

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Butts	:	
	:	
v.	:	F-2016-2523559
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

The customer filed a complaint against his electric utility alleging the utility terminated his service and that there are incorrect charges on his bills. The complaint also requested a payment arrangement for the unpaid balance on the customer’s electric utility account. This decision denies the complaint because the claim concerning incorrect charges on the customer’s bills occurred more than three years prior to the date the customer filed the complaint and because the utility provided notice to the customer prior to terminating utility service. This decision also denies the customer’s request for a payment arrangement because a portion of the customer’s arrearage accumulated while the customer was enrolled in the utility’s customer assistance program (CAP) and because the customer has a poor payment history.

HISTORY OF THE PROCEEDING

On January 13, 2016, John Butts (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). The complaint is a timely appeal of the Commission’s Bureau of Consumer

Services' (BCS') December 9, 2015 decision at BCS No. 3405292 dismissing the Complainant's informal complaint.

The complaint alleges that the Respondent terminated the Complainant's service and that there are incorrect charges on his bills. The complaint requests that the Commission direct the Respondent to restore the Complainant's service and order a payment arrangement for the unpaid balance on the customer's electric utility account.

The Respondent filed an answer on February 2, 2016. The answer admits that the Respondent provided electric service to the Complainant at the address shown on the complaint. The answer admits that the Respondent has terminated the Complainant's utility service. The answer also admits that the Complainant is seeking a payment arrangement. The answer denies that there are incorrect charges on the Complainant's bills. The answer requests that the Commission dismiss the complaint.

By hearing notice dated February 11, 2016, the Commission scheduled a telephonic hearing for this matter on March 30, 2016 at 1:00 p.m. and assigned the case to me. I issued a prehearing order dated February 22, 2016, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I conducted a telephonic hearing on March 30, 2016. John Butts appeared pro se and presented testimony in support of his complaint. Shawane L. Lee, Esquire represented the Respondent, which presented one witness who sponsored thirteen exhibits that I admitted into the record.

The initial hearing resulted in a transcript of 53 pages. The record closed on May 12, 2016, the date the transcript was filed with the Secretary's Bureau. For the reasons set forth below, I will deny the complaint.

FINDINGS OF FACT

1. The Complainant in this case is John Butts N.T. 5.
2. The Respondent in this case is PECO Energy Company. N.T. 5.
3. The Complainant currently resides at 8723 West Chester Pike, Apartment F-8 Upper Darby, Delaware County. N.T. 6.
4. The Complainant has resided at 8723 West Chester Pike for approximately one year. N.T. 6.
5. The Respondent terminated electric service to 8723 West Chester Pike in November 2015. N.T. 10-11.
6. The Respondent provided the Complainant with written notice of its intent to terminate his service prior to terminating his service. N.T. 11.
7. The Complainant continues to pay rent for the residence at 8723 West Chester Pike. N.T. 11.
8. The Complainant currently lives with his mother since he has asthma and uses a nebulizer which requires electricity to operate. N.T. 11.
9. The Complainant has had asthma for a number of years. N.T. 15.
10. Previously, the Complainant resided at 6873 Clover Lane, Upper Darby from 2014-2015. N.T. 6.
11. From 2012-2014 the Complainant lived with either his mother or his sister. N.T. 7.

12. From 2006-2012, the Complainant resided at 6584 Cobbs Creek Parkway, Philadelphia. N.T. 7.

13. The account for the residence at 8723 West Chester Pike is in the Complainant's name. N.T. 13.

14. When he was residing at 8723 West Chester Pike, the Complainant's two year old nephew resided with him. N.T. 13.

15. When the Complainant was no longer able to reside at 8723 West Chester Pike, his nephew began living with the Complainant's sister. N.T. 13-14.

16. The Complainant currently earns approximately \$18,000.00 per year. N.T. 14.

17. The Complainant's income varies, depending on the number of hours that he works. N.T. 14.

18. The Complainant has recently interviewed for a full time position that would pay him more than he currently earns. N.T. 14.

19. The Complainant established service at 6584 Cobbs Creek Parkway on July 10, 2006. N.T. 34, PECO Exs. 1-3.

20. On August 22, 2012, the Respondent discontinued the Complainant's account at 6584 Cobbs Creek Parkway at the request of the Complainant. N.T. 37, PECO Exs. 1-3.

21. The Respondent issued a final bill for the account at 6584 Cobbs Creek Parkway to the Complainant in the amount of \$4,571.95, due July 13, 2012. N.T. 37, PECO Ex. 1.

22. The final bill for 6584 Cobbs Creek was sent to the Complainant at 5428 Irving Street, Philadelphia. N.T. 37, PECO Exs. 1-3.

23. The Complainant established service with the Respondent at 6873 Clover Lane, Upper Darby on August 15, 2014. N.T. 38, PECO Exs. 1, 4.

24. On August 18, 2014, the Respondent transferred the account balance of \$5,401.15 from the account for 6584 Cobbs Creek Parkway to the account for 6873 Clover Lane. N.T. 39, PECO Exs. 1, 4.

25. On July 27, 2015, the Respondent discontinued service at 6873 Clover Lane. N.T. 39, PECO Exs. 1, 4.

26. On July 7, 2015, the Respondent issued a final bill for the account at 6873 Clover Lane to the Complainant in the amount of \$6,338.20, due July 29, 2015. N.T. 39, PECO Exs. 1, 4.

27. The final bill for 6873 Clover Lane was sent to the Complainant at 149 Margate Road, Upper Darby. N.T. 39, PECO Exs. 1, 4.

28. On July 24, 2015, the Complainant established service at 8723 West Chester Pike, Apartment F-8, Upper Darby. N.T. 40, PECO Exs. 1, 5.

29. On July 31, 2015, the Respondent transferred the account balance of \$6,213.20 from the account for 6873 Clover Lane to the account for 8723 West Chester Pike. N.T. 40, PECO Exs. 1, 5.

30. On November 30, 2015, the Respondent shut off service at 8723 West Chester Pike for a past due balance of \$6,706.14. N.T. 42, PECO Exs. 1, 5.

31. On January 4, 2016, the Respondent issued a final bill for the account at 8723 West Chester Pike to the Complainant in the amount of \$6,819.04, due January 26, 2016. N.T. 42, PECO Exs. 1, 5.

32. The current balance due on the Complainant's account is \$6,916.72. N.T. 32.

33. The Complainant was enrolled in the Respondent's CAP on June 23, 2011. N.T. 40, PECO Ex. 6.

34. The Complainant was removed from the CAP on August 22, 2012 because the account was closed. N.T. 41, PECO Ex. 6.

35. At the time that the Complainant was removed from the Respondent's CAP, there was a CAP arrearage of \$1,965.16. N.T. 41, PECO Ex. 6.

36. The CAP arrearage is part of the Complainant's total arrearage. N.T. 41, PECO Ex. 6.

37. The Respondent sent a ten day termination notice to the Complainant on October 22, 2015. N.T. 42, PECO Ex. 7.

38. The Respondent gave the Complainant 72-hour termination notices on October 28, 2015 by leaving a message on an answering machine and on October 29, 2015 by giving a message to a third party. N.T. 42, PECO Ex. 7.

39. The Respondent terminated the Complainant's service at 8723 West Chester Pike on November 30, 2015. N.T. 42, PECO Ex. 7.

40. The Complainant provided medical certificates to the Respondent on March 26, 2015, June 5, 2015 and September 22, 2015. N.T. 43, PECO Ex. 7.

41. On each occasion, the Respondent delayed termination of the Complainant's service. N.T. 43, PECO Ex. 7.

DISCUSSION

The Complainant in this proceeding has the burden of proof to show that the Respondent is responsible or accountable for the problem described in the complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). 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), alloc. den., 602 A.2d 863 (Pa. 1992). To meet his burden of proof, the Complainant must present evidence more convincing, by even the smallest amount, than that presented by the Respondent. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

Here the Complainant alleges that the Respondent terminated the Complainant's service and that there are incorrect charges on his bill. The Complaint also requests that the Commission order a payment arrangement for the unpaid balance on the customer's electric utility account. Before addressing the merits of the Complainants' claims, I will address the statute of limitations set forth at 66 Pa.C.S. § 3314 and its applicability to this proceeding.

Statute of Limitations

The Respondent has not has raised the statute of limitations set forth at 66 Pa.C.S. § 3314 in its pleadings and its applicability to the issues raised in the Complainant's complaint. As discussed below, the statute of limitations at 66 Pa.C.S. § 3314 divests the Commission of jurisdiction and therefore must be addressed. For the reasons set forth below, I conclude that the statute of limitations at 66 Pa.C.S. § 3314 is applicable to some of the claims raised in the Complainant's complaint.

The Respondent did not raise the statute of limitations in its answer. However, the Respondent's failure to raise the statute of limitations either through preliminary objections or in

new matter as part of its answer does not waive the statute of limitations as a defense. If the statute of limitations is a non-waivable defense, it may be raised as a preliminary objection pursuant to Pa. R.C.P. 1028. However, if the statute of limitations is waivable, it must be raised by new matter in a responsive pleading. Reuben v. O'Brien, 445 A.2d 801 (Pa. Super 1982). A statute of limitations is non-waivable if the time limitation contained in it terminates not just the remedy but the actual right to bring the action. A statute of limitations is waivable if the time limitation contained in it terminates just the remedy but not the right to bring the action.

The statute of limitations at 66 Pa.C.S. § 3314 is non-waivable. The statute at 66 Pa.C.S. § 3314 provides that no action for recovery of penalties or forfeitures, or any prosecution may be maintained unless brought within three years from the date the liability arose. This is a non-waivable statute of limitations since it terminates the right to bring an action as well as any remedy. The statute of limitations at 66 Pa.C.S. § 3314 divests the Commission of jurisdiction to hear an action brought more than three years from the date the liability arose and is properly raised through preliminary objections, pursuant to 52 Pa.Code § 5.101(a)(1). Since the statute of limitations at 66 Pa.C.S. § 3314 is non-waivable and divests the Commission of jurisdiction, it may be raised at any time.

The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. Tod and Lisa Shedlosky v. Pennsylvania Electric Co., Docket No. C-20066937 (Opinion and Order entered May 28, 2008); Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n., 43 A.2d 348 (Pa.Super. 1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. Hughes v. Pennsylvania State Police, 619 A.2d 390 (Pa.Cmwlt. 1992) alloc. denied 637 A.2d 293 (Pa. 1993). Since the statute at 66 Pa.C.S. § 3314 divests the Commission of jurisdiction to hear an action brought more than three years from the date the liability arose, it is appropriate for me to raise and apply the statute of limitations in this proceeding.

Applying the three year statute of limitations at 66 Pa.C.S. §3314 to this case, the Complainant filed his complaint on January 13, 2016. I will, therefore, bar any claims by the Complainant for events that occurred prior to January 13, 2013.

Having addressed the statute of limitations set forth at 66 Pa.C.S. § 3314 and its applicability to this proceeding, I will now address the allegations in the Complainant's complaint. In order to fully understand the Complainant's allegations, I will provide some background information taken from the evidence presented by the parties before addressing the merits of the complaint.

Background

The Complainant currently resides at 8723 West Chester Pike, Apartment F-8 Upper Darby, Delaware County. N.T. 6. The Complainant has resided at 8723 West Chester Pike for approximately one year. N.T. 6.

The Complainant indicated that the Respondent terminated electric service to 8723 West Chester Pike in November 2015. N.T. 10-11. The Complainant acknowledged that the Respondent provided him with written notice of its intent to terminate his service prior to terminating his service. N.T. 11.

The Complainant stated that he continues to pay rent for the residence at 8723 West Chester Pike. N.T. 11. However, he stated that he currently lived with his mother since he has asthma and uses a nebulizer which requires electricity to operate. N.T. 11. The Complainant has had asthma for a number of years. N.T. 15.

Previously, the Complainant resided at 6873 Clover Lane, Upper Darby from 2014-2015. N.T. 6.

From 2012-2014 the Complainant lived with his mother or sister. N.T. 7.

From 2006-2012, the Complainant resided at 6584 Cobbs Creek Parkway, Philadelphia. N.T. 7.

The Complainant indicated that he was disputing the bills he received from the Respondent for service to the residence at 6584 Cobbs Creek Parkway. N.T. 7-9. According to the Complainant, the Respondent never read the meter at the address. N.T. 10. As a result, the Complainant contends that the bills he received were inaccurate. N.T. 10.

The Complainant also alleged that he contacted the Respondent concerning the meter at 6584 Cobbs Creek Parkway, alleging that it was not functioning properly. N.T. 10. According to the Complainant, the Respondent never contacted him to address his concerns. N.T. 10.

The Complainant testified that the account for the residence at 8723 West Chester Pike was in his name. N.T. 13. The Complainant stated that when he was residing at 8723 West Chester Pike, his two year old nephew resided with him. N.T. 13. When the Complainant was no longer able to reside at 8723 West Chester Pike, his nephew began living with the Complainant's sister. N.T. 13-14.

The Complainant indicated that he currently earned approximately \$18,000.00 per year. N.T. 14. The Complainant testified that his income varied, depending on the number of hours that he worked. N.T. 14. According to the Complainant, he had recently interviewed for a full time position that would pay him more than he currently earns. N.T. 14.

In response to the Complainant's testimony, the Respondent presented the testimony of Michael Begley, a regulatory assessor. N.T. 32. Mr. Begley sponsored exhibits taken from the Respondent's business records.

According to the Respondent's records, the Complainant established service at 6584 Cobbs Creek Parkway on July 10, 2006. N.T. 34, PECO Exs. 1-3. According to the Respondent's records, on August 22, 2012, the Respondent discontinued the Complainant's

account at 6584 Cobbs Creek Parkway at the request of the Complainant. N.T. 37, PECO Exs. 1-3.

The Respondent issued a final bill for the account at 6584 Cobbs Creek Parkway to the Complainant in the amount of \$4,571.95, due July 13, 2012. N.T. 37, PECO Ex. 1. This final bill for 6584 Cobbs Creek Parkway was sent to the Complainant at 5428 Irving Street, Philadelphia. N.T. 37, PECO Exs. 1-3.

According to the Respondent's records, the Complainant next established service at 6873 Clover Lane, Upper Darby on August 15, 2014. N.T. 38, PECO Exs. 1, 4. On August 18, 2014, the Respondent transferred the account balance of \$5,401.15 from the account for 6584 Cobbs Creek Parkway to the account for 6873 Clover Lane. N.T. 39, PECO Exs. 1, 4.

On July 27, 2015, the Respondent discontinued service at 6873 Clover Lane. N.T. 39, PECO Exs. 1, 4. On July 7, 2015, the Respondent issued a final bill for the account at 6873 Clover Lane to the Complainant in the amount of \$6,338.20, due July 29, 2015. N.T. 39, PECO Exs. 1, 4. This final bill was sent to the Complainant at 149 Margate Road, Upper Darby. N.T. 39, PECO Exs. 1, 4.

According to the Respondent's records, on July 24, 2015, the Complainant next established service at 8723 West Chester Pike, Apartment F-8, Upper Darby. N.T. 40, PECO Exs. 1, 5. On July 31, 2015, the Respondent transferred the account balance of \$6,213.20 from the account for 6873 Clover Lane to the account for 8723 West Chester Pike. N.T. 40, PECO Exs. 1, 5.

On November 30, 2015, the Respondent shut off service at 8723 West Chester Pike for a past due balance of \$6,706.14. N.T. 42, PECO Exs. 1, 5. On January 4, 2016, the Respondent issued a final bill for the account at 8723 West Chester Pike to the Complainant in the amount of \$6,819.04, due January 26, 2016. N.T. 42, PECO Exs. 1, 5. The current balance due on the Complainant's account is \$6,916.72. N.T. 32.

According to the Respondent's records, the Complainant was enrolled in the Respondent's CAP on June 23, 2011. N.T. 40, PECO Ex. 6. The Complainant was removed from the CAP on August 22, 2012 because the account was closed. N.T. 41, PECO Ex. 6. At the time that the Complainant was removed from the Respondent's CAP, there was a CAP arrearage of \$1,965.16. N.T. 41, PECO Ex. 6. The CAP arrearage is part of the Complainant's total arrearage. N.T. 41, PECO Ex. 6.

According to the Respondent's records, the Respondent sent a ten day termination notice to the Complainant on October 22, 2015. N.T. 42, PECO Ex. 7. The Respondent gave the Complainant 72-hour termination notices on October 28, 2015 by leaving a message on an answering machine and on October 29, 2015 by giving a message to a third party. N.T. 42, PECO Ex. 7. The Respondent terminated the Complainant's service at 8723 West Chester Pike on November 30, 2015. N.T. 42, PECO Ex. 7.

According to the Respondent's records, the Complainant had provided medical certificates to the Respondent on March 26, 2015, June 5, 2015 and September 22, 2015. N.T. 43, PECO Ex. 7. On each occasion, the Respondent delayed termination of the Complainant's service. N.T. 43, PECO Ex. 7.

Improper Billing

Having provided some background information, I will now address the merits of the Complainant's complaint, starting with the allegation that the Respondent improperly billed the Complainant for service to his residence at 6584 Cobbs Creek Parkway. In support of this allegation, the Complainant stated that he resided at 6584 Cobbs Creek Parkway from 2006-2012.

During the period from 2006 to 2012, the Complainant alleged that his bills were too high because the Respondent never read the electric meter. In addition, the Complainant indicated that during this time period he contacted the Respondent but that the Respondent failed to address his concerns.

In response to the Complainant's assertions, the Respondent stated that its records indicate that the Complainant never complained to it about his bills or the meter at 6584 Cobbs Creek Parkway.

The Respondent also pointed out that during the time period that the Complainant resided at 6584 Cobbs Creek Parkway, the Complainant filed two informal complaints with BCS. N.T. 19-22, PECO Ex. 9. In neither of these informal complaints did the Complainant assert that his meter was malfunctioning or that the Respondent was improperly billing the Complainant. N.T. 19-22. Both informal complaints only request payment arrangements. N.T. 3719-22, PECO Ex. 9.

The Respondent's records indicate that the Respondent issued a final bill for the account at 6584 Cobbs Creek Parkway to the Complainant in the amount of \$4,571.95, due July 13, 2012. PECO Ex. 1. This final bill was sent to the Complainant at 5428 Irving Street, Philadelphia. PECO Exs. 1-3.

Since this claim by the Complainant occurred prior to January 13, 2013, the statute of limitations at 66 Pa.C.S. §3314 divests the Commission of jurisdiction to hear or rule on the claim. The Complainants' claim arose, at the latest, on approximately July 13, 2012 when the Respondent issued a final bill for the account at 6584 Cobbs Creek Parkway. July 13, 2012 is more than three years from the date the Complainant filed his complaint. The claims that the Respondent improperly billed the Complainant for service to his residence at 6584 Cobbs Creek Parkway, that the Respondent never read the electric meter and that the Respondent failed to address his concerns are therefore barred by the statute of limitations.

As noted earlier, this complaint is a timely appeal of the BCS' December 9, 2015 decision at BCS No. 3405292 dismissing the Complainant's informal complaint. The Commission has held that filing an informal complaint with BCS can toll the statute of limitation for the period of time during which BCS investigates a customer's informal complaint. Counsel v. Philadelphia Gas Works, Docket No. C-2014-2438368 (Opinion and Order entered November 19, 2015) (Counsel).

In this case, the Complainant filed his complaint at BCS No. 3405292 on December 7, 2015. PECO Ex. 11. BCS dismissed the informal complaint on December 9, 2015. The Complainant filed his informal complaint with BCS more than three years after July 13, 2012, the date the Respondent issued a final bill for the account at 6584 Cobbs Creek Parkway to the Complainant. Therefore, the Complainant's informal complaint failed to toll the statute of limitations because it had already run. Counsel. As stated above, the claims that the Respondent improperly billed the Complainant for service to his residence at 6584 Cobbs Creek Parkway, that the Respondent never read the electric meter and that the Respondent failed to address his concerns are therefore barred by the statute of limitations.

Having addressed the allegations concerning service to the Complainant's residence at 6584 Cobbs Creek Parkway, I will now address the Complainant's allegation that the Respondent terminated his electric service at 8723 West Chester Pike and his request that the Commission order the Respondent reconnect his service.

Service Termination

There is no dispute that the Respondent terminated the Complainant's service at 8723 West Chester Pike. Before it could terminate service to the Complainant for non-payment, the Respondent had to provide notice to the Complainant. The statute at 66 Pa. C.S. §1406(a)(1) provides that a public utility may terminate service for non-payment of an account after providing notice to the customer as set forth in 66 Pa. C.S. §1406(b). The provision at 66 Pa. C.S. §1406(b)(1)(i) directs that a public utility shall provide a written termination notice to the customer at least ten days prior to the date of the proposed termination. The termination notice remains effective for sixty days. The provision at 66 Pa. C.S. §1406(b)(1)(ii) directs that a public utility shall attempt to contact the customer in person or by phone at least three days prior to the scheduled termination.

In this case, the Respondent produced evidence that the Complainant had not made payments on his account for 8723 West Chester Pike. PECO Ex. 5. According to the Respondent's records, there was a LIHEAP payment made on December 28, 2015 in the amount

of \$121.00 on the account for 8723 West Chester Pike. PECO Ex. 5. The Complainant made no other payment on the account 8723 West Chester Pike for the period from July 24, 2015 to January 5, 2016. PECO Ex. 5. Therefore, the Respondent could terminate the Complainant's service for non-payment.

According to the Respondent's records, the Respondent sent a ten day termination notice to the Complainant on October 22, 2015. PECO Ex. 7. The Respondent gave the Complainant 72-hour termination notices on October 28, 2015 by leaving a message on an answering machine and on October 29, 2015 by giving a message to a third party. PECO Ex. 7. The Complainant acknowledged that he had received the notices. Therefore, the Respondent provided the Complainant with proper notice in compliance with Commission regulations prior to terminating his service at 8723 West Chester Pike on November 30, 2015. PECO Ex. 7. The Respondent terminated the Complainant's service at 8723 West Chester Pike on November 30, 2015. PECO Ex. 7.

The Complainant claims that the Respondent informed him that it would not honor his medical certificate and delay termination of his service. The regulation at 52 Pa.Code § 56.111 prohibits a utility from terminating service, or refusing to restore service, to a premises when a licensed physician or nurse practitioner provides a medical certificate indicating that the customer or an applicant seeking restoration of service or a member of the customer's or applicant's household is seriously ill or afflicted with a medical condition that will be aggravated by cessation of service. The regulation at 52 Pa.Code § 56.111 requires that the customer obtain a letter from a licensed physician verifying the condition and promptly forward it to the public utility.

The Commission regulation at 52 Pa.Code § 56.114 states that a utility may not terminate service for the time period set forth in the medical certificate. The maximum length of a medical certificate is thirty days. The regulation at 52 Pa.Code § 56.114(1) states that if the medical certificate specifies no length of time, the utility may not terminate service for at least thirty days. The regulation at 52 Pa.Code § 56.114(2) provides that a medical certificate may be renewed two times for the same set of arrearages.

In this case the Respondent produced evidence that the Complainant had provided medical certificates to the Respondent on March 26, 2015, June 5, 2015 and September 22, 2015. PECO Ex. 7. On each occasion, the Respondent delayed termination of the Complainant's service. PECO Ex. 7. The Complainant acknowledged that the Respondent had honored the three medical certificates he provided to it and that the Respondent informed him that it would not honor a fourth medical certificate. N.T. 30.

The Respondent properly honored the Complainant's three medical certificates in compliance with Commission regulations. However, the Respondent properly informed the Complainant that it would not honor another medical certificate and delay termination of his service. For the reasons set forth above, I conclude that the Complainant has failed to establish by a preponderance of the evidence that the Respondent improperly terminated his service at 8723 West Chester Pike.

Having addressed the Complainant's allegation that the Respondent improperly billed the Complainant for service to his residence at 6584 Cobbs Creek Parkway and the allegation that the Respondent terminated his electric service at 8723 West Chester Pike, I will now address the Complainant's request that the Commission direct the Respondent to reconnect his service at 8723 West Chester Pike.

Reconnection

The Respondent has indicated that it will reconnect the Complainant's service if the Complainant pays the current balance of \$6,916.72 plus a reconnection fee. The Complainant contends that he cannot afford to pay the entire balance at once but wants to pay the account balance in installments.

The statute at 66 Pa.C.S. § 1407 and the regulation at 52 Pa.Code § 56.191 govern reconnection of utility service. The statute and regulation authorize a utility to require payment of the entire account balance and payment of a reconnection fee prior to restoring service when a customer has defaulted on two or more payment agreements. In this case, the Complainant has

defaulted on two Commission ordered payment arrangements and three payment arrangements issued by the Respondent. PECO Ex. 13. Therefore the Respondent is properly requesting that the Complainant pay his entire account balance and reconnection fee prior to the Respondent reconnecting service at 8723 West Chester Pike. The Complainant has failed to establish by a preponderance of the evidence that the Respondent has improperly required the Complainant to pay the entire account balance and reconnection prior to restoring his service at 8723 West Chester Pike.

The Commission has held that while 66 Pa.C.S. § 1407 sets out the terms that a utility may impose on a customer requesting reconnection of service, it does not divest the Commission of its authority to order a payment arrangement, pursuant to 66 Pa.C.S. § 1405, for a customer who was lawfully disconnected for nonpayment. Crawford v. National Fuel Gas Distribution Corporation, Docket No. C-20066348 (Opinion and Order entered December 6, 2007) (Crawford); Rogito v. UGI Utilities, Inc., Docket No. F-02263457 (Opinion and Order entered December 3, 2008). The Commission has stated that it will exercise its authority to establish a payment arrangement in these circumstances judiciously.

By law, a public utility is entitled to receive payment for the service it provides. Scaccia v. West Penn Power Co., 55 Pa. PUC 637 (1982); Kea v. Peoples Natural Gas Co., 60 Pa. PUC 215 (1985); Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa.Cmwlt. 1982). The Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303. Neal v. Philadelphia Gas Works, Docket No. Z-00871874, (Final Order entered January 4, 2002); Angie's Bar v. Duquesne Light Co., 72 Pa. PUC 213 (1990).

All customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. Bolt v. Duquesne Light Co., Docket No. Z-8712758 (Opinion and Order entered April 8, 1988). A payment arrangement, which prevents service termination as long as the Complainant complies with it, is a privilege, not a right. Mandell v. Duquesne Light Co., Docket No. C-20030234, (Opinion and Order entered March 17, 2004).

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418 applies to this proceeding. On December 22, 2014, Act 155 of 2014, reenacting the Responsible Utility Customer Protection Act, became effective. Act 155 modified some provisions of the Responsible Utility Customer Protection Act. I will incorporate those modifications in the discussion that follows.

The Commission may establish a payment arrangement between a public utility and a customer only within the limits established by 66 Pa.C.S. §§ 1401-1418. In order to be eligible for a payment arrangement, the Complainant must be a “customer” or “applicant” as defined by 66 Pa.C.S. § 1403. If the Complainant is not a “customer” or “applicant”, the Commission is not authorized to establish a payment arrangement between him and the Respondent. The statute at 66 Pa.C.S. § 1403 defines a customer as follows:

“Customer.” A natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested. The term includes a person who, within 30 days after service termination or discontinuance of service, seeks to have service reconnected at the same location or transferred to another location within the service territory of the public utility.

In this case, the Complainant is a customer since he is a natural person in whose name a residential service account is listed. In addition, within thirty days of the Respondent terminating his service on November 30, 2015, the Complainant filed an informal complaint with BCS on December 7, 2015, seeking restoration of his service. Therefore, the Complainant is a customer since within thirty days after his service was terminated, he sought to have his service reconnected.

While the Complainant is a customer, pursuant to 66 Pa.C.S. § 1403, the Complainant may not be entitled to a new payment arrangement because the Commission has no authority to establish a payment arrangement where a customer has CAP arrearages. The provision at 66 Pa.C.S. § 1405(c) states as follows:

(c) **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.

Section 1403 of the Public Utility Code, 66 Pa.C.S. § 1403, defines a CAP 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.

Here a portion of the Complainant's arrearage in the amount of \$1,965.16 is subject to CAP rates. The Commission cannot order a payment arrangement on this amount. However, a portion of the Complainant's arrearage was accrued after the Complainant was removed from the Respondent's CAP and is not subject to CAP rates. The Commission can order a payment arrangement on the non-CAP amount. The Commission has previously addressed its authority to order a payment arrangement where the customer has a mixed arrearage consisting of both CAP and non-CAP arrearages.

In Hewitt v. PECO Energy Co., Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013) (Hewitt), the Commission held that it retained authority to issue a payment arrangement for the non-CAP portion of a mixed arrearage. The Commission emphasized that the issuance of a payment arrangement was a matter within the Commission's discretion. In Hewitt, the Commission determined that the complainant, a former CAP customer, was not entitled to a payment arrangement for her non-CAP arrearages because of her poor payment history and her inability to keep prior payment agreements.

The Commission explained in Hewitt that bifurcating an arrearage and establishing a payment arrangement would require a utility to place the CAP portion of the arrearage on hold. As long as the customer complied with the payment arrangement for the non-

CAP portion of the arrearage, the utility would be prohibited from terminating service for non-payment of the CAP arrearage. The Commission concluded that this would not be in the public interest or in the customer's best interest because it would allow a customer to utilize payment arrangements for non-CAP arrearages to avoid payment of CAP bills which are already discounted rates. The Commission has subsequently cited this reasoning as the basis for refusing to order a payment arrangement for the non-CAP portion of a mixed arrearage. Michail v. PECO Energy Company, Docket No. F-2014-2404586 (Opinion and Order entered January 16, 2015) (Michail); Pickett v. Philadelphia Gas Works, Docket No. C-2014-2444967 (Opinion and Order entered October 1, 2015) (Pickett).

In this case, when the Respondent removed the Complainant from the CAP, the Respondent's records indicate that the Complainant had a CAP arrearage of \$1,965.16. The Commission has no authority, pursuant to 66 Pa.C.S. § 1405(c), to order a payment arrangement on the CAP arrearage. At the time of the hearing, the Complainant had accumulated an additional non-CAP arrearage. Therefore, pursuant to Hewitt, the Commission may, at its discretion, issue a payment arrangement for the non-CAP portion of the Complainant's arrearage.

I conclude that the Commission should not exercise that discretion in this case. I do so for several reasons.

First, like the complainants in Hewitt, Michail and Pickett the Complainant in this case has a poor payment history. There was a LIHEAP payment made on December 28, 2015 in the amount of \$121.00 on the account for 8723 West Chester Pike. PECO Ex. 5. The Complainant made no other payment on the account 8723 West Chester Pike for the period from July 24, 2015 to January 5, 2016. PECO Ex. 5.

Second, the Complainant has shown an inability to keep prior agreed to payment arrangements with the Respondent by defaulting on five payment arrangements since 2008, including two Commission ordered payment arrangements.

Finally, as noted earlier, the Complainant has an outstanding balance of almost \$7,000.00. As of the date of the hearing, the Complainant's outstanding account balance was \$6,916.72.

From these facts, I conclude that the Complainant has not made reasonable efforts to pay his bills in a timely fashion and is not entitled to a Commission-ordered payment arrangement. In similar circumstances, the Commission denied a request for a payment arrangement on a mixed CAP-non-CAP arrearage. Turner v Philadelphia Gas Works, Docket No. C-2013-2388319 (Opinion and Order entered June 19, 2014). The Complainant has not demonstrated by a preponderance of the evidence that he is entitled to a payment arrangement on his unpaid balance and restoration of his service.

In summary, I conclude that the Complainant's claims concerning service to his residence at 6584 Cobbs Creek Parkway are barred by the statute of limitations. In addition, the Complainant has failed to establish by a preponderance of the evidence that the Respondent improperly terminated his service at 8723 West Chester Pike. The Complainant has also failed to establish by a preponderance of the evidence that the Respondent has improperly required the Complainant to pay the entire account balance and reconnection fee prior to restoring his service at 8723 West Chester Pike. Finally, the Complainant has failed to establish by a preponderance of the evidence that he is entitled to a payment arrangement on his unpaid balance and restoration of his service.

For the foregoing reasons, I will deny the complaint and enter the following order.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to 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. The Complainant has not met his burden of proving that he is entitled to relief. 66 Pa.C.S. § 332(a).

4. No action for recovery of penalties or forfeitures, or any prosecution may be maintained unless brought within three years from the date the liability arose. 66 Pa.C.S. § 3314.

5. The statute of limitations at 66 Pa.C.S. § 3314 is non-waivable. Reuben v. O'Brien, 445 A.2d 801 (Pa. Super 1982).

6. The claim that the Respondent improperly billed the Complainant for service to his residence at 6584 Cobbs Creek Parkway is barred by the statute of limitations. 66 Pa.C.S. § 3314.

7. A public utility may terminate service for non-payment of an account after providing notice to the customer. 66 Pa. C.S. §§1406(a)(1) and §1406(b).

8. A utility may not terminate service, or refuse to restore service, to a premises when a licensed physician or nurse practitioner provides a medical certificate indicating that the customer or an applicant seeking restoration of service or a member of the customer's or applicant's household is seriously ill or afflicted with a medical condition that will be aggravated by cessation of service. 52 Pa.Code § 56.111.

9. A utility may require payment of the entire account balance and payment of a reconnection fee prior to restoring service when a customer has defaulted on two or more payment agreements. 66 Pa.C.S. § 1407; 52 Pa.Code § 56.191.

10. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418, applies to this proceeding.

