**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Calvina Gadson :

:

v. : C-2015-2471359

:

PECO Energy Company :

**INITIAL DECISION**

Before

Eranda Vero

Administrative Law Judge

This Initial Decision sustains the portion of Calvina Gadson’s formal Complaint against PECO Energy Company, Docket No. C-2015-2471359 concerning the late payment charges, and denies the portion of her Complainant concerning other incorrect charges.

history of the proceeding

On March 10, 2015, Calvina Gadson (Complainant or Ms. Gadson) filed a formal Complaint against PECO Energy Company (PECO or Respondent) alleging that PECO is threatening to shut off or had already shut off her electric service and averring that there are incorrect charges on her bill(s) from PECO. As relief, the Complainant requested that PECO waive late payment charges as well as any charges that are more than three years old.

On March 16, 2015, PECO filed its Answer and New Matter, seeking the dismissal of the Complaint and striking of Complainant's requested relief as the Commission has no authority to grant a payment arrangement on Customer Assistance Program (CAP) arrears.

On April 7, 2015, the Respondent filed a Motion for Judgment on the Pleadings (Motion). The Respondent averred that the Complainant’s entire balance on the account is comprised of CAP arrears. The Respondent asserts that under 66 Pa.C.S. § 1405(c), the Complainant is not entitled to a payment arrangement.

A Hearing Notice dated March 26, 2015, notified the parties that an initial hearing was scheduled for Tuesday, May 19, 2015, at 9:30 a.m.

A Prehearing Order was issued on April 8, 2015, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The Complainant did not file a response to the Respondent’s Answer and New Matter or to its Motion.

On May 4, 2015, I issued an Order denying PECO’s Motion after finding that the relief requested by the Complainant did not include a Commission-issued payment arrangement.

The initial hearing convened as scheduled on May 19, 2015. Ms. Gadson was not present at the hearing. Instead, her husband, James McLean appeared and explained that Ms. Gadson had recently started a new job and was unable to attend the hearing. Tr. 4. He also explained that he was prepared to testify on behalf of the Complainant “because I was familiar with the issues [and] because we both share similar interest in the complaint filed.” Tr. 4. Mr. McLean was informed that while he could testify in support of the Complainant, he could not cross-examine PECO’s witness[[1]](#footnote-1). Tr. 5. Upon receiving this information, Mr. McLean requested that the hearing be continued until his wife was able to attend. Tr. 5. Counsel for PECO objected to the “late hour” request for a continuance. Tr. 6. After considering the pleadings and the parties’ respective positions with regard to the request for a continuance of the hearing, I denied the said request. Tr. 7. Mr. McLean testified in support of the Complainant. Shawane L. Lee, Esq. represented the Respondent, and presented the testimony of Renee Tarpley, who is a Senior Regulatory Assessor with PECO in charge of reviewing and investigating formal complaints filed with the Commission. The Respondent sponsored eight (8) exhibits, all of which were admitted into the record.

The record closed on June 18, 2015.

FINDINGS OF FACT

1. Complainant is Calvina Gadson, whose mailing address is 2939 N. Taney Street, Philadelphia, Pennsylvania 19132 (Service Address).

2. Respondent is PECO Energy Company.

3. From March 14, 2006, to March 10, 2008, Ms. Gadson resided at 4864 North Broad Street, Philadelphia, PA, where she received electric service from PECO. Tr. 15.

4. While residing at the 4864 North Broad Street address, Ms. Gadson was enrolled in PECO’s CAP program. Tr. 15.

5. Between March 2008 and May 2011, Ms. Gadson resided with her mother and did not have electric service in her name. Tr. 15.

6. Ms. Gadson started receiving electric service from PECO at the Service Address on May 26, 2011. Tr. 14, PECO Exhibit 1.

7. While residing at the Service Address, Ms. Gadson has been enrolled in CAP. Tr. 15.

8. Ms. Gadson lost her employment in November of 2014. Tr. 10.

9. From December 2014 to February 2015, Ms. Gadson received unemployment benefits. Tr. 10.

10. Ms. Gadson was employed again on or around April 2015. Tr. 4, 12.

11. At her current position, Ms. Gadson works between 35 and 40 hours per week, at a pay rate of $11.00 per hour. Tr. 12.

12. Mr. McLean is employed part-time by Resource Human Development, working 16 hours per week at a pay rate of $11.40 per hour. Tr. 12-3.

13. Ms. Gadson and Mr. McLean reside at the Service Address along with their 16-year old daughter and 11-year old son. Tr. 13.

14. In 2014, Ms. Gadson filed two formal Complaints against PECO at Docket Nos. C-2014-2416439 and C-2014-2439928. PECO Exhibits 6 and 7.

15. On or about June 24, 2014, the parties reached a resolution of all the claims raised in Ms. Gadson’s Complaint at Docket No. C-2014-2416439. Tr. 17, PECO Exhibit 6.

16. In accordance with the terms of the resolution of Ms. Gadson’s Complaint at Docket No. C-2014-2416439, PECO established a payment arrangement which would allow the Complainant to retire her balance of $3,413.76 in monthly installments of $142.24. Tr. 17, PECO Exhibit 6.

17. On or about October 27, 2014, the parties reached a resolution of all the claims raised in Ms. Gadson’s Complaint at Docket No. C-2014-2439928. Tr. 16, PECO Exhibit 7.

18. In accordance with the terms of the resolution of Ms. Gadson’s Complaint at Docket No. C-2014-2439928, Ms. Gadson paid $1,317.20 towards her outstanding balance with PECO. Tr. 16, 23-4, 26 PECO Exhibits 1 and 7.

19. In accordance with the terms of the resolution of Ms. Gadson’s Complaint at Docket No. C-2014-2439928, PECO restored her electric service; cancelled $542.32 in late payment charges in Ms. Gadson’s account, and established a payment arrangement which would allow the Complainant to retire her $2,032.50 balance by paying a special budget amount of $92.39 per month, plus her current monthly bill beginning with the November 2014 bill. Tr. 16, 23-4, 26 PECO Exhibits 1 and 7.

20. The amount of $542.32 represented the total amount of late payment charges assessed in connection with electric service provided to the Service Address from May 26, 2011, to October 2014. Tr. 23-4.

21. Between October 2014 and May 2015, PECO assessed late payment charges against Ms. Gadson’s account on two separate instances: on January 7, 2015, in the amount of $6.61, and on February 10, 2015, in the amount of $15.64. Tr. 27, PECO Exhibit 2.

22. As of the date of the hearing, Ms. Gadson’s balance with PECO was $2,774.91. Tr. 27, PECO Exhibit 1.

23. Ms. Gadson’s entire balance consists of arrearages accumulated while she was enrolled in PECO’s CAP program. Tr. 15.

DISCUSSION

In her formal Complaint, Ms. Gadson alleged that PECO is threatening to shut off her electric service and averred that there are incorrect charges on her bill(s) from PECO. As relief, the Complainant requested that PECO waive late payment charges as well as any charges that are more than three years old.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. [66 Pa.C.S.A. § 701](https://www.lexis.com/research/buttonTFLink?_m=34b0706af70b7bb2cbc788687249ab93&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2013%20Pa.%20PUC%20LEXIS%20180%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=13&_butInline=1&_butinfo=66%20PACS%20701&_fmtstr=FULL&docnum=2&_startdoc=1&wchp=dGLbVzk-zSkAW&_md5=36b90ee8e35ea5a4c0f9d507936354c4). If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility’s case by a preponderance of the evidence. [*Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95](https://www.lexis.com/research/buttonTFLink?_m=34b0706af70b7bb2cbc788687249ab93&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2013%20Pa.%20PUC%20LEXIS%20180%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=14&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=2&_startdoc=1&wchp=dGLbVzk-zSkAW&_md5=94e0608abaf615523e83b2a864dd61f6) (*Poorbaugh*). 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) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). 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 and Western Railway Co. v. Pa. Pub. Util. Comm’n*, 489 Pa. 109, 413 A.2d 1037 (1980).

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 her 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), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

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).

At the hearing, Mr. McLean testified that from March 14, 2006, to March 10, 2008, Ms. Gadson resided at 4864 North Broad Street, Philadelphia, PA, where she received electric service from PECO. Tr. 15. While residing at the 4864 North Broad Street address, Ms. Gadson was enrolled in PECO’s CAP program.  *Id.* Between March 2008 and May 2011, Ms. Gadson, Mr. McLean, and their children resided with Ms. Gadson’s mother and did not have electric service in their name. Tr. 15. On May 26, 2011, the family moved to the Service Address and Ms. Gadson placed electric service in her name. Tr. 14, PECO Exhibit 1. Ms. Gadson has been enrolled in CAP during the entire time she has resided at the Service Address. Tr. 15.

Mr. McLean testified that his wife lost her temporary job as an Insurance Agent in November of 2014. Tr. 10, 13. From December 2014 to February 2015, she received unemployment benefits, but was able to find employment again on or around April 2015. Tr. 4, 10, 12. He testified that, at her current position, Ms. Gadson works between 35 and 40 hours per week, at a pay rate of $11.00 per hour. Tr. 12. Mr. McLean also stated that he is employed part-time by Resource Human Development, working 16 hours per week at a pay rate of $11.40 per hour. Tr. 12-3. Ms. Gadson and Mr. McLean reside at the Service Address along with their 16-year old daughter and 11-year old son. Tr. 13.

During cross-examination, Mr. McLean admitted that in 2014, Ms. Gadson filed two formal Complaints against PECO at Docket Nos. C-2014-2416439 and C-2014-2439928. Tr. 10-11, 16-7. On or about June 24, 2014, the parties reached a resolution of the all the claims raised in Ms. Gadson’s Complaint at Docket No. C-2014-2416439. Tr. 17. Pursuant to the terms of the resolution, PECO established a payment arrangement which would allow the Complainant to retire her balance of $3,413.76 in monthly installments of $142.24. Tr. 17.

He also testified that the parties had reached a resolution of the all the claims raised in Ms. Gadson’s Complaint at Docket No. C-2014-2439928. Tr. 10-11, 16-7. Pursuant to the terms of that resolution: (1) Ms. Gadson paid $1,317.20 towards her outstanding balance with PECO; (2) PECO restored her electric service; PECO cancelled $542.32 in late payment charges in Ms. Gadson’s account; and (4) PECO established a payment arrangement which would allow the Complainant to retire her $2,032.50 balance by paying a special budget amount of $92.39 per month, plus her current monthly bill beginning with the November 2014 bill. Tr. 16-7.

With regard to the relief requested, Mr. McLean explained,

[W]hat we need Your Honor and what we are requesting Your Honor, is that under the law, I believe it’s either 52 Pennsylvania Code or something like that, it states that if we are below the poverty level, either PECO can on its own motion or you can order them – PECO, to waive three years of late charges.

Tr. 11, see also Tr. 18-9. He did not explain or provide any testimony with regard to Ms. Gadson’s original request to have any charges that are more than three years old removed from her outstanding balance with PECO. Instead, he stated the following, “I would like to start a clean slate if we could. I would want the whole entire bill waived and we could start over again….but I know that’s not going to happen.” Tr. 18.

In response to Mr. McLean’s testimony, PECO’s witness Ms. Tarpley testified that following the resolution of Ms. Gadson’s Complaint at Docket No. C-2014-2439928 in October of 2014, PECO credited Ms. Gadson’s account in the amount of $542.32, which represented the total amount of late payment charges assessed in connection with electric service provided to the Service Address from May 26, 2011 – the time service was first initiated in Ms. Gadson’s name – to October 2014. Tr. 23-4. Ms. Tarpley also testified that between October 2014 and May 2015, PECO assessed late payment charges on two separate instances: on January 7, 2015, in the amount of $6.61, and on February 10, 2015, in the amount of $15.64. Tr. 27, PECO Exhibit 2. PECO’s counsel offered to waive these late payment charges and to credit Ms. Gadson’s account in the amount of $22.25. Tr. 19-20.

The Pennsylvania Public Utility Code (Code), and the Commission’s regulation allow the Commission to “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, 52 Pa.Code § 56.22(d). Ms. Gadson’s gross household income is $30,904.80 per year.[[2]](#footnote-2) For a household of four (4), the Complainant’s annual household income is less than 150% of the Federal poverty level. Consequently, Ms. Gadson is eligible for a waiver of the late payment charges assessed by PECO against her account. However, in the instance case, the Respondent has already credited the Complainant’s account in the amount of $542.32, which represents all the late payment charges assessed in Ms. Gadson’s account between May 26, 2011, and October 23, 2014. PECO also offered to waive the two additional late payment charges assessed between October 23, 2014 and May 19, 2015 in the amount of $22.25.

In view of the above, Calvina Gadson’s formal Complaint against PECO Energy Company, Docket No. C-2015-2471359 is granted, in part, with regard to the late payment charges. The Respondent shall credit the Complainant’s account in the amount of $22.25. In addition, Ms. Gadson’s formal Complaint against PECO Energy Company, Docket No. C-2015-2471359 is denied, in part, with regard to any other claims concerning incorrect charges for failure to carry her burden of proof.

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 Complainant seeking affirmative relief from the Commission has the burden of proving the Complaint allegations by producing evidence which established material facts by a preponderance of the evidence. 66 Pa.C.S. § 332(a).

3. 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.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Calvina Gadson’s formal Complaint against PECO Energy Company, Docket No. C-2015-2471359 in sustained in part with regard to the late payment charges, and is denied, in part, with regard to any other claims of incorrect billing.

2. That PECO Energy Company shall credit Calvina Gadson’s account in the amount of $22.25.

3. That the Secretary mark this docket closed.

Dated: November 2, 2015 /s/

Eranda Vero

Administrative Law Judge

1. See *Andree Lombard v. PECO Energy Company*, Docket No. C-2014-2416855, (Opinion and Order entered March 11, 2015). [↑](#footnote-ref-1)
2. Ms. Gadson’s average annual gross income is: (35 + 40) /2 hours per week x $11.00 per hour x 52 weeks per year = $21,450.00 per year. Mr. McLean’s annual gross income is: 16 hours per week x $11.40 per hour x 52 weeks per year = 9,482.80. Ms. Gadson’s gross household income is $21,450.00 + $9,482.80 = $30,904.80 per year. [↑](#footnote-ref-2)