

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kenneth Richter	:	
	:	
v.	:	C-2018-3003024
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

This decision dismisses the Complaint for Complainant’s failure to establish his burden of proving Respondent violated a Commission statute, regulation or order and denies the request for a second Commission payment arrangement on a \$5,190.75 account balance.

HISTORY OF THE PROCEEDING

On June 25, 2018, Kenneth Richter (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Respondent or West Penn).¹ Utilizing the Commission’s standard complaint form, Complainant asserted the following: (1) the utility is threatening service termination or has already shut off service; and (2) he would like a payment arrangement. Complainant further averred his wife has a very serious and chronic medical condition, which generates a lot of medical bills and requires keeping their electric service active. For relief, Complainant explained they needed help with their electric bill payments.

¹ Complainant seeks timely review of the Commission’s Bureau of Consumer Services’ (BCS) May 24, 2018, decision denying his informal complaint against Respondent at BCS No. 3596794.

On July 17, 2018, Respondent filed an Answer. Respondent admitted issuing a residential service disconnection notice to Complainant on June 8, 2018, to terminate service on June 21, 2018, for non-payment of an outstanding balance in the amount of \$4,403.03. Service termination was held in abeyance pending resolution of the Complaint, Respondent asserted. Respondent denied Complainant was eligible for another payment arrangement based upon past defaults on payment arrangements and customer assistance program enrollments.

By Notice dated July 24, 2018, the Commission scheduled this matter for a call-in telephonic hearing on October 1, 2018, at 10:00 a.m. and assigned the case to me. I issued a Prehearing Order dated July 25, 2018, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

The hearing convened as scheduled. Mr. Richter appeared, self-represented, with his wife, April Richter. Both Mr. Richter and his wife testified; however, they did not sponsor any exhibits. West Penn was represented by John L. Munsch, Esquire, who on behalf of Respondent called one witness, Alison Walker, a customer service compliance specialist, who sponsored Exhibits 1 through 6, all of which were admitted into the record.

The hearing generated a 61-page transcript. The record was closed by an interim order entered on October 11, 2018. This case is procedurally ready for ruling.

FINDINGS OF FACT

1. Complainant Kenneth Richter, age 48, resides at 120 Hosfelt Road, Connellsville, Pennsylvania (service address) together with his wife, April Richter, age 43. Transcript (Tr.) 7, 22.

2. Respondent West Penn Power is a jurisdictional public utility providing electric service to Pennsylvania customers including Mr. Richter at the service address.

3. On November 16, 1999, West Penn established electric service for Mr. Richter at the service address. Tr. 31-32.

4 On July 5, 2011, West Penn enrolled Mr. Richter in its Low-Income Payment and Usage Reduction Program (2011 LIPURP) on a \$699.84 account balance, requiring Complainant to pay \$146.88 plus a \$5.00 co-pay for a \$151.88 monthly payment starting in August 2011. Tr. 39.

5. When West Penn transitioned its LIPURP into its Pennsylvania customer assistance program (PCAP), Respondent enrolled Mr. Richter in PCAP on a \$2,431.80 account balance as of November 17, 2015. *Id.*

6. Beginning on January 11, 2016, Mr. Richter was required to pay his current charges minus an \$80.00 PCAP credit. Tr. 39-40; Exhibit 6.

7. On July 18, 2016, West Penn removed Mr. Richter from PCAP when he did not complete the annual income reverification process. Tr. 40.

8. On November 17, 2016, Mr. Richter filed an informal complaint against West Penn at BCS No. 3493547, disputing his removal from PCAP and claiming West Penn never notified him to reverify his income. Exhibit 3.

9. BCS dismissed Mr. Richter's informal complaint at BCS No. 3493547 and found that he was required to pay \$990.03 to reapply for PCAP. Tr. 36; Exhibit 3.

10. On August 7, 2017, Mr. Richter filed a second informal complaint at BCS No. 3551351 requesting a payment arrangement. Tr. 36-37; Exhibit 6.

11. On August 9, 2017, BCS granted Complainant a Level 1, 5-year payment arrangement (2017 BCS PAR) at BCS No. 3551351 on a \$3,240.08 account balance, based upon

a 2-member household with a gross monthly income totaling \$1,432.00, that is, Mr. Richter's \$332 monthly social security disability benefit and Mrs. Richter's \$1,100.00 monthly social security disability benefit. Tr. 26, 36-37, 40; Exhibit 4.

12. Under the 2017 BCS PAR, Mr. Richter was required to pay his monthly budget bill plus \$55.00 on the outstanding balance. Tr. 37.

13. Mr. Richter did not appeal or seek further Commission review of the 2017 BCS PAR. Tr. 37.

14. Mr. Richter defaulted on the 2017 BCS PAR. Tr. 40, 49, 52; Exhibit 1.

15. On April 2, 2018, Mr. Richter filed another informal complaint at BCS No. 3596794 seeking a new PAR, based upon his 2-member household with a gross monthly income of \$1,432.00 in social security disability benefits. Tr. 38; Exhibit 5.

16. On May 24, 2018, BCS found that Mr. Richter had not experienced a change in income since the granting of his 2017 BCS PAR and denied his request for a second PAR. *Id.*

17. On June 25, 2018, Mr. Richter filed the within formal complaint at Docket No. C-2018-3003024, seeking timely review of BCS's decision denying him a second PAR. Tr. 37.

18. Mr. Richter's monthly budget bill with West Penn was \$193.00, until his recent sign-up with electric generation supplier (EGS) Green Mountain Energy, thereby converting his monthly budget bill to \$53.00 for West Penn plus EGS charges. Tr. 33.

19. The last payment Mr. Richter made on his account was in September 2018 in the amount of \$130.00. Tr. 25.

20. Mr. Richter is not disputing his electric charges or usage. Tr. 13, 52.
21. Mr. Richter's current account balance is \$5,190.75. Tr. 34; Exhibit 1.
22. Mr. Richter's electric service remains active. Tr. 34.
23. There are no PCAP arrearages on Mr. Richter's electric service account.

Tr. 42.

24. Mr. Richter's household size and income have not changed since the granting of his 2017 BCS PAR. Tr. 21-24, Exhibit 4-5.

DISCUSSION

Burden of Proof

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof to show that West Penn has in some manner violated the Public Utility Code (Code) or regulations of the Commission. 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlt. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the Respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, the Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by a 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 value or “weight,” the burden of proof has not been satisfied. The complainant now must provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa.Cmwlt. 1982), *aff’d*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of going forward with the evidence 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.Cmwlt. 2001).

Positions of the Parties

In this proceeding, Mr. Richter seeks a more affordable payment arrangement than the one BCS granted to him on August 9, 2017, at BCS No. 3551351.² Tr. 26, 36-37, 40; Exhibit 4. Mr. Richter is not disputing his account balance or electric usage. Tr. 13, 52. He does not claim West Penn violated a Commission statute, regulation or order. Mr. Richter briefly explains his position as follows:

I want time to get my payment arrangements back. Getting on a budget [that] I could afford. That’s basically about all. Instead of keep kicking me off and saying I’m not making my payments and I am.

Tr. 13.

West Penn argues that the company enrolled Mr. Richter in its PCAP, and in 2016, he failed to reverify his income. Tr. 40. West Penn submits Mr. Richter also defaulted on his 2017 BCS PAR. *Id.* Consequently, to re-enroll in PCAP, West Penn would require Mr.

² In his Complaint, Mr. Richter also raised service termination issues. During the hearing, he did not present any evidence on these issues, effectively abandoning these claims. In fact, Mr. Richter’s service has not been terminated. Tr. 34. Therefore, allegations concerning termination of his service or the threat of service termination are not addressed further in this decision and these claims are denied.

Richter to pay \$3,096.72 of his \$5,190.75 account balance. Tr. 41. To bring the 2017 BCS PAR current, Mr. Richter would be required to pay \$2,433.55. West Penn notes the 60-month, 2017 BCS PAR remains active and is actually a better PAR than the company could offer Mr. Richter because West Penn normally does not offer customers a 60-month PAR. Tr. 51-52.

Applicable Statutory Provisions

While utilities are encouraged to work out payment arrangements with income-challenged customers or applicants, the outcome of Mr. Richter's request for a more favorable Commission-ordered payment arrangement is controlled by Chapter 14 of the Public Utility Code, the Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401, *et seq.*, as amended and effective December 22, 2014. Section 1405 of the statute provides, in relevant 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 payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend:

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

....

(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. A public utility

may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

....

66 Pa.C.S. § 1405.

Analysis

Section 1405(d) of the Code restricts the Commission from granting a utility customer a second or subsequent payment agreement absent a change in the customer's income. 66 Pa.C.S. § 1405(d). Therefore, Mr. Richter was required to establish he had experienced a change in income following the receipt of his 2017 BCS PAR. Under the Code, a "change in income" is defined as follows:

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.

Here, the evidence establishes Mr. Richter has a 2-member household: Complainant and his wife. Mr. Richter's current gross monthly household income is \$1,432.00. In 2017, Mr. Richter had a 2-member household with a \$1,432.00 gross monthly household income. Exhibit 4. Mr. Richter's household size and income has not changed since the granting of his 2017 BCS PAR. Tr. 21-24, Exhibit 4-5. The evidence further establishes Mr. Richter defaulted on the Level 1, 5-year 2017 BCS PAR granted to him by BCS on August 9, 2017. Tr. 26, 36-37, 40; Exhibit 4. Mr. Richter did not appeal or seek Commission review of the 2017 BCS PAR. Consequently, the 2017 BCS PAR converted to a Commission-issued PAR. *See DiOrazio v North East Heat & Light Company*, F-2008-2052918 at 4 (Opinion and Order entered June 15, 2009).

Mrs. Richter explained that her household began to experience financial difficulties in 2015. Tr. 15-7. She was earning \$4,000.00 every two weeks, but in May of 2015

she became disabled. Tr. 16. Additionally, Mr. Richter was either not working or “only working here and there.” *Id.* While the Commission recognizes some customers encounter difficulties in paying for utility service, by statute the Commission is prohibited from granting Mr. Richter a second or subsequent payment arrangement after defaulting on the first Commission payment arrangement, absent a change in income. Although, Mr. Richter’s gross monthly household income was substantial in 2015, he has not experienced a change in income, following the granting of the 2017 BCS PAR. Therefore, by statute, Mr. Richter’s request for a second more affordable Commission payment arrangement cannot be granted.

However, Mr. Richter manages his household budget, he will have to pay West Penn the arrearages that he owes. 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). Otherwise, unpaid bills are included in the utility’s uncollectible expenses, which its remaining customers must pay. *Bolt v. Duquesne Light Co.*, Docket No. Z-8712758 (Opinion and Order entered April 8, 1988).

Ruling

Based upon the above findings, applicable law and reasoning, Mr. Richter’s request for a second or more favorable Commission-ordered payment arrangement must be denied.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Complainant as the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).
3. Complainant carries the burden of proving Respondent has in some manner violated the provisions of the Public Utility Code or the regulations of the Commission

in the course of providing him with electric service. Section 332 (a) of the Public Utility Code, 66 Pa.C.S. § 332 (a).

4. 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. 66 Pa.C.S. § 1405(d).

5. Complainant has not met his burden of proof as required under Section 332(a) of the Code. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant Kenneth Richter's request for a subsequent Commission-ordered payment arrangement in his Complaint against West Penn Power Company at Docket No. C-2018-3003024 is denied.

2. That the Complaint of Kenneth Richter against West Penn Power Company at Docket No. C-2018-3003024 is dismissed.

3. That the Commission's Secretary's Bureau shall mark Docket No. C-2018-3003024 closed.

Date: December 26, 2018

/s/
Conrad A. Johnson
Administrative Law Judge