

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nicole Gibson	:	
	:	
v.	:	F-2024-3049195
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision grants in part, and denies, in part, Nicole Gibson’s Formal Complaint against PECO Energy Company. In particular, this Initial Decision grants PECO’s Motion to Dismisses the portion of the Complaint that raises claims under the Uniform Commercial Code, the Truth in Lending Act, the Federal Reserve Act or any other Federal law or the United States Code. However, this Initial Decision grants the portion of Ms. Gibson’s Complaint requesting a payment arrangement.

HISTORY OF THE PROCEEDING

On May 22, 2024, Nicole Gibson (Complainant or Ms. Gibson) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Company, or Respondent)

indicating that she receives electric service from PECO. Complaint ¶¶ 3. By way of averments and relief requested, Ms. Gibson states:

TO ACCEPT MY REMITTANCE PAYMENT TO FOLLOW THE UCC AND THE USC CODES AND THE BOE LAWS¹ AND THE TRUTH AND LEANDER ACT AND THE FEDERAL RESERVE ACT AND CONSUMER LAW I THE AGAENT [SIC] WILL LIST SOME CODES TO PROVE THAT REMITTANCE PAYMENT IS ACCEPTED AND I HAVE ALL RIGHTS TO DISCHARGE ALL MY OBLIGATIONS THE DATE IS MAY 07,2024 I WILL PROVE THAT THIS PECO IS A STATEMENT AND NOT A BILL AND THAT FEDERAL RESERVE NOTES ARE UNLAWFUL MONEY AND ANYTHING OVER ONE DOLLAR SHOULD BE GIVING BACKAS [SIC] UNEARNED INTEREST H.J.R 192 ACT, THE BILL OF RIGHTS. 15USC 1679(2), 15USC 1615(A) 12USC 1431 - 1432 ... UCC 3-104 NEGOTIABLE INSTRUMENT UCC 3 - 603, UCC 3-802 AND UCC 3-602.

Complaint ¶¶ 4, 5.

This Complaint is a timely appeal of the informal decision issued by the Commission's Bureau of Consumer Services at BCS Case No. 3963618. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

On June 10, 2024, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint. In its Answer, PECO averred that it has billed the Complainant based on actual monthly usage, and that the Company only accepts cash, certified checks, money orders, and valid bank checks in payment of utility

¹ It is unclear what the Complainant means with "BOE Laws." The acronym "BOE" most commonly refers to the California State Board of Equalization which is a state agency responsible for overseeing property tax assessment, alcoholic beverage taxes, and insurance taxes in California.

accounts. PECO explained that it will not apply as credit to any customer account non-negotiable documents, sight drafts, 1040 Forms, Acceptance for Value, Uniform Commercial Code (UCC) Certified Tender of Payments, Promissory Notes or other UCC documents. Answer ¶ 4.

An Initial Call-in Telephonic Hearing Notice dated June 18, 2024, notified the parties that an initial call-in telephone hearing was scheduled on August 7, 2024, at 10:00 a.m.

On July 17, 2024, I issued a Prehearing Order. The Prehearing Order directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing and provided instructions for calling in to the hearing.

By email dated August 2, 2024, Ms. Gibson requested a continuance of the scheduled hearing due to the death of her child's father as well as health issues related to the unexpected death.

By email dated August 2, 2024, PECO's counsel in this matter informed me that the Respondent had no objections to Ms. Gibson's request.

On August 5, 2024, the Commission issued a Cancellation Notice informing the parties that the Hearing scheduled for August 7, 2025, was cancelled. Also, on August 5, 2024, a Hearing Reschedule Notice informed the parties that the initial call-in telephonic hearing was rescheduled for September 26, 2024.

The hearing was convened as scheduled on September 26, 2024. Ms. Gibson appeared *pro se*. Khadijah Scott, Esq., appeared on behalf of the Respondent and was accompanied by potential witnesses for the Company. Once the hearing commenced, Ms. Gibson informed me that she was in a hospital receiving IV treatment

and complained that her reception was poor. She was reminded that she had not requested a continuance of the hearing and was encouraged to relocate to an area with a better connection or use a different phone. At this point in the hearing, Ms. Gibson was disconnected abruptly from the call. I called a recess while I attempted to get Ms. Gibson back into the hearing. Tr. 5-6. Ms. Gibson was able to rejoin the hearing and I proceeded to inform her that the Commission had no jurisdiction to adjudicate her claims raised under the Uniform Commercial Code (UCC), the Truth in Lending Act, and the Federal Reserve Act. Tr. 6-7, 8, 9. Ms. Gibson was encouraged to clarify and restate her claims within the parameters of the Pennsylvania Public Utility Code. Tr. 10. Subsequently, Ms. Gibson orally amended her Complaint to claim an inability to pay her electricity bills to PECO and requested an affordable payment arrangement. Tr. 7. In response, counsel for PECO indicated the Respondent's willingness to consider a payment arrangement for Ms. Gibson. Tr. 8. However, Ms. Gibson was unable to proceed any further with the hearing and requested a continuance. Her request was granted, and the hearing was adjourned.

A Further Call-in Telephonic Hearing Notice dated November 14, 2024, notified the parties that a further call-in telephone hearing was scheduled on January 29, 2025, at 10:00 a.m.

On November 18, 2024, PECO filed a Motion to Dismiss (Motion) the portion of Ms. Gibson's Complaint raising claims under the Uniform Commercial Code (UCC), the Truth in Lending Act and the Federal Reserve Act. The Motion was accompanied by a Notice to Plead. Ms. Gibson did not file a response to the Motion.

On December 30, 2024, I issued a second Prehearing Order. The second Prehearing Order directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing and provided instructions for calling in to the hearing.

On January 27, 2025, Ms. Gibson sent me an email requesting a continuance of the further hearing due to the recent death of her grandmother.

By email dated January 27, 2025, PECO's counsel informed me that the Respondent had no objections to Ms. Gibson's request.

On January 28, 2025, the Commission issued a Further Hearing Cancellation/Reschedule Notice informing the parties that the Hearing scheduled for January 30, 2025, was cancelled and rescheduled for March 14, 2025.

The further hearing was convened as scheduled on March 14, 2025. Ms. Gibson appeared *pro se* and testified on behalf of the Complaint. Khadijah Scott, Esq., appeared on behalf of the Respondent and presented the testimony of Ramona Milburn, who is a Regulatory Assessor for PECO. The Respondent sponsored four exhibits which were admitted into the record.

During the hearing, I directed PECO's counsel to submit as a late-filed exhibit copies of Ms. Gibson's bills issued to her after BCS issued its decision on Ms. Gibson's informal complaint at BCS Case No. 3963618. The deadline for PECO to submit the late-filed exhibit was set for March 21, 2025. The Complainant was instructed that she had until March 31, 2025, to submit any objections to the admission of the late-filed exhibit into the record. Tr. 31.

On March 14, 2025, PECO submitted its late-filed Exhibit 5. Ms. Gibson did not object to the admission of this exhibit into the record. PECO late-filed Exhibit 5 will be admitted into the record in accordance with the ordering paragraphs below.

The record in this matter closed on April 14, 2025, when I received my copy of the transcript.

FINDINGS OF FACT

1. The Complainant is Nicole Gibson, who resides at 2426 West Gordon Street, Philadelphia, PA, 19132 (Service Address). Tr. 24.
2. The Respondent is PECO Energy Company, a jurisdictional public utility.
3. At the time of the further hearing, Ms. Gibson was unemployed and living alone at the Service Address. Tr. 29-30.
4. Ms. Gibson does not receive any type of income but has a friend who assists her financially when needed. Tr. 30.
5. Between February 28, 2025, and March 14, 2025, Ms. Gibson received a LIHEAP grant of \$964.00 which was applied towards her outstanding balance with PECO. Tr. 30, 34; PECO Exhibit 1.
6. As of the day of the further hearing, Ms. Gibson's outstanding balance with PECO was \$2,479.49. Tr. 34.
7. Ms. Gibson is not enrolled in PECO's Customer Assistance Program (CAP). Tr. 35.
8. Ms. Gibson has not received a Commission-issued payment arrangement. *See* PECO Exhibit 3.

9. On February 5, 2024, Ms. Gibson filed an informal complaint with the Commission's BCS at BCS Case No. 3963618 requesting *inter alia* a payment arrangement. PECO Exhibit 3.

10. At the time of the filing of the informal complaint, Ms. Gibson was unemployed and had no reportable income. Tr. 47-48; *see also* PECO Exhibit 3.

DISCUSSION

Preliminary Matter

During the initial hearing on September 26, 2024, Ms. Gibson was informed that the Commission had no jurisdiction to adjudicate her claims raised under the Uniform Commercial Code (UCC), the Truth in Lending Act, and the Federal Reserve Act. Tr. 6-7, 8, 9. She was encouraged to clarify and restate her claims within the parameters of the Pennsylvania Public Utility Code. Tr. 10. Subsequently, Ms. Gibson orally amended her Complaint to claim an inability to pay her electricity bills to PECO and requested an affordable payment arrangement. Tr. 7.

On November 18, 2024, PECO filed a Motion to Dismiss the portion of Ms. Gibson's Complaint raising claims under the UCC, the Truth in Lending Act, the BOE Law and the Federal Reserve Act. The Motion was accompanied by a Notice to Plead. Ms. Gibson did not file a response to the Motion.

As a creature of legislation, the Commission possesses only the authority the State Legislature has specifically granted to it in the Public Utility Code (the Code), 66 Pa.C.S. §§ 101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold*

v. Bell of Pa., 383 A.2d 1191 (Pa. 1977); *Allegheny Cnty. Port Auth. v. Pa. Pub. Util. Comm'n*, 237 A.2d 602 (Pa. 1967); *Behrend v. Bell of Pa.*, 390 A.2d 233 (Pa. Super. 1978); *Pa. Dep't of Highways v. Pa. Pub. Util. Comm'n*, 182 A.2d 267 (Pa. Super. 1962); *City of Erie v. Pa. Elec. Co.*, 383 A.2d 575 (Pa. Cmwlth. 1978).

Nothing in the Public Utility Code confers jurisdiction upon the Commission to adjudicate claims arising under the Uniform Commercial Code, federal law or the United States Code.

In addition, to the extent that the Complainant intends the reference to “remittance payment” to allege an attempt to pay for utility services rendered by PECO with non-negotiable documents, sight drafts, 1040 Forms, Acceptance for Value, UCC Certified Tender of Payments, Promissory Notes or other UCC documents, the Complainant is instructed that this issue has already been decided in *Coppedge v. PECO Energy Co.*, Docket No. F-2014-2406180 (Opinion and Order entered Jul. 29, 2014) (*Coppedge*), where the Commission determined that “even accepting as true the Complainant’s contentions, nothing in either PECO’s tariff or [Commission] Regulations requires PECO to accept all forms of payment.” *Coppedge* at 9. Consequently, I reiterate my ruling that Ms. Gibson’s Complaint is dismissed with regard to any claims arising under the Uniform Commercial Code, the Truth in Lending Act, the Federal Reserve Act or any other federal law or the United States Code. PECO’s Motion is granted.

Burden of Proof

As the party seeking affirmative relief from the Commission, a complainant has the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than that presented by the opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 70

A.2d 854 (Pa. 1950). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail and that the offense is a violation of the Public Utility Code (Code), the Commission's regulations, or order. 66 Pa.C.S. § 701; *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). The burden of proof is comprised of two distinct burdens: (1) the burden of production; and (2) the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Moore v. Nat'l Fuel Gas Distrib.*, Docket. No. C-2014-2458555 (Final Order entered Aug. 25, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party's claim or affirmative defense. *Id.* The burden of production may shift between the parties during a hearing. A complainant may establish a prima facie case with circumstantial evidence. *See, Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a prima facie case, the burden of production shifts to the utility to rebut the complainant's evidence. *See Moore*.

If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant's burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional evidence favorable to the complainant's claim. *See Milkie* at 1220; *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983) (*Burlison*).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on

a complainant as the party seeking affirmative relief from the Commission. *See Milkie* at 1220; *see also, Riedel v. Cnty. of Allegheny*, 633 A.2d 1325 (Pa. Cmwlth. 1993); *Burleson* at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See, Moore*. In determining whether a complainant has met the burden of persuasion, the fact-finder may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore* (citing *Suber v. Pa. Comm'n on Crime & Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005)).

Additionally, any decision of the Commission 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. 2 Pa.C.S. § 704; *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

Payment arrangement

At the hearing Ms. Gibson testified that she is the sole resident of the Service Address and that she is unemployed. Tr. 29-30. She explained that she receives no income but relies on the financial help of a friend. Tr. 30.

In response, PECO's witness Ramona Milburn testified that Ms. Gibson has a poor payment history. Ms. Milburn explained that between February 28, 2025, and March 14, 2025, Ms. Gibson received a LIHEAP grant of \$964.00 which was applied towards her outstanding balance with PECO. Tr. 30, 34; PECO Exhibit 1. Prior to that, Ms. Gibson's last payment to PECO was made on August 9, 2023, in the amount of \$363.86. Tr. 30, 34; PECO Exhibit 1. As of the day of the further hearing, Ms. Gibson's outstanding balance with PECO was \$2,479.49. Tr. 34. Ms. Milburn also testified that Ms. Gibson has received and defaulted on one Commission-issued payment arrangement

and one Company-issued one. Tr. 35-38; PECO Exhibits 3, 4. However, a careful review of the record indicates that the Commission-issued payment arrangement that Ms. Milburn is referring to is the one issued by BCS at BCS Case No. 3963618 which was appealed timely by Ms. Gibson in the present Complaint. *See* PECO Exhibits 3, 4. Consequently, I find that Ms. Gibson has not received a Commission-issued payment arrangement and shall review her eligibility for one in the paragraphs below.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401–1419, applied to complaints alleging inability to pay and requesting a Commission-issued payment arrangement at the time of the hearing. This law provided strict guidelines that the Commission had to follow when determining whether a payment arrangement could be issued and the length of the payment arrangement. I note that Chapter 14 has subsequently sunset, effective December 31, 2024, according to its provisions, and is not currently in effect.²

However, in its Statement of Policy entered December 24, 2024, the Commission clarified that its regulations codified at 52 Pa. Code Chapter 56 shall remain in effect until amended. *See Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328 (Statement of Policy entered Dec. 24, 2024). With regard to the provision of payment arrangements, the Commission explained that it will maintain its application of the four-tiered process establishing the length of payment arrangements previously articulated in Chapter 14. *Id.* at 4. In particular, the Commission’s Statement of Policy states that the principles of Section 1405 and definitions of Section 1403 will continue after the expiration of Chapter 14 on December 31, 2024. *Id.* at 5. Thus, consistent with Chapter 14, utility customers will be

² Nevertheless, since this action arose prior to the sunset of Chapter 14, its substantive effect still applies to this action. *Ghaderi v. St. Bd. of Osteopathic Med.*, 302 A.3d 240 (Pa. Cmwlth. 2023); *Miegoc v. W.C.A.B.*, 961 A.2d 269 (Pa. Cmwlth. 2008).

eligible for one payment arrangement on arrearages accrued while not on a customer assistance program under such terms, subject to a change in income or a significant change in circumstance as again outlined in the existing statute. *Id.* at 5, n.3 (citing 66 Pa.C.S. § 1405(c)).

As Chapter 14 required, the length of time for a customer to resolve an unpaid balance that is investigated by the Commission and is entered into by a public utility and a customer shall not extend beyond:

- (1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.
- (2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.
- (3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.
- (4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

Statement of Policy entered Dec. 24, 2024, at 4 (citing 66 Pa.C.S. § 1405(b)).

With no household income to report, Ms. Gibson is a level 1 income customer.³ While she has had a poor payment history with PECO, she has not received a payment arrangement from the Commission. Consequently, Ms. Gibson will be awarded a payment arrangement requiring her to make monthly payments consisting of her budget bill, plus one sixtieth (1/60th) of the balance accrued on her account, beginning with the first billing due date following the entry of a final Commission Order in this case.

³ See Federal poverty guidelines, 90 Fed. Reg. 5917 (Jan. 17, 2025); <https://aspe.hhs.gov/sites/default/files/documents/dd73d4f00d8a819d10b2fdb70d254f7b/detailed-guidelines-2025.pdf>.

In addition, 66 Pa.C.S. § 1409 provides that “the Commission may order a waiver of any late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level.” At the hearing, Ms. Gibson testified that she had no reportable income and that her situation had continued unchanged since she filed the informal complaint with BCS at BCS Case No. 3963618 on February 5, 2024. Tr. 47-48; *see also* PECO Exhibit 3. Consequently, she qualifies for the waiver of late payment charges assessed against her account from the time she filed the informal complaint with BCS. PECO is directed to calculate the total amount of late-payment charges assessed against Ms. Gibson’s account from February 5, 2024, to the date of the issuance of this order and credit that amount to Ms. Gibson’s account.

Finally, I encourage Ms. Gibson to apply for enrollment in PECO’s Customer Assistance Program in order to avail herself of the various benefits afforded by this program.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).
3. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

4. 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. 2 Pa.C.S. § 704. 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).

5. Following the sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code, the Commission’s regulations codified at 52 Pa. Code Chapter 56 shall remain in effect until amended. *Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328 (Statement of Policy entered Dec. 24, 2024).

6. Following the expiration of Chapter 14 of the Pennsylvania Public Utility Code on December 31, 2024, the Commission will maintain its application of the four-tiered process establishing the length of payment arrangements previously articulated in Chapter 14. *Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328, at 4 (Statement of Policy entered Dec. 24, 2024).

7. The principles of Section 1405 and definitions of Section 1403 of the Pennsylvania Public Utility Code will continue after the expiration of Chapter 14 on December 31, 2024. *Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328, at 5 (Statement of Policy entered Dec. 24, 2024).

8. The Commission may order a waiver of any late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level. 66 Pa.C.S. § 1409.

9. The Complainant has carried her burden of proving that she is eligible for a Commission-issued payment arrangement on her outstanding balance. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That PECO late-filed Exhibit 5 is admitted into the record.
2. PECO Energy Company's Motion to Dismiss the portion of Complaint raising claims under the Uniform Commercial Code, the Truth in Lending Act, the Federal Reserve Act or any other federal law or the United States Code is granted.
3. That the Formal Complaint filed by Nicole Gibson against PECO Energy Company at Docket No. F-2024-3049195 is dismissed to the extent it raises claims under the Uniform Commercial Code, the Truth in Lending Act, the Federal Reserve Act or any other federal law or the United States Code.
4. That the Formal Complaint filed by Nicole Gibson against PECO Energy Company at Docket No. F-2024-3049195 is granted as to Nicole Gibson's request for a payment arrangement.
5. That Nicole Gibson shall make monthly payments consisting of her current charges or budget bill, plus one sixtieth (1/60th) of the balance accrued in her

