

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lawrence Glover

v.

PECO Energy Company

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C-2023-3043314

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s Formal Complaint because the Complainant has not established that there were past charges that were incorrectly included on his bills. Further, the Initial Decision denies the Complainant’s request for a payment arrangement because he failed to establish that he is entitled to a second Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On September 20, 2023, Lawrence Glover (Complainant or Mr. Glover) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant contends that there were incorrect charges on the bills. He also

indicated PECO was threatening to shut off his service. The Complainant requested a payment arrangement.

On October 9, 2023,¹ Respondent filed an Answer denying the material allegations of the Complaint.

On October 11, 2023, an Interim Order was issued which set the matter for a settlement conference. However, the parties were unable to resolve the issues in the Complaint.

By Telephonic Hearing Notice dated November 1, 2023, an initial hearing was scheduled for January 16, 2024, at 10:00 a.m., and the matter was assigned to me.

On November 2, 2023, I issued a Prehearing Order which indicated procedural matters and hearing procedures.

The hearing convened as scheduled on January 16, 2024. At the time, the Complainant indicated that he had COVID and needed a continuance of the hearing. PECO had no objection to the request and I granted the request on the record. Tr. 3.

On May 29, 2024, a new Initial Call-In Telephonic Hearing Notice was issued which indicated a new hearing date on August 1, 2024 at 10:00 a.m.

I issued a new Prehearing Order in the matter on July 8, 2024, which again indicated the procedures for the hearing.

¹ The Formal Complaint was served on the Respondent by the Secretary's Bureau on September 28, 2023.

The hearing proceeded as scheduled on August 1, 2024. Complainant participated *pro se* and testified. Respondent appeared and was represented by Khadijah Scott, Esq., who presented the testimony of Ramona Milburn, a Regulatory Assessor. Respondent offered four exhibits, which were all entered into the record.

At the time of the hearing, I requested PECO submit a late-filed exhibit which included information regarding the balance transfers to the Complainant's account by August 15, 2024. I allowed the Complainant to provide written objections to the exhibits no later than August 29, 2024. The parties complied with my directions and PECO provided late filed exhibits No. 5-7. The Complainant's objections were to the substance of the exhibits and contained no legal objections to the documents, as such the documents are entered into the record through this Decision.

The hearing resulted in a 57-page transcript. The record closed on September 9, 2024, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Lawrence Glover, who resides at 125 Meadowview Lane, Mont Clare, Pennsylvania 19453 (Service Address). Tr. 12.
2. The Respondent is PECO Energy Company.
3. The Complainant lives alone at the Service Address. Tr. 14.
4. The Complainant works full-time for Icon Global Solutions. Tr. 14.
5. The Complainant's wages are \$24.00 per hour for a 40-hour work week. Tr. 14.

6. The Complainant's income of \$4,160.00² per month for a household of one is 332% of the Federal Poverty guidelines.³

7. The Complainant has not made consistent payments to his account nor has he made full payments. Tr. 31-32; PECO Exh. 1.

8. The Complainant has had a number of Company-issued payment arrangements with the most recent in February 2023 which was broken due to nonpayment. Tr. 35-36; PECO Exh. 3.

9. The Complainant had a prior Commission issued payment arrangement under Docket No. F-2012-2332095 which was defaulted on by the Complainant. PECO Exh. 4.

10. The Complainant's account balance as of the hearing date was \$14,401.64 which consists of unpaid bills and late payment charges. Tr. 31; PECO Exh. 1.

11. The Complainant's balance includes amounts that were incurred from prior residence that were transferred to his current PECO account. PECO Late Filed Exh. 5.

² Monthly Income calculation is as follows:

$$\begin{aligned} \$24 \times 40 &= \$960 \text{ per week} \times 52 \text{ weeks} = \$49,920.00 \text{ per year} / 12 = \\ & \$4,160.00 \text{ per month.} \end{aligned}$$

³ See Federal poverty guidelines, 89 Fed. Reg. 2961 (Jan. 17, 2024); <https://aspe.hhs.gov/sites/default/files/documents/7240229f28375f54435c5b83a3764cd1/detailed-guidelines-2024.pdf>

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 pursuant to 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 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. Pa. 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).

Dispute of Outstanding Balance

The Complainant disputes the amount that he owes for his service. He specifically argued that the Company was trying to collect on amounts that are many years old.

The burden of proof for “high bill” complaints has been explained in *Waldron v. Philadelphia Electric Co.*, 54 Pa.P.U.C. 98 (1980) (*Waldron*), and its progeny. In *Waldron*, the Commission adopted the Michigan Public Service Commission’s (PSC’s) policy announced in *Hallifax v. O & A Electric Co-Op*, Case No. U-5825, May 1979, which stated that, while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Commission stated that it will also consider the following factors: the billing history of the Complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100.

Consistent with the Commission's holding in *Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Opinion and Order entered Oct. 13, 2010) (*Bennet*), the *Waldron* Rule allows a Complainant to establish a *prima facie* case in a “high bill” complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed or by providing other relevant evidence showing that the disputed bill is unreasonably high. In

evaluating a “high bill” complaint, the Commission may consider such evidence as “the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), and any other relevant facts or circumstances that come to light during the proceeding.” *Bennet*, at 6; *see also Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197 (Opinion and Order entered Nov. 15, 2011).

The Complainant testified that while he does owe PECO some amount, he believes that it is unfair that he is required to pay past amounts in order to keep his electric service. He indicated that some of the amount is from balances that accrued years ago.

However, in the event of discontinuance or termination of service at a residence or dwelling, a public utility may transfer an unpaid balance to a new residential service account of the same customer. 52 Pa. Code § 56.16(b).

The Complainant’s account balance as of the hearing date was \$14,401.64 which consists of unpaid bills and late payment charges. Tr. 31; PECO Exh. 1. The Complainant’s balance includes amounts that were incurred from prior residences that were transferred to his current PECO account. PECO Late Filed Exh. 5.

While the Complainant contends that it is unfair to have previous balances transferred to his current account, the regulations allow PECO to do so. There is nothing in the record to indicate that PECO incorrectly transferred the account balances from previous residences of the Complainant. As such, the Complainant has not met his burden of establishing that there was a violation when PECO transferred his previous balances to his current account.

Request for Payment Arrangement

The Complainant also requests a payment arrangement for his outstanding balance. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401–1419 (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. Section 1405(a) of the Public Utility Code reads 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, 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, absent a change in income. 66 Pa.C.S. § 1405(d). Under Section 1403 of the Public Utility Code, a “change in income” is defined as a decrease in household income of 20% or more if the customer's household income level over 200% of the Federal poverty level. 66 Pa.C.S. § 1403.

The Complainant lives alone at the Service Address. Tr. 14. The Complainant works full-time for Icon Global Solutions. Tr. 14. The Complainant’s wages are \$24.00 per hour for a 40-hour work week. Tr. 14. The Complainant’s monthly

income of \$4,160.00 per month for a household of one is 332% of the Federal Poverty guidelines.

The Complainant has not made consistent payments to his account nor has he made full payments. Tr. 31-32; PECO Exh. 1. The Complainant has had a number of Company-issued payment arrangements with the most recent in February 2023 which was broken due to nonpayment. Tr. 35-36; PECO Exh. 3. The Complainant had a prior Commission issued payment arrangement under Docket No. F-2012-2332095 which was defaulted on by the Complainant. PECO Exh. 4. The Complainant's account balance as of the hearing date was \$14,401.64 which consists of unpaid bills and late payment charges. Tr. 31; PECO Exh. 1.

In this matter, the Commission is constrained to grant only one payment arrangement to the Complainant, absent a change in income. *See* 66 Pa.C.S. § 1405(d). The Complainant failed to demonstrate a change in income since he was provided with his last Commission issued payment arrangement. The Complainant defaulted on that payment arrangement. The Complainant did not present any testimony to indicate that his income has decreased since the last Commission-issued payment arrangement or that his household size has increased as he testified that he lives alone now. Further, the Complainant has not demonstrated that he is entitled to an extension of the previous Commission-issued payment arrangement under 66 Pa.C.S. § 1405(e). The Complainant has not experienced a significant change in circumstances as defined by 66 Pa.C.S. § 1403.⁴ The Complainant's household income is not below the 300% threshold in the

⁴ Significant change in circumstance is defined in 66 Pa.C.S. § 1403 as 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.

definition. The Complainant has a history of not making payments to his account or full payments. Further, the Complainant has had a number of payment arrangements from the Company and defaulted on all of them due to non-payment. As such, the Complainant's request for a payment arrangement must be denied.

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. The Commission stated that it will consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980).
5. "[T]he Commission may consider such evidence as the billing history of the account, any change in usage patterns (such as a change in the number of

(3) Loss of the customer's residence.

(4) Increase in the customer's number of dependents in the household.

occupants residing in the household or potential energy utilization), and any other relevant facts or circumstances that come to light during the proceeding.” *Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197, at 5 (Opinion and Order entered Nov. 15, 2011).

6. In the event of discontinuance or termination of service at a residence or dwelling, a public utility may transfer an unpaid balance to a new residential service account of the same customer. 52 Pa. Code § 56.16(b).

7. The Complainant failed to demonstrate that the Respondent incorrectly transferred prior outstanding balances to his current account. 66 Pa.C.S. § 332(a).

8. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401–1419, applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement.

9. 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. 66 Pa.C.S. § 1405(d).

10. The Complainant has not met his burden of establishing that he is eligible for a Commission-issued payment arrangement. 66 Pa.C.S. § 332(a).

11. Absent a significant change in circumstances, a customer is not eligible for reinstatement and extension of a prior Commission-issued payment arrangement. 66 Pa.C.S. §§ 1403, 1405(e).

12. The Complainant has not met his burden of establishing that he is eligible for reinstatement and extension of a prior Commission-issued payment arrangement. 66 Pa.C.S. §§ 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That PECO's Late Filed Exhibits are admitted and entered into the record in this matter.
2. That the Formal Complaint of Lawrence Glover against the PECO Energy Company at *Lawrence Glover vs. PECO Energy Company* at Docket No. C-2023-3043314 is denied and;
3. That Lawrence Glover's request for another Commission-issued payment arrangement is denied and dismissed and;
4. That Docket No. C-2023-3043314 be marked closed.

Date: December 4, 2024

/s/
Marta Guhl
Administrative Law Judge