

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph Greenleaf	:	
	:	
v.	:	C-2022-3032822
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision denies Joseph Greenleaf’s request for a payment arrangement and dismisses the Formal Complaint with prejudice for failure to meet the burden of proof.

HISTORY OF THE PROCEEDINGS

On June 7, 2022, Joseph Greenleaf (Complainant) filed a Formal Complaint (Complaint) against Pennsylvania Electric Company (Penelec or Respondent). Mr. Greenleaf checked the box on the Formal Complaint form alleging Penelec was threatening to shut off his service or had already shut off his service. He also requested a reasonable payment arrangement. As relief, Mr. Greenleaf requested a reasonable payment arrangement and indicated that he could afford no more than \$250 per month.

On June 27, 2022, Penelec filed its answer and new matter accompanied by a notice to plead. Penelec avers that it sent a 10-day notice of termination to Complainant on May 25, 2022, advising Complainant that his service was subject to termination on or after

June 8, 2022. Penelec further avers that termination was stayed upon receipt by Penelec of this Formal Complaint. Penelec denies that Complainant is entitled to a Commission-ordered payment arrangement. Penelec requests that the Complaint be dismissed with prejudice or denied in its entirety.

Complainant did not file a response to Penelec's new matter.

By Initial Call-In Telephone Hearing Notice dated July 28, 2022, the Commission scheduled this matter for an initial call-in telephone hearing on September 28, 2022. On July 28, 2022, I issued a Prehearing Order for Telephone Hearing informing the parties about the procedures for the hearing.

The telephone hearing convened as scheduled. Complainant appeared, self-represented, and testified on his own behalf. Complainant did not sponsor any exhibits. Penelec was represented by Margaret A. Morris, Esquire, who called one witness, Laurie Parker, an advanced customer service compliance specialist. Penelec's witness sponsored pre-marked Exhibits 1 through 9, which were admitted into the record.

The record consists of the transcript of the hearing on September 28, 2022, and Penelec's Exhibits 1-9. The record was closed on December 2, 2022, by Interim Order Closing the Hearing Record. This case is procedurally ready for ruling.

FINDINGS OF FACT

1. Complainant is Joseph Greenleaf who resides at 2321 Curryville Road, Martinsburg, Pennsylvania 16662 (service address). Tr. 8.

2. Respondent, Pennsylvania Electric Company, is a jurisdictional public utility providing electric service to Pennsylvania customers including Complainant.

3. Electric service for Complainant's residence was established with Penelec on August 26, 2015. Tr. 19.

4. Complainant resides with his wife, Meg Stever, his adult daughter, Emily Stever, and 5 minor children. Tr. 8, 14.

5. Complainant's gross income from work is approximately \$800 per week or \$3,467 per month. He also receives a monthly pension benefit in the amount of \$222. His total gross monthly income is approximately \$3,688. Tr. 13.

6. Complainant testified that Emily Stever's net income is \$500 every two weeks. Tr. 12.

7. Complainant's account balance is \$21,273.17. Tr. 21; Exhibit 2.

8. Complainant's account is enrolled in budget billing, also known as the equal payment plan, and his monthly budget amount is \$378. Tr. 21; Exhibit 2.

9. Complainant has made only 17 payments on his account over the last 68 months prior to the hearing. Tr. 22-23; Exhibit 3.

10. Complainant made only one payment over the 24-month period prior to the hearing and that was on April 5, 2021. He did not make any payments in 2022. Tr. 22-23; Exhibit 3.

11. On January 16, 2016, Complainant and Penelec entered into a company payment arrangement requiring payment of the budget bill amount plus \$76 beginning February 29, 2016, on the amount of \$1,384.75. Complainant defaulted on this company payment arrangement due to non-payment. Tr. 24; Exhibit 4.

12. On July 18, 2016, Complainant received a payment arrangement from the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3459367 requiring the payment of his budget bill amount plus \$40 beginning August 29, 2016, on the amount of \$2,398.34. Complainant defaulted on this BCS payment arrangement due to non-payment but the payment arrangement has since been satisfied. Tr. 24-25; Exhibits 4 and 5.

13. On August 8, 2017, Complainant and Penelec entered into a second company payment arrangement to settle a Formal Complaint. The second company payment arrangement terms were the budget bill amount plus \$82 beginning August 31, 2017, on an amount of \$4,921.33. Complainant defaulted on the second company payment arrangement due to non-payment. Tr. 25; Exhibit 4.

14. On July 3, 2019, Complainant's account was enrolled in Penelec's Pennsylvania Customer Assistance Program (PCAP). The balance deferred upon enrollment was \$11,956.63. Complainant's monthly household income reported was \$3,628. The PCAP payment terms were budget bill amount minus a \$92 monthly credit with potential forgiveness of \$332.13. Tr. 25; Exhibit 4.

15. On July 23, 2021, Complainant contacted Penelec and requested removal of his account from PCAP. The removal was made effective July 5, 2021. Tr. 25; Exhibit 1.

16. Complainant's PCAP delinquent charges are \$4,300.54. Tr. 25-26.

17. On July 23, 2021, Complainant and Penelec entered into a third company payment arrangement. The third company payment arrangement terms were the budget bill amount plus \$251 beginning August 26, 2021, on an amount of \$15,075.68. Complainant defaulted on the third company payment arrangement due to non-payment. Tr. 26; Exhibit 4.

18. On April 15, 2022, Complainant filed an Informal Complaint with the BCS at BCS Case No. 3830927 requesting a payment arrangement and reporting total household income in the amount of \$2,058.33 for a household containing 2 adults and 7 children. Tr. 28; Exhibit 8.

19. On May 16, 2022, BCS Case No. 3830927 was dismissed and Complainant's request for a payment arrangement was denied. Tr. 28; Exhibit 8.

20. Penelec has issued 33 ten-day termination notices to Complainant. Tr. 30; Exhibit 9.

DISCUSSION

Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof. Mr. Greenleaf is the party seeking affirmative relief from the Commission, and, therefore, has the burden of proof.

Section 701 of the Code, 66 Pa.C.S. § 701, 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.

In this proceeding Complainant, as the party seeking affirmative relief from the Commission, bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa.C.S. §332(a). To satisfy this burden, Complainant must demonstrate that the Respondent is responsible for the problems alleged in his Complaint through a violation of the Code or a regulation or outstanding order of the Commission. 66 Pa.C.S. §701. This must be established by a preponderance of the evidence. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry*,

Inc. v. Pa. Pub. Util. Comm'n., 578 A.2d 600 (Pa. Cmwlth. 1990). In addition, the Commission's findings of fact must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Norfolk & W. Ry. Co. v. Pub. Util. Comm'n.*, 413 A.2d 1037 (Pa. 1980).

Termination of Service

Section 1406(a) of the Code permits a utility company to terminate service under certain conditions. Section 1406, in relevant part, provides as follows:

(a) Authorized termination. — A public utility may notify a customer and terminate service provided to a customer after notice as provided in subsection (b) for any of the following actions by the customer.

- (1) Nonpayment of an undisputed delinquent account.
- (2) Failure to comply with material terms of a payment arrangement.

66 Pa.C.S. § 1406(a).

Mr. Greenleaf checked the box on the Formal Complaint form indicating Penelec was threatening to shut off his service or had already shut off his service. At the hearing, he did not offer any evidence that Penelec violated the Code, Commission regulations or any orders with respect to termination procedures. Mr. Greenleaf also did not offer any evidence that he disputed any amounts on his electric bill or his metered usage. Consequently, Mr. Greenleaf's general claim regarding termination is dismissed.

Payment Arrangement

Mr. Greenleaf seeks an affordable payment arrangement from the Commission. Chapter 14 of the Code, the Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401–1419, applies to this proceeding. Section 1405 of the Code provides in pertinent 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.

Mr. Greenleaf’s request for a Commission-ordered payment arrangement must be in conformity with the Commission’s decision in *Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271, (Opinion and Order entered Sept. 12, 2013) (*Hewitt*). In *Hewitt*, complainant was seeking a Commission PAR on mixed arrearage cases which include customer assistance program (CAP) and non-CAP charges. The Commission noted that it did not have the authority to grant a payment arrangement on CAP charges under Section 1405(c) of the Code, which states, “Customer assistance program rates shall be timely paid and shall not be the subject to payment arrangements negotiated or approved by the commission.” 66 Pa.C.S. § 1405(c). However, the Commission had the authority to grant a payment arrangement on non-CAP charges.

Mr. Greenleaf owes Penelec PCAP arrears in the amount of \$4,300.54. This sum cannot be part of any payment arrangement ordered by the Commission pursuant to 66 Pa.C.S. § 1405(c). Consequently, even if a payment arrangement was ordered on Mr. Greenleaf’s non-PCAP arrears, which totaled \$16,972.63 at the time of the hearing, Mr. Greenleaf’s account would still be subject to termination for non-payment of the PCAP arrears sum of \$4,300.54.

Mr. Greenleaf testified credibly and candidly at the hearing. He has a large family including 3 adults and 5 minor children, and the household is experiencing financial difficulties. In his Formal Complaint, Mr. Greenleaf indicated he could afford no more than \$250 per month. At the hearing, he testified that he thought he could afford a monthly payment of \$378. Tr. 11. Mr. Greenleaf's budget bill amount at the time of the hearing was \$378. Tr. 20-21; Exhibit 2. Based upon his testimony, Mr. Greenleaf cannot pay his monthly budget bill amount plus any additional sum to reduce the substantial arrearages owed on his account.

On July 18, 2016, Mr. Greenleaf received a payment arrangement from the Commission's BCS at BCS Case No. 3459367 requiring the payment of his budget bill amount plus \$40 beginning August 29, 2016, on the arrearage amount of \$2,398.34. Mr. Greenleaf defaulted on this BCS payment arrangement due to non-payment but the payment arrangement has since been satisfied. Tr. 24-25; Exhibits 4 and 5.

In *Hewitt*, the Commission declined to exercise its authority, to grant the complainant a payment arrangement based on the customer's poor payment history and her inability to keep company-issued payment arrangements. *Hewitt* at 10-12.

Similarly, in the present case, Mr. Greenleaf has a poor payment history. Mr. Greenleaf made only one payment over the 24-month period prior to the hearing and that was on April 5, 2021. He did not make any payments in 2022 prior to the hearing. Tr. 22-23; Exhibit 3. Mr. Greenleaf has had three payment arrangements with Penelec and he defaulted on all three of them. Mr. Greenleaf's account balance at the time of the hearing was \$21, 273.17. Tr. 21; Exhibit 2.

Importantly, by law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Co.*, 55 Pa.P.U.C. 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 (Order entered Apr. 8, 1988).

The Commission has a responsibility to exercise its authority very judiciously when granting customers payment arrangements and should exercise its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271, (Opinion and Order entered Sept. 12, 2013).

Mr. Greenleaf's request for a payment arrangement is denied. He owes a large balance, his payment history is poor, and by his own testimony concerning the amount he could afford to pay monthly, he would not be able to meet the payment terms of a payment arrangement that included payment of arrearages.

Accordingly, Mr. Greenleaf's Complaint is dismissed in the ordering paragraphs below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa.C.S. § 701.
2. Complainant has the burden of proving Respondent violated the provisions of the Public Utility Code, Commission regulations or a Commission order in providing service. 66 Pa.C.S. § 332(a).
3. The Public Utility Code permits a utility company to terminate service for non-payment of an undisputed delinquent account or for the failure of the customer to comply with the terms of a payment arrangement. 66 Pa.C.S. § 1406

4. The Commission has a responsibility to exercise its authority very judiciously when granting customers payment arrangements and should exercise its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271, (Opinion and Order entered Sept. 12, 2013)

5. Complainant failed to meet his burden of proving that Respondent violated a Commission order, the Code or a Commission regulation. 66 Pa.C.S. §§ 332, 701.

6. Complainant failed to meet his burden of proving he should be ordered a second payment arrangement from the Commission. 66 Pa.C.S. §§ 332, 701.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Joseph Greenleaf in *Joseph Greenleaf v. Pennsylvania Electric Company* at Docket No. C-2022-3032822 is dismissed with prejudice.

2. That the Secretary's Bureau shall mark Docket No. C-2022-3032822 closed.

Date: February 23, 2023

/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge