties on January 23, 2023, indicating that there was no Certificate of Service or other indication that the Complainant's Exceptions were served on the Parties and enclosing the Exceptions in order to constitute service under 52 Pa. Code § 5.533. Therefore, PECO was given until February 2, 2023, to file Reply Exceptions due to the failure of the Complainant to provide proper service.

Eranda Vero, which was issued on December 21, 2022. PECO (PECO or the Company) filed Reply Exceptions on February 1, 2023. For the reasons stated below, we shall deny the Exceptions of the Complainant and dismiss the Formal Complaint (Complaint).

I. History of the Proceeding

On April 22, 2022, the Complainant filed the instant Complaint with the Commission against PECO. The Complainant alleged that PECO was threatening to shut off his residential electric and gas services and requested a Commission-issued payment arrangement. Complaint at 2.

On May 9, 2022, PECO filed an Answer which admitted in part, and denied in part, various material allegations of the Complaint. PECO averred that the Complainant has filed ten prior Informal Complaints requesting payment arrangements, and he has defaulted on the terms of six PECO-issued payment arrangements and one Commission-issued payment arrangement due to a poor payment history. PECO requested that the Commission dismiss the Complaint. Answer at 2-4.

On September 1, 2022, a telephonic hearing was held in this matter. The Complainant appeared *pro se* and testified on his own behalf, and he sponsored two exhibits which were admitted into the record. PECO was represented by counsel, presented the testimony of one witness, and offered seven exhibits which were admitted into the record. The record closed on September 23, 2022. I.D. at 2.

On December 21, 2022, the Commission issued the Initial Decision of ALJ Vero, in which she found that the Complainant failed to meet his burden of proof and recommended that the Commission deny the Complaint. Specifically, the ALJ ruled that the Complainant 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. I.D. at 1, 8, 10.

As noted, *supra*, the Complainant filed Exceptions on January 20, 2023. PECO filed Reply Exceptions on February 1, 2023.

II. Discussion

A. Legal Standards

As a preliminary matter, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

1. Burden of Proof

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant, as the party seeking relief, must show that PECO is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by PECO. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, this Commission's decision must be 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. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

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 PECO. If the evidence presented by PECO is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant now has to provide some additional evidence to rebut that of PECO. *Burleson v. Pa. PUC*, 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. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

2. Responsible Utility Customer Protection Act

The Responsible Utility Customer Protection Act (Act), 66 Pa. C.S. §§ 1401-1419, applies to complaints alleging the inability to pay and requesting a Commission-issued payment arrangement. This Act provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued, *inter alia*, 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 also provides certain limitations that the Commission must follow, including which account balances cannot be subject to payment arrangements and the number of payment arrangements that may be issued. Specifically, the Act states that the Commission is prohibited from establishing a second or subsequent payment arrangement, absent a change of income, if the customer defaults on a prior payment arrangement. Section 1405(d) of the Code states the following with regard to the establishment of Commission-issued payment arrangements:

- (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).²

² In relevant part, Section 1403 of the Code defines the following terms:

Change in income. 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.

...

Furthermore, the Act authorizes the Commission to reinstate and extend a Commission-issued payment arrangement on which a customer has defaulted as a result of a significant change in circumstance. Section 1405(e) provides:

- (e) **Extension of payment arrangements.**--If the 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).³

Household income. The combined gross income of all adults in a residential household who benefit from the public utility service.

66 Pa. C.S. § 1403.

³ A “significant change in circumstance” is defined as the following:

Significant change in circumstance. 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.
- (4) Increase in the customer’s number of dependents in the household.

66 Pa. C.S. § 1403.

B. Positions of the Parties

The Complainant requested a Commission-issued payment arrangement. Complaint at 2-3. At the hearing, the Complainant testified that he resides with his wife, 15-year old daughter, and 27-year old stepson at the service address, and the current total monthly household income is approximately \$8,960. Tr. at 7, 14; Picklo Exh. 1. The Complainant stated that he filed the Complaint to get a payment arrangement because he was unable to make the required payments on his prior payment arrangement. Tr. at 8-9.

PECO requested that the Commission dismiss the Complaint. Answer at 4. PECO's witness testified that, as of August 22, 2022, the Complainant's outstanding balance was \$13,722.01. Tr. at 32-33. In addition, PECO's witness testified that the Complainant has defaulted on a Commission-issued payment arrangement, which was established in July 2021, because he did not adhere to the terms of the payment arrangement. Tr. at 34-37; PECO Exh. 5.

C. Initial Decision

The ALJ made nineteen Findings of Fact and reached ten Conclusions of Law. I.D. at 2-4, 8-10. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

In addressing the Complainant's request for a payment arrangement, the ALJ explained that Section 66 Pa. C.S. § 1405 provides limitations that the Commission must follow in issuing payment arrangements, including the number of payment arrangements and circumstances that may result in the extension of an existing payment arrangement. The ALJ found that the Commission cannot establish a second Commission-issued payment arrangement or reinstate and extend the last Commission-

issued payment arrangement for the Complainant. The ALJ explained that pursuant to 66 Pa. C.S. § 1405(d), the Commission cannot issue another payment arrangement because the Complainant previously defaulted on a Commission-issued payment arrangement for non-payment and did not present any evidence to prove that he experienced a change in income since the prior Commission-issued payment arrangement was established in July 2021. In fact, the ALJ noted that the Complainant's Level 4 household income at the time of the hearing was an increase over the Level 3 income reported when the payment arrangement was established in July 2021. I.D. at 6-8.

Additionally, the ALJ acknowledged that the Complainant testified at the hearing 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, and the Complainant argued that his accrued outstanding balance with PECO resulted, at least in part, from the financial burden created by his stepson's medical condition. The ALJ concluded that pursuant to 66 Pa. C.S. § 1405(e), the Complainant's last Commission-issued payment arrangement may not be reinstated and extended because the Complainant's current household income exceeds 300% of the Federal poverty level and the onset of his stepson's illness pre-dates the issuance of the last Commission-issued payment arrangement in July 2021. The ALJ found that the medical condition of the Complainant's stepson involved multiple hospital visits over a five-to-seven year period, but, although it may have caused financial hardship and a depletion of savings for the Complainant's household, the record contains no evidence that this situation resulted in a significant loss in the Complainant's household income. *Id.* at 8.

In light of the above, the ALJ found that the Complainant failed to carry his burden of proving that he is entitled to a second Commission-issued payment arrangement or a reinstatement and extension of the previous one. Therefore, the ALJ denied the Complaint. *Id.* at 8, 10.

D. Exceptions and Reply Exceptions

The Complainant filed two Exceptions to the ALJ's Initial Decision. In his first Exception, the Complainant states that, as he mentioned at the hearing, a series of massive medical bills due to a life-threatening illness of his stepson caused him to request a payment arrangement with PECO. The Complainant further avers that he was not aware of the many payment arrangements that had been made and defaulted upon because his wife, who handled their household budget and bill payment during most of their marriage due to his work travel responsibilities, did not completely communicate with him regarding their PECO balance. The Complainant requests that this lack of full knowledge regarding the numerous prior payment arrangements be taken into consideration by the Commission. Exc. at 1-3.

In his second Exception, the Complainant argues that the lack of timely notification of the hearing prevented him from conducting a complete and thorough review of PECO's exhibits. The Complainant states that he expected the hearing to be conducted like a mediation rather than a trial, and he did not have enough time to prepare a complete case to be presented with respect to PECO's exhibits. The Complainant avers that he did not receive the emails from the Commission notifying him of the hearing date, which he only became aware of a few days before it was held through PECO's email submitting exhibits for the hearing. The Complainant contends that his lack of notice left him unprepared to fully address the questions raised by the ALJ and PECO's counsel at the hearing. *Id.* at 3.

Finally, the Complainant states that he has encountered a "huge unplanned challenge" to implement the ALJ's recommendation to address his outstanding balance. The Complainant avers that his employer changed its payroll period from once per month to a bi-weekly payroll, which creates a decrease in his monthly pay during ten months of the year. The Complainant submits that this change has limited his ability to address his

past due balance owed to PECO. To support his claim, the Complainant attached pay stubs (labeled as Exhibits) from August 31, 2022, October 24, 2022, and January 13, 2022, as well as a document presenting the details of the monthly impact on his pay due to the payroll timing change. The Complainant states that this change in payroll timing, along with a payroll processing mistake by his employer in October 2022, prevented him from taking immediate action in making large payments towards his PECO account balance. Furthermore, the Complainant avers that, going forward, five payments, each in the amount of \$1,500, will be made between January 27, 2023, and March 31, 2023, towards his PECO account balance, which will bring the total balance below \$10,000. In response to “this good faith effort,” the Complainant requests that the last payment arrangement offered by PECO, a 60-month plan to pay \$119.34 per month in addition to the monthly bill, be reinstated. *Id.* at 4-6.

In its Reply Exceptions, PECO contends that the Complainant is not entitled to an additional payment arrangement. PECO argues that the Complainant defaulted on six prior PECO-issued payment arrangements between April 2010 and August 2021, and he defaulted on a Commission-issued payment arrangement within one month after it was established in 2021. PECO avers that the Complainant continues to demonstrate a poor payment history. Furthermore, PECO submits that the Complainant is not asserting that he is entitled to a payment arrangement, but rather that he was unaware of the prior payment arrangements entered into by his wife, and that this is a personal matter which the Commission nor PECO does not get involved in. PECO contends that the Complainant has failed to establish that PECO violated any regulation, statute, law, or order in which to grant him an additional payment arrangement; therefore, the Complainant is not entitled to such an additional payment arrangement. *R. Exc.* at 4-5.

Furthermore, PECO contends that the Complainant had timely notice of the hearing in this matter. PECO avers that the ALJ provided both Parties a Hearing Notice

through the Commission's E-File Subscription Service, which included the date of the hearing, the dial-in information, and instructions on how to seek a continuance. PECO argues that even if it were true that the Complainant learned of the hearing on August 23, 2022, when he received PECO's exhibits, he had ample time to request a continuance, which he understood how to do because he requested a continuance of the hearing scheduled for June 23, 2022. Moreover, PECO states that the Complainant does not allege that the ALJ made an error of law or abused her discretion in any manner, nor does he argue that an incorrect email address was used to notify him of the hearing date. Although the Complainant states that he did not have enough time to prepare for the hearing, PECO submits that he does not show good cause to support the record being re-opened or the granting of a further hearing. PECO posits that a request to continue the September 1, 2022, hearing was not filed five days prior to the hearing date, and that the Complainant is seeking to circumvent the hearing and litigate the issues raised in the Complaint via his Exceptions. For these reasons, PECO contends that the ALJ's Initial Decision is well-reasoned with ample support from the record, and that the Complainant's Exceptions should be dismissed. *Id.* at 5-6.

E. Disposition

Upon our review and consideration of the record evidence and the applicable law, we find that the Complainant has failed to meet his burden of proving that he is entitled to a Commission-issued payment arrangement. Nothing in the Complainant's Exceptions challenged the ALJ's conclusion of law or analysis with respect to the denial of a second Commission-issued payment arrangement.

With respect to the Complainant's first Exception, as noted above, the Act provides strict guidelines that we must follow in handling customer complaints. Under the Act, we may grant one payment arrangement consistent with the terms set forth in 66 Pa. C.S. § 1405(b). If the customer defaults on this arrangement, we cannot grant a

second or subsequent payment arrangement absent a change of income. Similarly, we may not extend a payment arrangement absent a significant change in circumstance. 66 Pa. C.S. §§ 1403, 1405(d)-(e).

The record shows that the Complainant received a Commission-issued payment arrangement in July 2021, on which he defaulted. Tr. at 34-37. Furthermore, the Complainant did not present any evidence or make a showing of either a change in income or a significant change in circumstance after defaulting on the previously Commission-ordered payment arrangement.⁴ As the ALJ found, there is no change in income to support the establishment of a second payment arrangement because the Complainant's current gross household income of \$8,960.58 per month falls between 350% and 400% of the Federal poverty level for a household of four, and makes the Complainant a Level 4 income customer, which is an increase over his Level 3 income reported when he received his prior Commission-issued payment arrangement in July 2021. I.D. at 7 (citing Picklo Exh. 1; PECO Exh. 2). In addition, the ALJ correctly concluded that there is no significant change in circumstance to support the reinstatement and extension of a payment arrangement because the Complainant's current household income exceeds 300% of the Federal poverty level; not to mention the onset of his stepson's illness pre-dates the issuance of the last Commission-issued payment arrangement, and the record contains no evidence that this illness resulted in a significant loss in the Complainant's household income. I.D. at 8. Therefore, pursuant to 66 Pa. C.S. § 1405(d)-(e), we cannot issue another payment arrangement, or reinstate and extend a payment arrangement.⁵ Accordingly, the Complainant's first Exception shall be denied.

⁴ We note that the Complainant's payment history has been poor, which is demonstrated by the fact that, at the time of the hearing, he had not paid his monthly bill to PECO in full and on time within the last two years, resulting in a total outstanding balance of \$13,722.01 as of August 22, 2022. Tr. at 29, 32-33.

⁵ The Complainant avers that he was unaware of the numerous PECO-issued payment arrangements because, while he authorized PECO representatives to discuss his

Next, we will turn to the Complainant's second Exception. While the Complainant argues that the lack of notification prevented him from conducting a thorough review of PECO's exhibits and preparing for the hearing, he did not allege that the ALJ committed an error of law or abused her discretion, nor does he demonstrate good cause to reopen the record for a further hearing. Although the Complainant states that he did not receive notification of the hearing date, the ALJ noted that there is no record or notification of the email containing the Hearing Notice, which was sent to the email address provided by the Complainant and at which he received other case-related email correspondence, as being undeliverable. Tr. at 54-57. In addition, the Complainant indicated that he became aware of the hearing on August 23, 2022, which was nine days prior to the scheduled hearing. Therefore, we find that the Complainant had adequate time to request a continuance of the hearing if he needed more time to prepare, as he was familiar with the continuance request process because he previously requested a continuance of an earlier scheduled hearing. Inasmuch as no request for continuance was filed prior to the hearing on September 1, 2022, we find that the Complainant had sufficient notice of the hearing; therefore, the Complainant's second Exception will be denied.⁶

account with his wife, his communication with his wife was not complete. While we will refrain from engaging in the personal matters of parties, we will note, however, that the Complainant testified that he was aware of certain payment arrangements, Tr. at 28, and PECO's witness testified that the Complainant filed several Informal Complaints with the Commission's Bureau of Consumer Services, although the Complainant stated that he had no "mental recognition" of doing so. Tr. at 43. In any event, this claim has no bearing on the outcome of this case which is dictated by the Act.

⁶ Although not listed as an additional Exception, the Complainant included comments regarding his employer's payroll process timing change and its alleged impact on his monthly pay, as well as several documents attached to his Exceptions that he referred to as "evidence." *See* Exc. at 4. First, in accordance with Section 5.431 of our Regulations, we will not consider the documents included by the Complainant because the record in this matter was closed on September 23, 2022. *See*, 52 Pa. Code § 5.431 (additional matter may not be relied upon or accepted into evidence after the record is closed unless allowed for good cause by the presiding officer or the Commission). Second, although the Complainant avers that his employer changed the timing of its

III. Conclusion

Based on our review of the Exceptions, the Initial Decision, and the record in this proceeding, we shall deny the Exceptions of Thaddeus Picklo and adopt the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Thaddeus Picklo, filed on January 20, 2023, to the Initial Decision of Administrative Law Judge Eranda Vero are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Eranda Vero, issued on December 21, 2022, is adopted.
3. That the Formal Complaint filed by Thaddeus Picklo on April 22, 2022, against PECO Energy Company at Docket No. C-2022-3032205, is denied and dismissed, consistent with this Opinion and Order.

payroll schedule to provide for twenty-six, instead of twelve, pays per year, the Complainant does not indicate that there has been any change to his overall, Level 4 gross income. Under the Act, there is nothing here that would support reinstate of a prior PECO-issued payment arrangement, as requested by the Complainant.

4. That this proceeding be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: March 2, 2023

ORDER ENTERED: March 2, 2023