

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|-------------------------------|---|----------------|
| Connie Nelson | : | |
| | : | |
| v. | : | C-2016-2560023 |
| | : | |
| Pennsylvania Electric Company | : | |

INITIAL DECISION

Before
Rebecca Waldemar
Special Agent

INTRODUCTION

This decision denies the customer’s Complaint as it is an untimely appeal of a decision issued by the Commission’s Bureau of Consumer Services (BCS). The customer is not permitted a second or subsequent payment arrangement, nor is she eligible for an extension of the payment arrangement established by BCS.

HISTORY OF THE PROCEEDING

On July 19, 2016, Connie Nelson (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission against Pennsylvania Electric Company (Penelec or Respondent) requesting a payment arrangement she can afford. In her Complaint, she avers that she can only afford \$300 per month for her electric bill.

On July 28, 2015, Penelec filed an Answer to the Complaint. In its Answer, Penelec admits the Complainant is entitled to a Commission issued payment arrangement and avers that she has been properly billed and her past due balance as of August 17, 2016 is

\$5757.60. Respondent also avers that BCS issued a payment arrangement on May 14, 2016 to Ms. Nelson and that the Complaint is an untimely appeal of that decision.

A Telephone Hearing Notice dated September 22, 2016, advised the parties that an initial telephonic hearing was scheduled for Tuesday, November 8, 2016 at 10:00 a.m. The case was assigned to me, pursuant to 52 Pa. Code § 56.174. A Prehearing Order dated October 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.

The initial telephonic hearing convened as scheduled.¹ Ms. Nelson appeared *pro se* and presented the testimony of her daughter, Mary Nelson. Margaret A. Morris, Esq., counsel for Respondent, presented the testimony of one witness, Laurie Parker, an Advanced Business Analyst for Respondent, who sponsored three exhibits which were admitted into the record. The record closed on November 8, 2016 at the conclusion of the hearing.

FINDINGS OF FACT

1. The Complainant is Connie Nelson, who receives electric utility service from the Respondent at 101 Center Pl. Johnstown, PA.
2. The Respondent is Pennsylvania Electric Company.
3. On May 9, 2016, Ms. Nelson filed an informal complaint with the Commission's Bureau of Consumer Services at case number 3437578.
4. On May 14, 2016, BCS issued a decision which found Ms. Nelson to be a Level 2 customer and set a payment arrangement accordingly. Penelec Exh. 3.
5. The payment arrangement set by BCS commenced on May 31, 2016. See Penelec's Exhs. 1 and 3.

¹ A tape recording of the hearing was made, no court reporter being present.

6. The Complainant did not make payments in accordance with that decision.

7. In order to timely appeal the BCS decision, the Complainant was required to file a formal complaint by July 7, 2016.

8. On July 19, 2016, the Complainant filed a formal Complaint with the Commission as an untimely appeal of the BCS decision.

9. In addition to the Complainant, the Complainant's adult son resides at the service address.

10. The Complainant's household income consists of \$1043 per month from Social Security, \$1200 per month from her son's employment, and \$25 per month from food stamps.

11. Complainant's total household income is \$2268 per month.

12. In May 2016, the Complainant reported an income to BCS of \$2243 per month. Penelec Exh. 3.

DISCUSSION

In her formal Complaint, Ms. Nelson requested a payment arrangement she can afford. The Complaint is an untimely appeal of a decision issued on May 14, 2016 by BCS at Case number 3437578. In that decision, BCS found Ms. Nelson to be a Level 2 customer and set a payment arrangement accordingly. Ms. Nelson has not make payments in accordance with that decision.

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving by substantial evidence that she 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

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 in income, the Commission cannot establish a second payment arrangement if a customer has defaulted on a prior payment arrangement. 66 Pa. C.S. § 1405(d). A change of income is defined as a decrease in the household income. 66 Pa. C.S. § 1403.

As this is an untimely appeal of a BCS decision, the Complainant is not challenging the BCS decision but is requesting another payment arrangement. *Nugent v. PECO Energy Company*, Docket No. C-2009-2096243 (Order entered April 26, 2010).

Here, because the Complainant has defaulted on the payment arrangement issued by the Commission on May 14, 2014, the Commission is not authorized to provide another unless Ms. Nelson has experienced a decrease in her income. Ms. Nelson did not present evidence that her household income has decreased since the date of the BCS decision. The

Complainant presented evidence that she lives at the service address with her adult son and has monthly household income of \$2268 per month. This is slightly more than the income of \$2243 per month reported to BCS in May 2016. The Complainant has not suffered a decrease in her household income.

Alternatively, the Commission may reinstate a payment arrangement where the customer has defaulted, if the customer has experienced a significant change in circumstances. 66 Pa. C.S. § 1405(e). The statute at 66 Pa. C.S. § 1403 defines “Significant change in circumstance” as follows:

“Significant change in circumstance.” Any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer’s household income.
- (2) Catastrophic damage to the customer’s residence resulting in a significant net cost to the customer’s household.
- (3) Loss of the customer’s residence.
- (4) Increase in the customer’s number of dependents in the household.

The Complainant did not testify, and the evidence does not reflect, that she has experienced a significant change in circumstance, as that phrase is defined and applied in the Public Utility Code. Therefore, the Commission may not reinstate the BCS payment arrangement from May 2016.

The Commission lacks the authority to order a payment arrangement in these circumstances and the Complaint is denied. However, nothing in this decision prevents the parties from working together to find a suitable resolution.

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 in income, the Commission cannot establish a second payment arrangement if a customer has defaulted on a prior payment arrangement. 66 Pa. C.S. § 1405(d).
6. A change of income is defined as a decrease in the household income. 66 Pa. C.S. § 1403.
7. An untimely appeal of a BCS decision is not a challenge to that decision, but is a request for another payment arrangement. *Nugent v. PECO Energy Company*, Docket No. C-2009-2096243 (Order entered April 26, 2010).
8. The Complainant has not met her burden of proving that she is entitled to a second payment arrangement. 66 Pa. C.S. § 1405(c).

