

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Justin Namie	:	
	:	
v.	:	C-2019-3008486
	:	
West Penn Power Company	:	

**INITIAL DECISION**

Before  
Conrad A. Johnson  
Administrative Law Judge

**INTRODUCTION**

An electric utility customer filed a Complaint alleging incorrect billing and service reliability issues due to a faulty meter and asserting his bills decreased upon installation of a new meter. This decision dismisses the Complaint for Complainant’s failure to meet his burden of proof and denies his request made at the hearing for a second Commission-ordered payment arrangement due to Complainant’s ineligibility and poor payment history.

**HISTORY OF THE PROCEEDING**

On March 11, 2019, Justin Namie (Complainant or Mr. Namie) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) at Docket No. C-2019-3008486, seeking review of the Commission’s Bureau of Consumer Services’ (BCS) December 11, 2018 decision denying Complainant’s informal complaint against Respondent West Penn Power Company (Respondent or WPP) at BCS No. 3598449.<sup>1</sup> Complainant alleges there are incorrect

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<sup>1</sup> While Complainant did not seek timely review within 20 days of the BCS decision under 52 Pa.Code § 56.172(c), the failure to do so did not foreclose Complainant from filing a formal complaint at a later time as provided for under 52 Pa.Code § 56.172(e).

charges on his bill because for more than two years he was charged extremely high amounts for electric usage due to a “burnt up/fried” meter. Complainant asserts his “usage/bill decreased when a new meter was installed.” Complaint ¶4. For relief, Complainant seeks a ruling from the Commission that he is not responsible for the amount due. At hearing, Complainant also requested a second Commission-ordered payment arrangement. Tr. 52, 56 and 208.

On April 2, 2019, Respondent filed an Answer and New Matter to the Complaint. Respondent denies that there are incorrect charges on Complainant’s account or that there is a reliability problem with the electric service. Respondent alleges that Complainant is enrolled in the company’s budget billing at the current monthly, budget amount of \$389.00, and three payments have posted to the account in the last 24 months with the last payment of \$381.10 being made on November 17, 2017.<sup>2</sup> According to the Answer, the account balance is \$9,418.19. Respondent also alleges that Complainant defaulted on a payment arrangement issued by BCS on June 12, 2017, at BCS No. 3515895. At hearing, Respondent maintained Complainant was not eligible for a second Commission-ordered payment arrangement. Tr. 98.

Concerning Complainant’s service reliability allegation, Respondent avers “a loose connection in the customer owned meter socket destroyed the meter jaws in the meter socket.” Answer at 3. Respondent avers the loose connection caused the meter to melt, and Complainant is responsible for the meter socket. Additionally, Respondent denies that Complainant’s electric usage decreased after a new meter was installed.

In New Matter, Respondent avers, “Consistent with its Commission-approved tariff, the Company is not responsible for the meter socket and any required repairs. Tariff Rule 8.” New Matter at 6. For relief, Respondent requests that the Complaint be dismissed with prejudice or denied in its entirety.

On May 7, 2019, the Commission notified the Parties that this proceeding was assigned to the undersigned Administrative Law Judge (ALJ) for an initial telephonic hearing on

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<sup>2</sup> Following the Complainant filing and as discussed below, Complainant made two payments on his account in June 2019. Tr. 62.

July 2, 2019. On May 14, 2019, a Prehearing Order outlining the relevant procedural rules for the hearing was issued to the Parties. The hearing convened as scheduled. Mr. Namie appeared, self-represented, testified on his own behalf and called one witness, his fiancé, Denise Styslinger. Mr. Namie sponsored Exhibits 1 and 2, which were admitted into the record.

WPP was represented by Margaret A. Morris, Esquire, who on behalf of Respondent called four witnesses: Senior Customer Service Compliance Specialist Tammy Taylor; Meter Test Shop Supervisor Dallas Jenkins; Meter Troubleshooter Mark Matuizek; and Reliability Engineer Shawn Hindman. Respondent's witnesses sponsored Exhibits 1 through 23, which were admitted into the record.

The hearing generated a 212-page transcript, and the ALJ received a copy of the transcript on August 15, 2019. No briefs were filed. The record was closed by Interim Order dated August 15, 2019. This case is procedurally ready for ruling.

### FINDINGS OF FACT

#### The Parties and Service Location Description

1. Complainant Justin Namie leases and resides at 123 Emerald Drive, New Kensington, Westmoreland County, Pennsylvania (service address). Tr. 8, 15.
2. Respondent West Penn Power Company is a jurisdictional public utility providing electric service to Mr. Namie at the service address and to other Pennsylvania customers. Tr. 62.
3. On August 5, 2014, West Penn established electric service for Mr. Namie at the service address. *Id.*
4. Mr. Namie resides at the service address with his fiancé, Denise Styslinger. Tr. 7, 46-47.

5. The service address is single-wide, modular, ranch style house, which includes three bedrooms, a living room, combined kitchen and dining room, laundry room, mud room and bathroom. There is no basement. Tr. 21-23.

6. The energy source for the service address is electric, but also includes a wood burning fireplace. Tr. 20-26, 35 and 46.

7. Appliances at the service address include a refrigerator, stove, furnace, two air conditioning window units, two televisions, washer, dryer, microwave, hot water tank, indoor and outdoor lighting. *Id.*

#### Complainant's Meter Socket and Service Reliability Issues

8. Mr. Namie's meter socket, which has four jaws attached to four lugs (clamps), is housed inside and affixed to his meter box, which is mounted on a pole next to the service address. Tr. 19; WPP Exhibit 23, at 1-5.

9. WPP's electrical service conductors (wires) thread through the clamps of Mr. Namie's meter socket to provide electricity to the service address. Tr. 113-114; WPP Exhibit 23, at 1-5.

10. The four blades (prongs) on the back of WPP's meter insert into the four jaws of Mr. Namie's meter socket and thereby record the electric usage at the service address. Tr. 113-114 and 118-119.

11. Mr. Namie's meter socket and the back of WPP's meter connect inside of Mr. Namie's meter box. *Id.*

12. Through his landlord, Mr. Namie is responsible for the maintenance of his meter socket, which allows WPP to thread its service wires through the clamps of the meter

sockets and to insert the prongs of WPP's meter into the jaws of Mr. Namie's meter socket. Tr. 115-117, 127 and 153.

13. On February 28, 2018, Complainant's fiancé, Ms. Styslinger, called WPP and initiated a high bill inquiry on Mr. Namie's account. Tr. 79; WPP Exhibit 1 at 6-7.

14. On March 6, 2018, WPP sent Mr. Namie a letter stating that based upon an investigation, his account billing was correct, and the account balance was \$5,395.10. Tr. 79; WPP Exhibit 6.

15. On the afternoon of March 23, 2018, Ms. Styslinger called WPP because the service address was experiencing a partial power outage, that is, flickering lights. Tr. 32, 80 and 149; WPP Exhibit 18.

16. On the evening of March 23, 2018, WPP's meter troubleshooter, Mark Matuizek, went to the service address, removed and inspected the meter, which was damaged, that is, the plastic coating on one of the metal prongs had melted away and the metal prong was discolored, due to excessive heating. Tr. 22, 119-117 and 197; Complainant Exhibit 1 and WPP Exhibit 23.

17. On the evening of March 23, 2018, the plastic coating on one of the prongs of the service meter was damaged, that is, melted away, at the point where one of the meter socket jaws had loosened and was charred. Tr. 42-44, 119-121, 126, 150 and 184-185; WPP Exhibit 23 at 1.

18. On the evening of March 23, 2018, Mr. Matuizek observed that the installation of one of the service wires clamped to the meter socket had melted, and the meter's socket's clamp and installation showed heat damage. Tr. 185-186; WPP Exhibit 23, p. 1.

19. On the evening of March 23, 2018, Mr. Matuizek removed from the service address damaged meter No. S311232135 (WPP's Meter S), and he left new meter

No. 5001662723 (WPP's Meter 500) on the ground below the meter box for installation after the charred meter socket was replaced by Mr. Namie's landlord's electrician. Tr. 83-84, 150 and 152; WPP Exhibits 19 and 20.

20. WPP's Meter 500 was installed at the service address on March 24, 2018. Tr. 84.

21. WPP's tariff requires the customer to provide "a place suitable to the Company for the installation of metering and all other electric facilities needed for the supply of electric energy by the Company." Tr. 114-116; WPP Exhibit 21 at 3.

#### Meter Tests

22. Prior to the installation of WPP's Meter S at the service address, Meter S had been tested on May 5, 2014, resulting in an accuracy rating of 99.94% on light load and 99.97% on full load. Tr. 109; WPP Exhibit 15.

23. On March 23, 2018, Mr. Matuizek could not read WPP's Meter S at the service address because one of the prongs of the meter was damaged. Tr. 112 and 151; Exhibit 19.

24. Prior to installation of WPP's Meter 500 at the service address, the meter had been tested on February 13, 2018, resulting in an accuracy rating of 100.06% on light load and 100.03% on full load. Tr. 113; WPP Exhibit 16.

#### Complainant's Electric Usage

25. For the 12-month period, March 2016 to February 2017, WPP billed Mr. Namie \$3,353.42 for 31,278 kWh of usage. WPP Exhibit 8.

26. Mr. Namie’s monthly electric usage and charges for the 24 months from March 2017 to February 2019 compare as follows:

Date	Reading	kWh	Charge	Date	Reading	kWh	Charge
Mar 2017	E*	3,660	\$405.20	Mar 2018	E	2,450	\$266.17
Apr 2017	A**	5,050	\$543.75	Apr 2018	A	3,175	\$342.03
May 2017	E	1,877	\$206.77	May 2018	E	1,877	\$205.25
Jun 2017	A	1,221	\$139.66	Jun 2018	A	1,698	\$191.06
Jul 2017	E	1,524	\$175.23	Jul 2018	E	1,334	\$150.66
Aug 2017	A	1,053	\$123.38	Aug 2018	A	559	\$67.14
Sep 2017	E	1,246	\$142.67	Sep 2018	E	1,033	\$112.92
Oct 2017	A	753	\$88.00	Oct 2018	A	1,336	\$138.02
Nov 2017	E	2,277	\$251.01	Nov 2018	E	2,670	\$268.94
Dec 2017	A	3,397	\$368.15	Dec 2018	A	5,029	\$515.55
Jan 2018	E	3,688	\$397.74	Jan 2019	E	3,407	\$365.97
Feb 2018	A	3,566	\$385.43	Feb 2019	A	6,532	\$689.44
Total		29,312	\$3,226.99	Total		31,100	\$3,315.15
*E = Estimated Meter Reading      **A = Actual Meter Reading							

Table 1

Tr. 80-81; WPP Exhibit 8.

27. For the 12-month period, March 2018 to February 2019, Mr. Namie’s overall electric usage increased by 1,788 kWh compared to the previous 12-month period (31,100 kWh – 29,312 kWh = 1,788 kWh). *See* Table 1 above.

28. For the 12-month period, March 2018 to February 2019, Mr. Namie’s overall electric charges increased by \$88.16 compared to the previous 12-month period (\$3,315.15 – \$3,226.99 = \$88.16). *Id.*

## Payment Arrangements

29. On March 20, 2015, WPP issued Mr. Namie a company payment arrangement (PAR) based upon a \$2,979.08 monthly household income and a \$2,210.00 account balance, requiring him to pay his budget bill plus electric generation supplier charges starting on August 11, 2015. Tr. 69; WPP Exhibit 5.

30. On September 16, 2015, WPP enrolled Mr. Namie in the company's customer assistance program formerly known as LIPURP (Low Income Payment and Usage Reduction Program) based upon a \$2,220.00 monthly household income and a \$2,344.84 account balance, requiring Mr. Namie to pay monthly \$318.99 plus a \$5.00 co-payment beginning November 5, 2015. *Id.*

31. On November 14, 2015, WPP transferred Mr. Namie's LIPURP account to the company's Pennsylvania Customer Assistance Program (PCAP), requiring Mr. Namie to pay his budget bills minus an \$86.13 PCAP credit beginning January 5, 2016, thereby allowing Mr. Namie to receive monthly a \$63.71 potential credit forgiveness on the service account. Tr. 72; WPP Exhibit 5.

32. On June 20, 2017, at BCS No. 3515895, BCS granted Mr. Namie a PAR based upon a 4-member household with a \$1,250.00 monthly income and a \$4,672.05 account balance, requiring Mr. Namie to pay his \$291 monthly, budget bill plus \$65.00 beginning on August 10, 2017 (2017 BCS PAR). Tr. 64, 75-75 and 97; WPP Exhibits 5 and 10.

33. Mr. Namie defaulted upon the company PAR granted to him by WPP; he failed to recertify under WPP's PCAP; and he defaulted on the 2017 BCS PAR. Tr. 69, 73, 77 and 90.

34. Mr. Namie's monthly income is between \$3,500 and \$4,000 for his 2-member household. Tr. 47-48.

Payment History, Termination Notices and Complaints

35. Over a 24-month period (July 2017 to June 2019), Mr. Namie made five payments on his account as follows:

Date	Amount
September 18, 2017	\$370.00
October 19, 2017	\$375.55
November 17, 2017	\$381.10
June 2, 2019	\$389.00
June 21, 2019	\$389.00

Table 2

Tr. 63; WPP Exhibit 2.

36. On April 18, 2017, Mr. Namie submitted to WPP a medical certificate for his daughter-in-law, which prevented service termination on a \$3,616.53 account balance.

Tr. 86; Exhibit 4.

37. Between November 18, 2017 and June 1, 2019 (19 months), Mr. Namie did not make any payments on his electric account. Tr. 67; WPP Exhibit 2.

38. Between June 2017 and June 2019, WPP issued Mr. Namie eight, 10-day termination notices for non-payment of his account. Tr. 90; WPP Exhibit 13.

39. Between June 2017 and June 2019, Mr. Namie filed five informal complaints and one formal complaint with the Commission. Tr. 90; WPP Exhibit 13

40. Between June 2017 and June 2019, WPP held termination of Mr. Namie's service in abeyance, due to the intervening winter moratoriums or pending resolution of Mr. Namie's informal and formal complaints. Tr. 67-68 and 89-90.

41. Mr. Namie's account balance at the time of the hearing was \$9,200.94, which does not include any PCAP arrearages. Tr. 63 and 96.

42. Mr. Namie's electric service at the time of the hearing was active. Tr. 51-52 and 63.

## DISCUSSION

### Legal Standards

#### Burden of Proof

Complainant is the party asking for action or relief from the Commission. As the party seeking relief, Complainant has the burden of proof to show that WPP has in some manner violated the provisions of the Public Utility Code (Code), the regulations of the Commission or a Commission order. 66 Pa.C.S. § 332(a).

The term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). "Preponderance of the evidence" means one party must present evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. *Id.* Accordingly, one must review the record in this case to determine whether Complainant has satisfied his burden of proof. If the review indicates the burden has been satisfied, one must then determine whether Respondent has submitted evidence of co-equal value or weight to refute Complainant's evidence. If this has occurred, the burden of proof cannot be satisfied, unless the party bearing the burden of proof presents additional evidence. *Morrissey v. Pa. Dept. of Highways*, 424 Pa. 87, 225 A.2d 895 (1967); *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982).

Furthermore, one must exercise care to ensure substantial evidence in the record supports the decision of the Commission. *See, e.g.*, Section 704 of the Administrative Agency

Law, 2 Pa.C.S. § 704; and *Yellow Cab Company v. Pa. Pub. Util. Comm'n*, 524 A.2d 1069 (Pa.Cmwlth. 1987). “Substantial evidence” means such relevant evidence that a reasonable mind may accept as adequate to support a conclusion. *Philadelphia Gas Works v. Pa. Pub. Util. Comm'n*, 898 A.2d 671 (Pa.Cmwlth. 2006). The pertinent inquiry is whether substantial evidence exists to support the Commission’s findings. *Elliot Co. v. Workers’ Comp. Appeal Bd. (Shipley)*, 785 A.2d 480 (Pa.Cmwlth. 2002). 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); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1961); and *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984). To establish a sufficient case against a utility and satisfy the burden of proof, a complainant must show the utility is responsible or accountable for the problem described in the complaint. *Feinstein*, cited above.

#### Reasonable Service

Section 1501 of the Code, 66 Pa.C.S. § 1501, states, “Every public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make all repairs, changes, alterations, substitutions, extensions, and improvements in or to its service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.” Section 102 of the Code, 66 Pa.C.S. § 102, defines “service” as:

Used in its broadest and most inclusive sense, includes *any and all acts done, rendered, or performed*, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities . . . .

(Emphasis added). A utility’s “service” is not merely confined to the distribution of utility service, but also includes “any and all acts” related to that function. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 578 A.2d 75 (Pa.Cmwlth. 1990).

The Commonwealth Court has cautioned that the Commission may not sustain a complaint pursuant to Section 1501 unless it finds that a utility has violated a duty to render reasonable and reliable service. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa.Cmwlth. 1984).

The Commission has stated that a utility is not mandated to furnish perfect service:

[Section 1501] does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.

*Re Metropolitan Edison Company*, 80 Pa. PUC 663, 672 (1993).

Thus, the test to determine the adequacy of a utility's service is that of reasonableness. *Scherich v. Verizon Pennsylvania Inc.*, Docket Nos. C-2008-2061244, C- 2008-2068818 (Final Order January 28, 2010).

#### Electric Safety Standards

Chapter 57, Subchapter B of the Commission regulations sets forth standards for electric service and facilities. 52 Pa.Code §§ 57.11-57. Section 57.28(a) of the regulations, 52 Pa.Code § 57.28(a), outlines the responsibilities of the electric utility and the customers as follows:

(a) *Responsibilities.* The separation of responsibilities between an electric utility and a customer with respect to the facilities utilized for electric service shall be described in the electric utility's tariff that is filed with and approved by the Commission.

(1) An electric utility shall use reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce hazards to which employees, customers, the public and others may be subject to by reason of its provision

of electric utility service and its associated equipment and facilities.

(2) An electric utility is not responsible for the ownership and maintenance of the customer's facilities beyond the service point.  
West Penn Power Company's Tariff

Rule 7 of WPP's Commission-approved tariff, Electric Pa. P.U.C., No. 40, Supplement No. 53, effective May 3, 2015, outlines the company's and the customer's obligations concerning wiring, apparatus and inspection, in relevant part, as follows:

**7. Wiring, Apparatus and Inspection**

**Company Obligations**

The Company owns, maintains, furnishes and installs the meters, unless otherwise allowed by the commission. . . .  
All equipment/facilities supplied by the Company shall remain its exclusive property and may be removed, in the Company's sole discretion, after termination of service for whatever cause.

. . . .

The Company shall repair and maintain any facilities/property it has installed on a Customer's premises. However, the Customer shall pay the full cost of inspection, repairs and/or replacement of all such facilities/property that may be damaged due to a Customer's negligence.

**Applicant/Customer Obligations**

Electric service installations shall be in accordance with the National Electrical Code . . . The Company shall not be responsible for any injury or damages which may result from defects in wiring for devices on the customer's premises . . .  
If, on existing installations, there is reasonable doubt as to the safety of existing electrical equipment or wiring, the Company shall require, as a condition to furnishing service, that the service be inspected and approved by a qualified inspector in accordance with the National Electrical Code.

. . . .

Upon the Company designating a point of delivery at which its service line will terminate, the Applicant/Customer shall provide, at its sole cost and expense, a place suitable to the Company for the installation of metering and all other electric facilities needed for the supply of energy by the Company or an EGS [Electric Generation Supplier].

See WPP Exhibit 21 at 2-3.

### High Bill Dispute

When a customer alleges a high bill dispute, the *Waldron Rule* applies.

In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980), the Commission adopted the Michigan Public Service Commission's (PSC's) policy announced in *Hallifax v. O & A Electric Co-Op*, Case No. U-5825, May 1979, which stated that, while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Michigan PSC stated that it will also consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100.

*Charisse M. Bennett v. The Peoples Natural Gas Company, LLC*, Docket No. C-2009-2122979, (Opinion and Order entered September 23, 2010, at 5).

### Meter Testing

The Commission's regulations provide tolerance standards for recording electricity usage within an error variance of 2.0% or less as follows:

#### **§ 57.20. Watthour Meter Testing.**

(c) No watthour meter which has an error in registration of more than 2.0% at light load or heavy load may be placed in service or allowed to remain in service without adjustment. If, upon installation,

period or other tests, a watt-hour meter is found to exceed these limits, it shall be adjusted or removed from service.

52 Pa.Code § 57.20(c).

Payment Arrangements

Here, Mr. Namie seeks an affordable PAR from the Commission. Thus, Chapter 14 of the Code, the Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, as amended December 22, 2014, applies to this proceeding. Section 1405 of the statute provides 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 agreements.**—The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment agreement 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% 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.

**(e) Extension of payment arrangements.**—If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extensions period may be

extended for an additional six months for good cause shown.

**(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

### The Parties' Positions

In this proceeding, Mr. Namie raises several issues: reasonableness and quality of service, high billing charges, and a PAR request. According to Mr. Namie, his electric bills were high because WPP's meter was damaged, and therefore his electric usage was not accurately recorded. Tr. 14-15. Mr. Namie claims that after WPP replaced the melted meter his bills decreased. Tr. 14-15. Consequently, he seeks an adjustment on his account, and he requests a Commission-ordered PAR on his balance based upon a monthly income between \$3,500 and \$4,000 for a 2-member household. Tr. 47-48.

WPP admits that during a service investigation, its technician discovered the plastic coating on one of the prongs on WPP's meter had melted, thereby requiring removal and replacement of the meter. Tr. 121 and 150. WPP contends the meter prong had melted because one of the meter jaws on Mr. Namie's meter socket had loosened. *Id.* WPP asserts the meter socket belongs to Mr. Namie, and under WPP's tariff, Mr. Namie is responsible for the maintenance of his electrical equipment. Tr. 115-117, 127 and 153. WPP further claims that a 24-month electric usage comparison demonstrates that Mr. Namie's electric consumption has remained consistent before and after the discovery of the loose meter jaw. Tr. 80-81, 83. Lastly, WPP argues that Mr. Namie is not eligible for a second Commission-ordered PAR because of his default on his existing PAR granted to him by BCS. Tr. 69, 73, 77 and 91.

Each issue and the competing positions of the Parties are addressed below.

### Reasonable Service, Reliability, Electric Safety Issues

Under the Code, public utilities are mandated to provide reasonable, reliable and safe service to customers. 66 Pa.C.S. § 1501. Here, the evidence establishes that Mr. Namie's fiancé called WPP on March 23, 2018, because he was experiencing a partial power loss at the service address. Tr. 32 and 80. In response to the call, WPP's meter troubleshooter or technician, Mr. Matuizek, conducted an inspection of Mr. Namie's meter box, and he discovered a prong of the meter was damaged due to excessive heat and Mr. Namie's meter socket was partially melted and charred. Tr. 185-186. This evidence at first blush suggests that WPP had failed to provide reasonable and reliable service to Mr. Namie.

However, WPP's meter shop supervisor, Mr. Jenkins, explained one of the jaws of Mr. Namie's meter socket had loosened. Tr. 138. Since the jaw was loose, as electricity was transmitting from WPP's line into the clamps of the meter socket electricity was escaping and causing the coating of the meter prong to melt and the meter socket to char. Tr. 122. Witness Jenkins further explained that the meter socket and the jaws are the responsibility of the customer. Tr. 116.

Support for Witness Jenkins's assignment of customer responsibility is found in the Commission's regulations. "An electric utility is not responsible for the ownership and maintenance of the customer's facilities beyond the service point." *See* 52 Pa.Code § 57.28(a)(2), cited above. In Mr. Namie's case, WPP's service point ended at the connection of the service wires into the Mr. Namie's meter socket. Tr. 128. Consequently, any defect in the meter socket, that is the loose meter jaw, cannot be attributed to WPP.

Additionally, under WPP's tariff, the customer is responsible for providing facilities, in this case the meter socket, suitable for the company's installation of metering and all other electrical facilities needed for supply of energy by the company to the service address. *See* WPP Exhibit 21 at 2-3. Notably, WPP's tariff has been approved by the Commission. *Id.* The provisions of a Commission approved tariff have the force of law and are binding on both the utility and its customer. *Stiteler v. Bell Telephone Co. of Pennsylvania*, 379 A.2d 339

(Pa.Cmwlth. 1977); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981). Thus, under both the statute and WPP's tariff, Mr. Namie is responsible for the maintenance of his meter socket.

Since the loose meter jaw caused the coating of the meter prong to melt and the meter socket to char combined with Mr. Namie's responsibility, through his landlord, for the meter socket, the evidence compels a finding that Mr. Namie failed to carry his burden of proving WPP violated the Commission's reasonable service, reliability, and electric safety statutes and regulations, or that West Penn is responsible for the problem alleged in the Complaint.

#### High Bill Dispute

Turning to Mr. Namie's high bill dispute, the Commission has stated that meter accuracy is not the sole determinant in resolving the dispute. Rather "the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding" are all factors that may be considered by the presiding officer. *See Waldron*, cited above.

Here, Mr. Namie asserts that for two years prior to the discovery of the melted meter his electric bills were high. He attributes the high bills to a defective meter, which was discovered as melted on March 23, 2018. After the meter was replaced, according to Mr. Namie, his bills decreased.

WPP counters that Meter S, the one that had melted, was tested on May 5, 2014, prior to installation at the service address. Tr. 109; WPP Exhibit 5. WPP argues that Meter S tested within the range of accuracy permitted under the Commission's regulations. Tr. 112. Upon removal of Meter S on March 23, 2018, the meter could not be tested because of its deteriorated condition due to melting. However, WPP disputes Mr. Namie's claim that his bills decreased once the Meter S was replaced. On this issue the evidence favors WPP.

For the 12-month period, March 2016 to February 2017, WPP billed Mr. Namie \$3,353.42 for 31,278 kWh of usage. WPP Exhibit 8. For the 12-month period, March 2018 to February 2019, Mr. Namie’s overall electric usage increased by 1,788 kWh compared to the previous 12-month period (31,100 kWh – 29,312 kWh = 1,788 kWh). *See* Table 1 above. For the 12-month period, March 2018 to February 2019, Mr. Namie’s overall electric charges increased by \$88.16 compared to the previous 12-month period (\$3,315.15 – \$226.99 = \$88.16). *Id.* As demonstrated in the below chart, Mr. Namie’s electric usage and charges have remained relatively consistent before and after the discovery of the melted meter on March 23, 2018.

12-Month Period	Total Usage	Total Charges
March 2016 to February 2017	31,278 kWh	\$3,363.42
March 2017 to February 2018	29,312 kWh	\$3,226.99
March 2018 to February 2019	31,100 kWh	\$3,315.15

*See* Table 1, above.

Considering that the service address is all electric with two adult occupants and Mr. Namie’s electric usage for three 12-month periods has been consistent, a conclusion is required that the service address has the potential for electrical usage for which Mr. Namie has been billed by WPP. Mr. Namie did not submit any other evidence to warrant a finding that there are incorrect charges on his bill.

Assuming for the purpose of argument that the melted meter caused Mr. Namie’s electric usage to increase, the increase cannot be assigned to any fault on the part of WPP. Rather as discussed above, by necessity the increased usage must be assigned to Mr. Namie because he and/or his landlord is responsible for the upkeep of the meter socket which had become defective. Accordingly, Mr. Namie’s high bill claim must be dismissed. Next Mr. Namie’s request for a PAR will be addressed.

## Payment Arrangement

The Commission has the authority to establish a PAR pursuant to the guidelines of *The Responsible Utility Customer Protection Act*, 66 Pa.C.S. §§ 1401-1419, as amended December 22, 2014 (Chapter 14 or Act). *Also see, Creekmur v. PECO Energy Company*, Docket No. C-2008-2079322 (Final Order entered February 4, 2010). However, the Commission exercises this authority very judiciously. Specifically, the Commission exercises its discretion only on behalf of customers, who have demonstrated some evidence of good faith efforts to pay their utility bills or who have experienced a significant change of circumstance outside of their control. *See Slaughter v. Philadelphia Gas Works*, Docket No. C-2016-2541771 (Opinion and Order entered April 13, 2017) (citing *Crawford v. National Fuel Gas Distribution Corporation*, Docket No. C-2006638 (Opinion and Order entered August 3, 2007) and *Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013)).

Under the Commission's regulations, 52 Pa.Code § 56.172(a), a request for review of a BCS decision granting a PAR must be initiated in writing within 20 days of issuance, otherwise the BCS PAR becomes a Commission PAR. *See DiOrazio v. North East Heat & Light Company*, F-2008-2052918 at 4 (Opinion and Order entered June 15, 2009). Mr. Namie did not appeal or seek review of BCS's June 20, 2017 decision, granting him a PAR (2017 BCA PAR). Consequently, the 2017 BCS PAR converted into a Commission-issued PAR 20 days after BCS issued its decision. Tr. 76.

The evidence establishes Mr. Namie defaulted on the Commission PAR granted to him by BCS on June 20, 2017. Tr. 73; WPP Exhibit 5. Having defaulted on a prior Commission PAR, Mr. Namie's request for a subsequent Commission-ordered PAR is governed by Sections 1405(d) and 1405(e) of Chapter 14, cited above.

Section 1405(d) restricts the Commission from granting a customer a second or subsequent payment arrangement where the customer has defaulted on a prior payment arrangement, unless the customer has experienced a change in income after the receipt of the prior payment arrangement. 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.

In Mr. Namie's case, he reported a \$1,250.00 monthly, household income at the time he was granted the 2017 BCS PAR. Tr.73; WPP 5. At the time of hearing, Mr. Namie testified he was employed and earned between \$3,500 and \$4,000 monthly. Tr. 47-48. Since Mr. Namie's income has increased from the time of the 2017 BCS PAR, he has not experienced a "change in income" within the above definition of the Code. Therefore, he is not eligible for a subsequent Commission-ordered PAR, under Section 1405(d) of the Code. 66 Pa.C.S. § 1405(d).

Turning to Section 1405(e) of Chapter 14, if a customer defaults on a Commission payment arrangement, resulting from a "significant change in circumstance," the Commission may reinstate the payment arrangement and extend the remaining term by six months.

66 Pa.C.S. § 1405(e). A "significant change in circumstance" is defined as the following:

**"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.
- (4) Increase in the customer's number of dependents in the household.

66 Pa.C.S. § 1403.

For Mr. Namie's 2-member household with an approximate monthly income between \$3,500 and \$4,000, 300% of the federal poverty guideline is \$4,228.00 monthly. See 2019 Poverty Guidelines for the 48 Contiguous States and the District of Columbia, Federal Register, Vol. 84, No. 22, at 1167-1168 (February 1, 2019). Also available at <https://aspe.hhs.gov/poverty-guidelines>.

Mr. Namie did not present any evidence that he experienced any significant change in circumstance as enumerated above. Therefore, he does not meet the criteria for a significant change in circumstance. Hence, he is not eligible for an extension of the Commission PAR under Section 1405(e) of the Code. 66 Pa.C.S. § 1405(e). Also, note must be taken that the Commission, in *Hewitt*, declined to exercise its authority to grant a complainant a payment arrangement based on the complainant's poor payment history and his ability to keep company-issued payment arrangements. *Hewitt* at 10-12.

Similarly, in the present case, Mr. Namie has a poor payment history. In the past 24 months he has only made five payments on his electric account, and his account balance is \$9,200.94. Tr. 63; WPP Exhibit 2. During that 24-month period, Mr. Namie did not make any payments on his account for 19 months. Further he avoided service termination by filing four informal complaints and the present formal complaint.<sup>3</sup> The complaint filings permitted Mr. Namie to receive the benefits of two winter moratoriums.<sup>4</sup> Significantly, Mr. Namie's maneuvering to avoid service termination coupled essentially with a scant payment history borders on an abuse of the Commission's processes and should not be countenanced.

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 its remaining customers must pay. *Bolt v. Duquesne Light Company*, Docket No. Z-8712758 (Order entered April 8, 1988). However Mr. Namie manages his household budget, he will have to pay WPP the arrearages that he owes.

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<sup>3</sup> See 52 Pa.Code § 56.141(2), staying service termination pending resolution of the dispute or complaint.

<sup>4</sup> See 52 Pa.Code § 56.100(b), restricting service termination from period December 1 through March 31.

## Ruling

Considering Mr. Namie's high account balance, \$9,200.94, default on his Commission PARs and his poor payment history, his request for a subsequent Commission-ordered payment arrangement must be denied in conformity with Section 1405 of Chapter 14 and with the ruling in *Hewitt*, cited above. Mr. Namie has otherwise failed to carry his burden to demonstrate that WPP violated the Public Utility Code or a Commission order or regulation.

## 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 or a Commission order in the course of providing him with electric service. 66 Pa.C.S. § 332(a).
4. No wathour meter which has an error in registration of more than 2.0% at light load or heavy load may be placed in service or allowed to remain in service without adjustment. If, upon installation, period or other tests, a wathour meter is found to exceed these limits, it shall be adjusted or removed from service. 52 Pa.Code § 57.20(c)
5. An electric utility is not responsible for the ownership and maintenance of the customer's facilities beyond the service point. 52 Pa.Code § 57.28(a)(2).
6. Absent a change in income or 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 or

reinstate and extend a Commission 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(d) and (f).

7. The issuance of a payment arrangement is a matter within the Commission's discretion. The Commission exercises its discretion only on behalf of customers, who have demonstrated some evidence of good faith efforts to pay their utility bills or who have experienced a significant change of circumstance outside of their control. *Slaughter v. Philadelphia Gas Works*, Docket No. C-2016-2541771 (Opinion and Order entered April 13, 2017), citing *Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013).

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

### ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant Justin Namie's request for a subsequent Commission-issued payment arrangement in the proceeding, Justin Namie v. West Penn Power Company at Docket No. C-2019-3008486, is denied.

2. That the Complaint of Justin Namie against West Penn Power Company at Docket No. C-2019-3008486 is dismissed.

3. That the Secretary's Bureau shall mark Docket No. C-2019-3008486 closed.

Date: September 12, 2019

\_\_\_\_\_/s/  
Conrad A. Johnson  
Administrative Law Judge