

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alfredo Caraballo

v.

PPL Electric Utilities Corporation

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C-2017-2615246

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge
Sitting as Special Agent

INTRODUCTION

This Initial Decision denies the Complaint of Alfredo Caraballo because he failed to demonstrate that he should receive a Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On July 18, 2017, Alfredo Caraballo (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission against PPL Electric Utilities Corporation (Respondent) alleging that PPL had threatened to shut off his service. The Complainant requests the Commission to issue a payment arrangement he could afford.

On August 10, 2017, the Respondent filed an Answer to the Complaint. In its Answer, the Respondent admitted that it has provided notice of intent to terminate electric service to the Complainant for an unpaid balance.

Originally, a Telephonic Hearing Notice was sent on August 15, 2017, advising the parties that an initial telephonic hearing was scheduled for Friday, October 6, 2017, at 10:00 a.m. before Special Agent Rebecca Waldemar. Subsequently, the case was reassigned to me and a Corrected Telephonic Hearing Notice was sent on September 13, 2017, advising the parties that the presiding officer had changed but the date and time of the hearing remained the same. A Prehearing Order, dated September 12, 2017, also advised the parties of the date and time of the scheduled hearing, and informed them of the procedures applicable to this proceeding. In accordance with the provisions of the Prehearing Order, the Respondent submitted four proposed exhibits for possible use at the hearing.

The initial telephonic hearing convened as scheduled on Friday, October 6, 2017, at 10:00 a.m.¹ The Complainant appeared *pro se* and testified on his own behalf. Kimberly Krupka, Esquire, Counsel for the Respondent, presented the testimony of one witness, Brandi L. Marpzen, a customer service representative for the Respondent. Ms. Marpzen sponsored two exhibits – an Account Activity Statement (PPL Exhibit 1) and a Payment Agreement History (PPL Exhibit 3). Both exhibits were admitted into the record without objection. The record closed on October 6, 2017, at the conclusion of the hearing.

FINDINGS OF FACT

1. The Complainant is Alfredo Caraballo, who resides at 423 West Cherry Street, Shenandoah, PA (service address).
2. The Respondent is PPL Electric Utilities Corporation.
3. The Complainant's household consists of three adults (the Complainant, Jonathan Caraballo, Sapphire Nieves) and three minors.
4. The Complainant receives \$840.00 per month in Supplemental Security Income and \$200.00 per month in Supplemental Nutrition Assistance Program (SNAP) benefits.

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

5. Sapphire Nieves receives \$550.00 per month in SNAP benefits.

6. The Complainant's current household income of \$1590.00 with six household members places the household at less than 75% of the Federal Poverty guidelines.²

7. The Complainant was enrolled in the Respondent's OnTrack Program, which is the Respondent's customer assistance program (CAP).

8. The Complainant's eligibility for the OnTrack Program ended in May, 2017, with him owing \$1,571.32 in arrears.

9. As of the date of the hearing, the Complainant's outstanding non-CAP balance is \$1,485.68.

10. The Complainant's last payment to the Respondent was on June 7, 2017 in the amount of \$10.00. *PPL Exh. 1.*

11. Since 2004, the Complainant has defaulted on multiple payment agreements established with the Respondent. *PPL Exh. 3.*

DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving by substantial evidence that he 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. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.

² *Federal Register*, Vol. 81, No. 15, January 25, 2016, pp. 4036-4037. Also, see <http://aspe.hhs.gov/poverty>.

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. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 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. Pub. Util. Comm'n*, 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).

Upon the presentation by the 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 weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence 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 persuasion 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).

In this case, the Complainant seeks a payment arrangement for his outstanding balance. The Complainant owes \$1,571.32 in CAP arrears and \$1,485.68 in non-CAP arrears.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued and the length of the payment arrangement. Title 66 Pa.C.S. § 1405(c) provides:

- (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.

Accordingly, the Commission is prohibited from setting a payment arrangement on the \$1,571.32 in CAP arrears owed by the Complainant. Nevertheless, when a Complainant has an arrearage composed of both CAP and non-CAP arrearages, the Commission may bifurcate the arrearage and establish a payment arrangement on the non-CAP arrearage. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Order entered September 12, 2013). However, the Commission is not required to do so, and may decline to do so if the Complainant exhibits a poor payment history, inability to pay, and/or likeliness to default. *Hewitt*. In *Hewitt*, the Commission discussed why bifurcating an arrearage is not recommended in most cases:

Even if bifurcating an arrearage is feasible, it may not be practical. Typically, CAP assistance is the best, most affordable payment plan for an eligible, low-income customer. If a customer cannot afford and does not pay a CAP bill, which is service provided at a discount, the customer most likely cannot afford and will not pay his or her current/budget bill plus an additional payment on an accrued balance, which is the typical structure of a payment agreement. Given the limitations in the Code in Section 1405(d) on the number of payment agreements that the Commission may issue for a customer, issuing a payment agreement where the customer will likely default is not in the customer's best interest. *Id.* at 11.

Furthermore, by law, a public utility is entitled to receive payment for the service it provides and the Complainant must pay the Respondent for the service he consumes. *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, (Final Order entered January 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa. PUC 213 (1990). 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 8721758 (Opinion and Order entered April 8, 1988).

A payment arrangement, which prevents service termination if the Complainant complies with it, is a privilege, not a right. *Mandell v. Duquesne Light Co.*, Docket No. C-20030234, (Opinion and Order entered March 17, 2004).

The Commission has previously held that it may refuse to order a payment arrangement for customers who do not make good faith efforts to pay their bills. See, e.g., *Stephen Getz v. Metropolitan Edison Company*, Docket No. C-20142459964 (Final Order entered May 28, 2015); *Susan Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013). In both of these cases, the Commission refused to exercise its discretion to order a payment arrangement for a customer where the customer had a poor payment history and/or demonstrated an inability or unwillingness to comply with payment arrangements established by the utility.

Here, the Complainant has not demonstrated a good faith effort to pay his electric bill. Prior to this Complaint, the Complainant accrued an outstanding balance of \$7,428.82 after defaulting on multiple payment agreements previously established between him and the Respondent. Nevertheless, the Respondent allowed him to enroll in their CAP. However, the Complainant was unable to meet his obligations under CAP either and his eligibility ended in May 2017 with him owing \$1,571.32 in CAP arrears. Moreover, from the time his eligibility ended in May 2017, the Complainant only made a single \$10.00 payment on his electric bill on June 7, 2017, which leaves him with an outstanding non-CAP balance of \$1,485.68.

Additionally, the Complainant testified at the hearing that he could only afford to pay around \$100 to \$150 per month *total* for his electric bill. Unfortunately, this amount would not even cover his usage totals for his *lowest month* (August 2017 was approximately \$154), let alone the portion of the outstanding balance that would be added to each bill if a payment arrangement was issued.³ It appears that the Complainant would default on any payment

³ The Complainant's current household income of \$840.00 with six household members places the household at less than 50% of the Federal Poverty guidelines. The Commission may grant a customer with gross household income not exceeding 150% of the Federal poverty level a five-year payment arrangement to resolve an unpaid balance. 66 Pa.C.S.A. § 1405(b)(1). Thus, if a payment arrangement was issued, the Complainant would

arrangement awarded at this time, which, given the limited number of payment arrangements that the Commission may issue, is not in the best interest of the Complainant.

Based on the foregoing, I conclude that the Complainant has not demonstrated that he is entitled to a payment arrangement. Accordingly, the Complaint is dismissed.

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. Section 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 Complainant failed to sustain his burden of demonstrating that he should receive a Commission-issued payment arrangement. 66 Pa.C.S. § 332(a).

owe \$24.76 per month ($\$1,485.68 \div 60 \text{ months} = \24.76) in addition to the regular bill, which means his total bill for his *lowest month* of usage would be at least \$178.00.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Alfredo Caraballo against PPL Electric Utilities Corporation at Docket No. C-2017-2615246 is denied; and
2. That the case at Docket No. C-2017-2615246 be marked closed.

Date: October 12, 2017

/s/
F. Joseph Brady
Administrative Law Judge