

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eric Johnson	:	
	:	
v.	:	C-2018-3004778
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

This Initial Decision dismisses a Complaint filed by Eric Johnson (Complainant) against Metropolitan Edison Company (Met-Ed or Company) because Complainant has failed to show that Met-Ed violated any provision of the Pennsylvania Public Utility Code (Code) or the regulations of the Commission and failed to establish that he is eligible for a Commission ordered payment arrangement (PAR).

HISTORY OF THE PROCEEDING

On September 19, 2018, Complainant filed a formal Complaint with the Public Utility Commission (Commission) asserting that Met-Ed was threatening to disconnect his electric service. Complainant also alleged that he had been misbilled by Met-Ed. Complainant asked for a Commission directed PAR. On August 28, 2018, the Commission’s Bureau of Consumer Services (BCS) at BCS Case No. 3595130 issued a decision that Complainant was not eligible for a Commission ordered PAR because a previous Commission ordered PAR had not been satisfied.¹ The formal Complaint in this case is an untimely appeal of that BCS determination.

¹ BCS previously directed a PAR in BCS Case No. 3545897.

On October 24, 2018, Met-Ed filed an Answer *nunc pro tunc* in which it agreed that Met-Ed has threatened to terminate Complainant's electric service for nonpayment. Met-Ed further stated that Complainant is not eligible for a new PAR because Complainant failed to meet the terms of a Company PAR in 2015 and the Commission ordered PAR in 2017.

On October 31, 2018, a hearing notice was issued scheduling the hearing in this case for December 12, 2018.

On December 12, 2018, I convened a telephonic hearing originating from the Commission's office in Harrisburg, Pennsylvania. Complainant was present and offered testimony but no exhibits. Met-Ed was represented by John L. Munsch, Esquire. Met-Ed offered the testimony of Allison S. Walker, a Customer Service Compliance Specialist employed by FirstEnergy Service Company, and five exhibits: Met-Ed Exhibit No. 1, a detailed Statement of Account; Met-Ed Exhibit No. 2, a summary of BCS Complaint No. 3545987; Met-Ed Exhibit No. 3, a summary of BCS Complaint No. 3573105; Met-Ed Exhibit No. 4, a summary of BCS Complaint No. 3595130; and, Met-Ed Exhibit No. 5, a Hierarchy of Payment Arrangements.

On January 3, 2019, the official transcript of the hearing of December 12, 2018 consisting of 38 pages with attached exhibits was filed with the Secretary of the Commission, and the record closed.

This case is ready for decision.

FINDINGS OF FACT

1. The Complainant in this case is Eric Johnson who resides at 201 Fisher Drive, York, Pennsylvania (service address).
2. The Respondent is Metropolitan Edison Company, a Commission jurisdictional electric distribution company.

3. Complainant was employed as a truck driver for over 20 years until he had a heart attack in October, 2016, after which he was unemployed for an extended period. Tr. at 9.

4. Complainant conceded that he has reneged on prior PARs. Tr. at 9.

5. Circa June, 2018, Complainant returned to full time work as a contractor with a net income of about \$3,200 per month. Tr. at 10.

6. Complainant's wife is employed full time as a dispatcher and makes about \$2,500 per month, net. Tr. at 11.

7. Complainant has three minor children residing with him. Tr. at 11.

8. Complainant receives electric distribution service from Met-Ed and electric generation supply service from Verde Energy. Tr. at 13, 14.

9. The service address at 201 Fisher Drive, York, Pennsylvania, is a townhouse which uses natural gas heat. Tr. at 13.

10. At the time of the hearing in this matter, Verde Energy's cost per kilowatt hour was 12.49 cents. Tr. at 19.

11. At the time of the hearing in this matter, Met-Ed's default service cost per kilowatt hour was 6.07 cents. Tr. at 20.

12. Complainant was removed from Met-Ed's PCAP on March 20, 2017, due to the failure to recertify. Tr. at 29.

13. Complainant was placed on a BCS PAR at BCS Case No. 3545987 on July 28, 2017, based on a gross household monthly income of \$4,506.67. Tr. at 29; Met-Ed Exhibit No. 5.

14. Complainant sought another Commission PAR in March, 2018, at BCS Case No. 3595130 based on a gross household monthly income of \$4,636.66; BCS found that Complainant was not eligible for another Commission ordered PAR because the terms of the BCS PAR in Case No. 3545987 had not been satisfied. Met-Ed Exhibit No. 4.

15. Based on his current income level, Complainant is not eligible to re-enroll in PCAP. Tr. at 30.

16. Complainant had no PCAP arrears at the time of hearing. Tr. at 30.

17. Complainant's outstanding balance at the time of the hearing was \$4,195.05. Tr. at 22-23.

DISCUSSION

As the proponent of a rule or order, Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code. 66 Pa.C.S. § 332(a). "Burden of proof," means a duty to establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). To satisfy the burden of proof against a utility, a complainant 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), or that the utility has violated either its duty under the Public Utility Code or the orders or regulations of the Commission. 66 Pa.C.S. § 701.

To establish a sufficient case and satisfy the burden of proof, a complainant must show that Respondent public 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). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*,

134 Pa.Cmwlth. 218, 221-222, 578 A.2d 600, 602 (1990); *alloc. den.*, 602 A.2d 863 (Pa. 1992). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 67 Pa.Cmwlth. 597, 447 A.2d 1100 (1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 154 Pa.Cmwlth. 21, 623 A.2d 6 (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*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

Complainant has requested a second Commission ordered PAR. He alleged in his formal Complaint that he has been incorrectly billed, but he presented no evidence to establish that misbilling. Complainant testified that every time he calls the company he is told a different amount he owes. Tr. 6-7. He demanded a payment plan based on a "correct" amount, but did not establish what that amount might be.

Pursuant to Chapter 14 of the Public Utility Code, the Commission is authorized to establish a payment arrangement between a utility and a customer based on the federal poverty level. 66 Pa. C.S.A. § 1405. "Payment Arrangement," is defined at 66 Pa. C.S.A. § 1403 as an, "... agreement whereby a customer who admits liability for billed service is permitted to amortize or pay the unpaid balance of the account in one or more payments." Complainant did not prove that his bills are inaccurate. The Complainant has not established that he is eligible for another Commission ordered PAR. In fact, Complainant may not have another Commission ordered PAR because he is precluded by 66 Pa. C.S. § 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.

66 Pa. C.S. § 1405(d) (emphasis added). In addition, a “change of income” is defined 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.A. § 1403.

Complainant was placed on a BCS PAR at BCS Case No. 3545987 on July 28, 2017, based on an income of \$4,506.67. Tr. at 29; Met-Ed Exhibit No. 2. Complainant sought another Commission PAR in March, 2018, at BCS Case No. 3595130 based on an income of \$4,636.66 but was advised that because the terms of BCS Case No. 3545987 had not been satisfied, Complainant was not eligible for another Commission ordered PAR. Met-Ed Exhibit No. 4.

In this case, Complainant testified that the only change in circumstance since the BCS ordered a PAR in July, 2017, is that the current combined household income is approximately \$5,700 per month. This is a substantial increase in income, and so Complainant did not demonstrate a change (such as a reduction in income) that would warrant a second Commission ordered PAR. Nor has Complainant demonstrated a significant change in circumstance sufficient to warrant a reinstatement and extension of his prior payment arrangement. 66 Pa. C.S.A. § 1405(e). Absent such a change in circumstance, Complainant is precluded by law from obtaining another Commission ordered PAR under the provisions of Section 1405(d). 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).

The 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.

