

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ron Richards	:	
	:	
v.	:	C-2017-2616828
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

This Initial Decision dismisses the formal Complaint filed by Ron Richards (Complainant) against Duquesne Light Company (DQE or Company). Complainant alleged billing error, claiming that DQE incorrectly transferred charges from his wife’s account to his account. Complainant is also seeking a payment arrangement (PAR) to avoid termination of service. The Complainant did not meet his burden of proving that he is entitled to relief.

HISTORY OF THE PROCEEDING

On July 27, 2017, Complainant filed a formal Complaint against DQE alleging that DQE had mis-billed him by transferring charges incurred at a prior residence from an account not in his name.

On August 21, 2017, DQE filed an Answer in which it denied the allegations set forth in the Complaint and asserted that it had properly transferred charges from an account in the name of Complainant’s wife, incurred at a prior joint-residence, to the account in husband’s name at the couples’ new residence.

On August 28, 2017, a Notice issued by the Office of Administrative Law Judge (OALJ) established October 10, 2017, as the date for an initial telephonic hearing in this case.

On August 31, 2017, I issued a standard form prehearing Order.

On October 10, 2017, a telephonic hearing convened originating from the Commission's Harrisburg office. Paul Shane Miller, Esquire, appeared on behalf of DQE. Complainant was present and represented himself. DQE presented the testimony of one witness, Peg Mueller, a Regulatory Consumer Relations Specialist with DQE. DQE offered two pre-marked exhibits that were received into evidence: DQE Exhibit C, a summary of payment arrangements for an account in Complainant's name, and DQE Exhibit D, a summary of payment arrangements in Complainant's wife's name. At the conclusion of the hearing, DQE moved for dismissal of the Complaint on the grounds that Complainant had failed to meet his burden of proof. That Motion was taken under advisement.

The hearing concluded on October 10, 2017. The record closed on October 31, 2017, with the filing of the transcript of the hearing with the Secretary of the Commission. The record in this proceeding consists of the 30-page transcript, and DQE's Exhibits C and D.

This matter is now ready for decision.

FINDINGS OF FACT

1. Complainant is Ron Richards who receives residential electric service in his name from Duquesne Light Company at 204 Webster Drive, Pittsburgh, Pennsylvania, where he resides with his wife, Marie Richards. Tr. 7, 14.

2. Respondent is Duquesne Light Company, a jurisdictional public utility company providing electric service to the Complainant's service address.

3. Prior to living at 204 Webster Drive, Complainant resided with his wife at 34 Hawthorne Avenue, Pittsburgh, Pennsylvania. Tr. at 7, 14.

4. DQE provided electric service to the Hawthorne Avenue service address, billed to an account in Complainant's wife's name, which is Marie Richards. Tr. at 7, 14.

5. A past due balance was transferred from the Hawthorne Avenue account to the Webster Drive account. Tr. at 7, 14.

6. There are two people in Complainant's household, the Complainant and his wife. Tr. at 16.

7. The income of the household is \$2,500 to \$2,750 per month. Tr. at 16.

8. Complainant and his wife have had a total of four PARs with DQE, two of which were ordered by the Commission, and two of which were provided by DQE. Tr. 19-20; DQE Exhibits C and D.

9. On June 15, 2012, Marie Richards entered into a PAR with DQE for service at the 23 Hawthorne Avenue address as a result of the settlement of a formal Complaint at PUC Docket No. C-2012-2308974. DQE Exhibit D.

10. On July 19, 2013, Marie Richards entered into a PAR with DQE at the 23 Hawthorne Avenue address as the result of a Commission decision in a formal Complaint case at PUC Docket No. C-2012-2335328. DQE Exhibit D.

11. On May 19, 2016, Ron Richards entered into a PAR with DQE for service at the 204 Webster Drive address. DQE Exhibit C.

12. On July 15, 2015, Ron Richards entered into a PAR with DQE for service at the 204 Webster Drive address as a result of a determination by the Commission's Bureau of Consumer Services at case No. 3363920. DQE Exhibit C.

13. Complainant and his wife defaulted on all four PARs. Tr. at 20.

DISCUSSION

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S.A. § 332(a). To satisfy this burden, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosier 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. Comm'w., 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. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Alleged Mis-billing

The Complainant alleges a mis-billing by DQE in that he claims that charges billed to an account under his wife's name at a prior address where they both resided were improperly transferred to a subsequent account in his name at a new address where both reside. Complaint at Para. 4. Complainant asked that charges previously billed in his wife's name be deducted from the charges for service incurred at a new address, the latter which he concedes that he does owe DQE, and that he be given an affordable PAR for the balance. Complaint at 5; Tr. at 7-8. Complainant believes that he should not be responsible for charges previously billed in his wife's name even though he conceded that he was living with her at the prior service

address during the time that those charges accrued. Tr. at 13. Complainant cited no legal authority to support that conclusion.

Regarding transfer of accounts, 52 Pa.Code § 56.16(b) provides, in pertinent part, that "[i]n the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a new residential service account of the same customer."

The term "customer" is defined at Chapter 56 of Title 52 of the Pennsylvania Code as:

A natural person at least 18 years of age in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or an adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential public utility service is requested. A natural person remains a customer after discontinuance or termination until the final bill for service is past due.

Complainant was also a "customer," at the prior and current address as defined in the Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1403:

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.* (emphasis added)

As a customer, Complainant was equally responsible for the bills accrued for the service provided. As a matter of general law, if one spouse acquiesces in the terms of a contract made between the other spouse and a third party and receives benefits from it, he or she will be bound by its terms. *Brinich v. Jencka*, 2000 Pa. Superior Ct. 209, 757 A.2d 388 (2000). The evidence presented at hearing shows that Complainant acquiesced in and received the benefits of the utility service that DQE provided at the prior address. Accordingly, he is equally responsible

with his wife for payment for this service. Thus, DQE acted properly in transferring an outstanding balance from his wife's account into his account.

Complainant has failed to prove by a preponderance of the evidence that he has been incorrectly billed.

Request for a Commission-directed PAR

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); see also, *Kea v. Peoples Natural Gas Co.*, 60 Pa. PUC 215 (1985); *Mill v. Pa. Public Utility Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982). DQE 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).

With respect to his request for a PAR, absent a change in income Complainant is not entitled to another Commission ordered PAR under the provisions of Chapter 14, 66 Pa. C.S.A. § 1405(d), which states:

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.

At hearing, Complainant referred to changed circumstances, but he did not assert or demonstrate a change in income. A "change in income," is defined in the Code as:

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.

66 Pa. C.S. §1403. Complainant's testimony indicated a loss of income at some point, but he then stated that his income level was restored, thus, there was no change. Tr. at 15-16.

Section 1405(d) of the Public Utility Code limits the number of payment agreements that the Commission can establish or order a public utility to establish to just one, absent a change in income. The record in this case demonstrates that Complainant and his wife have defaulted on all four PARs they had over a four-year period.

When the account was in his wife's name, both a Commission directed PAR and a Company authorized PAR were defaulted on. Complainant then defaulted on the most recent Commission directed PAR instituted on July 15, 2015. He defaulted on the most recent Company PAR entered into on May 19, 2016. A PAR, which prevents service termination as long as Complainant complies with it, is a privilege, not a right. *Mandell v. Duquesne Light Co.*, Docket No. C-20030234, (Order entered March 17, 2004).

Complainant's request for a third PUC PAR is denied because he and his wife defaulted on two previous Commission directed PARs, and they have not met the change in income criterion required for issuance of another PUC PAR. 66 Pa.C.S. § 1405(d). Therefore, the Complaint will be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. §§ 701, 1501.

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is on the Complainant.

3. A customer is defined as a natural person at least 18 years of age in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or an adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential public utility service is requested. A natural person remains a customer after discontinuance or termination until the final bill for service is past due. 52 Pa.Code § 56.2.

4. Complainant was a "customer" as defined in the Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1403.

5. 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.

6.. Complainant failed to sustain his burden of establishing that the Respondent improperly transferred an unpaid balance to his residential service account.

7.. The Complainant has not met his burden of proving that he is entitled to relief. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Ron Richards against Duquesne Light Company at Docket No. C-2017-2616828 is hereby dismissed.

2. That the case at Docket No. C-2017-2616828 be marked closed.

Dated: December 20, 2017

/s/
Dennis J. Buckley
Administrative Law Judge