

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Corwin	:	
	:	
v.	:	C-2017-2625600
	:	
West Penn Power Company	:	

**INITIAL DECISION**

Before  
Dennis J. Buckley  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses a formal Complaint filed by John Corwin (Complainant) against West Penn Power Company (West Penn or Respondent). Complainant did not prove that West Penn violated the Public Utility Code or any rule or regulation of the Commission, nor did Complainant prove that he is entitled to a new payment arrangement for his delinquent account.

**HISTORY OF THE PROCEEDING**

On September 20, 2017, Complainant filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn stating that West Penn was threatening to cut off his utility service and requesting an affordable payment arrangement (PAR).

On October 12, 2017, West Penn filed an Answer to the Complaint contending that Complainant had broken one Commission-ordered PAR and two Company PARs, and that

Complainant had not demonstrated a good faith effort to pay his bills in the 17 months preceding the filing of the Complaint.

On December 5, 2017, a hearing Notice was issued setting January 12, 2018 as the date for a telephonic hearing in this case.

On December 20, 2017, a standard form prehearing Order was issued.

A telephonic hearing originating from the Commission's office in Harrisburg, Pennsylvania convened as scheduled on January 12, 2018. Both parties were present. Unfortunately, Complainant, who was using a cell phone from his residence in Holbrook, Pennsylvania, was unable to make himself understood to the court reporter despite three attempts to place his testimony on the record. Those three attempts having been unsuccessful, I adjourned the hearing.

On January 16, 2018, I issued another prehearing Order in which I afforded Complainant the opportunity for another telephonic hearing or to request an in-person hearing at the Commission's office in Harrisburg, Pennsylvania. I stressed the importance of a clear telephone connection in a telephonic hearing. Complainant did not respond to the Order.

On April 5, 2018, a hearing notice was issued setting April 30, 2018 as the date for a rescheduled telephonic hearing.

On April 30, 2018, a telephonic hearing convened, as scheduled, at 10:00 a.m., originating from the Commission's office in Harrisburg, Pennsylvania. John L. Munsch, Esquire, appeared on behalf of West Penn. Complainant appeared and represented himself. He offered testimony, but no exhibits. West Penn presented the testimony of one witness, Tammy J. Taylor, a Senior Customer Service Compliance Specialist. West Penn offered two exhibits that were received into the record: West Penn Exhibit No. 1, a detailed Statement of Account and West Penn Exhibit No. 5, a list of PARs and Customer Assistance Program details relative to Complainant's account.

The hearing concluded, and a transcript totaling 39 pages was generated (including six pages from the January 12, 2018 hearing). The record closed on May 21, 2018, with the filing of that transcript. The record in this case consists of the transcript and West Penn's two hearing exhibits.

This case is now ready for adjudication.

### FINDINGS OF FACT

1. The Complainant in this proceeding is John Corwin.
2. The Respondent in this proceeding is West Penn Power Company, a Commission jurisdictional electric distribution company.
3. The service address is 111 Hoges Run Road, Holbrook, Pennsylvania.
4. Complainant is unemployed and receives \$1,125 per month in Social Security Income. Tr. at 14.
5. Complainant resides with his three children, two of whom are minors, none of whom have any income. Tr. at 14.
6. West Penn provides Complainant with residential electric service coded for a hot water heater. Tr. at 21.
7. Complainant established service with West Penn at the service address on November 18, 2014. Tr. at 21.
8. Complainant was enrolled in West Penn's budget billing program, and \$248 of his arrears are from budget billing. Tr. at 23; West Penn Exhibit 1.

9. West Penn terminated service to the residence on April 18, 2018, for non-payment. Tr. at 24.

10. A final bill was issued on the account in the amount of \$7,317.34. Tr. at 23; West Penn Exhibit No. 1.

11. Since December, 2014, Complainant has made six payments on the account: (1) \$100 on June 3, 2015; (2) \$105 on July 7, 2015; (3) \$67.80 on December 6, 2015; (4) \$70 on December 31, 2015; (5) \$67.80 on February 3, 2016; and, (6) \$100 on May 3, 2016. Tr. at 24; West Penn Exhibit No. 1.

12. On January 20, 2015, West Penn set up a PAR for Complainant which Complainant subsequently defaulted on. Tr. at 26; West Penn Exhibit No. 5.

13. On March 20, 2015, West Penn set up a PAR for Complainant which Complainant subsequently defaulted on. Tr. at 26; West Penn Exhibit No. 5.

14. On June 10, 2015, the Commission's Bureau of Consumer Services (BCS), at BCS Case No. 3353963, ordered a PAR which Complainant subsequently defaulted on. Tr. at 27; West Penn Exhibit No. 5.

15. Complainant was enrolled in the Low Income Usage Reduction Program (LIURP) on November 5, 2015, but LIURP was discontinued and all LIURP customers were migrated to West Penn's Pennsylvania Customer Assistance Program (PCAP), Complainant being enrolled on December 13, 2015. Tr. at 28; West Penn Exhibit No. 5.

16. Complainant was dropped from PCAP in October, 2016, when he failed to reverify his eligibility. Tr. at 28.

17. Complainant's PCAP arrearage is \$1,604.65. Tr. at 30.

## 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). "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). As the party seeking relief from the Commission, Mr. Corwin bears the burden of proof.

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa.Cmwlth. 1984). This due process requirement is satisfied when the parties are provided with notice and an opportunity to be heard. *Id.*

To establish a sufficient case against a utility and satisfy the burden of proof, one must show that the utility is responsible or accountable for the problem described in the complaint. *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). Without a showing that a utility is in violation of its duty under the Public Utility Code or the orders or regulations of the Commission, the Commission has no power to sustain a complaint brought against the utility; in such a case, the Commission does not have the authority, when acting on a customer's complaint, to require any action by the utility. *West Penn Power Company v. Pa. Pub. Util. Comm'n.*, 84 Pa. Cmwlth. 157, 162, 478 A.2d 947, 949 (1984).

In this case, the basis of the Complaint is that Complainant wants a new PAR on terms which Complainant believes are affordable.

Complainant has had two company PARs and one Commission ordered PAR, all of which he defaulted on. Section 1405(d) of the Public Utility Code, 66 Pa.C.S. § 1405(d), states:

Absent a change in income<sup>1</sup>, 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.

66 Pa.C.S. § 1405(d).

Complainant is unemployed and receives \$1,125 per month in Social Security Income. Complainant did not testify with respect to any change in income. A review of the record shows that the Complainant's income has increased since the Commission ordered PAR at BCS Case No. 3353963. West Penn Exhibit No. 5.

Alternatively, the Commission may not reinstate a payment agreement where the customer has defaulted except in limited circumstances. 66 Pa.C.S. § 1405(e). The Complainant did not testify, and the evidence does not reflect that he has experienced a significant change in circumstance, as that phrase is defined and applied in the Public Utility Code.<sup>2,3</sup> Therefore, the Commission may not reinstate the Commission ordered PAR at BCS Case No. 3353963.

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. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982). 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

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<sup>1</sup> "Change in Income." - 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.

<sup>2</sup> "Significant change in circumstance." - Any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level: (1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income; (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household; (3) Loss of the customer's residence; and (4) Increase in the customer's number of dependents in the household. 66 Pa.C.S. § 1403.

<sup>3</sup> I note that while Complainant claims a disability, this is an ongoing condition.

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).

The record in this case demonstrates that West Penn provided Complainant with two PARs and the Commission's BCS provided Complainant with one. The fact that the Complainant owes an arrearage is not in dispute. Complainant did not dispute the amount or accuracy of his bills. Complainant did not refute West Penn's evidence that established Complainant's long history of non-payment and PAR defaults, and thus Complainant's bad faith. Finding of Fact No. 11. Complainant's PCAP arrearage of \$1,604.65, cannot be the subject of a PAR. 66 Pa. C.S. § 1405(c).

In addition, service at the service address is now terminated. Finding of Fact No. 9. The Public Utility Code statute pertaining to reconnection is 66 Pa. C.S. § 1407(c) (Reconnection of Service), which states, in pertinent part:

(c) Payment to restore service.—

(1) A public utility shall provide for and inform the applicant or customer of a location where the customer can make payment to restore service.

(2) A public utility may require:

(i) Full payment of any outstanding balance incurred together with any reconnection fees by the customer or applicant prior to reconnection of service if the customer or applicant has an income exceeding 300% of the Federal poverty level *or has defaulted on two or more payment agreements*. If a customer or applicant with household income exceeding 300% of the Federal poverty level experiences a life event the customer shall be permitted a period of not more than three months to pay the outstanding balance required for reconnection. For purposes of this paragraph, a life event is:

(A) A job loss that extended beyond nine months.

(B) A serious illness that extended beyond nine months.

(C) Death of the primary wage earner

66 Pa. C.S. § 1407(c) (emphasis added).

Under Section 1407(c) a utility may demand full payment to restore service regardless of income when as a customer, the applicant has defaulted on two or more payment agreements as in the instant matter. West Penn has made that demand. Tr. at 27.

In the past, Complainant did not pay his utility bills which ultimately led to the disconnection of his service. Finding of Fact No. 9. Complainant broke two company PARs and a Commission ordered PAR. Findings of Fact Nos. 12-14. I accept as credible the testimony of West Penn's witness that Complainant's account is payment troubled and that he has not acted in good faith as evidenced by two broken Company PARs, a broken Commission directed PAR, and a history of nonpayment. See 66 Pa. C.S. § 1405(d); *George Crawford v. National Fuel Gas Distribution Corporation*, Docket No. C-20066348 (Final Order entered December 6, 2007).

Complainant presented no credible evidence to prove that he is entitled to an additional PAR or that West Penn has violated any provision of the Public Utility Code or any regulation of the Commission. The Complainant has failed to meet his burden of proof, and his Complaint must be dismissed.

CONCLUSIONS OF LAW

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

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. "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).

4. Complainant has failed to establish that the utility violated the Public Utility Code or a regulation or Order of the Commission in requiring payment from Complainant for the services that it rendered. 66 Pa.C.S. § 701.

5. Complainant failed to carry his burden of proof in this proceeding.

6. A public utility is entitled to full payment for service provided to customers and all customers are obligated to pay for utility service provided to them. *Kea v. Peoples Natural Gas Co.*, 60 Pa. PUC 215 (1985); *Scaccia v. West Penn Power Co.*, 55 Pa. PUC 637 (1982).

7. Absent a change in income or a significant change in circumstance, 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. 66 Pa. C.S. § 1405(d); *George Crawford v. National Fuel Gas Distribution Corporation*, Docket No. C-20066348 (Final Order entered December 6, 2007).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by John Corwin against West Penn Power Company at Docket No. C-2017-2625600 is dismissed.

2. That this matter be marked closed.

Date: July 31, 2018

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/s/  
Dennis J. Buckley  
Administrative Law Judge