

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Linda Berry	:	
	:	
v.	:	C-2025-3055802
	:	
FirstEnergy Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Michael J. Mroczka
Special Agent

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of an electric service customer seeking a payment arrangement because Complainant is actively enrolled in First Energy Pennsylvania Electric Company’s customer assistance program (PCAP).

HISTORY OF THE PROCEEDING

On June 13, 2025, Linda Berry (Complainant or Ms. Berry) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against FirstEnergy Pennsylvania Electric Company (FEPA, Company or Respondent).¹ Ms. Berry checked the boxes on the Complaint form stating the utility is threatening to shut

¹ The Complaint was served on FEPA on June 17, 2025.

off her service or has already shut off her service and requesting a Commission-issued payment arrangement.

On July 7, 2025, FEPA filed its Answer to the Formal Complaint, which admitted in part and denied in part various material allegations of the Complaint. FEPA requested the Complaint be dismissed.

By Hearing Notice dated July 17, 2025, an Initial Call-In Telephonic Hearing was scheduled for September 19, 2025, at 10:00 a.m., and the matter was assigned to me.

A Prehearing Order was issued on July 17, 2025, reminding the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

On September 19, 2025, the hearing convened as scheduled. The Complainant appeared *pro se*, testified on her own behalf, and offered no exhibits for the record. Timothy K. McHugh, Esquire, appeared on behalf of FEPA and presented the testimony of one witness, Alison Walker, an advanced customer services compliance specialist for FEPA. Ms. Walker sponsored the following four exhibits, which were admitted into the record without objection:

- FEPA Exhibit 1 – Statement of Account
- FEPA Exhibit 2 – Payment Arrangement history
- FEPA Exhibit 3 – Complaint history
- FEPA Exhibit 4 – Customer Contacts

The record closed on September 19, 2025, upon the filing of the 24-page transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Linda Berry, who resides at 3520 Acorn Circle, East Stroudsburg, PA, 18302 (Service Address). Tr. 7.

2. The Respondent is FirstEnergy Pennsylvania Electric Company, a jurisdictional public utility, which provides electric service to Complainant at the Service Address.

3. Complainant has a total household size of five at the Service Address. Tr. 9.

4. Complainant's gross monthly household income is \$2,000. Tr. 9.

5. Complainant's income and household size places her below 150% of the Federal poverty level. Tr. 9.²

6. Complainant's total arrearage at the time of the hearing was \$13,646.33. Tr. 14; FEPA Ex. 1.

7. Complainant is actively enrolled in the Company's Pennsylvania Customer Assistance Program (PCAP). Tr. 17; FEPA Exs. 1, 2, 4.

8. The total balance deferred for potential forgiveness through PCAP is \$11,569.33. Tr. 17; FEPA Ex. 2.

² See Federal poverty guidelines, 90 Fed. Reg. 5917 (Jan. 17, 2025); <https://aspe.hhs.gov/sites/default/files/documents/dd73d4f00d8a819d10b2fdb70d254f7b/detailed-guidelines-2025.pdf>

9. At the time of the hearing, Complainant owed \$2,077 to catch up on her PCAP account. Tr. 10, 17.

10. Complainant's account has had six prior Commission-issued payment arrangements. FEPA Ex. 2; Tr. 16-17.

11. Complainant's husband was handling the bills but has since passed away. Tr. 10, 22.

12. Complainant did not find out that the household was behind on the bill until after her husband passed away. Tr. 22.

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). 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. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 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 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). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind

might accept as adequate to support a conclusion. 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. Co. 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. 1961); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Cntr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Payment Arrangement

Complainant requests a Commission-issued payment arrangement. Prior to sunset, the Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401–1419 (Chapter 14), applied to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. 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. Chapter 14 has sunset, effective December 31, 2024, and is not currently in effect.

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) (*Statement of Policy*). 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.

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 at 4 (citing 66 Pa.C.S. § 1405(b)). Section 1405(c) of the Public Utility Code (the Code) stated that “[c]ustomer 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(d).

If the Commission has not previously ordered a payment arrangement for a complainant, the Commission has the authority to establish a payment arrangement on a complainant's arrearages within the strict guidelines previously set forth in 66 Pa.C.S. § 1405(b), as applied by the *Statement of Policy*. Ms. Berry's gross monthly household income of \$2,000 for a household size of five places her below 150% of the Federal poverty level.³ Tr. 9. Therefore, pursuant to the *Statement of Policy*, Ms. Berry would be eligible for a five-year payment arrangement under 66 Pa.C.S. § 1405(b)(1), absent any other restrictions.

Second or Subsequent Payment Arrangement

If the Commission has not previously ordered a payment arrangement for a complainant, the Commission has the authority to establish a payment arrangement, pursuant to 66 Pa.C.S. § 1405(a), on a complainant's arrearages within the strict guidelines set forth in 66 Pa.C.S. § 1405(b), as stated above. However, Chapter 14, as followed by the *Statement of Policy*, restricts the Commission from issuing a second or subsequent payment arrangement if a customer defaulted on a previous Commission-issued payment arrangement. The Code addresses second or subsequent payment arrangements as follows:

(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.

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>

66 Pa.C.S. § 1405(d). “Change in income” is defined by the Code as “[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.” 66 Pa.C.S. § 1403.

Complainant, or at the very least, the Complainant’s household, has had several prior Commission-issued payment arrangements. The last Commission payment arrangement was issued on April 18, 2022 at Docket No. C-2024-3049280 (April 2022 PAR). FEPA Ex 2.; Tr. 16. In granting the April 2022 PAR, Ms. Berry’s total household income was determined to be \$2,385 per month. FEPA Ex. 2. Complainant defaulted on the April 2022 PAR. Tr. 16.

Currently, as explained above, Ms. Berry’s household income is \$2,000 which is a decrease of \$385 per month from the income determined in the April 2022 PAR. Complainant’s current income, with five people in the household, is below 200% of the Federal poverty level. Therefore, she would need to show at least a 10% decrease in her household income to meet the “Change in income” definition under the statute to qualify for a second Commission-issued payment arrangement. Ms. Berry has had a decrease in household income of \$385 or approximately 16%.⁴ Therefore, the Commission would be permitted to grant a second or subsequent payment arrangement under Chapter 14 of the Code, as applied by the *Statement of Policy*. 66 Pa.C.S. §§ 1403, 1405(d). However, for other reasons, which are stated below, the Commission is not permitted to issue a payment arrangement in this matter.

⁴ ($\$2,385 - \$2,000 = \$385$) ($\$385 \div \$2,385 = 0.1614 \times 100 = 16.14\%$).

CAP Arrearages

The Commission does not have authority to order a payment arrangement on CAP arrearages. 66 Pa.C.S. § 1405(c); *Cooper v. PECO Energy Co.*, Docket No. F-2011-2254904 (Opinion and Order entered Aug. 2, 2012) (*Cooper*). A “customer assistance program” is defined as follows:

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by Section 2202 (relating to definitions) or Section 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

66 Pa.C.S. § 1403. FEPA’s PCAP program rates are CAP rates that cannot be the subject of a payment arrangement ordered by the Commission.

Ms. Berry is actively enrolled in PCAP. Tr. 17; FEPA Exs. 1, 2, 4. Therefore, her arrears are CAP arrears. This amount is not subject to a Commission-issued payment arrangement. Further, since she is actively enrolled in PCAP, her prior arrearage of \$11,569.33 has been deferred for potential forgiveness. Tr. 17; FEPA Ex. 2. At the time of the hearing, Complainant owed \$2,077 to bring her PCAP account current. Tr. 10, 17. Ms. Berry was working to get caught up. It is imperative that Ms. Berry catch up on the PCAP account, as it is the best payment arrangement available to her. In doing so, I encourage her to apply for any assistance that may be available to her. Further, I urge FEPA to continue to assist Ms. Berry in surmounting this obstacle.

Accordingly, the Complainant’s request for a Commission-issued payment arrangement must be denied and the Complaint will be dismissed.

CONCLUSIONS OF LAW

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

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

3. The Commission is authorized to establish a payment arrangement between a public utility and a customer. *Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328 (Statement of Policy entered Dec. 24, 2024) (citing 66 Pa.C.S. § 1405(a)).

4. Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the Commission. *Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328 (Statement of Policy entered Dec. 24, 2024) (citing 66 Pa.C.S. § 1405(c)).

5. The Complainant has failed to carry her burden of proving that she is eligible for a Commission-issued payment arrangement. *Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328 (Statement of Policy entered Dec. 24, 2024) (citing 66 Pa.C.S. § 1405(c)).

