

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Freda Willis

v.

PECO Energy Company

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F-2022-3032925

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint and denies the Complainant’s request for a payment arrangement because the Commission lacks the authority to grant a payment arrangement on the Complainant’s arrears.

HISTORY OF THE PROCEEDING

On June 8, 2022, Freda Willis (the Complainant or Ms. Willis) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or the Respondent).¹ In the Complaint, the Complainant indicated that PECO was threatening to shut off her service. She also stated that PECO had put her on a customer assistance program (CAP) without her permission. In addition, she indicated that she wanted a payment agreement she could afford, not the amount specified by PECO. Finally, she stated that PECO refused to “work with” her.

¹ The Complaint is a timely appeal from a determination of the Commission’s Bureau of Consumer Services (BCS) at BCS No. 38311071.

On June 27, 2022, the Respondent filed an Answer denying the material allegations of fact in the Complaint. PECO averred that the Complainant initially enrolled in the CAP program in 2008 and re-enrolled or re-certified her enrollment in the program in 2011, 2013, 2014, 2016 and 2019. PECO also averred that the Complainant had been removed from the CAP program in 2011, 2012, 2018, and 2022. PECO averred that the Complainant's most recent removal from the CAP program occurred on April 28, 2022, at her request. Furthermore, PECO averred that because the Complainant's entire balance is comprised of CAP arrears, she is ineligible for a Commission-issued payment agreement under the Public Utility Code.² Finally, the Respondent requested that Ms. Willis' Complaint be dismissed.

By Hearing Notice dated June 30, 2022, a call-in telephonic hearing was scheduled for August 3, 2022, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on July 8, 2022. The Prehearing Order also advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing. Additionally, the Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be sent to me at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party.

The Complainant requested a continuance of the hearing scheduled for August 3, 2022. The Complainant's request was granted, and a Rescheduled Hearing Notice was issued advising the parties that the hearing was rescheduled for September 14, 2022. Subsequently, the Complainant requested a further continuance of the hearing scheduled for September 14, 2022. The Complainant's request was again granted, and a Rescheduled Hearing Notice was issued advising the parties that the hearing was rescheduled for November 9, 2022.

The Complainant and PECO appeared at the hearing on November 9, 2022; however, at the outset of the hearing, the Complainant requested a third continuance of the hearing. The Complainant's request was once again granted, and a Rescheduled Hearing Notice

² 66 Pa.C.S. §1405(c). As discussed below, PGW's witness testified that the Complainant's outstanding balance consisted of CAP and non-CAP arrears.

was issued advising the parties that the hearing was rescheduled for January 25, 2023. On January 23, 2023, with the consent of the parties, a Rescheduled Hearing Notice was issued, changing the time for the hearing scheduled for January 25, 2023, from 10:00 a.m. to 2:00 p.m.

The hearing convened as scheduled on January 25, 2023. Ms. Willis appeared *pro se*, testified on her own behalf, and did not offer any exhibits. Ms. Khadijah Scott, Esquire, appeared on behalf of Respondent and presented the testimony of one witness, Deba Ather, Senior Regulatory Assessor for PECO. PECO sponsored six exhibits, which were admitted into the record.

The record closed on February 23, 2023, the date the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant is Freda Willis, who resides at 14 College Ave., Upper Darby, Pennsylvania 19082 (Service Address). Tr. 25.

2. The Respondent is PECO Energy Company, which provides gas and electric service to Complainant at the Service Address. Tr. 34, Exhibit 1.

3. The Complainant's participation in PECO's Customer Assistance Program (CAP) may be summarized as follows:

Enrollment	Removal
11/26/2008	6/30/2011
8/8/2011	5/30/2012
3/7/2013	10/9/2018
5/6/2019	4/28/2022

Tr. 35 Exhibit 2.

4. The Complainant entered into 14 payment agreements with PECO. Tr. 38, 50. Exhibits 1, 3.

5. The Complainant's most recent PECO payment agreement began on July 23, 2021. Tr. 39. Exhibit 1.

6. The Complainant defaulted on July 23, 2021, payment agreement with PECO on November 1, 2021. Exhibit 3.

7. The outstanding balance on Complainant's PECO account is \$9,801.48, consisting of \$7,483.71 in CAP arrears; and \$2,317.77 in non-CAP arrears. Tr. 52.

8. During the 24-month period from January 1, 2021, through December 31, 2022, the Complainant made three payments on her PECO account; those payments were made in February, March, and September 2021. Tr. 35, Ex. 1.

9. The Complainant is disabled; her income consists of a disability payment of \$1,200. Tr. 29. Ex. 6.

10. The Complainant lives at the Service Address with one adult daughter, who has no income and depends on the Complainant for housing, food, and utility services. Tr. 28. Ex. 6.

11. The Complainant provides financial support to her son, who does not reside at the Service Address, to assist him in paying for his expenses, including rent. Tr. 27 – 28.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof.³ "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest

³ 66 Pa.C.S. § 332(a).

degree, than the evidence presented by the other party.⁴ In addition, the Commission's decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere “trace of evidence or a suspicion of the existence of a fact” is insufficient.⁵

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.⁶

By law, a public utility is entitled to receive payment for the service it provides.⁷ Consequently, the Respondent has the right to bill and receive payment for the utility service actually supplied.⁸ Additionally, all customers are obligated to pay for utility service.⁹ Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay.¹⁰ A payment arrangement, which prevents service termination as long as the Complainant complies with it, is a privilege, not a right.¹¹

⁴ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

⁵ *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. Cmwlth. 1980).

⁶ *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).

⁷ *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).

⁸ 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).

⁹ *See* 66 Pa.C.S. § 1402(1) “unpaid bills threaten paying customers with higher rates due to other customers' delinquencies.”

¹⁰ *Bolt v. Duquesne Light Co.*, Docket No. Z-08721758 (Opinion and Order entered Apr. 8, 1988).

¹¹ *Mandell v. Duquesne Light Co.*, Docket No. C-20030234 (Opinion and Order entered Mar. 17, 2004).

In her Complaint, Ms. Willis seeks a Commission-issued payment agreement on her outstanding balance of \$9,801.48, consisting of \$7,483.71 in CAP arrears; and \$2,317.77 in non-CAP arrears.¹² Therefore, as the party seeking relief, Ms. Willis bears the burden of proof. Complainant does not dispute that she previously defaulted on her payment agreements with PECO.¹³

The Responsible Utility Customer Protection Act¹⁴ (the Act or Chapter 14) applies to complaints alleging inability to pay and requests for Commission-issued payment arrangements. This law provides strict guidelines that the Commission must follow.

The Commission has no authority to establish a payment arrangement on amounts subject to customer assistance program (CAP) rates. Section 1403 of the Public Utility Code defines a customer assistance program as follows:

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by Section 2202 (relating to definitions) or Section 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.^[15]

Section 1405(c) of the Public Utility Code provides that “customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.”¹⁶

¹² In the Complaint, Ms. Willis indicated that PECO was threatening to terminate her service; however, she failed to address the termination issue in her testimony. Instead, much of her testimony related to the differences in the benefits available to her under PECO’s existing CAP program compared to those available under PECO’s CAP program as it existed when she first enrolled in 2008.

¹³ Tr. 27.

¹⁴ 66 Pa. C.S. §§ 1401-1419.

¹⁵ 66 Pa.C.S. § 1403.

¹⁶ 66 Pa.C.S. § 1405(c).

PECO's CAP program meets the requirements of 66 Pa.C.S. § 1403. Therefore, the Commission lacks the authority to establish a payment arrangement on that portion of Ms. Willis' outstanding balance consisting of CAP arrears. The amount of \$7,483.71 must be timely paid, pursuant to 66 Pa.C.S. § 1405(c).

The Complaint is denied as to the Complainant's request for a payment arrangement on the \$7,483.71 of portion of her balance that accrued under PECO's CAP.¹⁷ The issuance of a payment arrangement for the non-CAP portion of the Complainant's arrearage is a matter within the Commission's discretion.¹⁸ However, the Commission is not required to issue 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.¹⁹ A payment arrangement, which prevents service termination if the Complainant complies with it, is a privilege, not a right.²⁰

Section 1405 of the Public Utility Code authorizes the Commission to investigate complaints regarding payment disputes between a public utility and customers and to establish payment arrangements, subject to the criteria and limits established by the Act.²¹ Therefore, the Commission is authorized to establish a payment arrangement between Ms. Willis and PECO. The length of the payment arrangement that can be established for Ms. Willis is based on her gross monthly household income in relation to the federal poverty level.²²

¹⁷ Tr. 51. See *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Order entered Sept. 12, 2013) (*Hewitt*).

¹⁸ See, *Hewitt*.

¹⁹ *Brown v. Phila. Gas Works*, Docket No. C-2022-3032000 (Opinion and Order entered Nov. 10, 2022)(*Brown*); *Getz v. Metro. Edison Co.*, Docket No. C-2014-2459964 (Final Order entered May 28, 2015); *Hewitt*.

²⁰ *Mandell v. Duquesne Light Co.*, Docket No. C-20030234 (Opinion and Order entered Mar. 17, 2004).

²¹ 66 Pa.C.S. § 1405(a) and (b). "Household income" is defined in section 1403 as "[t]he combined gross income of all adults in a residential household who benefit from the public service." 66 Pa.C.S. § 1403 (Definition of "Household income").

²² 66 Pa.C.S. § 1405(b).

In this case, the Complainant failed to provide the information necessary to evaluate her eligibility for a Commission-issued payment agreement and/or to award such an agreement to her. The Complainant provided no documentary evidence regarding her income or the size of her household. In testimony, Ms. Willis provided minimal, imprecise testimony regarding the amount of her monthly household income, indicating that she receives disability income of \$1,200;²³ however, she did not indicate whether that figure was exact or an estimate, nor did she specify the frequency of her disability payment. Regarding the size of her household, Ms. Willis testified that she has been paying her son's "rent and everything" indicating that her son no longer resides with her.²⁴ Ms. Willis referred to "helping [her] daughter" but did not indicate whether her daughter lived with her or elsewhere.

The Complainant's CAP application submitted to PECO for her CAP enrollment beginning May 6, 2019 (2019 CAP App) lists Ms. Willis' income as "disability" and a three-person household. Assuming, *arguendo*, that Ms. Willis' daughter is still part of the household, she has a two-person household and household income of \$1,200, which would place her at 50% of the federal poverty level. The Commission is authorized to establish a five-year payment arrangement for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.²⁵ Therefore, the Commission is authorized to establish a five-year payment arrangement for Ms. Willis.

Although the Commission is authorized to establish a payment arrangement for Ms. Willis, the Commission has a responsibility to exercise its authority very judiciously. Specifically, the Commission should exercise its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills, or who have experienced a significant change of circumstance outside of their control.²⁶ *Brown*. The

²³ Tr. 29. Exhibit 6. The application includes a "No-income Form" dated April 20, 2019, that appears to have been signed by the Complainant's son, Steven Willis. Also attached to the Complainant's CAP application is a hand-written statement dated April 20, 2019, that appears to have been signed by the Complainant's daughter, that statement indicates "no income." Exhibit 6.

²⁴ Exhibits 2, 6. Tr. 27 – 28. The Complainant did not indicate when her son left her household or for how long she had been paying his rent, only that he "just had a baby, three years ago." Tr.28.

²⁵ 66 Pa.C.S. § 1405(b)(1).

²⁶ See *Brown*.

Commission has considered a customer's payment history, or lack thereof, compliance history with any utility issued payment arrangements, and account balance to determine if the customer has made a good faith effort to pay their utility bills.²⁷

Review of the evidentiary record shows that Ms. Willis has not made a good faith effort to pay her utility bills. Ms. Willis' statement of account reveals that she has only made three payments towards her account during the two-year period of January 20, 2021 to December 31, 2022.²⁸ Ms. Willis' payment arrangement history reveals that she has defaulted on more than a dozen PECO-issued payment arrangements.²⁹ Moreover, the Complainant testified that she provided financial support to her son for his expenses, including rent, while failing to pay for service to her own home.³⁰ The Complainant's poor payment history in addition to her poor compliance history with PECO-issued payment arrangements has led to a substantial outstanding account balance. Based on this evidence, the Complainant has not made a good faith effort to pay her utility bills. Discretion will not be exercised in this instance to issue Ms. Willis a Commission-issued payment arrangement on the non-CAP portion of her arrearage.

In conclusion, for the above reasons, the Complainant has not met her burden of proving that she is eligible for a Commission-issued payment arrangement as to the \$2,317.77 non-CAP portion of her outstanding balance. The Complaint will be dismissed in the ordering paragraphs below.

CONCLUSIONS OF LAW

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

²⁷ *Rohrbach v. Phil. Gas Works*, F-2018-3006723 (Final Order entered May 8, 2019).

²⁸ Exhibit 1.

²⁹ Exhibit 3. PGW's Witness testified that the Complainant's most recent payment arrangement could be reinstated if Ms. Willis paid a lump sum of \$5,982.01; however, the Complainant testified that she did not have \$1,500 to pay to PECO. Tr. 39, 29.

³⁰ Tr. 28.

2. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

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

5. The Commission cannot order a payment arrangement on balance arrears consisting of CAP arrears. 66 Pa.C.S. § 1405(c).

6. A customer's gross monthly household income level in relation to the federal poverty level determines the length of the payment arrangement that the Commission may issue. 66 Pa.C.S. § 1405(b).

7. When the Commission is authorized to establish a payment arrangement between a customer and a utility, the Commission has a responsibility to exercise that authority very judiciously. The Commission should exercise its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills, or who have experienced a significant change of circumstance outside of their control. *Brown v. Phila. Gas Works*, Docket No. C-2022-3032000 (Opinion and Order entered Nov. 10, 2022).

8. The Commission has considered a customer's payment history, or lack thereof, compliance history with any utility issued payment arrangements, and account balance to determine if the customer has made a good faith effort to pay their utility bills. *Rohrbach v. Phila. Gas Works*, F-2018-3006723 (Final Order entered May 8, 2019).

9. The Complainant has not made a good faith effort to pay her utility bills, and therefore has not met her burden of proving that she is eligible for a Commission-issued

payment arrangement. *Brown v. Phila. Gas Works*, Docket No. C-2022-3032000 (Opinion and Order entered Nov. 10, 2022); 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Freda Willis in *Freda Willis v. PECO Energy Company* at Docket No. F-2022-3032925, is denied and dismissed.

2. That the Secretary mark the proceeding at Docket No. F-2022-3032925 closed.

Date: April 26, 2023

_____/s/
Arlene Ashton
Administrative Law Judge