

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Roberta Zenmon	:	
	:	
v.	:	C-2022-3030679
	:	
Pennsylvania Power Company	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This decision dismisses, for failure to meet the burden of proof, the formal complaint alleging Pennsylvania Power Company failed to comply with a settlement agreement reached in a prior formal complaint proceeding.

HISTORY OF THE PROCEEDING

On December 27, 2021, Roberta Zenmon (Ms. Zenmon or Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Power Company (Penn Power or Respondent) alleging incorrect charges from Respondent for her residential electric utility service. Ms. Zenmon alleged Penn Power failed to comply with an agreement reached in a prior formal complaint proceeding which allowed Complainant to pay the utility on the first of every month. She requested a payment arrangement.

On February 22, 2022, Penn Power filed its Answer and New Matter, with a Notice to Plead, in which Respondent generally denied the allegations. Specifically, Penn Power denied it failed to honor the terms of the settlement agreement between the parties at Docket No. F-2020-3023344 (2020 Formal Complaint). In New Matter, Respondent alleged a letter which Respondent mailed to Complainant on June 4, 2021 (Settlement Letter) contained the terms of the settlement agreement and should be permitted to speak for itself. Penn Power noted the Commission's regulations permit billing periods to vary from 26 days to 35 days in length, pursuant to 52 Pa.Code § 56.2.

On March 15, 2022, the Office of Administrative Law Judge scheduled a call-in initial telephonic hearing for April 27, 2022, before Administrative Law Judge (ALJ or presiding officer) Katrina L. Dunderdale. ALJ Dunderdale issued a Prehearing Order on March 17, 2022, which provided applicable procedures regarding submission of exhibits, attorney representation, continuances, subpoenas, and the burden of proof.

On April 27, 2022, the presiding officer conducted the initial telephonic hearing as scheduled. Ms. Zenmon appeared *pro se* and testified on her own behalf. She did not offer any exhibits. Penn Power was represented at the hearing by Margaret A. Morris, Esquire, who presented one witness, Charles Howlett, a Senior Compliance Specialist. During the hearing, Penn Power presented seven exhibits which were marked Penn Power Exhibits 1 through 7 and which exhibits were admitted into the hearing record.¹

During the hearing, Complainant made oral requests for the presiding officer to review and admit into the hearing record the transcript from a proceeding conducted by Administrative Law Judge Conrad A. Johnson (ALJ Johnson) on June 3, 2021, at Docket No. F-2020-3023344. The presiding officer advised Complainant how to request the transcript from the 2020 Formal Complaint be admitted into the hearing record, as a late filed exhibit.

¹ Complainant lodged objections to the admission of Penn Power Exhibits 4 and 5 which, after discussion, were admitted into the hearing record with her objections noted. Tr. 87.

After the initial hearing concluded, Respondent served upon the presiding officer and Complainant a letter dated May 4, 2022, which indicated Penn Power's witness, Charles Howlett, mistakenly testified that the settlement discussions in the 2020 Formal Complaint were conducted off the record. Penn Power included a copy of the transcript from the June 3, 2021, proceeding (2020 Transcript), consisting of 32 pages, and identified the transcript as Exhibit 8. Penn Power asked to admit the transcript to correct the witness' mistaken testimony. On May 4, 2022, Complainant communicated to the office of the presiding officer that she knew Attorney Morris asked the presiding officer if she could include another exhibit. Complainant lodged an oral objection to admitting the exhibit.

On May 9, 2022, the presiding officer was notified Complainant sent a letter, via Certified Mail, to the Commission's main mailing address in Harrisburg, Pennsylvania. A copy of the letter (May 3, 2022 Letter) was provided to the presiding officer on May 9, 2022.² In her letter, Complainant requested the presiding officer request the transcript from the 2020 Formal Complaint proceeding because she believed the 2020 Transcript would "contain important settlement information related to my past and current case that could be very pertinent to my current case which is part of an agreed settlement between myself and Penn Power in which we agreed on a certain date to pay my current and arrearages by the first of every month and perpetually."

On May 11, 2022, the presiding officer issued the Post-Hearing Order, pursuant to 52 Pa.Code §§ 5.403 and 5.485, and ordered the transcript from the hearing on June 3, 2020, at Docket No. F-2020-3023344 to be admitted into the hearing record.

The transcript of the initial hearing, consisting of 106 pages, was received in the Commission's Secretary's Bureau on May 24, 2022. On May 26, 2022, the presiding officer issued the Interim Order Closing the Hearing Record.

² The body of the letter was dated August 28, 2022, but it was date-stamped as received in the Commission's Harrisburg offices on May 3, 2022.

FINDINGS OF FACT

1. Complainant, Roberta Zenmon, currently resides in Wexford, Pennsylvania, and receives mail at P.O. Box 463, Wexford, Pennsylvania 15090. (Tr. 15).
2. Respondent, Pennsylvania Power Company, provided electric service to Complainant at two service addresses prior to April 2022. (Tr. 15).
3. From 2016 to 2017, Complainant resided at 1100 Cranberry Pointe, Cranberry Township, Pennsylvania 16066 (Cranberry Address) and received service from Respondent. (Tr. 11, 13).
4. From September 4, 2019, to April 13, 2022, Complainant resided at 131 Lewisham Road, Cranberry Township, Pennsylvania (Lewisham Address or service address) and received service from Respondent until she moved out. (Tr. 11, 12).
5. Complainant is not a current customer of Respondent. (Tr. 22).
6. On June 29, 2020, Complainant filed a formal complaint against Respondent at Docket No. F-2020-3023344 (2020 Formal Complaint) alleging issues with Respondent's termination of service and incorrect billing charges arising from service at the Cranberry Address, and Complainant requested a payment agreement for unpaid charges starting in 2019 at the Lewisham Address. (Tr. 51; Penn Power Exhibit 2).
7. Administrative Law Judge Conrad Johnson (ALJ Johnson) conducted a Further Call-In Telephonic Hearing in the 2020 Formal Complaint on June 3, 2021, at which time the parties discussed settlement terms and amicably agreed to a company-payment agreement. (Penn Power Exhibit 2).
8. As part of a settlement agreement, Respondent agreed to credit \$512.46 to Complainant's electric service account and enter into a company-payment

agreement for sixty (60) months to pay back \$1,537.39 in arrears. (Tr. 53; Penn Power Exhibits 3 & 4).

9. During settlement discussions in the 2020 Formal Complaint, Complainant indicated she wanted the agreement between the parties to require Respondent to always use the first of the month as the due date month because Complainant receives her monthly disability check on the first of each month. (Tr. 16-21; Penn Power Exhibit 8).

10. On June 4, 2021, Respondent sent a letter (2020 Settlement Letter) to Complainant detailing the terms of the settlement and advising Complainant to object in writing within ten days if she disagreed with the terms. (Penn Power Exhibit 2).

11. The 2020 Settlement Letter did not contain any provisions about the due date for future monthly billing statements and did not specify that Complainant's payments would only be due in the first few days of each month. (Penn Power Exhibit 2).

12. Complainant did not file an objection to the 2020 Settlement Letter, dated June 4, 2021, with either the Commission or Respondent. (Tr. 53; Penn Power Exhibit 1).

13. Complainant did not file an objection to the Certificate of Satisfaction, dated June 4, 2021, which contained instructions on how Complainant could object but which did not contain any details about the specific settlement terms. (Tr. 53; Penn Power Exhibit 2).

14. To settle the 2020 Formal Complaint, Complainant and Respondent joined in a company-payment agreement in which Complainant would pay, effective with the August 2021 due date, the budgeted monthly bill plus pay \$26 monthly over 60 months to eliminate the unpaid arrears, which totaled \$1,564.39 at that time. (Penn Power Exhibit 7).

15. From August 11, 2021 to April 11, 2022, Respondent's billing cycles fluctuated in length (varying due dates) but Complainant had at least 20 days each month in which to make payments. (Tr. 23, 27, 57; Penn Power Exhibit 5).

16. Respondent offers a 30-day due date to customers who request one but Complainant did not request a 30-day due date. (Tr. 57).

17. On Thursday, April 14, 2022, Complainant called Respondent to request that electric service be terminated at the Lewisham Address, effective on Monday, April 18, 2022. (Tr. 13, 17, 34, 35, 58).

18. The termination became effective on the first business day after April 14, 2022, which was April 18, 2022, because Respondent's offices were closed for the Good Friday and Easter holidays. (Tr. 17, 34, 35, 58).

20. The 2020 Settlement Letter specified Complainant must provide at least seven days' notice prior to moving out. (Tr. 39, 58, 60; Penn Power Exhibit 2).

21. The 2020 Settlement Letter specified Respondent would provide Complainant with six months in which to pay off any arrearage if Complainant moved outside of Penn Power's territory prior to paying off the arrearage. (Tr. 59; Penn Power Exhibit 2).

22. Respondent voluntarily moved the final date of service back to April 14, 2022, and issued the final bill on April 19, 2022, which required Complainant to make a full payment by May 9, 2022, of the total unpaid balance equal to \$1,070.85. (Tr. 31, 33, 36, 58, 59; Penn Power Exhibits 4 and 6).

23. Complainant received three payment agreements from the Company from January 19, 2018 to August 2, 2021. (Tr. 61; Penn Power Exhibit 7).

DISCUSSION

Complainant alleged in her formal complaint that Penn Power's billing statements contained incorrect charges for her residential electric utility service at a prior residence and denies telling Respondent she would pay a certain monthly amount to pay down arrears.³ According to Complainant, Penn Power failed to comply with a payment agreement reached in a prior formal complaint proceeding wherein Penn Power had agreed Complainant could pay the utility on the first of every month. She requested a Commission-payment arrangement.⁴ Complainant asked the Commission to eliminate the unpaid balance (totaling over \$1,700) because Respondent violated the settlement agreement reached in a prior formal complaint.

Burden of Proof

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proving by substantial evidence she is entitled to the requested relief. 66 Pa.C.S. § 332(a). To satisfy this burden, Complainant must show Respondent utility is responsible or accountable for the problem described.⁵ Complainant must show this fact to be true by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that evidence presented by the other party.⁶ Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon

³ Tr. 29.

⁴ While Complainant alleged incorrect charges and a request for a payment arrangement in the formal complaint, Ms. Zenmon clarified at the hearing she did not wish to pursue those claims. Her allegation concerned only Respondent's failure to comply with a prior settlement agreement wherein she alleged Respondent agreed all future due dates would be the first of each month. Tr. 16-17.

⁵ *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. P.U.C. 300 (1976).

⁶ *Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

substantial evidence.⁷ Furthermore, more evidence is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁸

Pursuant to the Pennsylvania Code, all relevant and material evidence may be admitted but will be excluded if repetitious or cumulative, or if its probative value is outweighed by a danger of unfair prejudice, confusion of the issues, or considerations of undue delay or waste of time.⁹

Complainant Position

Complainant argues it is not her fault the settlement agreement in the 2020 Formal Complaint did not contain a provision about due dates being on or after the first of every month. Ms. Zenmon pointed out counsel for Penn Power prepared the settlement agreement and Certificate of Satisfaction which did not contain this provision that was important to her. Ms. Zenmon indicated the provision was so important to her that she would not have agreed to settle the case in the 2020 Formal Complaint without that provision. Complainant contended the transcript from the earlier proceeding would show the provision was meant to be part of the agreement and she asked to have the transcript admitted into the hearing record in the instant proceeding.

Complainant indicated at the hearing herein she does not dispute the amount of the charges on Respondent's billing statements, but she argues she met the burden of proving Respondent failed to comply with the settlement agreement in the 2020 Formal Complaint. Specifically, Ms. Zenmon contends Penn Power agreed all billing statements issued after June 2021 would require payment by the first of the month or within a few days after the start of every month. Ms. Zenmon testified she is a disabled veteran and only receives her disability

⁷ *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

⁸ *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

⁹ See "Admissibility of Evidence," 52 Pa. Code § 5.401.

check on the first of each month. She insists the term in the settlement from the 2020 Formal Complaint – that due dates for future billing statements would require payment no earlier than the first of every succeeding month – was an essential element of the settlement in the 2020 Formal Complaint. She asserts Penn Power violated this essential element after June 2021 and, accordingly, she wants the Commission to force Penn Power to comply with the terms of the agreement, stop using a collection agency to recover the unpaid balance and remove all charges from her balance.

In addition to the allegations contained within the formal complaint, Ms. Zenmon argued, for the first time at the initial hearing, that Penn Power was wrong to take so many days to terminate electric service to the Lewisham Address. Complainant contends she called on April 14, 2022, but she continued to be charged for electric service until April 18, 2022. Ms. Zenmon argues Penn Power was wrong not to terminate electric service immediately and asserts Penn Power never advised her what date the service would be terminated.

Respondent Position

Respondent argues the formal complaint should be dismissed because Complainant failed to meet the burden of proof. Penn Power contends Complainant had a full, fair, and knowing opportunity to complain and/or object to the Certificate of Satisfaction and/or the 2020 Settlement Letter but she failed to do so. Penn Power argues Ms. Zenmon should have objected when she received the 2020 Settlement Letter - and again after receiving the Certificate of Satisfaction dated June 4, 2021 - if the due date on future billing statements was an essential element of the settlement. In addition, Penn Power pointed out that Complainant violated the express provisions of the 2020 Settlement Letter when she failed to give at least seven days' notice of her intention to vacate the Lewisham Address and terminate electric service.

Disposition

Penn Power Exhibit 8 was the transcript from the hearing conducted on June 3, 2021, in the prior proceeding and which was admitted into this proceeding as a late-filed exhibit on May 11, 2022. After reviewing Penn Power Exhibit 8, the presiding officer found no reference by Complainant to her requirement that a settlement must include a due date of the first of each subsequent month. However, Complainant's request - to establish the first of each month as the due date for all billing statements going forward - is located in the transcript of the prehearing conference conducted on February 11, 2021, in the 2020 Formal Complaint. The transcript from the prehearing conference, in which the parties engaged in an unsworn conversation with ALJ Johnson attempting to settle the dispute, reflected that Complainant wanted the due date for each bill to be the first of every month, because she receives her monthly disability check on the first day of the month.¹⁰

During that discussion, Complainant indicated a concern that the timing of the due date on the billing statements was important to her because the due date might fall at the wrong time of the month for her to be able to pay on time.¹¹ The proceeding on February 11, 2021 ended without a settlement and the parties agreed to participate in a hearing at a later date. After the prehearing conference on February 11, 2021, the parties engaged in settlement conversations at the subsequent hearing in June 2021,¹² at which time a settlement was reached. Counsel for the utility followed up after the June 2021 hearing with a writing that memorialized the settlement reached by the parties.

Ms. Zenmon waited five months after the first payment was due in August 2021 (and six months after settling the 2020 Formal Complaint) before filing the instant

¹⁰ Initially, the proceeding on February 11, 2021, was entitled an Initial Call-In Telephonic Hearing but was converted into a prehearing conference by the presiding officer at the request of Complainant.

¹¹ February 11, 2021, Transcript in Docket No. F-2020-3023344 at 18-20.

¹² The proceeding conducted on June 3, 2021, was entitled "Further Call-In Telephonic Hearing" in the hearing notice dated February 17, 2021.

formal complaint. During that time, Penn Power issued billing statements with due dates that were not the first of each month.

The undersigned concludes, based upon the totality of factual evidence chronicled in the Findings of Fact and a review of the two transcripts from the 2020 Formal Complaint, that Ms. Zenmon did not meet the burden of proof.¹³ Complainant proved the due date was important to her at the prehearing conference in February 2021, but she was unable to prove that due dates remained an important settlement term at the hearing in June 2021 and/or in the settlement agreement which resulted after the further hearing.

The fact that is most determinative against Complainant is the fact that Ms. Zenmon did not appeal, complain, or object after receiving the 2020 Settlement Letter in June 2021. She did not object to the 2020 Settlement Letter or to the Certificate of Satisfaction. She also waited more than five months before complaining about the due date. Complainant did not meet her burden of proving Penn Power violated the Commission's statutes, regulations, or orders when it billed her after June 2021 with due dates for payments due before the first of each subsequent month.

Further, it should be noted the issue Complainant raised at the hearing – that Penn Power initially said it would delay termination from April 14, 2022 to April 18, 2022 – is moot and Complainant is incorrect in her allegations. Complainant was advised in the 2020 Settlement Letter that she must provide seven days for the Company to terminate service. In addition, Complainant waited until the day before a long weekend to make her request to terminate service. Penn Power was correct to delay termination until the first business day after Complainant made the request. The first business day after Complainant made the request was Monday because Friday through Sunday were not business days, due to the Good Friday/Easter holidays. Furthermore, Respondent adjusted the termination date back to April 14, 2022 as a courtesy after it received the formal complaint herein.

¹³ *Hahn v. PPL Elec. Utils. Corp.*, Docket No. C-2009-2100830 (Final Order entered August 26, 2010).

Accordingly, Ms. Zenmon's formal complaint - that Penn Power failed to comply with the terms of the settlement in Docket No. F-2020-3023344 - will be denied in the Ordering Paragraphs that follow.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over the parties to and subject matter of this case. 66 Pa.C.S. § 701.

2. Complainant has the burden of proving Respondent failed to comply with the terms of a settlement in Docket No. F-2020-3023344. 66 Pa.C.S. § 332(a).

3. Complainant failed to prove Respondent did not comply with the settlement agreement reached in Docket No. F-2020-3023344 or failed to comply with the Commission's statutes, regulations, or orders when it billed her after June 2021 with due dates for payments due before the first of each subsequent month. 66 Pa.C.S. § 332(a).

4. Complainant failed to prove Respondent did not comply with the settlement agreement reached in Docket No. F-2020-3023344 or failed to comply with the Commission's statutes, regulations, or orders when it initially told her electric service could not be terminated until the next business day after she called Respondent to request termination. 66 Pa.C.S. §§ 332(a) and 1501.

