

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kristin Hrbek	:	
	:	
v.	:	C-2023-3041925
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Complaint in part and denies it in part. The Complainant’s request for reinstatement of a company payment agreement and a Commission-issued payment arrangement are denied. The claim that PECO bills and notifications were not received is sustained. No fine is imposed, but PECO is directed to meet with the Complainant to resolve billing address and communication preference issues.

HISTORY OF THE PROCEEDING

On July 18, 2023, Kristin Hrbek (“Complainant” or “Ms. Hrbek” or “Ms. Dougherty”¹) filed a Formal Complaint (“Complaint”) with the Public Utility

¹ During the hearing on August 6, 2024, the Complainant identified herself as Ms. Kristin Dougherty and stated that she has not used Hrbek in years and that for a while she has tried to have her name changed on the PECO account. Tr. 6.

Commission (“Commission”) against PECO Energy Company (“PECO” or “Company”). On the Complaint form, Ms. Dougherty checked boxes stating that she would like a payment arrangement. She also added that she would like a previous Company-issued payment agreement restored and that although the Company contends that she is enrolled in the Customer Assistance Program (“CAP”), she is not.

On August 14, 2023, PECO filed an Answer wherein the Company denied all material allegations. PECO also averred that the Complainant defaulted on two company-issued payment agreements. PECO also stated in the Answer that Complainant was enrolled in the CAP program and that the Complainant’s balance is comprised of CAP arrears. PECO also averred that, pursuant to 66 Pa.C.S. §1405(c), the PUC has no jurisdiction to give the Complainant a payment agreement on the CAP arrearage portion of the balance, which was \$7,866.19 at the time of the Answer.

On September 20, 2023, an Interim Order Setting Resolution Conference was issued. The parties were not able to resolve their dispute.

On January 9, 2024, an Initial Call-In Telephone Hearing Notice was issued setting a hearing for March 8, 2024. Due to a scheduling conflict, on February 21, 2024, a Call-In Telephone Cancellation/Reschedule Hearing Notice was issued setting a hearing for March 20, 2024. On March 20, 2024, the Complainant contacted PECO and stated that she had a family emergency and needed a continuance of the hearing. PECO had no objection and on March 20, 2024, a Call-In Cancellation/Reschedule Hearing Notice was issued setting a hearing for May 24, 2024. A Prehearing Order was issued on February 22, 2024.

The May 24, 2023 hearing convened as scheduled. PECO was represented by Khadijah Scott, Esquire. The Complainant did not call in to the hearing. Ms. Scott

made an oral Motion to Dismiss for failure to prosecute, which was taken under advisement.

On June 6, 2024, the Complainant sent an email to the Commission stating that she did not call into the hearing because she thought that she would receive a call from the Commission and there was a continuing family emergency. Given that the Complainant was acting *pro se*, on June 6, 2024, a Hearing Notice was issued scheduling a telephonic hearing for August 6, 2024. A Prehearing Order was issued on June 26, 2024.

The hearing convened as scheduled on August 6, 2024. The Complainant appeared at the hearing *pro se*. Ms. Scott appeared at the hearing on behalf of PECO and presented five exhibits and the testimony of Anthony Costello, PECO Senior Regulatory Assessor. All PECO exhibits, PECO Exhibits 1-5, were admitted into evidence.

During the hearing, PECO was directed to submit to me and the Complainant copies of bills sent to the Complainant and records of the Complainant signing up for a payment arrangement. PECO forwarded:

PECO Exhibit 6 – Copies of Bills

PECO Exhibit 7 – Payment Agreement Confirmation

PECO Exhibit 8 – Address confirmation print out

To date, no response or objections to the late filed exhibits have been filed by Ms. Hrbek. PECO Exhibits 6-8 will be admitted herein. The record is now closed.

FINDINGS OF FACT

1. The Complainant is Kristin Dougherty, formerly Kristin Hrbek.
Tr. 6
2. The Complainant is a PECO customer on Chilton Road in Philadelphia, Pennsylvania (service address). Tr. 7.
3. The Complainant's Chilton Road account is in the name Kristin Hrbek and is spelled Harbek on some PECO documents. Tr. 6; PECO Exhibits 1 2,3.
4. The Complainant had a payment arrangement with PECO during the COVID-19 pandemic. Tr. 7-8.
5. Due to late payments, the Complainant was removed from the payment arrangement. Tr. 8.
6. Since 2019, the Complainant has had at least three payment arrangements with PECO upon which she defaulted. Tr. 37; PECO Exhibit 4.
7. At the time of the hearing, the Complainant's account balance was \$8,836.24. Tr. 26-27.
8. The Complainant has both CAP and non-CAP arrearages in her balance. Tr. 43.
9. Of the \$8,836.24 balance on the Complainant's PECO account, over \$8,000 is CAP arrears. Tr. 41-44.

10. PECO has had several problems with a new billing system. Tr. 47.

11. The Complainant has not received PECO bills since August of 2023.

12. The Complainant contacted PECO on several occasions to report that she is not receiving bills. Tr. 8-9, 12, 15, 17, 20, 49, 66.

13. The Complainant did not receive notice of an active payment arrangement with PECO beginning in 2023. PECO Exhibit 7, 8; Tr. 49.

14. When the Complainant called the PECO automated service, it stated that the Complainant did not have a balance. Tr. 23.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). The complainant must establish his case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A complainant can meet that burden if he presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

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 to the evidence presented by the complainant, the complainant has not satisfied his burden of proof. The complainant would then 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), *aff'd*, 461 A.2d 1234 (Pa. 1983).

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

The Pennsylvania Public Utility Code ("Code") requires each public utility to provide the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501. The term "service" is defined broadly under Section 102 of the Code, in relevant part, as follows:

"Service." Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities ... in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them.

66 Pa.C.S. § 102.

As to payment arrangements, 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. This law provides strict guidelines that the

Commission must follow when determining whether a payment arrangement can be issued.

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). The Code also provides:

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).

Complainant would like reinstatement of a previous payment arrangement with PECO and a payment arrangement on her outstanding balance. Additionally, during the hearing, the Complainant testified that she has not received PECO bills since August of 2023. Tr. 9. She also disputed entering into a payment arrangement with PECO in 2023.

There is no basis upon which the Commission may direct a utility to reinstate a company payment arrangement between the Company and a customer. As to

the Commission awarding a payment arrangement, the record does not support such an award.²

The Complainant's \$8,836.24 balance is a mix of CAP and Non-CAP arrears. PECO witness, Senior Regulatory Assessor Costello, explained that at least \$8000.00 was accrued under the CAP program. Tr. 41-44. In accordance with 66 Pa.C.S. § 1405(c), the Commission cannot award the Complainant a payment arrangement on the CAP portion of her balance, which is the vast majority (90%) of the total balance.

The Commission has held that it retains the authority to award a payment arrangement on the non-CAP portion of the balance. *See Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013). However, when a customer is eligible for a payment arrangement under Chapter 14, the Commission has refused to award payment arrangements for those who have a poor payment history and/or inability or unwillingness to comply with payment arrangements in cases involving requests for second or subsequent Commission-issued payment arrangements or customers with "mixed arrearages," i.e. arrearages including both CAP and non-CAP arrears. *See Matkoskey v. Pennsylvania Elec. Co.*, Docket No. F-2022-3034596, at 7 (Order entered July 28, 2023). The Commission has also not awarded a payment arrangement on a non-CAP portion of arrears where it would not be in the public interest or the interest of the customer. *See Michail v. PECO Energy Co.*, Docket No. F-2014-2404586 (Opinion and Order entered Jan. 16, 2015); *Pickett v. Phila. Gas*

² The Complaint's household income for a household of four is under 150% of the federal poverty level. Tr. 12; <http://aspe.hhs.gov/poverty/>. If the arrears were not CAP, under § 1405(b), she would be eligible for a five year or 60-month payment arrangement. PECO offered and placed the Complainant on a 24-month payment arrangement. The Complainant stated during the hearing and testified that she informed PECO that she could not afford the payment required for a 24-month payment arrangement. Tr. 55, 67. Why PECO did not offer the Complainant a 60-month payment arrangement was not fully explained. Tr. 8, 53,54, 69.

Works, Docket No. C-2014-2444967 (Opinion and Order entered Oct. 1, 2015). Issuing a payment arrangement for a customer is an exercise of the Commission's discretion which should be exercised very judiciously. *Hayes v. Phila. Gas Works*, Docket No. C-2017-2634526 (Opinion and Order entered Oct. 1, 2018).

A payment arrangement on less than ten percent of the Complainant's balance of over \$8,000 would not be in the Complainant's interest. There is also nothing in the record supporting a finding that to grant a payment arrangement would be in the public interest. A payment arrangement on the non-CAP balance will not be awarded at this time.

As to the other claims, the record points to a billing problem. There is substantial evidence supporting a finding that the Complainant has not received a bill from PECO in over a year and that she was uninformed that there was a payment arrangement in effect in 2023.

The Complainant testified credibly that she was not aware that a payment arrangement was finalized in 2023, that she has not received PECO bills since about August of 2023, and that she has called PECO to report that she is not receiving bills, to no avail. Tr. 8-9, 12, 15, 17, 20, 49, 66. Also, when she called the PECO automated service, it incorrectly stated that the Complainant did not have a balance. Tr. 23.

PECO records show that Ms. Dougherty was sent bills electronically. PECO Exhibit 8. However, there is no evidence that Ms. Dougherty signed up to receive electronic bills from PECO. Further, there was also testimony that the Company was experiencing several problems with the then new PECO billing system. Tr. 47.

That the Complainant was unaware that a payment arrangement with PECO was active is also supported by the record. The document confirming a 2023 payment arrangement was not issued to the Complainant until September of 2023, after the contact method errors began in August of 2023. PECO Exhibit 7.

These billing and customer service issues constitute a violation of the obligation under 66 Pa.C.S. § 1501 to provide reasonable and efficient service. A public utility that violates the Code or a Commission Order or Regulation may be subjected to a civil penalty of up to \$1,000 per violation for every day of that utility's continuing offense. *See*, 66 Pa.C.S. § 3301(a)–(b). The Commission's policy statement at 52 Pa. Code § 69.1201 establishes specific factors and standards the Commission will consider in evaluating litigated cases involving violations and in determining whether a fine is appropriate.

The factors and standards that will be considered by the Commission include the following:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa. Code § 69.1201.

Considering the above factors, it appears that the billing and payment arrangement confirmation issues, as well as the automated system stating that the Complainant did not have a balance, arose with PECO installing a new billing system. As such, any errors or miscalculations were not deliberate or in bad faith or through willful fraud or misrepresentation. There was no personal injury or property damage.

Accordingly, I will not impose a fine against PECO. However, PECO will be ordered to meet with Ms. Dougherty to resolve these billing and communication issues.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this dispute. 66 Pa.C.S. § 701.
2. The Complainant has the burden of proof. 66 Pa.C.S. § 332(a).
3. The Commission has the authority to award payment arrangements between customers and utilities in accordance with strict guidelines. 66 Pa.C.S. §§ 1401–1419.
4. The Commission cannot issue a payment arrangement on amounts accrued under a customer assistance program. 66 Pa.C.S. § 1405(c).
5. The Complainant cannot receive a payment arrangement on the CAP portion of her outstanding balance. 66 Pa.C.S. § 1405(c).
6. The Commission has the authority to award a payment arrangement on the non-CAP portion of the balance. *See Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013).
7. Awarding the Complainant a payment arrangement on the non-CAP portion of her balance would not be in the public interest or the interest of the customer. *See Michail v. PECO Energy Company*, Docket No. F-2014-2404586 (Opinion and Order entered Jan. 16, 2015).

8. Every public utility is required to furnish and maintain adequate, efficient, safe, and reasonable service and Ms. Dougherty was not provided reasonable and efficient service with respect to billing and Company notifications. 66 Pa.C.S. § 1501.

9. Although a public utility that violates the Code or a Commission Order or Regulation may be subjected to a civil penalty, a fine will not be imposed here. 66 Pa.C.S. § 3301(a)–(b); 52 Pa. Code § 69.1201

ORDER

THEREFORE,

IT IS ORDERED:

1. That PECO Exhibits 6, 7 and 8 are admitted into the record.
2. That the claims regarding billing and payment arrangement notification in the Complaint of Kristin Dougherty (Hrbek) at Kristin Hrbek v. PECO Energy Company, Docket No. C-2023-3041925, are sustained.
3. That within 30 days of entry of the final order in this matter, PECO Energy Company representatives must meet with Kristin Dougherty (Hrbek) to discuss and resolve billing and method of notification issues.
4. That all other claims in the Complaint of Kristin Dougherty (Hrbek) at Kristin Hrbek v. PECO Energy Company, Docket No. C-2023-3041925, are denied.

5. That, upon verification by PECO Energy Company filed with the Secretary of the Commission that the action ordered in Ordering Paragraph 3, above, has been completed, Docket No. C-2023-3041925 be marked closed.

Date: December 16, 2024

_____/s/
Darlene Heep
Administrative Law Judge