

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265**

**Jerry James
v.
PECO Energy Company**

**PUBLIC MEETING
September 24, 2009
2025659-ALJ
Docket No. C-2008-2025659**

MOTION OF COMMISSIONER KIM PIZZINGRILLI

Before the Commission for consideration is an Initial Decision (ID) dismissing a complaint and directing the complainant to make payments in accordance with a prior Bureau of Consumer Services (BCS) determination. The complaint is an untimely appeal¹ of the prior BCS decision. The complainant did not comply with the BCS payment terms.

While I concur with the denial of the Complaint, I disagree with the portion of the ID establishing payment terms. Under Chapter 14, the Commission is prohibited from establishing a second or subsequent payment agreement unless a complainant demonstrates that the household has experienced a change in income. 66 Pa. C.S. §1405(d). The Commission has held that a customer cannot be deemed in default of a timely appealed BCS payment agreement until the Formal Complaint on appeal is fully adjudicated and a Final Order entered. *Richard Kalamets v. Columbia Gas of Pennsylvania, Inc.*, Z-01701441 (October 14, 2005). However, since the instant complaint is an untimely appeal, this policy does not apply.

In this case, the payment terms established by BCS were not timely appealed and those terms have become the one Commission-established payment agreement permitted by statute. The payment terms contained in the ID effectively amount to a second Commission-established payment agreement.

The record indicates that complainant is a level 4 income customer and that his household income at the time of the hearing was likely higher than that reported at the time of the BCS determination. The record does not support a finding of a change in income sufficient to justify the establishment of a second Commission payment agreement. Additionally, I note that complainant made only 12 payments over the past 2 years and, as of the hearing date, had an account balance exceeding \$4,000. Accordingly, the ID should be modified to eliminate the portion establishing a subsequent payment arrangement on complainant's account.

THEREFORE, I MOVE THAT:

1. The Initial Decision is modified consistent with this Motion.
2. The Office of Special Assistants prepare the appropriate Order.

September 24, 2009
Date

**_____
KIM PIZZINGRILLI, COMMISSIONER**

¹ The BCS determination was issued on November 8, 2007. The Commission's file does not contain a Notice of Intention to Appeal which is required to preserve the timeliness of an appeal from a BCS determination. The formal complaint was filed on January 16, 2008. An appeal is considered timely if filed within 20 days of the BCS determination.