

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bennii Gatlin-Ali	:	
	:	F-2017-2623116
v.	:	C-2017-2611525
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Andrew M. Calvelli
Administrative Law Judge

INTRODUCTION

This Decision grants in part and dismisses in part a formal Complaint filed by a customer of an electric distribution company, seeking a refund of alleged incorrect charges along with a Commission ordered payment arrangement. The Complaint is granted to the extent that the Complainant is seeking a Commission ordered payment arrangement, as the Complainant has met her burden of proof in that regard. The Complaint is dismissed to the extent that the Complainant is seeking a refund, as the Complainant has failed to meet her burden of proof to demonstrate that the charges are incorrect or that she is entitled to a refund.

HISTORY OF THE PROCEEDING

On June 14, 2017, Bennii Gatlin-Ali (Ms. Ali) filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against West Penn Power Company (West Penn). In the Complaint, Ms. Ali states that there are incorrect charges on her bill and that she would like a payment arrangement. The Complaint was processed and served by the Commission on June 27, 2017 and assigned Docket Number C-2017-2611525.

On July 17, 2017, West Penn filed an Answer with New Matter and a notice to plead in response to Ms. Ali's Complaint at Docket Number C-2017-2611525. In its Answer, West Penn admitted or denied the various averments made in the Complaint. West Penn also requested that the Complaint be dismissed.

Also on July 17, 2017, West Penn filed Preliminary Objections to the Complaint, stating that the Complaint should be dismissed because the four-year statute of limitations under Section 1312 of the Pennsylvania Public Utility Code (66 Pa.C.S. § 1312) had expired.

Ms. Ali did not file a response to West Penn's New Matter or Preliminary Objections. By Motion Judge Assignment Notice dated August 23, 2017, the parties were informed that West Penn's Preliminary Objections had been assigned to me for a ruling. By Order dated September 15, 2017, I denied the Preliminary Objections on the basis that it was not entirely clear, from the pleadings alone, that the claims were time barred.

In the interim, Ms. Ali filed a second formal Complaint on August 22, 2017 at Docket Number F-2017-2623116. This Complaint was a timely appeal of the Commission's Bureau of Consumer Services decision in case number 3521833.¹ The Complaint was processed and served by the Commission on September 7, 2017.²

On September 27, 2017, West Penn filed an Answer with New Matter and a notice to plead in response to Ms. Ali's Complaint at Docket Number F-2017-2623116. In its Answer, West Penn admitted or denied the various averments made in the Complaint. West Penn also requested that the Complaint be dismissed.

¹ In her BCS complaint, Ms. Ali does not request a payment arrangement, but instead claims that her West Penn bills were too high and that she was requesting a refund.

² West Penn has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702, and has agreed to electronic service instead under the Commission's Waiver of 702 program. West Penn accepted electronic service of both complaints in this case.

Also on September 27, 2017, West Penn filed a Motion to Consolidate the two cases, arguing that the Complaints in both cases involved the same parties and legal issues. No answer to the Motion was filed by the Complainant. By Order dated November 29, 2017, I granted the Motion and consolidated Docket Numbers F-2017-2623116 and C-2017-2611525 because the cases involved common issues of law and fact.

By Telephonic Hearing Notice dated December 7, 2017, the parties were advised that an Initial Telephonic Hearing was scheduled for Wednesday, January 3, 2018 and that I was assigned as the Presiding Officer. A Prehearing Order was issued on December 22, 2017 setting forth various rules that would govern the hearing.

The hearing convened on January 3, 2018 as scheduled. Ms. Ali appeared *pro se* and testified but did not sponsor any exhibits for the record. John Munsch, Esquire, appeared on behalf of West Penn. Mr. Munsch presented one witness who testified and sponsored three exhibits which were admitted into the record. A transcript of the hearing totaling 48 pages was made. The record in this proceeding closed on January 18, 2018 when the transcript was submitted to the Commission.

Ms. Ali's Complaint is ready for disposition. For the reasons discussed below, the Complaint will be granted in part and dismissed in part.

FINDINGS OF FACT

1. The Complainant in this case is Bennii Gatlin-Ali.
2. The Respondent in this case is West Penn Power Company.
3. The service address is 604 Gaskill Avenue, Jeanette, PA 15644.
4. Ms. Ali lives at the service address with her husband and three children, one of whom is an adult. Tr. 19-20.

5. Ms. Ali is the only employed member of the household. Tr. 20-21.
6. Ms. Ali has gross monthly earnings of \$840.00. Tr. 21.
7. Ms. Ali previously lived at 40 Carson Street in Uniontown, PA from October 2008 until December of 2010. Tr. 23.
8. Ms. Ali then lived at 29 East Kerr Street in Uniontown, PA from December of 2010 until the end of 2014. Tr. 23.
9. Ms. Ali and her family then moved to the service address of 604 Gaskill Street where Ms. Ali established utility service in her name on September 10, 2014. Tr. 28.
10. West Penn transferred Ms. Ali's prior utility accounts to her current account at 604 Gaskill Street because she had outstanding balances on those accounts. Tr. 28-29.
11. Ms. Ali's account statement demonstrates an outstanding balance of \$6,826.60 as of the date of the hearing in this case. Tr. 36-37.
12. None of Ms. Ali's account balance is CAP arrears. Tr. 37.
13. Ms. Ali has not had a previous Commission ordered payment arrangement. Tr. 36.

DISCUSSION

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, 364 Pa. 54, 70 A.2d 854 (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, Ms. Ali filed a Complaint against West Penn seeking legal relief in the form of a refund and a payment arrangement. Ms. Ali, therefore, has the burden of proof in this proceeding.

Ms. Ali's allegations of high billing

Before discussing the high billing allegations, I note that on July 17, 2017, West Penn filed Preliminary Objections to the Complaint, stating that the Complaint should be dismissed because the four-year statute of limitations under Section 1312 of the Pennsylvania Public Utility Code (66 Pa.C.S. § 1312) had expired. I denied the Preliminary Objections on the basis that it was not entirely clear, from the pleadings alone, that the claims were time barred. West Penn, through its counsel, orally renewed its Preliminary Objections after hearing testimony from Ms. Ali at the hearing, stating that it was clear that Ms. Ali's claims for high bills accrued during times that she lived at her prior addresses and that those claims were therefore time-barred. Tr. 24-26.

I took the oral motion under advisement. Reviewing the record, it seems clear that Ms. Ali is disputing bills going back to 2008. Tr. 41-42. Ms. Ali offered no reason for the delay in filing a complaint with the Commission about her alleged high bills. Also, I note that Section 1312 of the Public Utility Code states the following regarding refunds:

If in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power [to order the utility to refund the customer] within four years prior to the date of the filing of the complaint. . . .

66 Pa. C.S. § 1312(a). Since Ms. Ali did not file her Complaint until June 14, 2017, I am granting West Penn's oral Motion and dismissing any claims for a refund prior to June 14, 2013. I will now turn to Ms. Ali's claims for alleged high billing occurring after June 14, 2013.

In cases of alleged high billing, the Commission applies the Waldron rule, which provides that in order to establish a prima facie case of overbilling, a complainant must show: (1) that the number of occupants in the household has not changed, (2) that the potential for energy utilization was low and (3) that complainant's billing history shows no prior abnormalities. Once the complainant makes out a prima facie case, the burden of proof then shifts to the utility; however, the ultimate burden of persuasion always remains with the complainant. Malcolm Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980); Repogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980).

In Milkie, 768 A.2d 1217 (Pa. Cmwlth. 2001), the Commonwealth Court of Pennsylvania further refined the Waldron rule by holding:

While the [Waldron] rule is often explained by stating that the ratepayer must establish certain specific elements in order to make out a prima facie case of overbilling by a utility company, we believe this view is too restrictive. Rather, the controlling principle is that even where the utility can present evidence that it has tested the customer's meter and found it to be accurate, the customer may, nonetheless, prove his case by circumstantial evidence which would support a finding that the metered usage exceeded the actual usage. Thus, as our Supreme Court has explained, the rule operates as a device by which the complainant is protected from dismissal because of his inability to marshal *direct* proof that his meter had malfunctioned. Burleson v. Pennsylvania Pub. Util. Comm'n, 501 Pa. 433, 435-36, 461 A. 2d 1234, 1235 (1983).

Id. at 1219-1220 (emphasis in original) (footnote omitted). In Nehemiah Thomas v. PECO Energy Company, Docket No. C-2010-2187197 (Final Order entered November 15, 2011), the Commission explained that:

[C]onsistent with our holding in Charisse Bennett v. Peoples Natural Gas Co., Docket No. C-2009-2122979 (Order entered October 13, 2010), the Waldron Rule allows a complainant to establish a *prima facie* case in a “high bill” complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed *or by providing other relevant evidence showing that the disputed bill is unreasonably high*. In evaluating a “high bill” complaint, the Commission may consider such evidence as “the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), *and any other relevant facts or circumstances that come to light during the proceeding.*” Id. at 6 (emphasis added).

Id. at 5 (emphasis in original).

In her Complaint, Ms. Ali contends that her bills were too high. However, Ms. Ali offered almost no testimony or evidence in support of her high bill claims for any of the timeframe after June 14, 2013. Substantially all of Ms. Ali’s testimony concerned high bills from her prior addresses, and those claims have been dismissed as time-barred by the applicable statute of limitations (see above discussion).

The only testimony on point regarding possible high bills at the current service address concerns high bills apparently resulting from Ms. Ali’s choice of electric supplier (Tr. 41-43), where Ms. Ali testified that her bills were high until she stopped “paying some other company for the same thing” and then the bills went down. Tr. 43. No other testimony or evidence was offered on alleged high bills at the current service address, nor was any other testimony or evidence offered on alleged high bills after June 14, 2013.

West Penn, for its part, provided evidence indicating that its customer contact records dating back to 2011 reveal no complaints from Ms. Ali regarding alleged high bills at her prior service addresses. Tr. 29. West Penn also provided evidence indicating that Ms. Ali’s bills were accurate as rendered and that Ms. Ali’s account balance was \$6,826.60 as of the date of the hearing in this case. Tr. 29-33; West Penn Exhibit 1.

Based on the above, I conclude that Ms. Ali has failed to meet her burden of proof to show that her West Penn bills were not accurate or that they were too high. Ms. Ali did not provide any testimony or other evidence to indicate that there has been a change in the number of household occupants, or that the bills were abnormally high compared to her household usage patterns. The only evidence provided by Ms. Ali was that her current bills seemed high until she changed her electric supplier and then the bills went down. Since Ms. Ali has failed to meet her burden of proof regarding alleged high bills, the portion of her Complaint alleging high bills is dismissed, and I will now turn to Ms. Ali's request for a payment arrangement.

Ms. Ali's request for a payment arrangement

By law, a public utility is entitled to receive payment for the service it provides. Scaccia v. 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). Public utilities are entitled 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).

In her Complaint, Ms. Ali has requested a payment arrangement. This is the first time that Ms. Ali is requesting a payment arrangement. Tr. 36. In her prior BCS case, Ms. Ali did not request a payment arrangement, but instead alleged that her bills were too high and that she wanted a refund. Tr. 37-38; West Penn Exhibit 3.

Disposition of the payment arrangement portion of the Complaint is governed by Chapter 14 of the Public Utility Code. Chapter 14 grants the Commission the authority to establish a payment arrangement for customers with outstanding bills pursuant to certain

guidelines related to total household income and household size. 66 Pa.C.S. § 1405(b). Chapter 14 limits the permissible duration for any Commission ordered payment arrangement, based on the customer's gross monthly household income in relation to the federal poverty level. For example, the Commission may order a company to allow a customer, whose gross monthly household income does not exceed 150% of the federal poverty level, a payment arrangement over a period of up to 60 months. 66 Pa.C.S. § 1405(b)(1). Furthermore, the Commission's ability to order a utility to provide a payment arrangement is limited to requiring a utility to provide only one payment arrangement to a customer, absent a change in income or a significant change in circumstance. 66 Pa.C.S. § 1405(d).

The evidence demonstrates that Ms. Ali lives at the service address with her husband and three children, for a total of five residents at the service address. Tr. 19-20. The evidence also demonstrates that Ms. Ali is the only employed member of the household and that her gross monthly income is \$840.00. Tr. 20-21. Under the federal poverty guidelines, Ms. Ali's gross household income of \$840.00 per month is approximately 36% of the federal poverty guideline for a household of five people. Since Ms. Ali's gross monthly household income is less than 150% of the federal poverty level, Ms. Ali is entitled to a Level 1 payment arrangement over a period of 60 months, pursuant to 66 Pa.C.S. § 1405(b)(1).

Given that Ms. Ali has met her burden of proof to demonstrate that she is entitled to a Commission ordered payment arrangement, the portion of her Complaint requesting a payment arrangement will be granted. When applying the relevant statutory law to the record evidence in this case, Ms. Ali is entitled to a payment arrangement of no more than 60 months to pay her outstanding West Penn account balance.

CONCLUSIONS OF LAW

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

2. 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).

3. Section 1312 of the Public Utility Code provides that a Complainant cannot make a claim for a refund more than four years prior to the filing of a Complaint. 66 Pa.C.S. § 1312.

4. Ms. Ali's claims prior to June 14, 2013 are barred by the four year statute of limitations. 66 Pa.C.S. § 1312.

5. "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, 364 Pa. 54, 70 A.2d 854 (1950).

6. In cases of alleged high billing, to establish a prima facie case of overbilling, a complainant, must show: (1) that the number of occupants in the household has not changed, (2) that the potential for energy utilization was low and (3) that complainant's billing history shows no prior abnormalities. Once the complainant makes out a prima facie case, the burden of proof then shifts to the utility however; the ultimate burden of persuasion always remains with the complainant. Malcolm Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980); Repogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980).

7. Ms. Ali has failed to satisfy her burden of proof in this proceeding to demonstrate that her bills were not accurate or that West Penn violated the Public Utility Code, a Commission Order or Regulation or a Commission-approved tariff with regard to the bills rendered by West Penn. 66 Pa.C.S. § 332(a).

8. West Penn 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).

9. 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).

10. 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).

11. Chapter 14 of the Public Utility Code grants the Commission the authority to establish a payment arrangement for customers with outstanding bills pursuant to certain guidelines related to total household income and household size. 66 Pa.C.S. § 1405(b).

12. The Commission may order a company to allow a customer, whose gross monthly household does not exceed 150% of the federal poverty level, a payment arrangement over a period of up to 60 months. 66 Pa.C.S. § 1405(b)(1).

13. Ms. Ali has satisfied her burden of proof to demonstrate that she is entitled to a payment arrangement of 60 months. 66 Pa. C.S. § 332(a); 66 Pa. C.S. § 1405(b)(1).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaints filed by Bennii Gatlin-Ali against West Penn Power Company on June 14, 2017 at Docket Number C-2017-2611525 and on August 22, 2017 at Docket Number F-2017-2623116 are hereby dismissed insofar as they seek credits for alleged high bills.

