

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Charlotte Hagood

v.

Pennsylvania Power Company

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C-2016-2552266

**INITIAL DECISION GRANTING RESPONDENT’S MOTION FOR JUDGMENT ON  
THE PLEADINGS**

Before  
Benjamin J. Myers  
Administrative Law Judge

**INTRODUCTION**

A customer filed a complaint against her electric utility requesting that the Pennsylvania Public Utility Commission (Commission) order a second payment arrangement for the unpaid balance on her electric utility account. After the filing of an answer and new matter, the utility has subsequently filed a motion for judgement on the pleadings asking that the complaint be dismissed, with prejudice. This decision is in response to that motion. It denies the customer’s request for a second Commission-ordered payment arrangement as the customer has failed to present any facts that would allow the Commission to order a second payment arrangement and grants the motion to dismiss the complaint with prejudice.

**HISTORY OF THE PROCEEDING**

On June 20, 2016, Charlotte Hagood (Complainant), filed a formal complaint with the Commission alleging that Penn Power is threatening to shut off her utility service and seeking a Commission-ordered payment agreement. The complaint acknowledges that the

Complainant defaulted on a previous Commission-ordered payment agreement but requests the Commission to order a payment agreement which she can afford.

On July 8, 2016, the Respondent, Pennsylvania Power Company (Penn Power), filed an answer with new matter with attached notice to plead. In its answer, Penn Power admitted that it provides service to the Complainant at the address shown on the complaint and is attempting to terminate that service. Penn Power also admitted or denied the various other averments of the complaint.

In its new matter, Penn Power asserted that the Complainant was not entitled to a second Commission-ordered payment arrangement (PAR) because she had already defaulted on the Commission-ordered 2015 PAR.

Penn Power described that on February 25, 2015, the Complainant filed an informal complaint with the Bureau of Consumer Services (BCS) requesting a Commission-ordered payment arrangement for the outstanding balance of her utility bill in the amount of \$1,047.52. At that time, the Complainant reported a gross monthly household income of \$4,553.34 and that her household consisted of five (5) persons. Based upon those circumstances, the Complainant received a Level 2 PAR in a decision under BCS Case No. 3321966 beginning with her April 2015 billing and which provided the Complainant with a monthly budget payment amount of \$261 and a monthly arrears payment of \$47.

Penn Power specifically asserts that the Complainant subsequently defaulted on the 2015 PAR due to non-payment. Her last payment occurred on October 15, 2015, in the amount of \$504.29.

Penn Power also asserts that on March 30, 2016, it sent the Complainant a 10-day notice advising the Complainant that her electric service was subject to termination pending the satisfaction of a delinquent account balance of \$3,449.51.

On April 25, 2016, the Complainant filed a second informal complaint with the BCS seeking a second Commission-ordered payment agreement. At that time, the Complainant

again reported five (5) persons residing in her household and indicated a gross monthly household income of \$5,878.00. As a result of the Complainant's default of the 2015 PAR, and a consideration of the Complainant's gross monthly household income, a June 1, 2016, decision in BCS Case No. 3432286 denied the Complainant's 2016 PAR request.

In addition, Penn Power has also averred that because the Complainant's gross monthly household income had increased since the implementation of the 2015 PAR, the Complainant had not alleged in the complaint a significant change in circumstances which would allow a second PAR or justify an extension of the 2015 PAR under existing law.

Penn Power's answer with new matter requests that the Commission dismiss this complaint. The Complainant's answer to this new matter was due on or before August 1, 2016. The Complainant has never filed an answer.

On July 29, 2016, Penn Power filed a motion for judgment on the pleadings which was again accompanied by a notice to plead. In this motion, Penn Power averred that the Complainant is not eligible for a second Commission-ordered PAR because she defaulted on the previous Commission-ordered 2015 PAR and has failed to allege in the complaint a significant change in circumstances which would allow the implementation of a second PAR or an extension of the 2015 PAR. As a result, Penn Power argues that the pleadings do not give rise to factual allegations which would warrant the granting of the relief which the Complainant seeks and that the Commission should dismiss the complaint.

An answer from the Complainant to this motion was due on or before August 22, 2016. The Complainant has never filed an answer.

On October 21, 2016, the Commission issued a Motion Judge Assignment Notice thereby assigning this matter to the undersigned to resolve any issues which may arise during the preliminary phase of this proceeding. Penn Power's motion for judgment on the pleadings is now ready for disposition. For the reasons discussed below, Penn Power's motion will be granted.

## FINDINGS OF FACT

1. The Complainant in this case is Charlotte Hagood.
2. The Respondent in this case is Pennsylvania Power Company.
3. On February 25, 2015, the Complainant filed an informal complaint with the BCS in case No. 3321966 requesting a Commission-ordered payment arrangement.
4. The Complainant reported a gross monthly household income of \$4,553.34 and that her household consisted of five (5) persons.
5. The Complainant received a Level 2 PAR in BCS Case No. 3321966 beginning with her April 2015 billing with a monthly budget payment amount of \$261 and a monthly arrears payment of \$47.
6. The Complainant's last payment under this 2015 PAR occurred on October 15, 2015, in the amount of \$504.29.
7. The Complainant has defaulted on the 2015 PAR.
8. On March 30, 2016, the Complainant was sent a 10-day shut off notice.
9. On April 25, 2016, the Complainant filed a second informal complaint with the BCS in BCS Case No. 3432286 seeking a second Commission-ordered payment agreement.
10. The Complainant again reported five (5) persons residing in her household and indicated a gross monthly household income of \$5,878.00.
11. On June 1, 2016, a decision was issued in BCS Case No. 3432286 which denied the Complainant's 2016 PAR request.

12. The Complainant was denied the 2016 PAR request because she had defaulted on a previous Commission-ordered 2015 PAR and had failed to demonstrate a significant change in her circumstance.
13. On June 20, 2016, the Complainant filed a formal complaint with the Commission seeking a Commission-ordered PAR.
14. On July 8, 2016, Penn Power filed an answer with new matter with attached notice to plead.
15. The Complainant has never filed an answer to this new matter.
16. On July 29, 2016, Penn Power filed a motion for judgment on the pleadings which was accompanied by a notice to plead.
17. The Complainant has never filed an answer to this motion.
18. At the time the Complainant was granted the 2015 PAR, the Complainant had gross monthly household income of \$4,553.34.
19. The Complainant currently has a gross monthly household income of \$5,878.00.

### DISCUSSION

Penn Power's motion is subject to the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code Chapters 1, 3 and 5, providing for the filing of Motions for Judgment on the Pleadings. In particular, Section 5.102 of the Commission's Rules provides in relevant part:

**§ 5.102 Motions for summary judgment and judgment on the pleadings.**

- (a) *Generally.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a

notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

(b) *Answers.* An answer to a motion for judgment on the pleadings or summary judgment, including an opposing affidavit or verification to a motion for summary judgment, may be filed within 20 days of the date of service of the motion...

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(d) *Decisions on motions.*

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

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(3) *Form of decision.* The presiding officer will grant, in whole or in part, the motion in the form of an initial or recommended decision which shall be subject to exceptions as set forth in § 5.533 (relating to exceptions). Denial of a motion will be in the form of a written order.

52 Pa.Code § 5.102(a)(b), (d)(1)(3). For a court to grant a motion for judgment on the pleadings, the record must show that no facts are at issue and that the law is so clear that a trial would be a fruitless exercise. All of the opposing party's well-pleaded allegations are viewed as true but only those facts admitted by him may be considered against him. Beardell v. Western Wayne School District, 91 Pa. Commonwealth Ct. 348, 496 A.2d 1373 (1985) (Beardell). In short, in order for Penn Power's motion to be granted, no material facts may be at issue and based upon those facts Penn Power must be entitled to a judgment as a matter of law.

The question of whether there are material facts at issue will be addressed first. Here, the Complainant admitted in her complaint that she had been granted a previous BCS payment agreement and that she was now in default of that agreement. The Complainant also

admitted that she had received a 10-day shut off notice. In addition to the facts alleged in the complaint are the facts alleged in Penn Power's new matter which are deemed admitted since the Complainant did not file an answer to this new matter. Pursuant to 52 Pa.Code § 5.63(b), a failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted.

In the new matter filed by Penn Power, it was averred that the Complainant had defaulted on the 2015 Commission-ordered payment agreement when the last payment received from the Complainant was in October 2015 and that the Complainant had a current outstanding account balance of \$4,769.70.

In addition, Penn Power averred that the BCS decision issued at the time the Complainant had been granted the 2015 PAR established the Complainant's gross monthly household income of \$4,553.34.

It also averred that the second BCS decision issued which denied the Complainant's request for a second PAR established that the Complainant currently has a gross monthly household income of \$5,878.00. In light of the averments made in both the complaint and new matter, it is concluded that the applicable pleadings show that there is no genuine issue as to a material fact under 52 Pa.Code § 5.102(d)(1).

The last question to therefore be decided with respect to Penn Power's motion for judgement on the pleadings under 52 Pa.Code § 5.102(d)(1) is whether Penn Power as the moving party is entitled to a judgment as a matter of law.

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 changed some provisions of the Responsible Utility Customer Protection Act. Any such applicable changes will be incorporated in the discussion that follows.

The Commission has the authority to establish a payment arrangement pursuant to 66 Pa.C.S. § 1405(a), within the strict guidelines set forth in 66 Pa.C.S. § 1405(b). The statute at 66 Pa.C.S. § 1405(a) states:

(a) *General Rule.*-The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

While the Commission is authorized to establish a payment agreement for the Complainant, 66 Pa.C.S. § 1405(d) limits this ability. It provides:

(d) *Number of Payment Agreements.* – 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.

66 Pa.C.S. § 1403 provides a definition for what may constitute a “change in income”. It states:

“*Change in income.*” 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. (emphasis added.)

The undisputed facts clearly indicate that the Commission granted the Complainant a payment agreement in 2015 which she subsequently defaulted on in October of 2015. In order to qualify for a second Commission-ordered payment agreement under 66 Pa.C.S. § 1405(d), the Complainant must demonstrate that she has experienced a “change in income”.

The undisputed facts indicate that at the time the Complainant was granted the 2015 PAR, she had a gross monthly household income of \$4,553.34. In addition, the undisputed facts indicate that the Complainant currently has a gross monthly household income of

\$5,878.00. This means that the Complainant has experienced an **increase** in household income which does not meet the definition of “change in income” under 66 Pa.C.S. § 1403. Without such a change in income, the Commission therefore has no authority under 66 Pa.C.S. § 1405(d) to establish or order Penn Power 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. That is clearly the case here. As such, it is concluded that Penn Power has established that there is no genuine issue as to a material fact and that Penn Power as the moving party is entitled to a judgment as a matter of law.

### 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 Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418, 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. The Commission is not authorized 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 unless there is a showing of a change in the customer’s income. 66 Pa.C.S. § 1405(d).
6. A change in income is defined as a decrease in a customer’s gross monthly household income. 66 Pa.C.S. § 1403.

7. The Complainant's gross monthly household income has increased since her default of the 2015 PAR in October of 2015 and therefore does not qualify as a change in income. 66 Pa.C.S. § 1403.

8. The Complainant has failed to sustain her burden of proof establishing that she is entitled to a second Commission-ordered payment arrangement. 66 Pa.C.S. § 332(a); 66 Pa.C.S. § 1403; 66 Pa.C.S. § 1405(d).

9. Penn Power has established based upon the applicable pleadings that there is no dispute as to a material fact and that as the moving party is entitled to a judgment as a matter of law. 52 Pa.Code § 5.102(d)(1).

ORDER

THEREFORE,

IT IS HEREBY ORDERED:

1. That Penn Power's motion for judgement on the pleadings filed at Docket No. C-2016-2552266 is granted.

2. That the complaint of Charlotte Hagood at Docket No. C-2016-2552266 is dismissed with prejudice.

Date: November 9, 2016

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/s/  
Benjamin J. Myers  
Administrative Law Judge