

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Francis Rayner	:	
	:	
v.	:	C-2023-3040829
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Formal Complaint filed by Francis Rayner against PECO Energy Company because the Complainant failed to meet his burden of demonstrating that he is eligible for a Commission-issued payment arrangement. This Decision also finds that the Complainant failed to sustain his burden of demonstrating that PECO’s termination notices did not adhere to the regulations regarding termination notices at 52 Pa. Code § 56.91.

HISTORY OF THE PROCEEDING

On May 23, 2023, Francis Rayner (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed checkmarks in the boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service,” and “I would like a payment agreement.” Under the “requested relief” section of the form, the Complainant indicated “I would like to receive a payment arrangement as there are no cap [sic] on my PECO Energy account.”

On June 9, 2023, the Respondent filed an Answer to the Complaint. In the Answer, the Respondent indicated: that the Complainant initiated gas and electric service in November 2004 at 136 Willowbrook Rd. in Clifton Heights (service address); that on April 5, 2023, the Complainant received a Ten-Day Termination Notice effective on or after April 19, 2023 for a past due balance of \$15,409.29; that the Complainant has a delinquent balance on his account for which PECO may terminate his service; that the Complainant has had multiple prior payment agreements with PECO including a recent agreement which defaulted on March 6, 2023; that the Complainant continues to demonstrate a poor payment history; and that it is PECO's position that the Complainant is not entitled to any additional payment agreements.

By Initial Telephonic Hearing Notice dated July 31, 2023, an initial call-in telephonic hearing was scheduled for September 15, 2023 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on August 1, 2023. The Prehearing Order directed the parties to comply with various procedural requirements and also explained that the Complainant bears the burden of proof to establish that the Respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

By email dated September 7, 2023, the Complainant requested a continuance of the September 15, 2023 hearing because he recently started a new position, he is in training, and is not allowed to miss days of work. Khadijah Scott, Esq., counsel for PECO, subsequently advised that PECO did not have an objection to the Complainant's request.

By Interim Order dated September 8, 2023, I granted the Complainant's request for a continuance.

By Telephonic Hearing Cancellation/Reschedule Notice dated September 8, 2023, the Initial Call-In Telephonic Hearing was rescheduled for November 3, 2023 at 10:00 a.m.

By email dated October 24, 2023, the Complainant requested a continuance of the November 3, 2023 hearing. In support of his second continuance request, the Complainant again indicated that his new employment in the medical insurance field makes it difficult for him to miss work. The Complainant specifically requested a Friday hearing in either late December or in January. The Complainant advised that he did not know if PECO agreed with or opposed his request. My legal assistant subsequently forwarded the Complainant's email to Ms. Scott, who advised that PECO did not object to the Complainant's request.

By Interim Order dated October 26, 2023, I granted the Complainant's second continuance request.

By Call-In Telephone Cancellation/Reschedule Hearing Notice dated October 27, 2023, the Initial Call-In Telephonic Hearing was rescheduled for Friday, January 12, 2024 at 10:00 a.m.

I issued a second Prehearing Order on November 2, 2023. The Prehearing Order directed the parties to comply with various procedural requirements and again 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.

By email dated January 5, 2024, the Complainant requested a continuance of the January 12, 2024 hearing. In support of his request, the Complainant again cited a work conflict as a basis for the request. Additionally, the Complainant indicated that he may want to secure an attorney to represent him in this matter. The Complainant did not advise if PECO agreed with or opposed his request, as required by my August 1, 2023 and November 2, 2023 Prehearing Orders. PECO subsequently objected to another continuance request because the matter had been rescheduled twice to accommodate the Complainant's work schedule and as such, he had not established good cause warranting another continuance. Ms. Scott further noted that the Complainant has had ample time to hire an attorney. Lastly, Ms. Scott advised that the Complainant's balance is over \$15,000.00 and the matter of his outstanding bill needs to be addressed or it will continue to accrue.

By Order dated January 9, 2024, I granted the Complainant's request for the sole reason to afford him time to secure legal representation. I instructed the Complainant that he must secure an attorney to represent him prior to the date of the rescheduled hearing, and that his attorney must enter their appearance with the Commission's Secretary in accordance with Commission regulations.¹

To date, no attorney has entered an appearance in this matter on the Complainant's behalf.

The hearing convened as scheduled on February 16, 2024. The Complainant appeared *pro se* and testified. The Respondent appeared and was represented by Khadijah Scott, Esq., who presented the testimony of Anna Mae Migliaccio, a PECO Regulatory Assessor. The Respondent presented four exhibits, all of which were admitted into the record. (PECO Exhs. 1-4).

The record closed on March 8, 2024, the date the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant in this case is Francis Rayner.
2. The Respondent in this case is PECO Energy Company.
3. The Complainant resides at 136 Willowbrook Road, Clifton Heights, PA 19018. Tr. 9.
4. The Complainant seeks a payment agreement on his outstanding PECO balance. Tr. 10.

¹ 52 Pa. Code § 1.24(b)(2).

5. The Complainant has received payment agreements from PECO. Tr. 13, 15.

6. The Complainant's household is a four-person household, consisting of all adults. Tr. 14, 25.

7. The Complainant is the sole source of income for his household. Tr. 15, 25.

8. The Complainant estimates that he has approximate gross monthly income of \$3,000 from employment as a licensed insurance agent, and that he may occasionally receive a bonus at the end of the month. Tr. 15-16.

9. The Complainant's balance as of the date of the hearing totaled \$15,169.29. Tr. 37; PECO Exh. 1.

10. For the calendar year 2022, the Complainant made three payments towards his PECO bills. Tr. 37; PECO Exh. 1.

11. For the calendar year 2023, the Complainant made nine payments towards his PECO bills. Tr. 37; PECO Exh. 1.

12. The Complainant's most recent payment agreement with PECO required him to make monthly payments of \$245.53 plus his current bills. Tr. 38.

13. The Complainant was only paying the current monthly bill. Tr. 38.

14. The Complainant defaulted on this Company-issued payment arrangement. Tr. 17, 41; PECO Exh. 3.

15. The Complainant participates in PECO's Customer Assistance Program (CAP). Tr. 10, 38; PECO Exh. 2.

16. The Complainant's \$15,169.29 outstanding balance includes CAP arrears of \$12,742.04. Tr. 39.

17. PECO has issued several service termination notices to the Complainant. Tr. 22.

18. The service termination notices PECO issued to the Complainant advised him of steps he could follow to avoid termination of service. Tr. 23.

19. PECO has not terminated the Complainant's service. Tr. 22.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainant has the burden of proof in this matter. 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, Complainant must show that the Respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (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). A preponderance of the evidence is evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993);

2 Pa.C.S. § 704. 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. 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. 1960); *Murphy v. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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 the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

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. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

Request for Commission-Issued Payment Arrangement

The Complainant requested a Commission-issued payment arrangement. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401-19 (the Act or Chapter 14), applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow in handling customer complaints.

A “payment agreement” is defined at 66 Pa.C.S. § 1403 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.” Additionally, the Commission has no authority to establish a payment agreement on amounts subject to customer assistance program (CAP) rates. The provision at 66 Pa.C.S. § 1405(c) specifically provides that “[c]ustomer

assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission.”

Although the Commission has the authority to establish a payment agreement for the non-CAP portion of a former CAP customer’s mixed arrearage, it has elected not to establish such a payment agreement in instances where the customer’s payment history is poor or they have demonstrated an inability to keep prior payment agreements with the utility. *Hewitt v. PECO*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013) (*Hewitt*). In *Hewitt*, the Commission reasoned as follows:

The question then becomes whether the Commission should exercise its legal authority and issue a payment agreement in this case for the non-CAP portion of a mixed arrearage. The issuance of a payment agreement is a matter within the Commission’s discretion. As a practical matter, bifurcating an arrearage, and establishing a payment arrangement only for the non-CAP portion, is not feasible in most cases. In effect, such a truncated arrangement would require the utility to place the CAP portion of the arrearage on hold, presumably indefinitely. As long as the customer adhered to the payment agreement for the non-CAP portion of the arrearage, the utility presumably would be prohibited from terminating service for non-payment of the CAP arrearage. In many instances, it is likely that the utility ultimately would be required to simply write off the CAP arrearage. This obviously would not be in the public interest, and would allow customers to utilize payment agreements for non-CAP arrearages as a tool to avoid payment of CAP bills, which already are discounted from standard rates.

Id. at 11. The Commission further noted that CAP assistance is the most affordable payment plan for an eligible low-income customer, and “[i]f a customer cannot afford and does not pay a CAP bill, which is service provided at a discount, the customer most likely cannot afford and will not pay his or her current/budget bill plus an additional payment on an accrued balance[.]”

Id. at 11, n. 4.

The record in this matter demonstrates that \$12,742.04 of the Complainant’s \$15,169.29 balance is CAP arrears, leaving the Complainant with a non-CAP balance of

\$2,427.25 (\$15,169.29 - \$12,742.04 = \$2,427.25). Tr. 39. Pursuant to 66 Pa.C.S. § 1405(c), the Complainant is clearly not entitled to a Commission-issued payment agreement on the \$12,742.04 portion of his balance that accrued while he participated in PECO's CAP program. Although the Commission has the authority to order a payment agreement on the remaining \$2,427.25 portion of his balance that accrued while the complainant was not participating in PECO's CAP program (i.e., the non-CAP portion of his mixed arrearage), his extremely poor payment history and inability to keep the terms of his company-issued payment agreement make him ineligible for a Commission-issued payment agreement on the non-CAP portion of his outstanding balance.

Accordingly, the Complainant's request for a Commission-issued payment arrangement is denied.

Termination Notice

The Complainant also indicated that PECO issued him service termination notices. Tr. 22. Although the Complainant did not offer any notices as exhibits, he did testify that the notices he received advised him of steps he could follow to avoid termination of service. Tr. 23. The Complainant further testified that PECO has not terminated his service. Tr. 22. The Complainant did not offer any additional testimony regarding PECO's termination notices. Based on the limited testimony provided by the Complainant, the Complainant did not meet his burden of demonstrating that PECO improperly issued him any service termination notices, or that the contents of those notices failed to meet the notice requirements set out in 52 Pa. Code § 56.91.

Accordingly, the Complainant's Complaint is denied in its entirety.

CONCLUSIONS OF LAW

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

2. The burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

4. A "payment agreement" is defined as an 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. 66 Pa.C.S. § 1403.

5. Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission. 66 Pa.C.S. § 1405(c).

6. Although the Commission has the authority to establish a payment agreement for the non-CAP portion of a former CAP customer's mixed arrearage, it has elected not to establish such a payment agreement in instances where the customer's payment history is poor or they have demonstrated an inability to keep prior payment agreements with the utility. *Hewitt v. PECO*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013).

7. The Complainant is not entitled to a Commission-issued payment agreement. 66 Pa.C.S. § 1405(c); . *Hewitt v. PECO*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013).

8. The Complainant failed to sustain his burden of establishing that PECO improperly issued him service termination notices and also failed to demonstrate that PECO's

termination notices did not adhere to the regulations regarding the contents of termination notices at 52 Pa. Code § 56.91. 66 Pa.C.S. § 332(a); 52 Pa. Code § 56.91.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Frances Rayner at Frances Rayner v. PECO Energy Company at Docket No. C-2023-3040829 is denied;
2. That the Formal Complaint at Docket No. C-2023-3040829 be marked closed.

Date: June 5, 2024

_____/s/_____
Christopher P. Pell
Deputy Chief Administrative Law Judge