

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sheri Rhone	:	
	:	
v.	:	C-2019-3010184
	:	
West Penn Power Company	:	

**INITIAL DECISION**

Before  
Alphonso Arnold, III  
Special Agent

**INTRODUCTION**

This Initial Decision dismisses the Complainant’s request for a payment arrangement. The Complainant is not eligible for a payment arrangement because her entire outstanding balance is comprised of customer assistance program arrears, which cannot be the subject of a Commission payment arrangement.

**HISTORY OF THE PROCEEDING**

On May 29, 2019, Sheri Rhone (Complainant or Ms. Rhone) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Respondent or West Penn) alleging that West Penn has threatened to terminate her service and seeking a payment arrangement.

On June 18, 2019, West Penn filed an Answer. West Penn admitted that it issued a service termination notice to Ms. Rhone on May 16, 2019 but denied that it had an active intent to terminate her service. West Penn claimed that Ms. Rhone is actively enrolled in West Penn’s

Customer Assistance Program (CAP) known as the Pennsylvania Customer Assistance Program (PCAP). West Penn requested that the Commission dismiss the Complaint.

By Hearing Notice served on the parties on June 25, 2019, the Commission scheduled this matter for a telephonic hearing on August 6, 2019 and assigned the case to me. By Hearing Cancellation/Reschedule Notice served on the parties on July 1, 2019, the Commission rescheduled the hearing in this matter for August 16, 2019.

By Prehearing Order served on the parties on July 12, 2019 the parties were informed, inter alia, of the procedures applicable to the scheduled hearing.

I conducted the August 16, 2019 telephonic hearing as scheduled. Ms. Rhone was present and testified in support of her Complaint. Ms. Rhone sponsored no exhibits for the record. Attorney Aron J. Beatty was present on behalf of West Penn and presented the testimony of Charles Howlett, a senior compliance specialist employed by West Penn. Mr. Howlett sponsored the following four exhibits, all of which were admitted into the record:

- West Penn Exhibit 1 – Detailed Statement of Account
- West Penn Exhibit 2 – BCS Opening Report, Case No. 3636976
- West Penn Exhibit 3 – Payment Arrangement History
- West Penn Exhibit 4 – Customer Contacts

The record<sup>1</sup> closed on August 16, 2019, following the conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be dismissed.

#### FINDINGS OF FACT

1. The Complainant is Sheri Rhone.
2. The Respondent is West Penn Power Company.

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<sup>1</sup> The telephonic hearing was recorded over the phone by means of a tape recorder. No Court Reporter was present.

3. Ms. Rhone resides at 1221 Lookout Avenue, Charleroi, Pennsylvania (service address).
4. Ms. Rhone lives at the service address with her son.
5. Ms. Rhone receives Social Security Disability payments in the amount of \$770 per month.
6. Ms. Rhone's son does not have any income.
7. Ms. Rhone last received a termination notice on May 16, 2019.
8. West Penn sends termination notices to customers who have delinquent accounts.
9. Ms. Rhone's service is not currently under threat of termination.
10. On March 30, 2015, West Penn enrolled Ms. Rhone in its Low Income Payment and Usage Reduction Program (LIPURP), which was West Penn's CAP at that time. (West Penn Exhibit 3).
11. West Penn discontinued LIPURP and converted Ms. Rhone's LIPURP account to a PCAP account on November 25, 2015. (West Penn Exhibit 3).
12. Upon converting Ms. Rhone's account to a PCAP account, \$5,811.43 was deferred for potential forgiveness. (West Penn Exhibit 3).
13. On July 27, 2018, Ms. Rhone filed an Informal Complaint with the Commission's Bureau of Consumer Services (BCS) at BCS No. 3636976 seeking a payment arrangement. (West Penn Exhibit 2).

14. The BCS denied Ms. Rhone's payment arrangement request at BCS No. 3636976, finding that Ms. Rhone is ineligible for a payment arrangement per 66 Pa.C.S. § 1405(c).<sup>2</sup> (West Penn Exhibit 2).

15. All of Ms. Rhone's deferred arrears have been forgiven.

16. Ms. Rhone was still enrolled in PCAP as of the date of the hearing.

17. Ms. Rhone's outstanding balance on July 29, 2019 was \$607.05. (West Penn Exhibit 1, p. 3).

18. Ms. Rhone made a \$107.33 payment towards her account on August 1, 2019, making her outstanding balance as of the day of the hearing \$499.72.

19. Ms. Rhone's entire outstanding balance is made up of PCAP arrears.

#### DISCUSSION

Section 701 of the Public Utility Code (Code) provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission. 66 Pa.C.S. § 701.

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). To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub.

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<sup>2</sup> Section 1405(c) provides: “(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.”

Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the Complainant will prevail. If the utility rebuts the Complainant's evidence, the burden of going forward with the evidence shifts back to the Complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a Complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlt. 2001); see also, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlt. 1982).

Additionally, this Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. 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, 413 A.2d 1037 (Pa. 1980).

In her Complaint, Ms. Rhone alleged that West Penn has threatened to terminate her service. At the hearing, Ms. Rhone testified that she has received several termination notices in the past and wanted to avoid having her service terminated in the future. West Penn's witness Howlett testified that West Penn has sent Ms. Rhone termination notices in the past, most recently on May 16, 2019, but that Ms. Rhone's service was not currently under a threat of termination. Witness Howlett testified that Ms. Rhone's service may be terminated in the future if her account remained delinquent. As of the day of the hearing, the outstanding balance on Ms. Rhone's account was \$499.72.

The Commission's regulations address termination of a public utility customer's service due to a delinquent account.

**§ 56.81. Authorized termination of service.**

A public utility may notify a customer and terminate service provided to a customer after notice as provided in §§ 56.91-56.100 (relating to notice procedures prior to termination) for any of the following actions by the customer:

(1) Nonpayment of an undisputed delinquent account.

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52 Pa. Code § 56.81.

A “delinquent account” is defined as the following:

**§ 56.2. Definitions.**

*Delinquent account*--Charges for public utility service which have not been paid in full by the due date stated on the bill or otherwise agreed upon; provided that an account may not be deemed delinquent if: prior to the due date, a payment arrangement with the public utility has been entered into by the customer, a timely filed notice of dispute is pending before the public utility, or, under time limits provided in this chapter, an informal or formal complaint is timely filed with and is pending before the Commission.

52 Pa. Code § 56.2.

West Penn has properly initiated termination proceedings against Ms. Rhone by sending her termination notices for nonpayment of her delinquent account. Ms. Rhone’s account has been delinquent over the entire span of the Statement of Account (August 2017 to July 2019) and as of the date of the hearing Ms. Rhone’s account remained delinquent. (West Penn Exhibit 1). Despite the current delinquency of her account, Ms. Rhone’s service is not currently under threat of termination. The Commission’s regulations generally prevent a public utility from issuing termination notices during the pendency of a Formal Complaint proceeding.

**§ 56.92. Notice when dispute pending.**

A public utility may not mail or deliver a notice of termination if a notice of initial inquiry, dispute, informal or formal complaint has been filed and is unresolved and if the subject matter of the dispute forms the grounds for the proposed termination. A notice mailed or delivered in contravention of this section is void.

52 Pa. Code § 56.92.

However, in order to avoid termination of her service following the resolution of this Formal Complaint proceeding, Ms. Rhone must pay her outstanding balance in full, and must pay her monthly charges in full by the due dates stated on her electricity bills.

Additionally, in her Complaint, Ms. Rhone made a request for a payment arrangement. Ms. Rhone has a gross monthly household income of \$770 for a household of two. Witness Howlett testified that Ms. Rhone's account is enrolled in PCAP, and that her entire outstanding balance consists of PCAP arrears.

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); 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). 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-00871874 (Final 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-8721758 (Opinion and 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 (Opinion and Order entered March 17, 2004).

Requests for payment arrangements are governed by The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 (Chapter 14). Chapter 14 gives the Commission authorization to establish a payment arrangement between a public utility, customers and applicants. 66 Pa.C.S. § 1405(a). A customer's gross monthly household income<sup>3</sup> in relation to the Federal poverty level determines the length of the payment arrangement that the Commission can issue. 66 Pa.C.S. § 1405(b).

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<sup>3</sup> **“Household income.”** The combined gross income of all adults in a residential household who benefit from the public utility service. 66 Pa.C.S. § 1403.

However, the Commission may not issue a payment arrangement for balances accrued under CAP rates.

### **§ 1405. Payment arrangements**

**(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.

66 Pa.C.S. § 1405(c).

Ms. Rhone's gross monthly household income of \$770 for a household of two places her below 100% of the Federal poverty level.<sup>4</sup> This would make Ms. Rhone a level 1 customer under 66 Pa.C.S. § 1405(b)(1). Level 1 customers are eligible for a payment arrangement of up to five years to resolve their unpaid balance.

However, given that Ms. Rhone's entire outstanding balance is comprised entirely of PCAP arrears, her balance cannot be the subject of a Commission-issued payment arrangement. 66 Pa.C.S. § 1405(c). Therefore, Ms. Rhone is not eligible for a Commission-issued payment arrangement. Customer assistance programs are the best, most affordable payment plans available for an eligible, low-income customer. Ms. Rhone is encouraged to continue her participation in West Penn's PCAP.

In conclusion, Ms. Rhone is not eligible for a Commission-issued payment arrangement due to the fact that her entire outstanding balance is comprised of PCAP arrears. Therefore, her Complaint will be dismissed.

### CONCLUSIONS OF LAW

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

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<sup>4</sup> Federal Register, Vol. 84, No. 22 at 1168 (February 1, 2019). Also available at <http://aspe.hhs.gov/poverty> (providing that 100% of the Federal poverty level for a household of two is \$1,409).

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. A public utility may notify a customer and terminate service provided to a customer after notice as provided in §§ 56.91-56.100 (relating to notice procedures prior to termination) for nonpayment of an undisputed delinquent account. 52 Pa. Code § 56.81(1).

4. 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); 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).

5. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419, applies to this proceeding. 66 Pa.C.S. §§ 1401-1419.

6. The Commission is authorized to establish a payment arrangement between a public utility, customers and applicants. 66 Pa.C.S. § 1405(a).

7. A customer's gross monthly household income in relation to the Federal poverty level determines the length of the payment arrangement that the Commission can issue. 66 Pa.C.S. § 1405(b).

8. 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).

9. The Complainant has not met her burden of proving that she is eligible for a Commission-issued payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Sheri Rhone against West Penn Power Company at Docket No. C-2019-3010814 is dismissed.
2. That the docket at Docket No. C-2019-3010814 is marked closed.

Date: August 23, 2019

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/s/  
Alphonso Arnold, III  
Special Agent