

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Shaffer	:	
	:	
v.	:	C-2017-2632821
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

This decision dismisses the formal complaint filed by Complainant for his failure to establish his burden of proving any violation by Respondent of the Public Utility Code, or a Commission regulation or order, or that he is eligible for a Commission-ordered payment arrangement.

HISTORY OF THE PROCEEDING

Complainant’s Complaint

On October 26, 2017, Complainant Michael Shaffer filed a Complaint seeking timely review of the Commission’s Bureau of Consumer Services’ (BCS) decision dated October 6, 2017, which granted Complainant’s informal complaint against West Penn Power Company (Respondent or West Penn) at BCS No. 3567188. The BCS decision established a payment arrangement, under which Complainant would pay his budget billings plus \$470.00 monthly beginning on November 22, 2017. The Complaint alleges Complainant would like a “more reasonable” payment arrangement. Complaint ¶4. As relief, Complainant requests a lower monthly repayment plan. *Id.* 5.

Respondent's Answer

Respondent filed an Answer on November 28, 2017, admitting that Complainant would like a payment arrangement, but disagreeing that Complainant should receive a new payment arrangement. West Penn alleges that Mr. Shaffer was enrolled in a company payment arrangement (PAR) on June 1, 2015, with an account balance in the amount of \$1,355.54. Under the PAR, Mr. Shaffer was required to pay his budget bills plus \$15 monthly starting on July 22, 2015; however, according to West Penn, the PAR defaulted due to non-payment. West Penn alleges Mr. Shaffer's account balance is \$5,581.24, and in the last 24 months two payments have been made on the account. The most recent payment was \$138.38 on July 6, 2017, West Penn asserts. As relief, West Penn requests that the Complaint be dismissed.

Evidentiary Hearing and Record Closing

By Notice dated December 15, 2017, the Commission scheduled this matter for an initial call-in telephonic hearing on February 20, 2018, at 10:00 a.m. and assigned the case to me. On December 26, 2017, I issued a Prehearing Order, addressing, *inter alia*, requests for a continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

The telephone hearing convened as scheduled on February 20, 2018. Hearing participants included Complainant Michael Shaffer, Mr. Shaffer's witness, Julie McCabe, Respondent's witness, Tammy J. Taylor, and its counsel, John L. Munsch, Esquire. Mr. Shaffer represented himself and offered testimony, but he did not sponsor any exhibits. Ms. McCabe testified on behalf of Mr. Shaffer. Ms. Taylor testified on behalf of Respondent and sponsored Exhibits 1 through 4, all of which were admitted into the record.

The evidentiary hearing generated 62 pages of transcribed testimony. The record was closed by Interim Order dated April 3, 2018. This case is procedurally ready for ruling.

FINDINGS OF FACT

1. Complainant Michael Shaffer resides at 21 Geno Lane, Avella, Pennsylvania (service address). Transcript (Tr.) 4.
2. Mr. Shaffer's fiancé, Julie McCabe, has resided with him at the service address for approximately three years. Tr. 4-5, 24.
3. Respondent West Penn Power Company is a jurisdictional public utility providing electric service to Pennsylvania customers.
4. Respondent established electric service for Complainant at the service address on November 14, 2013. Tr. 30.
5. On July 22, 2015, West Penn established a company payment arrangement (PAR) for Mr. Shaffer, requiring him to pay his budget billings plus \$15.00 monthly on his \$1,355.54 account balance based upon his \$904.81 monthly income. Tr. 45; Exhibit 4.
6. Mr. Shaffer's PAR with West Penn defaulted due to non-payment. *Id.*
7. On March 7, 2017, West Penn enrolled Mr. Shaffer in its Pennsylvania Customer Assistance Program (PCAP), starting on April 20, 2017. Tr. 45-46; Exhibit 4.
8. Under PCAP, Mr. Shaffer was required to verify his zero income and to pay his budget billing minus \$189.67 PCAP monthly credit on his \$5,125.71 balance, which would be deferred for potential forgiveness. *Id.*
9. In June 2017, Mr. Shaffer was removed from PCAP because he failed to verify his zero income within three months of his enrollment in PCAP. Tr. 46, 58-59.

10. Based upon his gross monthly income of \$4,000.00 as a truck driver, on October 6, 2017, BCS granted Mr. Shaffer a payment arrangement on his \$5,639.68 account balance, which required him to pay his budget bill of \$75.00 plus \$470.00 for a total monthly payment of \$545.00. Tr. 20; Exhibit 3.

11. Mr. Shaffer could not afford the BCS payment arrangement because his last day of work was October 7, 2017. Tr. 21.

12. Complainant has had various medical conditions over the last three years, resulting in sporadic employment. Tr. 11, 13-14.

13. Complainant stopped working on October 7, 2017, because of his medical conditions. Tr. 14, 20-21.

14. Complainant's sole source of income is \$136.00 per month in veteran disability benefits. Tr. 15, 17.

15. Complainant is delinquent on his \$500.00 monthly rental for the service address as well as his other household bills. Tr. 12, 15.

16. Complainant, age 44, applied for Social Security disability benefits on January 11, 2018. Tr. 17, 21.

17. Complainant's application for Social Security disability benefits remains pending. Tr. 18, 21-22.

18. Complainant's fiancé, Ms. McCabe, age 44, due to caring for Complainant, was involuntarily separated from her employment in December 2017 as a customer service representative in the health insurance industry. Tr. 16-17, 24.

19. Prior to her employment separation, Ms. McCabe's bi-weekly take home pay was approximately \$844.00. Tr. 27.

20. Ms. McCabe is currently unemployed. Tr. 23-25.

21. Complainant recently filed an application with the Veterans Administration for his fiancé, Ms. McCabe, to receive home aide benefits as his care provider; the application is pending. Tr. 17, 23.

22. During the last twenty-seven months, Complainant has made one payment on his service account: \$138.38 on July 6, 2017. Tr. 17; Exhibit 1.

23. As of the hearing date, Complainant's account balance was \$6,111.47, none of which includes PCAP charges. Tr. 48, 58, 60.

24. At the time of the hearing, Complainant's electric service, which West Penn codes as residential electric heat and electric water heating, was active. Tr. 16, 30, 42.

DISCUSSION

Legal Standards

Burden of Proof

In this proceeding Complainant, as the party seeking affirmative relief from the Commission, bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa.C.S. § 332(a). To satisfy this burden, Complainant must demonstrate that the Respondent is responsible for the problem alleged in the Complaint through a violation of the Code or a regulation or outstanding order of the Commission. 66 Pa.C.S. § 701. This must be established by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). Preponderance of the evidence means that the party with

the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 134 Pa.Cmwlth. 218, 222, 578 A.2d 600, 602 (1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's findings of fact must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, to rebut the evidence of Complainant, shifts to Respondent. If the evidence presented by Respondent is of co-equal weight, Complainant has not satisfied his burden of proof. Complainant now must provide some additional evidence to rebut that of Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 66 Pa.Cmwlth. 282, 443 A.2d 1373 (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).

Payment Arrangements

Chapter 14 of the Code, the Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401, *et seq.*, effective December 22, 2014, authorizes the Commission to grant customers and applicants payment arrangements. Specifically, Section 1405 of the statute provides in pertinent part as follows:

§ 1405. Payment arrangements.

(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.

(b) Length of payment arrangements. – The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

(1) Five years for customers with a gross monthly household income level not exceeding 150% and of the Federal poverty level.

....

(3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more that 300% of the Federal poverty level.

....

(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.

(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 in to a second or subsequent payment arrangement with a customer.

....

(f) Failure to comply with payment arrangement. – Failure of a customer to comply with the terms of a payment arrangement shall be grounds for a public utility to terminate the customer’s service. Pending the outcome of a complaint filed with the commission, a customer shall be obligated to pay that portion of the bill which is not in dispute and subsequent bills which are not in dispute.

Analysis

Complainant Michael Shaffer's Payment Arrangement Request

Mr. Shaffer is seeking an affordable Commission-order payment arrangement. Tr. 16. Mr. Shaffer received a payment arrangement on his \$5,639.68 account balance from the Commission's BCS on October 6, 2017. Exhibit 3. Based upon his gross monthly income of \$4,000.00 as a truck driver (Tr. 20), BCS granted Mr. Shaffer a Level 3 payment arrangement in accordance with Section 1405 of the Code. *See* 66 Pa.Code § 1405(b)(3) cited above. The BCS payment arrangement required Mr. Shaffer to pay a budget bill of \$75.00 plus \$470 for a total monthly payment of \$545.00. Exhibit 3. He could not afford the BCS payment arrangement because the day following the BCS decision was his last day of work as a truck driver. Furthermore, his fiancé, Ms. McCabe, last worked in December 2017. Tr. 16-17, 24. As a result, their household income has been reduced to Mr. Shaffer's \$136.00 monthly veteran disability benefits. Tr. 15. Notably, in approximately two years, Mr. Shaffer has made only one payment on his account, that is, \$138.38 on July 6, 2017. Tr. 42; Exhibit 1. Since he has defaulted on a company payment arrangement, West Penn is not in favor of extending another payment arrangement to him. Tr. 47.

Mr. Shaffer essentially explains that he has no money; his household bills are all delinquent; he has been borrowing from family; and he has been receiving food stamps. Tr. 17-18, 55. Mr. Shaffer submits the Commission should order West Penn to forgive his account balance or at least to forbear collection of the service account until his Social Security disability benefits "kick-in." Tr. 11-12, 16, 55-56. Mr. Shaffer applied for Social Security disability benefits on January 11, 2018, and he is confident that his application will be approved within 30 days of the hearing. Tr. 17-18, 21-22. He also argues he has applied to the Veterans Administration (VA) for his fiancé, Ms. McCabe, to be his care provider, which will bring in additional income. Tr. 17. Mr. Shaffer asserts, "West Penn is a billion-dollar company." Therefore, he suggests the company should be able to wait until his Social Security disability and VA applications are approved. Tr. 19.

West Penn's Argument

West Penn contends it is not willing to provide Mr. Shaffer another payment arrangement because 1) he defaulted on a prior company payment arrangement, and 2) he has made only one payment on his account in the last 24 to 27 months. Tr. 47; Exhibit 1. West Penn further explains that none of Mr. Shaffer's arrearages are PCAP charges. Tr. 47. Although Mr. Shaffer was enrolled in West Penn's PCAP, he was removed from PCAP because he failed to verify his zero income. Tr. 46, 58-59. Therefore, his PCAP enrollment did not become effective. Tr. 58.

Commission Payment Arrangements

The Responsible Utility Customer Protection Act (Act) authorizes the Commission to grant a customer a payment arrangement. *See* 66 Pa.C.S. § 1405(a). Prior to the passage of the Act in 2004, the Commission granted payment arrangements permitting customers to pay less than their current monthly utility bill under certain conditions. The customer was required to demonstrate extenuating circumstance such as a medical condition, a temporary inability to pay current bills, a prior good payment history, and a definite and positive change in the customer's financial circumstance that would occur on a date certain or within the reasonably foreseeable future. *Zane Smith v. the Peoples Natural Gas Company*, No. Z-8971227 (Opinion and Order entered December 12, 1989); 1989 Pa. PUC LEXIS 221.

Mr. Shaffer's argument suggests that the Commission should grant him a payment arrangement under its prior practice. In other words, Mr. Shaffer is hopeful that he will soon receive Social Security benefits with which to pay his bills. Unfortunately for Mr. Shaffer, the Commission ruled in *Zane Smith* that in addition to complainant's lack of a good payment history, speculation of an indefinite, future income was insufficient to warrant a Commission payment arrangement. Here, Mr. Shaffer's payment history for more than two years is practically non-existent; and he did not present any substantive evidence that the Social Security Administration or Veterans Administration will approve his application for benefits. Therefore, Mr. Shaffer's forbearance argument must fail.

More importantly, the Commission's decision in *Susan Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013) (*Hewitt*) is instructive. In *Hewitt*, the Commission confirmed its authority under the Act to grant a payment arrangement in cases involving mixed arrearages (CAP and non-CAP charges). Section 1405(c) of the Code restricts the Commission from granting a payment arrangement on CAP charges. 66 Pa.C.S. § 1405(c). However, the Commission retains the authority to grant a payment arrangement on non-CAP charges. *Hewitt*, at 10-12. Yet in *Hewitt*, the Commission declined to exercise its authority to grant the complainant a payment arrangement based on the customer's poor payment history and her ability to keep company-issued payment arrangements. *Hewitt* at 10-12. The Commission further noted it was not in the customer's best interest to receive a payment arrangement when in all likelihood the customer would default. *Hewitt* at 11, n. 4. While Mr. Shaffer's arrearages do not include CAP charges, granting Mr. Shaffer a payment arrangement on a monthly income of \$136.00 would be a recipe for default.

Ruling

Mr. Shaffer has not presented any evidence that West Penn is responsible for the problem alleged in his Complaint. He has not presented any evidence that West Penn violated the Public Utility Code, or Commission regulation or order.

While the Commission is not unsympathetic to Mr. Shaffer's financial dilemma, by law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Company*, 55 Pa. PUC 637 (1982). Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all remaining customers must pay. *Bolt v. Duquesne Light Company*, Docket No. Z-8712758 (Opinion and Order entered April 8, 1988).

Therefore, after considering Mr. Shaffer's poor payment history and lack of sufficient income, granting him a payment arrangement would not be in his best interest. Accordingly, his Complaint will be dismissed in the ordering paragraphs below.

CONCLUSIONS OF LAW

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

2. Complainant has the burden of proving Respondent has in some manner violated the provisions of the Public Utility Code or the regulations of the Commission in providing them service. 66 Pa.C.S. § 332(a).

3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401, *et seq.*, applies to this proceeding.

4. Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the Commission. 66 Pa.C.S. § 1405(c).

5. The Commission has a responsibility to exercise its authority very judiciously when granting customers payment arrangements and should exercise its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills. *Susan Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013).

6. Complainant failed to carry his burden of proving that Respondent violated a Commission order, statute or regulation. 66 Pa.C.S. §§ 332, 701.

