

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Natasha Tinson

v.

PECO Energy Company

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F-2016-2546103

**ORDER GRANTING, IN PART, MOTION FOR JUDGMENT  
ON THE PLEADINGS**

On May 16, 2016, Natasha Tinson (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') March 22, 2016 decision at BCS No. 3393177 dismissing the Complainant's informal complaint.

At paragraph 4 of the Commission's complaint form, the Complainant has checked the boxes stating "The utility is threatening to shut off my service or has already shut off my service", "I would like a payment arrangement" and "incorrect charges are on my bill".

At paragraph 5 of the Commission's complaint form, the complaint alleges that the Complainant receives disability payments of \$733.00 per month while her rent is \$625.00 per month. The complaint requests that the Commission order a payment arrangement that the Complainant can afford.

On June 9, 2016, the Respondent filed a motion to file answer nunc pro tunc. According to the motion, the Commission served the Complainant's complaint on the Respondent on May 18, 2016. According to the motion, the Respondent's answer was due on or before June 7, 2016. Due to an administrative oversight, the Respondent alleges it is filing an answer on June 9, 2016. The motion further asserts that the late filing of the answer does not

affect the substantive rights of the Complainant. The motion requests that the Commission accept the Respondent's answer be accepted for filing. As of the date of this order, the Complainant has not filed an answer to the Respondent's motion.

The Respondent filed an answer with new matter, with a notice to plead on June 9, 2016. The answer admits that the Respondent provides service to the Complainant at the address shown on the complaint. Attached to the answer is a document marked as Exhibit 1 which is a copy of the Complainant's account history.

The answer asserts that the Complainant was enrolled in the Respondent's customer assistance program (CAP) on June 27, 2014. The answer states that the Complainant was reenrolled in Respondent's CAP on September 23, 2015. The Complainant's next scheduled recertification is on September 23, 2017. The answer asserts that the Complainant's entire outstanding account balance is comprised of CAP arrears.

The answer indicates that the Complainant filed an informal complaint with BCS at BCS No. 3376447 on August 20, 2015, requesting a payment arrangement. Attached to the answer is a document marked Exhibit 2, which is a copy of the BCS case details report. On August 24, 2015, BCS issued a decision dismissing the complaint, pursuant to 66 Pa.C.S. § 1405(c). Attached to the answer is a document marked Exhibit 3, which is a copy of the BCS decision.

The answer states that the Complainant's account balance is \$2,625.86, which is comprised entirely of CAP arrears. Since the \$2,625.86 account balance consists of CAP arrears, the answer contends that the Complainant is not entitled to a payment arrangement.

The new matter reiterates the assertions in the answer that the Complainant is enrolled in the Respondent's CAP and that her arrearages consist entirely of CAP arrears. The new matter asserts that, pursuant to 66 Pa.C.S. § 1405(c), CAP arrearages are not subject to payment arrangements. The answer and new matter request that the Commission dismiss the

complaint. As of the date of this decision, the Complainant has not filed an answer to the Respondent's new matter.

On June 30, 2016, the Respondent filed a motion for judgment on the pleadings, with a notice to plead. The motion reiterates the assertions in the answer with new matter that the Complainant is enrolled in the Respondent's CAP and that her arrearages consist entirely of CAP arrears. The motion renews the argument that, pursuant to 66 Pa.C.S. § 1405(c), CAP arrearages are not subject to payment agreements.

In addition, the motion states that the Complainant has not filed an answer to the Respondent's new matter. The motion requests that the Commission deem the facts alleged in the new matter as admitted, pursuant to 52 Pa.Code § 5.63(b).

The motion argues that there is no dispute as to the facts that the Complainant is enrolled in the Respondent's CAP, that the Complainant's entire past due balance is CAP arrears and that the sole relief the Complainant seeks is a Commission-ordered payment arrangement. Since the statute at 66 Pa.C.S. § 1405(c) prohibits the Commission from ordering a payment arrangement on CAP arrearages, the motion concludes that the Commission cannot grant the relief that the Complainant seeks. The motion requests that the Commission dismiss the complaint with prejudice, since there is no dispute as to any material facts and the Respondent is entitled to judgment as a matter of law.

By notice dated December 22, 2016, the Commission notified the parties that it had assigned the case to me as motion judge. As of the date of this decision, the Complainant has not filed an answer to the motion for judgment on the pleadings. The motion for judgment on the pleadings is ready for decision. For the reasons set forth below, I will grant the motion for judgment on the pleadings in part.

I will first address the Respondent's motion to file its answer nunc pro tunc. On May 18, 2016, the Commission e-served the Complainant's complaint on the Respondent. The Respondent's answer was due to be filed with the Commission in 20 days or June 7, 2016. Due

to an administrative oversight, the Respondent did not file its answer until June 9, 2016. The motion requests that the Commission accept the Respondent's answer for filing.

In support of this request, the motion asserts that the late filing of the answer does not affect the substantive rights of the Complainant. I agree. As of the date of this order, the Complainant has not filed an answer to the Respondent's motion alleging that her substantive rights are affected by late filing.

In addition, while the Commission's mail box rule at 52 Pa.Code § 1.56(b) adding three days to respond after service of a document, does not apply to e-service, the answer has been filed only two days late.

Finally, the Commission's regulation at 52 Pa.Code § 1.2(a) provides that the presiding officer or the Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties. Since the Respondent served its motion on the Complainant, she had notice of the Respondent's request that the Commission accept its late-filed answer.

I will ignore the lateness of the Respondent's answer and treat the June 9, 2016 filing of the answer as timely in order to secure a just, speedy and inexpensive determination of this proceeding pursuant to 52 Pa.Code § 1.2(a). This will not adversely affect the Complainant's substantive rights, pursuant to 52 Pa.Code § 1.2(c), since she had notice that the Respondent was requesting that the Commission accept its late filed answer and had an opportunity to respond.

Turning to the merits of the Respondent's motion for judgment on the pleadings, the Commission's Rules of Practice and Procedure at 52 Pa.Code § 5.102 govern motions for judgment on the pleadings. The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa.Code § 5.102(d)(1). Only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise should

judgment on the pleadings be granted. Williams v. Lewis, 466 A.2d 682 (Pa. Super. 1983); Service Employees International Union, Local 69, AFL-CIO v. The Peoples Natural Gas Company, d/b/a Dominion Peoples, Docket No. C-20028539 (Opinion and Order entered December 19, 2003). In ruling on a motion for judgment on the pleadings, the tribunal must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against her only those facts she specifically admits. Judgment on the pleadings should be entered only when the case is clear and free from doubt. Reuben v. O'Brien, 496 A.2d 913 (Pa. Super 1985).

I will view the factual averments in the complaint in this case as true for purposes of disposing of the motion for judgment on the pleadings. The factual averments in the complaint are that the Respondent is attempting to shut off the Complainant's service. There are incorrect charges on the Complainant's bill. The Complainant is on disability. The Complainant requests a payment arrangement she can afford.

In addition to the facts alleged in the complaint, I must consider the facts alleged in the Respondent's new matter since the Complainant has admitted those facts by failing to answer the Respondent's new matter. The Commission's regulation at 52 Pa.Code § 5.63(b) states that a party failing to file a timely reply to new matter may be deemed in default and the facts stated in the new matter deemed admitted. Since the Complainant has not filed an answer to the Respondent's new matter denying its factual allegations, I will deem the allegations in the Respondent's new matter admitted, pursuant to 52 Pa.Code § 5.63(b).

The facts alleged in the Respondent's new matter are: 1) the Complainant enrolled in the CAP on June 27, 2014; 2) the Complainant was reenrolled in the CAP on September 23, 2015; 3) the Complainant's next scheduled recertification date is September 23, 2017; 4) the Complainant has a \$2625.86 account balance; and 5) the Complainant's balance of \$2625.86 consists solely of CAP arrearages. These facts are deemed admitted.

Taking the factual averments in the complaint and the admitted facts in the new matter together, there is no genuine issue as to a material fact concerning the Complainant's

request for a payment arrangement. The Complainant is enrolled in the Respondent's CAP. The Complainant requests a payment arrangement. The Complainant has an outstanding account balance that consists solely of CAP arrearages. Based on these undisputed facts, the Respondent is entitled to judgment as a matter of law concerning the Complainant's request for a payment arrangement. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418, mandates this result.

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.

The Commission has the authority to establish payment arrangements, 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.

The Commission may establish a payment arrangement between a public utility and a customer or applicant 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" as defined by 66 Pa.C.S. § 1403. If the Complainant is not a "customer", the Commission is not authorized to establish a payment arrangement between her and the Respondent. The statute at 66 Pa.C.S. § 1403 defines 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 natural person in whose name a residential service account is listed. While the Complainant is a customer pursuant to 66 Pa.C.S. § 1403, the Complainant is not entitled to a new payment arrangement because she is enrolled in the Respondent's CAP and all of her arrearages are CAP arrearages. The Commission has no authority to establish a payment arrangement where a customer is enrolled in a utility's CAP, pursuant to the Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418. The statute 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.

The statute at 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.

As set forth in the Respondent's new matter and deemed admitted, pursuant to 52 Pa.Code § 5.63(b), the Complainant is enrolled in the Respondent's CAP, based on her income and household size. The Complainant's unpaid balance on her account consists solely of CAP arrearages.

Since the Complainant is enrolled in the Respondent's CAP and her entire unpaid account balance consists of CAP arrearages, she is not eligible for a payment arrangement, pursuant to 66 Pa.C.S. § 1405(c). The Commission lacks the authority to establish a payment arrangement for the Complainant and that portion of her complaint must be denied. Hill v.

PECO Energy Co., Docket No. C-2102-2315524 (Final Order entered November 2, 2012). The material facts in this case are undisputed and the Respondent is entitled to judgment as a matter of law concerning the Complainant's request for a payment arrangement. The Respondent's right to prevail is so clear that a hearing on this issue would be a fruitless exercise.

In Neibauer v. PECO Energy Company, Docket No. C-2010-2179572 (Order entered July 7, 2011) (Neibauer), Bearden v. PECO Energy Company, Docket No. F-2013-2393197 (Order entered April 1, 2014) (Bearden) and White v. PECO Energy Company, Docket No. C-2014-2426792 (Order entered November 12, 2014) (White), the Commission granted motions for judgment on the pleadings and dismissed the complaints where the complainants requested payment arrangements on accounts where the entire balance consisted of CAP arrearages. Since the complaint in this case also requests a payment arrangement where the entire balance consists of CAP arrearages, I find the decisions in Neibauer, Bearden and White to be controlling. Because the Complainant in this case has not filed an answer to the Respondent's new matter denying its factual allegations, she has admitted that her entire unpaid account balance consists of CAP arrearages. As stated above, 66 Pa.C.S. § 1405(c) prohibits the Commission from ordering a payment arrangement on CAP arrearages.

The complaint also alleges that there are incorrect charges on the Complainant's bill. A complainant may file a complaint alleging incorrect charges on her bill disputing the amount of her CAP payments. Williams v. PECO Energy Company, Docket No. C-2011-2245903 (Final Order entered June 22, 2012). While the Complainant has only checked the box on the complaint form alleging incorrect charges on her bill and has not provided any additional information, the complaint will be referred to a hearing on this issue. The Commission has previously ruled on this issue.

In Elliott v PECO Energy Company, Docket No. C-2010-2156422 (Opinion and Order entered May 11, 2011), (Elliot), the ALJ sustained a preliminary objection alleging that the complaint lacked specificity and directed a complainant to file an amended complaint. The complainant failed to file an amended complaint and the ALJ issued an initial decision dismissing

the complaint for failure to comply with a Commission order. The Commission reversed the initial decision of the ALJ and remanded the matter for further hearing.

In Elliot, the Commission stated that the complainant had indicated in her complaint that there were incorrect charges on her bill and requested help with her bill. The Commission observed that the complaint form mailed to a complainant at the conclusion of the informal complaint process contains check boxes to help the complainant state the nature of his or her complaint. The Commission found that in Elliot, the complainant had checked the boxes regarding incorrect charges and requesting a payment arrangement. The Commission concluded that this was sufficient to allow the utility to prepare an answer and prepare for a hearing.

In Elliot, the Commission found that where a customer indicated in his or her complaint that there were incorrect charges, the utility could access its account records for the customer and review the records for inaccuracies and determine the nature of the customer's complaint. In addition, the complainant requested a payment arrangement and the Commission concluded that when a customer requests a payment arrangement, no other facts need to be averred.

In reaching its determination in Elliot, the Commission cited Carlock v The United Telephone Company of Pennsylvania, Docket No. F-00163617 (Opinion and Order entered July 14, 1993) (Carlock) for the proposition that it would not dismiss pro se complaints without providing a hearing because pro se complainants may find it difficult to address prehearing motions and should be given the opportunity to orally describe their issue and supporting facts. Since the complainant in Elliot was pro se, the Commission concluded that dismissing the complaint at the pleadings stage was in error.

In addition, the Commission in Elliot indicated that a complaint form was sent to the complainant at the conclusion of the Commission's informal complaint process thus providing the utility with additional information regarding the billing dispute. The Commission reached a similar conclusion in Richmond v PECO Energy Company, Docket No. F-2010-2187305 (Opinion and Order entered December 7, 2011) (Richmond), where the Commission noted that the billing

dispute complaint was an appeal from a decision of BCS which provided the utility with information regarding the billing dispute.

Here, the Complainant initiated an informal complaint before BCS. Therefore, the informal complaint proceeding provided information to the Respondent concerning the nature of the alleged incorrect charges on the Complainant's bill so as to enable the Respondent to prepare an answer and prepare for a hearing. This issue raised in the complaint will be scheduled for hearing.

Since there are no material facts in dispute and the Respondent is entitled to judgment as a matter of law concerning the Complainant's request for a payment arrangement, I will grant its motion for judgment on the pleadings on that issue and refer the issue concerning incorrect charges on the Complainant's bill for hearing.

#### ORDER

THEREFORE,

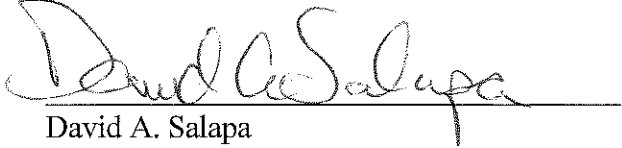
IT IS ORDERED:

1. That the motion for judgment on the pleadings filed by PECO Energy Company at Docket No. F-2016-2546103 is granted in part.

2. That the request for a payment arrangement set forth in the complaint of Natasha Tinson at Docket F-2016-2546103 is denied.

3. That the remaining issue concerning incorrect charges set forth in the complaint of Natasha Tinson at Docket F-2016-2546103 shall be scheduled for hearing before an administrative law judge.

Date: December 27, 2016

  
David A. Salapa  
Administrative Law Judge

F-2016-2546103 - NATASHA TINSON V PECO ENERGY COMPANY

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