

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mary Harvey	:	
	:	
v.	:	C-2016-2577705
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against her electric utility alleging that incorrect charges had been improperly added to her account and requesting that the Pennsylvania Public Utility Commission (Commission) order a payment arrangement for the unpaid balance of her account. This decision denies the complaint because the customer has failed to satisfy her burden that the utility violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff.

HISTORY OF THE PROCEEDING

On November 30, 2016, Mary Harvey (Complainant), filed a formal complaint with the Commission alleging that PPL Electric Utilities Corporation (Respondent) is threatening to shut off her utility service and seeks a Commission-ordered payment agreement. The complaint further alleged that certain unexplained amounts had been added to the Complainant's outstanding account balance and that she believed one of those amounts was related to a previous account balance that had been discharged in an earlier bankruptcy.

On December 19, 2016, Respondent filed an answer to the complaint. This answer admitted or denied the various averments of the complaint. The Respondent however specifically denied that any account balances which may have accrued prior to the Complainant's bankruptcy were added to the Complainant's account but that her current outstanding balance was the result of a lengthy period of non-payment.

By hearing notice dated January 25, 2017, the Commission scheduled a telephonic hearing for this matter on March 2, 2017, at 10:00 a.m. and assigned the case to the undersigned. A prehearing order was issued on January 26, 2017, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

The initial hearing was conducted as scheduled on March 2, 2017. The Complainant appeared *pro se* and testified. Kimberly Krupka, Esquire represented the Respondent which presented one witness who sponsored four exhibits which were admitted into the record. The initial hearing resulted in a transcript of 46 pages. The record closed on March 23, 2017, the date the transcript was filed with the Secretary's Bureau. For the reasons set forth below, the complaint will be denied.

FINDINGS OF FACT

1. The Complainant in this case is Mary Harvey.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. In February 2012 the Complainant filed for bankruptcy. N.T. 28.
4. At that time, the Complainant's account with the Respondent at #79701-13026 had an outstanding balance of \$6,092.35. N.T. 28.
5. The Respondent closed this account because of the bankruptcy and this outstanding account balance was written off. N.T. 28-29.

6. On February 24, 2012 the Complainant was assigned a new account, #79701-13035, which began with a \$0 balance. N.T. 28-29.

7. By March 15, 2013 the Complainant had accrued a new outstanding balance under this new account in the amount of \$1,329.02. N.T. 26.

8. No portion of the outstanding balance from account #79701-13026 was ever transferred to the Complainant's new account #79701-13035. N.T. 26.

9. On August 24, 2013 in Bureau of Consumer Services (BCS) Case No. 3130162, the Complainant received a Level 1 payment arrangement of \$294 per month which was to begin in October 2013. PPL Ex. 2.

10. At the time of the August 24, 2013 payment arrangement, the Complainant had reported gross monthly household income of \$1068.00. PPL Ex. 4a.

11. On April 30, 2015 the Complainant filed a complaint with the BCS in Case No. 3340233. N.T. 28; PPL Ex. 4a.

12. On December 21, 2015 the BCS issued a decision in Case No. 3340233 which found, in part, that the Complainant had defaulted on the August 24, 2013 payment arrangement and was therefore not eligible for a second Commission-ordered payment arrangement. PPL Ex. 4a; N.T. 29.

13. At the time this BCS decision was issued on December 21, 2015, the Complainant had accrued an outstanding account balance of \$11,361.68. PPL Ex. 4a.

14. On October 17, 2016 the Respondent performed an internal accounting transaction that credited and then debited the Complainant's account in the amount of \$10,000. N.T. 30.

15. As an internal accounting procedure, these transactions had no relationship to the Complainant's bankruptcy and did not affect the total outstanding balance of the Complainant's account. N.T. 30.

16. On October 19, 2016, Respondent sent the Complainant a shut-off notice. N.T. 36.

17. Since 2013, the Respondent has offered the Complainant a total of 14 payment arrangements. N.T. 35.

18. The Complainant's last payment arrangement with the Respondent occurred on October 31, 2016. N.T. 36.

19. As of October 31, 2016, the Complainant reported total monthly household income of \$1578 and three adults residing in the household. N.T. 36-37.

20. Four adult have been residing in the residence for approximately one year prior to the hearing on March 2, 2017. N.T. 17.

21. The Complainant has not made any payments towards her account since November 2016. N.T. 31.

22. At the time of hearing on March 2, 2017, the Complainant's total outstanding account balance was \$17,559.85. N.T. 36.

DISCUSSION

The testimony and evidence in this matter indicate that the Complainant is seeking two forms of relief : 1) That incorrect charges which had been improperly added to her account be removed. 2) That she be provided with a Commission-ordered payment arrangement for the corrected outstanding balance of her account.

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, the Complainant has alleged that incorrect or improper amounts were added to her account balance and has requested a second Commission-ordered payment arrangement for her corrected account balance. The Complainant, therefore, has the burden of proof in this proceeding to show that her account balance requires correction and that she qualifies for such a payment arrangement under the applicable sections of law.

Complainant’s Account Balance

The Complainant argued at the time of hearing that despite filing for bankruptcy in February 2012, she believed that her pre-bankruptcy account balance with the Respondent had not been discharged and the Respondent had improperly added this approximately \$6,000 balance to her new, post-bankruptcy account. N.T. 14-16. The only evidence offered by the Complainant to support this allegation was the Complainant’s testimony that she did not believe her post-bankruptcy electricity use could possibly account for the outstanding balance of her account which had continued to accrue through the date of hearing in this matter. N.T. 16.

The Respondent however offered credible testimony and documentary evidence regarding the Complainant’s previous account, her bankruptcy, as well as her continued electricity use.

The Respondent’s witness testified that the Complainant did in fact file for bankruptcy in February 2012. N.T. 25. At that time the Complainant had an outstanding account balance of \$6,092.35 at account #79701-13026. N.T. 28. When the Respondent learned

of this bankruptcy, this account was closed and the outstanding balance of the account was written off by the Respondent. N.T. 28. On February 24, 2012, Complainant was assigned a new account, #79701-13035 with a starting balance of \$0. N.T. 28-29. The Complainant thereafter began to accrue a new outstanding balance on her new account. As of billing date March 15, 2013, the Complainant had accrued a new account balance of \$1,329.02. N.T. 26. The Respondent argued that given this account balance one year after the Complainant had filed for bankruptcy and obtained a new account number with the Respondent, it was clear that her previous outstanding balance in excess of \$6,000 had in fact been discharged and had not been carried over to the Complainant's new account. N.T. 26.

It is agreed. The evidence shows that once the Complainant filed for bankruptcy, she obtained a new account with the Respondent which had a starting balance of \$0. There is no evidence of record to show that any portion of the approximately \$6,000 pre-bankruptcy account balance was ever transferred to the Complainant's new account.

An issue was also raised at the time of hearing with respect to the amount of \$10,000 being added to the Complainant's outstanding account balance with the Respondent in 2016. The Respondent's witness again credibly testified that on October 17, 2016 the amount of \$10,000 was debited and credited to the Complainant's account. N.T. 29-30. It was explained that this was in no way related to the Complainant's bankruptcy and was the result of an internal accounting procedure. N.T. 30. Because the amount was both added and then subtracted from the Complainant's account, it had no effect on the Complainant's correct outstanding account balance. N.T. 30. The Complainant did not rebut this explanation. The Respondent has therefore satisfactorily explained that this amount was the result of an internal accounting procedure and that it was not improperly included in the Complainant's outstanding account balance. The Complainant has failed to satisfy her burden that Respondent violated the Public Utility Code, a Commission order or regulation or a Commission approved tariff of the company.

Last, the Complainant made a general argument at the time of hearing that her household electric use could not possibly justify the large outstanding balance that had accrued under her new account. N.T. 16. Since the Complainant raises the issue or allegation of

overbilling, the Complainants' burden of proof is governed by Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98 (1980) (Waldron). In Waldron, the Commission concluded that a complainant may establish a prima facie overbilling case by showing that: (1) the number of occupants of the household has not changed; (2) the potential for energy utilization is low; and (3) the prior billing history shows no previous abnormalities. If the Complainants have submitted such evidence, the burden of going forward with the evidence shifts to the Respondent.

The Commonwealth Court broadened the Commission's ruling in Waldron in Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa. Cmwlth. 2001) (Milkie). The Commonwealth Court held that the Commission's requirement that a complainant must establish certain specific elements in order to make out a prima facie case was too restrictive. The Commonwealth Court ruled that even where the utility has presented evidence that it has tested the customer's meter and found it to be accurate, the customer may prove his or her case by circumstantial evidence that the metered usage exceeded actual usage.

Subsequent to the Milkie decision, the Commission has determined that it may consider the billing history of the account, any change in usage pattern or any other relevant facts or circumstances that come to light during the proceeding. Bennett v. Peoples Natural Gas Co., Docket No. C-2009-2122979 (Order entered October 13, 2010); Thomas v. PECO Energy Co., Docket No. C-2010-2187197 (Order entered November 15, 2011). The Waldron rule protects the Complainant from dismissal because of his inability to produce direct proof that his meter has malfunctioned.

The testimony presented by both the Complainant and the Respondent's witness at the time of hearing indicates that for a period of one year prior to the date of hearing, the Complainant had been utilizing four electric space heaters to heat her mobile home. N.T. 20- 21. The Complainant further admitted that she had not been relying on any other heat sources during this period of time. N.T. 20. The Respondent's witness testified that the Complainant had informed the Respondent of this space heater use during communications on November 28, 2016. N.T. 34. In addition, the Complainant's generation supplier charges were 12.9 cents/kwh

whereas the Respondent's rate to compare was 7.439 cents/kwh. N.T. 31. The witness testified that such space heater use, as well as this increased electric rate, could easily account for an increase in monthly electric usage and billing amount for the Complainant. N.T. 32.

The Commission has considered circumstances where a complainant contends that their utility bill is inordinately large as compared to their perceived utility usage. In Richard Kirby v. PPL Electric Utilities Corporation, the Commission ruled that,

The Complainant's testimony consisted solely of his opinion that these charges are too high. Regardless of how earnestly Complainant believes the complaint allegations to be true, personal opinions or perceptions do not constitute substantial evidence sufficient to permit him to sustain his burden of proof.

Richard Kirby v. PPL Electric Utilities Corporation, Docket No. C-20066297 (Final Order entered November 16, 2006) (citing PA Bureau of Corrections v. City of Pittsburgh, 532 A.2d 12 (1987)).

Based upon a totality of the testimony and evidence presented, the Complainant's mere belief and assertion that her outstanding account balance is too high with respect to her household electric use does not meet her burden as required under Waldron. Likewise, the Complainant has failed to show that incorrect charges were improperly added to her account balance after she had filed for bankruptcy or at the time the Respondent performed an internal accounting procedure within her account.

The Respondent has provided competent and credible evidence to show that the Complainant was assigned a new account in February 2012 as a result of her bankruptcy and that her new balance began with \$0. In addition, there is no evidence to show any additional amounts were added to the Complainant's account thereafter. The total outstanding balance of the Complainant's account is the result of her continued, actual usage of the Respondent's service which, according to both parties, is due in part to the Complainant's extended use of electric space heaters as the sole heat source within her residence as well as the increased rates she has

experienced with her electric generation supplier of choice. The Complainant has failed to meet her burden to demonstrate that the Respondent has violated the Public Utility Code, Commission order or regulation or a Commission-approved tariff of the Company.

Complainant's Request for a Payment Arrangement

In the complaint, the Complainant also requests a Commission-ordered payment arrangement.

However she manages her household budget, the Complainant will have to pay the Respondent for the service her household consumes. 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.Cmwlth. 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-00971874, (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 (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, (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 and provides the Commission with 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 arrangement for the Complainant, 66 Pa.C.S. § 1405(d) limits this ability. It provides:

(d) Number of payment arrangements. – 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.

Here, the Complainant received a previous Commission-ordered payment arrangement on August 24, 2013. In Bureau of Consumer Services Case (BCS) Case No. 3130162 the Complainant was provided with a payment arrangement of \$294 per month beginning in October 2013. PPL Ex. 2. On April 30, 2015 the Complainant filed a complaint with the BCS in Case No. 3340233. N.T. 28; PPL Ex. 4a. On December 21, 2015 the BCS issued a decision for that complaint which found, in part, that the Complainant had defaulted on the August 24, 2013 payment arrangement and was not eligible for a second Commission-ordered payment arrangement. PPL Ex. 4a. At the time this BCS decision was issued on December 21, 2015, the Complainant had accrued an outstanding account balance of \$11,361.68. PPL Ex. 4a.

Given that the Complainant has already defaulted on a previous Commission-ordered payment arrangement, in order to qualify for a second arrangement under 66 Pa.C.S.

§ 1405(d), the Complainant must establish a “change in income” as defined in 66 Pa.C.S. § 1403. Whether the Complainant has experienced a change in income is based upon two very specific points in time – the income the Complainant had at the time of the first Commission-ordered payment arrangement on August 24, 2013, versus her income now at the time of her request for a second Commission-ordered arrangement.

Neither party specifically testified at the time of hearing regarding the Complainant’s income circumstance in 2013. In fact, neither party testified that the Complainant had already received a Commission-ordered payment arrangement on August 24, 2013 or that the Complainant had defaulted on that arrangement. Only a review of the documentary evidence reveals those circumstances. In August 2013 the Complainant qualified for a Level 1 payment arrangement based upon a gross monthly household income of \$1068.00 per month. PPL Ex. 4a. It is therefore concluded that for the purposes of calculating a change in income, the Complainant’s initial gross monthly household income at the time of the first Commission-ordered payment arrangement was \$1068.00.

At the time of hearing, the Complainant could only testify to approximate monthly household income for her residence. She testified that four adults reside in the residence and that only two, her husband and her grandson’s fiancée, receive any income. N.T. 16-17. The Complainant estimated that her husband receives approximately \$828 in Social Security disability benefits and that her grandson’s fiancée has a disability income of approximately \$700 per month. N.T. 18. The Respondent’s witness testified that the Complainant’s last payment arrangement with the Respondent occurred on October 31, 2016 and at that time the Complainant reported total monthly household income of \$1,578.00. N.T. 36-37. Under both the Respondent’s and the Complainant’s versions of the facts, the Complainant’s current monthly household income is a minimum of \$1528.00 per month.

Comparing the Complainant’s monthly household income of \$1068.00 per month at the time of the first Commission-ordered payment arrangement in August 2013, and the Complainant’s current monthly household income of \$1528.00 or more per month, it is clear that the Complainant has experienced an **increase** in monthly household income. Such an increase

does not meet the definition of “change in income” under 66 Pa.C.S. § 1403. Without such a change in income, the Commission has no authority under 66 Pa.C.S. § 1405(d) to establish, or order Respondent to establish, a second Commission-ordered payment arrangement for the Complainant. This is true regardless of the Complainant’s household’s federal poverty level.

It should be noted that even if the Complainant had established a change in income in this matter, and would therefore potentially qualify for a second Commission-ordered payment arrangement under § 1405(d) as described above, the Commission has stated that it will only exercise its authority to establish a payment arrangement judiciously. Specifically, the Commission has held that it should only exercise its discretion on the behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills, or who have experienced a significant change of circumstances outside of their control. *See, 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 record in this matter does not support a finding that the Complainant has exhibited good faith efforts to pay or remain current on her account. In February of 2012, an outstanding account balance in excess of \$6000 was discharged as a result of the Complainant’s bankruptcy. The Complainant started a new account with a \$0 balance with the Respondent at that time and by March of 2013 had accrued a new outstanding balance of \$1,329.02. N.T. 26. Between February 24, 2012 and the date of hearing on March 2, 2017, the Complainant had been offered 14 payment arrangements by the Respondent and had accrued an additional outstanding account balance of \$17,559.85. N.T. 36. This means that the Complainant has accrued in excess of \$23,600 in arrears over the course of her relationship with the Complainant. Yet despite the discharge of more than \$6000 of those arrears due to a bankruptcy, 14 offers of payment arrangements by the Respondent, a Commission-ordered payment arrangement and an **increase** in the Complainant’s monthly household income, the Complainant has a current outstanding account balance of \$17,559.85 and last made a payment towards her account in November of 2016. N.T. 31.

These circumstances do not evidence good faith on the behalf of the Complainant which would warrant a second Commission-ordered payment arrangement - even if the Complainant were able to demonstrate eligibility under § 1405(d) as discussed above.

The Complainant's complaint, and the requested relief, are therefore denied.

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 failed to establish that any incorrect or improper charges have been placed on her account at #79701-13035 by the Respondent. Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98 (1980).

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

5. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).

6. 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).

7. A change in income is defined as a decrease in a customer's gross monthly household income. 66 Pa.C.S. § 1403.

8. The increase in the Complainant's gross monthly household income has does not qualify as or meet the definition of a change in income. 66 Pa.C.S. § 1403.

9. 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); Crawford v. National Fuel Gas Distribution Corporation, Docket No. C-20066348 (Opinion and Order entered December 6, 2007).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Mary Harvey against PPL Electric Utilities Corporation at Docket No. C-2016-2577705 is hereby denied.

2. That the docket at Docket No. C-2016-2577705 is marked closed.

Date: June 6, 2017

/s/
Benjamin J. Myers
Administrative Law Judge