

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Branden Brittany Thompson ¹	:	
	:	
v.	:	C-2016-2553425
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Rebecca Waldemar
Special Agent

INTRODUCTION

The customer filed this Complaint to request a payment arrangement. This decision grants the request and sets a payment arrangement requiring the balance to be repaid over a period of three years.

HISTORY OF THE PROCEEDING

On June 24, 2016, Branden Brittany Thompson (Complainant) filed a formal Complaint² with the Pennsylvania Public Utility Commission against PECO Energy Company (Respondent) requesting a payment arrangement he can afford. In his Complaint, he averred that PECO had sent him a shut off notice, the company had denied him a payment arrangement, and that he had paid the balance of a previous payment arrangement, but that PECO claimed he did not pay it. As relief, he requested a payment arrangement. On July 18, 2016, PECO filed an Answer to the Complaint. In its Answer, PECO averred, inter alia, that the Complainant was not

¹ The Caption has been changed to correct the spelling of the Complainant's name.

² This Complaint is a timely appeal of an informal complaint at BCS case number 3434503.

entitled to payment arrangement as he had defaulted on a previous Commission issued payment arrangement.

A Telephone Hearing Notice dated August 11, 2016, advised the parties that an initial telephonic hearing was scheduled for Thursday September 8, 2016, at 10:00 a.m. The case was assigned to me, pursuant to 52 Pa. Code § 56.174. A Prehearing Order dated August 19, 2016, again advised the parties of the date and time of the scheduled hearing and informed them of the procedures applicable to this proceeding. In accordance with the provisions of the Prehearing Order, the Respondent submitted proposed exhibits.

The initial telephonic hearing convened as scheduled.³ Mr. Thompson appeared *pro se* and testified on his own behalf. Shawane L. Lee, Esq., counsel for Respondent, presented the testimony of one witness, Elsa Leunge, a regulatory assessor for Respondent, who sponsored seven exhibits which were admitted into the record. The Exhibits include:

Exhibit 1 – account transaction activity

Exhibit 3 – payment agreement history

Exhibit 6 – case details report for BCS case # 002959031

Exhibit 7 – BCS decision report for BCS case # 002959031

Exhibit 10 – case details report for BCS case # 003296338

Exhibit 12 – case details report for BCS case # 003434503

Exhibit 13 – BCS decision report for BCS case # 00343503

The record closed on September 8, 2016 at the conclusion of the hearing.

FINDINGS OF FACT

1. The Complainant is Branden Brittany Thompson, who receives electric utility service from the Respondent at 10018 Jeanes Street 1st Fl., Philadelphia, Pennsylvania.

³ A tape recording of the hearing was made, no court reporter being present.

2. The Respondent is PECO Energy Company.
3. The Complainant's household consists of himself.
4. Mr. Thompson earns \$9.65 an hour and works forty hours a week.
5. The Complainant's monthly household income is \$1672.66 per month.⁴

6. The Complainant was issued a payment arrangement by the Commission's Bureau of Consumer Services (BCS) on April 25, 2012 at BCS case number 2959031.

7. Although Complainant did not make all payments on time for the 2012 Commission issued payment arrangement, he did satisfy the balance that was subject to the payment arrangement.

8. As of the date of the hearing, the Complainant's past due account balance was \$1584.79.

DISCUSSION

In his formal Complaint, Mr. Thompson averred that PECO had denied him a payment arrangement even though he had paid off a previous payment arrangement and requested a payment arrangement. In its Answer, PECO asserted that the Complainant was not entitled to payment arrangement because he had defaulted on a previous Commission issued payment arrangement.

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving by substantial evidence that he is entitled to the requested relief. 66 Pa. C.S. § 332(a). To satisfy this burden, the Complainant must show that the named utility is

⁴ The monthly income is derived by taking his weekly pay, multiplying it by 52 and dividing by 12; $\$9.65 \times 40 = \$386 \times 52 / 12 = \$1672.66$.

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). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm.*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Public Utility Comm.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Public Utility Comm.*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa. C.S.A. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Public Utility Comm.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401, *et seq* (Chapter 14) applies to complaints alleging inability to pay and requests for Commission-issued payment arrangements. This law authorizes the Commission to establish payment arrangements between a public utility and its customers within prescribed limits that the Commission must follow. 66 Pa.C.S. § 1405(a). Absent a change of income, the Commission cannot establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by the Commission. 66 Pa.C.S. § 1405(d).

Where previous payment arrangements are completed as a result of a customer making payments sufficient to retire the outstanding balance, a request for a payment arrangement on a balance which is wholly unrelated to any prior outstanding balance is properly viewed as a request for an initial arrangement and the Commission may establish a payment arrangement on the new delinquency. *Chapter 14 Implementation*, Docket No. M-00041802F0002 at 37 (Second Implementation Order entered September 12, 2005).

The maximum length of time to resolve an unpaid balance the Commission is authorized to allow depends upon the Complainant's gross monthly household income as follows: (1) Five years for customers with an income not exceeding 150% of the federal poverty level; (2) three years for customers with an income exceeding 150% of the federal poverty level but not by more than 250%; (3) one year for customers with an income exceeding 250% of the federal poverty level but not by more than 300%; and (4) six months for customers with an income exceeding 300% of the federal poverty level. 66 Pa.C.S. § 1405(b).

In this case, the Complainant was issued a payment arrangement by the Commission in April 2012. At the hearing, the parties stipulated both to the fact that Mr. Thompson had been issued a payment arrangement by the Commission and to the fact that he had satisfied that balance. Complainant has requested another payment arrangement stating he had paid off all prior balances but that recently, he had experienced financial difficulties related to assisting a parent financially and needed another payment arrangement in order to retain utility service and pay his past due balance. PECO's position is that the Complainant is not entitled to another payment arrangement established by the Commission. Respondent argued that even though the balance which was subject to the 2012 payment arrangement had been completely satisfied, the Commission is without authority, pursuant to 66 Pa.C.S. § 1405(d), to issue another payment arrangement because Mr. Thompson had defaulted on the previous payment arrangement by not timely making each monthly payment of that payment arrangement.

I disagree with PECO's interpretation of Section 1405(d) and find that the Commission has the authority to issue a second payment arrangement to the Complainant. While making untimely payments may be considered a default during the time the balance remains unpaid, once the balance is satisfied, any default has been cured. In its *Second Implementation Order* for the implementation of Chapter 14, the Commission clarified that second or subsequent payment arrangements cannot be established on a balance which has already been the subject of a Commission issued payment arrangement but that a request for a payment arrangement on a new and wholly unrelated delinquent balance is a request for an initial payment arrangement. In this case, the Complainant has completely satisfied the balance which was subject to the 2012 Commission issued payment arrangement. Because that balance has

been satisfied, he has not defaulted on the payment arrangement. He now seeks a payment arrangement on a balance which has never been the subject of a Commission issued payment arrangement. This balance is therefore eligible for a payment arrangement established by the Commission.

PECO's Exhibit #1, Account Transaction Activity, shows a pattern of regular payments until about a mid-2015 when Mr. Thompson began making payments about every three months. Additionally, he has shown a good faith effort to pay his bill by retiring a previous past due balance. I will therefore order a payment arrangement.

I find that Mr. Thompson is a level two customer consistent with Chapter 14 and will set a payment arrangement accordingly. Mr. Thompson testified that his household consists solely of himself and his income is \$1672.66 per month from employment. For a household of one, his monthly household income falls between 150 and 250% of the Federal poverty level which makes him a level two customer under Chapter 14. Consequently, he may be given a payment arrangement allowing 36 months to reconcile his past due balance. 66 Pa.C.S. § 1405(b)(1).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S.A. § 701.
2. The Complainant had the burden of proof. 66 Pa. C.S.A. § 332(a).
3. The Responsible Utility Customer Protection Act, 66 Pa. C.S.A. §§ 1401, *et seq.*, applies to this proceeding.
4. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa. C.S. § 1405(a).

5. Absent a change of income, the Commission cannot establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by the Commission. 66 Pa.C.S. § 1405(d).

6. Where a customer has retired the outstanding balance of a Commission established payment arrangement, the Commission may establish a payment arrangement on a new delinquency. *Chapter 14 Implementation*, Docket No. M-00041802F0002 at 37 (Second Implementation Order entered September 12, 2005).

7. The Complainant has met his burden of proving that the Commission may grant him a payment arrangement allowing him 36 months to pay his past due balance.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Branden Brittany Thompson against PECO Energy Company at Docket No. C-2016-2553425 is sustained.

2. That Branden Brittany Thompson's request for a payment arrangement is granted.

3. That Branden Brittany Thompson shall make monthly payments consisting of his current charges plus one 1/36th of the balance accrued on his account, beginning with the first billing due date following the entry of a final Commission Order in this case.

4. That as long as Branden Brittany Thompson keeps the payment schedule stated in this Order, PECO Energy Company shall not suspend or terminate his utility service

except for valid safety or emergency reasons or assess late payments or finance charges against his account.

5. That if Branden Brittany Thompson does not keep the payment schedule stated in this Order, PECO Energy Company is authorized to suspend or terminate his utility service in accordance with the Commission's statute and regulations.

6. That the Caption at this docket be changed from Brandon Brittany Thompson to Branden Brittany Thompson to reflect the correct spelling of the Complainant's name.

6. That the Secretary mark this docket closed.

Date: September 23, 2016

_____/s/_____
Rebecca Waldemar
Special Agent