

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

Public Meeting held July 13, 2023

Commissioners Present:

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

Matthew Forgie c/o Megan Forgie

C-2022-3034051

v.

PECO Energy Company – Electric

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Matthew Forgie c/o Megan Forgie (Complainant) on June 7, 2023,<sup>1</sup> to the Initial Decision (I.D.) of Administrative

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<sup>1</sup> On April 20, 2023, the Commission's Secretary received Reply Exceptions filed on behalf of PECO Energy Company (PECO or Company) in this matter. However, a review of the docket revealed that although the Complainant served Exceptions on PECO, it appeared that a copy of the Exceptions was not filed with the Secretary of the Commission. By Secretarial Letter issued May 31, 2023 (*May 2023 Secretarial Letter*), the Complainant was directed to file his Exceptions with the Secretary of the Commission no later than June 12, 2023.

Law Judge (ALJ) Mary D. Long, which was issued on March 31, 2023. PECO filed Reply Exceptions on April 20, 2023. For the reasons stated below, we shall reject and deny the Exceptions of the Complainant and adopt the ALJ's Initial Decision.

## I. History of Proceeding

On July 26, 2022, the Complainant filed a Formal Complaint (Complaint) against PECO with the Commission. The Complainant requested a Commission-issued payment arrangement to pay his current and past due utility bills, and requested the arrangement be for a period of sixty or seventy-two months. Complaint at 2-4.

On August 12, 2022, PECO filed an Answer which admitted in part, and denied in part, certain material allegations of the Complaint. PECO stated that the Complainant has failed to make payments and defaulted on nine previous payment arrangements issued by PECO and a prior Commission-issued payment arrangement. PECO also noted that the Complainant has filed five informal complaints and two formal complaints with the Commission. Answer at 2-3. In its New Matter, PECO averred that the Complainant was enrolled in PECO's Customer Assistance Program (CAP) and argued the CAP arrearage of \$1,266.78 was ineligible for a Commission-issued payment arrangement. Answer at 5-6. PECO requested that the Commission deny all relief requested and dismiss the Complaint. Answer at 6. The Complainant did not file an Answer to New Matter.

On September 13, 2022, the instant Complaint was referred to the Office of Administrative Law Judge's Mediation Unit. After the Parties failed to resolve the Complaint via mediation, a telephonic hearing was held, as scheduled, on December 6, 2022. The Complainant appeared *pro se* and testified on his own behalf. PECO was represented by counsel, presented the testimony of one witness, and offered

six exhibits which were admitted to the record. The record closed on January 9, 2023. I.D. at 2.

On March 31, 2023, the Commission issued the Initial Decision of ALJ Long, in which she found the Complainant failed to meet his burden of proof and recommended that the Commission deny the Complaint. The ALJ ruled that the Complainant failed to prove that he is entitled to a second Commission-issued payment arrangement or a reinstatement or extension of the previous arrangement. I.D. at 1, 6, 7.

As noted, *supra*, PECO filed Reply Exceptions on April 20, 2023. Following a review of the docket that revealed that the Complainant appeared to fail to file his Exceptions with the Commission, the Complainant was directed, via the *May 2023 Secretarial Letter*, to file those Exceptions with the Secretary of the Commission no later than June 12, 2023. On June 7, 2023, the Complainant filed Exceptions.<sup>2</sup>

## II. Discussion

### A. Legal Standards

As a preliminary matter, the Commission notes that any argument or Exception not specifically delineated shall be deemed to be considered and denied without further discussion or consideration. The Commission is not required to consider expressly, or at length, each contention or argument made by the parties. *Consolidated*

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<sup>2</sup> As discussed in further detail below, the Exceptions filed by the Complainant are apparently not the same Exceptions that were served on PECO prior to April 20, 2023. We also note that it is not clear whether the Complainant served his Exceptions of June 7, 2023, on PECO.

*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**

Pursuant to Section 332(a) of the Public Utility Code (Code), the proponent of a rule or order, bears the burden of proof. 66 Pa. C.S. §332(a). To satisfy the burden of proof, the Complainant, as the party seeking relief, must establish a sufficient case that PECO is responsible for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). This 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). This standard requires the Complainant's evidence to be more convincing, by even the smallest amount, than evidence presented by PECO. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). This Commission's decisions 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 & West Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the evidentiary burden shifts to PECO to present persuasive evidence rebutting that of the Complainant. If PECO's evidence is of co-equal weight, the Complainant has not satisfied their burden of proof, and must provide 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 evidentiary 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 to prove their case by a preponderance of the evidence. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

## **2. Responsible Utility Customer Protection Act**

The Responsible Utility Consumer Protection Act (Act), 66 Pa. C.S. §§1401-1419, applies to consumer complaints alleging an inability to pay and requesting the Commission issue a payment arrangement. The Act imposes strict guidelines the Commission must follow in considering 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).

The Act also imposes certain guidelines and limitations the Commission must follow, including which account balances cannot be subject to payment arrangements and the number of payment arrangements that may be issued. Section 1405(c) of the Code prohibits the Commission from issuing payment arrangements on CAP program rates:

**(c) Customer assistance programs.** – Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.

66 Pa. C.S. §1405(c).

The Act also states that the Commission is prohibited from establishing a second or subsequent payment arrangement, absent a change in income, in the event a customer defaults on a prior payment arrangement. Section 1405(d) of the Code provides the following regarding 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).<sup>3</sup>

The Act allows the Commission to reinstate and extend a Commission-issued payment arrangement on which a customer has defaulted because of significant change in circumstances. 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

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<sup>3</sup> 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.

...

**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.

be extended for an additional six months for good cause shown.

66 Pa. C.S. §1405(e).<sup>4</sup>

## **B. Positions of the Parties**

The Complainant requested a Commission-issued payment arrangement. Complaint 2-4. At the telephonic hearing, the Complainant testified that he resides at the service address with his wife and one minor child. The Complainant also testified that an adult child lives with the family while not away at college. Tr. at 10. The Complainant admitted he had failed to adhere to the conditions of his prior Commission-issued payment arrangement and testified regarding employment and salary difficulties he faced during that period. Tr. at 8-15. The Complainant testified that he and his wife had recently received increased base salaries and were better situated financially to adhere to the conditions of a payment arrangement. Specifically, the Complainant testified that the household income is higher now than it was in 2021 when he had a payment arrangement from the Commission. Tr. 9 -12.

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<sup>4</sup> 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 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.

PECO requested that the Commission dismiss the Complaint. Answer at 6. PECO's witness testified that, as of October 31, 2022, the Complainant's outstanding balance was \$18,925.42, with \$1,266.78 of that amount consisting of CAP arrearages. Tr. at 19, 23; Exh. 4. PECO's witness additionally testified that the Complainant defaulted on a prior Commission-issued payment arrangement established in November 2021, as well as previous PECO-issued payment arrangements, for non-payment. Tr. 19-20, 25-26, Exhibit 2. During cross examination, the Complainant also admitted that they had only made two payments to PECO during 2022, the first coming in September and the second in October. Tr. at 14.

### **C. Initial Decision**

The ALJ made thirteen Findings of Fact and reached seven Conclusions of Law. I.D. at 2-3, 7. 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 considering the Complainant's request for a payment arrangement, the ALJ explained that Section 66 Pa. C.S. §1405 imposes guidelines the Commission must follow when considering whether to issue a payment arrangement, including the number of prior payment arrangements. I.D. at 5. The ALJ specifically noted that Chapter 14 prohibits the establishment of a second or subsequent payment arrangement, without a change of income, when the customer defaults on a prior Commission-issued payment arrangement. I.D. at 5.

Next, the ALJ concluded the Commission could not reinstate or extend the Commission-issued payment arrangement, because the Complainant had not experienced a significant change in circumstances. I.D. at 5-6.

After consideration of the above factors, the ALJ found the Complainant failed to demonstrate that he is entitled to a second Commission-issued payment arrangement. Therefore, the ALJ dismissed the Complaint. I.D. at 6-7.

#### **D. Exceptions**

The ALJ's Initial Decision was issued on March 31, 2023, along with a Secretarial Letter enclosing a copy of the ALJ's Initial Decision (*March 2023 Secretarial Letter*). The *March 2023 Secretarial Letter* noted that Exceptions were due within twenty days (i.e., April 20, 2023) and Reply Exceptions were due within ten days of the Exceptions due date (i.e., May 1, 2023).

On April 20, 2023, PECO filed Reply Exceptions in this matter. However, a review of the docket revealed that although the Complainant served Exceptions on PECO, it appeared that the Complainant failed to properly file and serve a copy of the Exceptions with the Secretary of the Commission. Therefore, the *May 2023 Secretarial Letter* was issued directing the Complainant to file the Exceptions with the Secretary of the Commission no later than June 12, 2023. The *May 2023 Secretarial Letter*, required in relevant part, as follows:

On April 20, 2023, PECO Energy Company (PECO) filed Reply Exceptions in this matter. However, our review of the docket revealed that although the Complainant served his Exceptions on PECO, he appears to have failed to file a copy of the Exceptions with the Secretary of the Commission as directed by the *March 2023 Secretarial Letter* and required by Commission Regulations at 52 Pa. Code [*sic*] § 5.533 and § 1.4.

**In order for the Complainant's Exceptions to be considered in this matter, the Complainant must file his Exceptions with the Secretary of the Commission within ten (10) days of this letter (i.e., June 12, 2023). To the**

extent that the Complainant properly files his Exceptions with the Secretary of the Commission, PECO may, but is not required to, re-file any Reply Exceptions with the Secretary of the Commission within seven (7) days of the date when Exceptions are due.

Exceptions and Replies to Exceptions must be prepared, filed, and served in accordance with the directives set forth in the *March 2023 Secretarial Letter* and the Commission's Regulations at 52 Pa. Code §§ 5.533 and 5.535, respectively.

*May 2023 Secretarial Letter* (emphasis in original).

On June 7, 2023, the Complainant filed Exceptions, which consist of a one-page typewritten letter in which the Complainant takes exception to the ALJ's Initial Decision. The Complainant notes the Initial Decision's discussion regarding a decrease in income, states that the Complainant was laid off by his employer on May 4, 2023, and alleges that there has been a significant decrease in income. The Complainant also argues that PECO has allowed his past due balance to accumulate, and that PECO should not object to his request for a payment arrangement. Exc. at 1. It is not clear whether the Complainant served his Exceptions of June 7, 2023, on PECO.

#### **E. Reply Exceptions**

In its Reply Exceptions, which were filed on April 20, 2023, PECO argues that the Complainants are not entitled to an additional payment arrangement because they have previously defaulted on nine PECO-issued payment arrangements and one Commission-issued payment arrangement. R. Exc. at 4. PECO avers that the Complainant continues to employ strategies to avoid paying his electric bills in a timely manner by filing informal and formal complaints and entering into agreements, in an effort to halt collection efforts. R. Exc. at 5. PECO further submits that the Complainant does not assert that he is entitled to a payment arrangement based on any law, statute or

regulation, but instead asserted that the household income has increased compared to the household income level when the prior Commission payment arrangement was issued. PECO contends that the Complainant has failed to establish that PECO violated any regulation, statute, law, or order. PECO argues that the Complainant's Exceptions should be dismissed. R. Exc. at 5.

PECO did not submit additional Reply Exceptions to the Complainant's Exceptions filed with the Commission on June 7, 2023.

## **F. Disposition**

Upon review, we find that the Complainant has failed to follow the directives set forth in the *May 2023 Secretarial Letter* and properly file a copy of the Exceptions he previously prepared and served on PECO prior to April 20, 2023, in this matter. Accordingly, we shall reject and deny the Complainant's Exceptions.

As noted *supra*, upon the filing of Reply Exceptions by PECO on April 20, 2023, a review of the docket revealed that although the Complainant appeared to serve Exceptions on PECO, a copy of the Exceptions was not properly filed with the Secretary of the Commission. By the *May 2023 Secretarial Letter*, the Commission directed the Complainant to file his Exceptions with the Secretary of the Commission no later than June 12, 2023.

Although the Complainant filed Exceptions on June 7, 2023, those Exceptions are apparently not the Exceptions that the Complainant previously served on PECO, and which were directed to be filed with the Commission by the Complainant no later than June 12, 2023, in accordance with the *May 2023 Secretarial Letter*. This is evident for several reasons. First, the Exceptions are dated June 7, 2023. Second, the Exceptions allege facts and refer to events that allegedly occurred in May 2023, after the

record closed and after the date of PECO's Reply Exceptions of April 20, 2023. Therefore, the Exceptions filed by the Complainant on June 7, 2023, do not appear to, and cannot possibly, be the same Exceptions that were previously served on PECO, which were directed to be filed with the Commission in the *May 2023 Secretarial Letter*. For these reasons, we find that the Complainant failed to comply with the Commission's directives and properly file a copy of the Exceptions that were previously served on PECO, as required in the *May 2023 Secretarial Letter*. Accordingly, we will reject and deny the Complainant's Exceptions.<sup>5</sup>

Inasmuch as we are rejecting and denying the Complainant's Exceptions herein, we shall adopt the ALJ's Initial Decision. Under the facts in the record, we agree that the Complainant has failed to meet the burden of proving that he is entitled to a subsequent Commission-issued payment arrangement. As discussed by the ALJ, 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 a customer defaults on this arrangement, we cannot grant a second or subsequent payment arrangement absent a change in income. 66 Pa. C.S. § 1405(d). Similarly, we may not reinstate or extend a payment arrangement absent a significant change in circumstance. 66 Pa. C.S. § 1405(e). At the time of the hearing, the Complainant's household income had increased, and there was no evidence of a significant change in circumstance which occurred after the Commission had provided him with the first payment arrangement.

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<sup>5</sup> While the Commission is sympathetic to challenges faced by *pro se* litigants and traditionally has been hesitant to rule unfavorably against them based on technical grounds, we find that the totality of the specific facts and circumstances of this case, including the Complainant's history of using payment arrangement and complaint processes to avoid paying and accumulate a large electric bill as discussed herein, warrant our rejection and denial of the Complainant's Exceptions for failing to adhere to our directives.

Moreover, we are prohibited under the Act from granting a payment arrangement for any CAP arrearages. 66 Pa. C.S. § 1405(c). As noted above, the Complainant's outstanding account balance consists of a portion of CAP arrearages. Therefore, the \$1,266.78 portion of the Complainant's outstanding balance comprised of CAP arrears cannot be the subject of a Commission-approved payment arrangement.

Finally, we note that the Complainant's total balance due on the electric service account as of October 2022 was \$18,925.42. R. Exc. at 4; Tr. at 19. As of August 2022, the Complainant made five payments on the electric service account in the past two years. Answer at 4. Moreover, the Complainant has defaulted on nine PECO-issued payment arrangements since November 2013. R. Exc. at 4; Answer at 3. The Complainant has also defaulted on a settlement agreement resulting from a Formal Complaint case filed in August 2018. Answer at 3. In addition, the Complainant defaulted on a Commission-issued payment arrangement established in November 2021. R. Exc. at 4; Answer at 3. Furthermore, the Complainant has filed five informal complaints and two formal complaints against PECO seeking payment arrangements. R. Exc. at 4.

We are compelled to remind the Complainant that a public utility is entitled to full payment for service provided to customers, and there is an obligation for all customers to pay for the utility service provided to them. Otherwise, unpaid customer's bills are included in the utility's uncollectibles expense and, ultimately, paid for by the other remaining utility customers. *Mill v. Pa. PUC*, 447 A.2d (Pa. Cmwlth. 1982); *Scaccia v. West Penn Power Co.*, 55 Pa. PUC 637 (1982). Also, payment arrangements are contractual arrangements between the customer and utility company that should be honored by the customer, not used to avoid payment altogether. *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Order entered December 27, 2013). The record in this case suggests a disturbing trend in the Complainant's use of payment arrangements and Commission processes to avoid paying his electric bills while evading

the Company's termination procedures, which result in a large outstanding account balance.

Furthermore, we remind PECO that utilities are obligated to protect all customers from those that refuse to pay with the tools provided by the Code and the Commission's Regulations, including terminating overdue unpaid accounts. *See, Pa. PUC v. North Heidelberg Sewer Co.*, Docket No. M-2018-2645983 (Order entered February 9, 2018). We encourage PECO to take the necessary steps and actions under the Code and our Regulations to mitigate the negative effects on its overall customer base from the actions of individual customers who take advantage of the system to avoid payment and accumulate large and unreasonable outstanding balances.

### **III. Conclusion**

Based on our review of the record in this proceeding, we shall reject and deny the Exceptions of Matthew Forgie, c/o Megan Forgie, and adopt the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Exceptions of Matthew Forgie, c/o Megan Forgie, filed on June 7, 2023, to the Initial Decision of Administrative Law Judge Mary D. Long issued on March 31, 2023, are rejected and denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Mary D. Long issued on March 31, 2023, is adopted.

3. That the Formal Complaint filed by Matthew Forgie, c/o Megan Forgie, on July 26, 2022, against PECO Energy Company at Docket No. C-2022-3034051, is dismissed, consistent with this Opinion and Order.

4. That this proceeding be marked closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

Rosemary Chiavetta  
Secretary

(SEAL)

Order Adopted: July 13, 2023

Order Entered: July 13, 2023