

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Frederick Altland	:	
	:	
v.	:	C-2017-2582828
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint filed in this matter because of Complainant’s failure to establish his burden of proof, which was precipitated by his contemptuous conduct throughout the hearing.

HISTORY OF THE PROCEEDINGS

Complainant’s Complaint

On December 27, 2016, Frederick Altland (Complainant or Mr. Altland) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) seeking review of the Commission’s Bureau of Consumer Services’ (BCS) denial of his informal complaint against Metropolitan Edison Company (Met-Ed or Respondent).¹ In his Complaint, Mr. Altland

¹ The BCS Decision No. 3458709 dismissed Mr. Altland’s billing dispute and found he was required to be on budget billing in conjunction with his enrollment in Met-Ed’s Pennsylvania Customer Assistance Program (PCAP). BCS issued its decision on November 1, 2016 after which the filing of the Formal Complaint was due within 30 days. See 52 Pa.Code § 56.172. Therefore, Mr. Altland’s request for review on December 27, 2016, was untimely.

generally alleges there are reliability, safety or quality problems with his electric service. Mr. Altland specifically alleges the following:

- 1) Power outages occurred on November 12 and 19, 2016, when the weather outside was nice;
- 2) Met-Ed is not reading his meter monthly, which forces him to pay more than the legal requirement for electricity;
- 3) Met-Ed is telling him he uses more electricity than he could possibly use;
- 4) He lives in a one room apartment, and his neighbors, who have larger living quarters, are paying far less for their electric service; and
- 5) He has been on PCAP for years, and now Met-Ed is forcing him to be on an equal payment plan, which is illegal since he is grandfathered under PCAP.

Complaint ¶4.

As relief, Mr. Altland requests the following:

- 1) Dismissal of Grant Geszvain,² who is just another puppet for the utility company, because he just sides with the utility company;
- 2) Met-Ed read his meter every month;
- 3) Met-Ed stop over-billing him; and
- 4) Met-Ed reset his meter monthly so he can tell how much power he uses monthly and toggle between different months.

Id. ¶5.

² Mr. Geszvain is an investigator in the BCS. Respondent's Answer, Attachment 2 at unnumbered page 4.

Respondent's Answer and New Matter and Complainant's Reply

On January 25, 2017, Met-Ed filed an Answer and New Matter to the Complaint. Met-Ed denied 1) there is a reliability, safety or quality problem with Mr. Altland's electric service; 2) Mr. Altland's account is improperly billed; and 3) its requirement for PCAP participants to be enrolled in budget billing is illegal. Answer ¶4. Additionally, Met-Ed alleges Mr. Altland's account is enrolled in PCAP³ and budget billing⁴; and his account has a \$20.67 credit as of December 29, 2016. *Id.*

In answer to Mr. Altland's specific allegations, Met-Ed avers as follows:

- 1) Effective May 2016, PCAP participants are required to participate in the Equal Payment Plan or budget billing to be eligible for the monthly bill subsidy; this requirement has been reviewed and approved by the Commission;
- 2) Met-Ed's Commission-approved tariff and the Commission's regulations authorize the use of bi-monthly estimated bills;
- 3) There are no provisions under Met-Ed's PCAP to grandfather or exempt any account from budget billing;
- 4) Mr. Altland's monthly bill reflects the meter index at the beginning and end of the billing period and the kWh difference is clearly set forth on the monthly billing.

Id.

In New Matter, Met-Ed asserts conclusions of law relative to 1) the Commission's approval of its PCAP; 2) the Company's budget billing requirement for PCAP participants; and 3) its Tariff Rule 10 authorizing bi-monthly estimated billing and the Commission's regulations

³ "PCAP is the Company's low-income customer assistance program which provides, *inter alia*, to a qualified participant a monthly credit based on income, heat source and energy burden and a potential arrearage forgiveness for timely in full payments". Answer ¶4, n. 2.

⁴ "The equal payment plan or budget program is for residential customers and designed to make their monthly payments consistent throughout an entire year, leveling out seasonal highs and lows. The budget amount is based on the average of the last 12 months. The budget amount is reviewed quarterly and adjusted accordingly based on the customer's usage." *Id.* at n. 1.

permitting a utility to provide customers alternating actual and estimated monthly bills.
52 Pa.Code § 56.12. New Matter ¶¶11-14.

On February 16, 2017, Mr. Altland filed a Reply to Met-Ed's New Matter. He reiterated there was a reliability issue with his service, and he was improperly billed. Reply ¶4.

Evidentiary Hearing and Record Closing

On March 9, 2017, a Call-In Telephonic Hearing Notice was mailed to the Parties informing them that the proceeding was assigned to the undersigned Administrative Law Judge (ALJ) for hearing on April 7, 2017. On March 13, 2017, the ALJ issued a Prehearing Order informing the Parties of the applicable procedural rules for the hearing.

The evidentiary hearing convened as scheduled. Mr. Altland appeared, self-represented, and testified, but he did not call any witnesses or sponsor any exhibits. Met-Ed was represented by Margaret A. Morris, Esquire, who on behalf of Respondent called Lauri Parker, a business analyst to testify. She sponsored Met-Ed's Exhibits 1 through 10, all of which were admitted into the record. James A. Sarver, a senior engineer with Met-Ed, was also present, but he did not testify.

The evidentiary hearing, as later discussed, was truncated on April 7, 2017, because of Mr. Altland's contemptuous and disruptive conduct.

After the adjournment of the hearing on April 7, 2017, Mr. Altland emailed the ALJ and stated in part as follows:

At what point did I get to even say anything. You just kept letting the lawyer talk and talk and talk. All you jerks at the PUC do is side with the utilities. Just how fair is that? Yeah all you're protecting is the utility companies. I hope your cold gets worse.

By letter dated April 10, 2016, the ALJ acknowledged receipt of Mr. Altland's email and reminded him that under the Prehearing Order any correspondence he sent to the ALJ was to be copied to Respondent. The ALJ informed Mr. Altland that as a courtesy a copy of his email was being sent to counsel for Respondent, and the email was also being sent to the Commission's Secretary's Bureau for filing in this case.

The 62-page transcript of the hearing was received by the ALJ on May 1, 2017. The record was closed by an interim order entered on May 2, 2017. This case is procedurally ready for ruling.

FINDINGS OF FACT

1. Complainant Frederick Altland resides and currently receives electric service from Metropolitan Edison Company at 958 East Market Street, Apartment 7, York, Pennsylvania, 17403 (service address). Tr. 5, 20.

2. Respondent Metropolitan Edison Company is a jurisdictional public utility providing electric service to Pennsylvania customers.

3. The service address is a studio apartment consisting of one large living area, approximately 28 feet by 25 feet, a small bathroom and a small kitchen. Tr. 17.

4. Mr. Altland did not know the amount of his electric bill for March 2017, the month immediately preceding the hearing. Tr. 18.

5. Mr. Altland was initially enrolled in Met-Ed's PCAP on April 18, 2008, under which his account received a monthly credit of \$68.29, and his deferred balance of \$111.74 was forgiven in the amount of \$3.10 monthly. Tr. 30-31.

6. By October 2011 Mr. Altland's deferred balance had been completely forgiven under PCAP. Tr. 31.

7. As of April 15, 2013, Mr. Altland's monthly PCAP credit was \$32.56.
Tr. 31.
8. As of February 28, 2017, Mr. Altland's electric account was enrolled in Met-Ed's PCAP with a monthly credit of \$17.72. Tr. 21, 29, 31; Exhibit 2.
9. Met-Ed's Equal Payment Plan (budget billing) is a program for residential customers designed to make their monthly payments a consistent amount throughout the entire year. Tr. 32.
10. Met-Ed requires PCAP customers to be enrolled in budget billing in order to remain eligible for PCAP. Tr. 37-38, 40-41; Exhibit 4 at 5.
11. Mr. Altland's February 28, 2017 billing included a budget amount of \$49.00 and a supplier amount of \$56.46. Tr. 36; Exhibit 2.
12. Mr. Altland's electric account is enrolled in Met-Ed's Equal Payment Plan. Tr. 33.
13. In the past two years, Mr. Altland's electric account has been credited with federal LIHEAP (Low Income Home Energy Assistance Program) funds as follows: October 22, 2015 - \$106.00 and \$70.00; July 25, 2016 - \$65.00; and December 1, 2016 - \$50.00 and \$200.00. Tr. 32; Exhibit 2.
14. As of March 9, 2017, Mr. Altland's electric account balance was \$46.77. Exhibit 2.
15. Rule 10 of Met-Ed's tariff reserves to the Company the right for bi-monthly readings of its customers' meters and the rendering of estimated monthly bills for the periods when meter readings are not obtained. Tr. 43-44; Exhibit 3.

16. Met-Ed provides billings to Mr. Altland based upon alternating actual and estimated monthly meter readings. Exhibit 2.

17. For the period March 2015 to February 2016, Mr. Altland used 9,951 kilowatts of electricity at a cost of \$1,354.88. Tr. 45; Exhibit 6.

18. For the period March 2016 to February 2017, Mr. Altland used 9,488 kilowatts of electricity at a cost of \$1,185.16. *Id.*

19. Met-Ed requires PCAP customers to be enrolled in its WARM program, which is a level income usage reduction program under which Met-Ed may conduct energy audits of the customer's service address. Tr. 46; Exhibit 4 at 5.

20. On January 11, 2017, Mr. Altland participated in the WARM program, and Met-Ed performed an energy usage audit of the service address. Tr. 46; Exhibit 7.

21. Under the WARM program, Mr. Altland's service address was weatherized, which included caulking of the doors and windows, weather stripping the doors and air sealing the attic with spray foam. Tr. 50; Exhibit 7.

22. The service address is located on the third floor of an apartment building that was constructed in 1925. Tr. 17, 47; Exhibit 7.

23. The service address is 700 square feet; the main heat source is electric baseboard heat and the two window air conditioners provide the main cooling source. Tr. 47, 49; Exhibit 7.

24. During the winter, Mr. Altland keeps his thermostat between 65 and 70 degrees. Tr. 48; Exhibit 7.

25. During the winter, the service address has the potential to use 1,615 kilowatts of electricity. *Id.*

26. During the summer, the service address has the potential to use 1,544 kilowatts of electricity. Tr. 49; Exhibit 7.

27. Mr. Altland's actual winter and summer electric usage is within range of the potential electric energy usage of the service address. Tr. 48-49; Exhibits 6 and 7.

28. In March 2017 Met-Ed billed Mr. Altland \$108.62 for 820 kilowatts of usage for average temperatures of 39 degrees. Tr. 50.

DISCUSSION

Burden of Proof

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the Respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, the Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by a complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the complainant shifts to the respondent. If the evidence presented by the respondent is of co-equal value or “weight,” the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff’d*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

Complainant’s Contemptuous Conduct

Rather than explain the precise nature of his Complaint, Mr. Altland elected to present his testimony in a rambling accusatory fashion, to use offensive language and to claim repeatedly that the Commission was biased against him. He testified, Met-Ed turns the power off when they want to, in order to make repairs, and the Company doesn’t care about the equipment in his house. Tr. 14. He claimed he was overbilled without offering a specific explanation as to the overbilling. *Id.*

Mr. Altland began to express his distrust and lack of respect for the proceeding from the outset of the hearing as follows.

ALJ: This is how the hearing will proceed.

Mr. Altland, you are the complainant in this proceeding. As the complainant, it is your burden to prove the allegations in your complaint and to prove that you are entitled to the relief that you are asking the Commission to grant to you. So, you would testify first and - -

Mr. Altland: You are siding with these people.

ALJ: Mr. Altland, let me - -

Mr. Altland: I'm tired of this [expletive].

ALJ: Mr. Altland - - Mr. Altland when I speak, you have to stop speaking. Let me explain the whole procedure of the hearing to you.

Tr. 9-10.

ALJ: Mr. Altland, do you have any questions as to how the hearing will proceed?

Mr. Altland: I don't even know what the hell you said. I really don't. The Public Utility Commission is a joke and they need to be abolished like the Public Service Commission.

Tr. 12.

Under direct examination, Mr. Altland opened his testimony suggesting the ALJ was biased in favor of utility companies as follows.

ALJ: Mr. Altland, tell me what your complaint is about. Now is your opportunity. Tell me what you are complaining about and what would you like for the Commission to do for you?

Mr. Altland: I want you to stop siding with the utility companies all the time. I see it all the time. Give them more money, give them more money, do whatever you want. They turn the power off. Basically, I'm [on] the EPP [Met-Ed's Equal Payment Plan] and they say, oh, this is what you have to buy. I'm on a fixed income. This is what you have to buy. It says right on the bill here, this is what you are responsible for. Well, they want to make me pay more.

Tr. 13.

Mr. Altland: You [ALJ] sit there and let these power companies do what they want to. The utility companies, they [expletive] the roads up. Just let them go and

do what they want to do. That's the whole problem here. That's the whole problem.

Tr. 16.

Mr. Altland persisted in this contempt for the proceeding by reiterating the Commission is a joke and a corrupt organization that sides with the utility, and it does not care about the customers, so he wants "the P.U.C. abolished." Tr. 16, 20, 30.

During her direct examination Met-Ed's witness, Ms. Parker, presented testimony and evidence in order to respond to the allegations of Mr. Altland's Complaint. However each time Ms. Parker attempted to address the allegations, Mr. Altland interrupted her testimony with outbursts in defiance of the ALJ's warnings, to wit:

Mr. Altland: Wrong answer.

ALJ: Mr. Altland, please do not interrupt. You will have the opportunity to question Ms. Parker once she finishes her testimony or you can make an objection. But you just can't say it's not correct.

Tr. 30.

Mr. Altland: That is why I want the P.U.C. abolished, because all it does is side with the utility companies.

Tr. 30-31.

Mr. Altland: It [budget billing] is being forced on to me.

Tr. 37.

Mr. Altland: Illegal [enrollment in budget bill for PCAP eligibility].

Enough of this.

I'm tired of this [expletive].

Tr. 38.

ALJ: Mr. Altland, if you continue to interject inappropriately, then I'm just going to adjourn the hearing and I will base a decision upon what I already have. So please stop interjecting inappropriately. Everyone in this hearing is expected to be respectful to each other. No one has been disrespectful to you, but you are being disrespectful to the process by interjecting that way. So I would ask you to remain silent, unless you have a legitimate objection. Please give Attorney Morris and her witness the opportunity to complete the Direct Examination.

Tr. 38-39.

Mr. Altland: I'm not going to do that [participate in budget billing] anymore. I refuse to. I'm tired of this [expletive]. I'm tired of it. To sit here and side with you, I'm done.

Tr. 40.

ALJ: Mr. Altland, please do not interrupt unless you have an objection.

Tr. 41.

Mr. Altland: It [the billing] was not correct.

Tr. 53.

Mr. Altland: Stop turning the power off. I didn't do anything wrong.

ALJ: Mr. Altland, if you have one more outburst, I'm going to –

Mr. Altland: I don't care. I'm tired of them turning my power off for no reason.

ALJ: I'm going to have to –

Mr. Altland: You just keep messing with people all the time.

ALJ: Mr. Altland, please stop interrupting.

Tr. 54-55.

Mr. Altland: I'm tired of the utility companies. I can't wait to get this abolished.

Tr. 55.

Mr. Altland: Liar.

Tr. 56.

Mr. Altland: Let the utility companies do what they want to. That's all they ever do. Let them do what they want to. I'm tired of being told that I have to deal with the company I don't care to deal with. You shouldn't be forced to do this. I'm tired of it. Everything I say is just ignored.

Tr. 58.

Ms. Parker: The company may, without liability interrupt or limit supply - -

Mr. Altland: No [expletive].

Mr. Parker: - - of electric service for the purpose of making repairs - -

Tr. 58- 59.

ALJ: I'm going to adjourn the hearing.

Mr. Altland: I am fed up with these [expletive] tariffs. Always something small. No one wants to listen. No one cares. No one cares about the disabled. Just do what you want to do. You guys have 50 million dollars. That's all you do. I'm tired of it.

ALJ: Mr. Altland, I'm going to adjourn - -

Mr. Altland: Do what you want to do. That's what this is about. It's a game. You might as well go out and play golf. The judge probably goes out and plays golf with one of these companies. I'm tired of it.

Tr. 59.

ALJ: Mr. Altland, I have given you a number of warnings that your continued outbursts would result in the adjournment of the hearing and writing of the decision based upon the evidence that has been submitted thus far.

Tr. 61.

Due to Mr. Altland's continuing outbursts during the hearing and disrespectfulness of the proceeding, the ALJ informed the Parties that a decision would be made based upon the evidence submitted to that point, and the hearing was adjourned. *Id.* Importantly, prior to adjournment, Mr. Altland had not presented any evidence establishing that Met-Ed had violated the Code or a Commission regulation or order.

Respondent's Evidence

Met-Ed's business analyst credibly testified that Mr. Altland's account is currently enrolled in the Company's PCAP, which also requires enrollment of the account in budget billing under the Company's tariff. Tr. 29, 32, 44. As of March 9, 2017, Mr. Altland's account balance was \$46.77. Exhibit 2. His electricity is currently active. Tr. 20. The Company's tariff permits bi-monthly estimated meter readings. T. 43-44; Exhibit 3. Met-Ed provides billings to Mr. Altland based upon alternating actual and estimated monthly meter readings, which is permitted under Section 56.12 of the Commission's regulations, 52 Pa.Code § 56.12. Tr. 44; Exhibit 2. Mr. Altland's electric usage and costs have been consistent over the last 24 months and is within the range for a household size of one and a 700-square foot service address. Tr. 45-49; Exhibits 6 and 7. For the period March 2015 to February 2016, Mr. Altland used 9,951 kilowatts of electricity at a cost of \$1,354.88. Tr. 45; Exhibit 6. For the period March 2016 to February 2017, Mr. Altland used 9,488 kilowatts of electricity at a cost of \$1,185.16. *Id.* Tr. 48; Exhibit 7. During the winter, the service address has the potential to use 1,615 kilowatts of electricity. Tr. 48; Exhibit 7. During the summer, the service address has the potential to use 1,544 kilowatts of electricity. Tr. 49; Exhibit 7. Lastly, the Company's Tariff Rule 20 permits interruption of service to make repairs, changes or improvements of any part of its system. Tr. 54; Exhibit 9. The Company's tariff also provides for giving customers advance notice of an expected service suspension and its duration. Tr. 55. On January 27, 2017, through

its automated telephone system, Met-Ed gave Mr. Altland notice that service would be interrupted for repairs on January 31, 2017, and that the interruption would be from 9:00 a.m. to 2:00 p.m.

Analysis

In this proceeding, as the moving party seeking relief from the Commission, Mr. Altland carries the burden of proving the Med-Ed had violated a Commission statute, regulation or order or in some manner was accountable for the problem complained of in his Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). Rather than present evidence about his Complaint, as noted above, Mr. Altland elected to disparage the proceeding and express his contempt for the Commission, the ALJ and Met-Ed. Under these circumstances, a presiding officer is authorized to summarily exclude the disobedient party from proceeding further in the hearing. This authorization is derived from Section 1.26(a) of the Commission's regulations. Specifically, the regulation reads as follows: "Contemptuous conduct at a hearing before the Commission or a presiding officer shall be grounds for exclusion from the hearing and for summary suspension without a hearing for the duration of the hearing." 52 Pa.Code § 1.26(a). Despite repeated warnings, Mr. Altland continued to express his contempt for the proceeding. As a result, the telephonic hearing was abruptly adjourned pursuant to Section 1.26(a).

In between Mr. Altland's outbursts and interruptions, Met-Ed rebutted his allegations with credible testimony and persuasive documentary evidence. Mr. Altland was denied the opportunity for cross-examination because of his contemptuous conduct. However, Mr. Altland could have requested a reopening of the hearing to conduct cross-examination. Instead, subsequent to the adjournment of the hearing, he elected to send an email to the presiding officer again disparaging the Commission and expressing his contempt for the process.

Based upon the above findings and analysis, the undersigned is compelled to conclude that Mr. Altland failed to carry his burden of proof. Therefore, his Complaint must be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding. 66 Pa.C.S. § 701.

2. The party filing the complaint bears the burden of proving that he is entitled to relief from the Commission. 66 Pa.C.S. § 332(a).

3. Complainant must show that the respondent/utility company is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 134 Pa.Cmwlth. 218, 578 A.2d 600, 602, *alloc. den.*, 602 A.2d 863 (Pa. 1992).

4. Contemptuous conduct at a hearing before the Commission or a presiding officer shall be grounds for exclusion from the hearing and for summary suspension without a hearing for the duration of the hearing. 52 Pa.Code § 1.26(a).

5. Complainant has not met his burden of proving by a preponderance of the evidence that the named public utility is responsible or accountable for the problem described in his Complaint. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Frederick Altland v. Metropolitan Edison Company at Docket No. C-2017-2582828 is dismissed for Complainant's failure to carry his burden of proof.
2. That the Secretary's Bureau shall mark Docket No. C-2017-2582828 closed.

Date: June 20, 2017

/s/
Conrad A. Johnson
Administrative Law Judge