

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held June 15, 2023

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Thomas J. Scanlon

C-2022-3033984

v.

PPL Electric Utilities Corporation

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Thomas J. Scanlon (Complainant or Mr. Scanlon) filed on May 1, 2023.¹ The Exceptions were filed in response to the Initial

¹ By letter dated May 4, 2023 (*May 2023 Secretarial Letter*), the Commission's Secretary: issued a notice to the Parties indicating that there was no Certificate of Service or other indication that the Complainant's Exceptions were served on the Parties; and enclosed the Exceptions, in order to constitute service under 52 Pa. Code § 5.533. Therefore, pursuant to 52 Pa. Code § 5.535, PPL Electric Utilities Corporation (PPL or Company) was given until May 30, 2023, to file Reply Exceptions.

Decision (I.D.) of Administrative Law Judge (ALJ) Dennis J. Buckley, served on the Parties on April 28, 2023, in the above-captioned proceeding. On May 25, 2023, PPL filed its Reply Exceptions. For the reasons discussed below, we shall deny the Complainant's Exceptions, adopt the Initial Decision of ALJ Buckley, and dismiss the Formal Complaint (Complaint), consistent with this Opinion and Order.

I. History of the Proceeding

On July 11, 2022, Mr. Scanlon filed a Complaint with the Commission against PPL.² In the Complaint, Mr. Scanlon indicated that: (1) PPL is threatening to shut off his electric service; and (2) there are incorrect charges on his bill.³ Complaint at 2. Mr. Scanlon stated, *inter alia*, that he and his wife are unable to work and, given their current expenses and limited income, financial assistance is necessary. *Id.* at 7. As relief, the Complainant requested a meter reading and a payment plan.⁴ Complaint at 3; I.D. at 1.

On August 12, 2022, PPL filed an Answer to the Complaint (Answer), which admitted, in part, and denied, in part, various material allegations in the Complaint. PPL averred that the Complainant has: (1) a balance in arrears with the Company of \$2,577.11, as of the date of the Answer; and (2) defaulted on all prior payment arrangements with the Company. Answer at 1-2. PPL elaborated that most recently, the

² On or about July 25, 2022, the Commission's Secretary issued a letter, via email, to Mr. Scanlon explaining that in order for his Complaint to be processed, additional information on page four of the Complaint was required. Consequently, on August 25, 2022, Mr. Scanlon filed a completed page four of his Complaint.

³ We note that attached to the Complaint are the first two pages of two PPL bills addressed to Mr. Scanlon for the billing periods May 2, 2022 through June 1, 2022, and June 1, 2022 through June 30, 2022. *See*, Attachment to Complaint at 8-11.

⁴ Upon review of the Commission's case management system, we note that although the Complaint was filed with the Commission July 11, 2022, it was not served on the Respondent until July 25, 2022.

Commission's Bureau of Consumer Services (BCS) issued an informal decision (BCS Informal Decision) at BCS Case No. 3829351, recommending a payment arrangement consisting of a monthly budget bill amount of \$392.00, and an additional monthly payment of \$68.00, against the Complainant's balance in arrears, but the Complainant has since defaulted on that payment arrangement. PPL further noted that since the beginning of 2022, the Complainant has entered into or been offered several other payment arrangements with the Company. *Id.* at 2-3. PPL requested that the Complaint be dismissed. Answer at 4; I.D. at 2.

On January 17, 2023, a telephonic evidentiary hearing was held as scheduled.⁵ The Complainant appeared *pro se*, testified on his own behalf, and did not offer any exhibits. PPL was represented by counsel, presented the testimony of one witness, and offered three exhibits which were admitted into the record without objection (PPL Exhibits 1, 2, and 4). The record was closed on February 7, 2023. I.D. at 2-3.

On April 28, 2023, by a Secretarial Letter (*April 2023 Secretarial Letter*), the Commission issued the Initial Decision of ALJ Buckley dismissing the Complaint.⁶

As previously noted, the Complainant filed his Exceptions on May 1, 2023. In accordance with the timeframes established by the *May 2023 Secretarial Letter*, on May 25, 2023, PPL timely filed its Reply Exceptions.

⁵ We note that, on October 5, 2022, a telephonic evidentiary hearing was initially held in this matter. The Complainant appeared *pro se* and presented testimony. Counsel for PPL was also present. However, because the Complainant did not have PPL's proposed exhibits available to him at the start of the hearing, and to afford the Complainant an opportunity to review PPL's proposed exhibits, the hearing was continued by ALJ Buckley. Consequently, by Hearing Notice dated November 10, 2022, a telephonic evidentiary hearing notice was scheduled for January 17, 2023. I.D. at 2.

⁶ We note that the *April 2023 Secretarial Letter* directed Exceptions to be filed within twenty (20) days of the date of the Secretarial Letter and Replies to Exceptions to be filed within ten (10) days of the due date for filing Exceptions.

II. Discussion

A. Legal Standards

As a preliminary matter, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

1. Burden of Proof

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof, pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant, as the party seeking relief, must show that the Company is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992) (*Lansberry*). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the Company. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. 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. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, to rebut the evidence of the Complainant, shifts to the Company. If the evidence presented by the Company is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant now has to provide additional evidence to rebut that of the Company. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982, *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983)).

While the burden of persuasion may shift back and forth during the proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

2. Responsible Utility Customer Protection Act

The Responsible Utility Customer Protection Act (Act), 66 Pa. C.S. §§ 1401-1419, applies to complaints alleging the inability to pay and requesting a Commission-issued payment arrangement. This Act provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued, *inter alia*, 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.

66 Pa. C.S. § 1405(a).

However, the Act also provides certain limitations that the Commission must follow, including which account balances cannot be subject to payment arrangements and the number of payment arrangements that may be issued. Specifically, the Act states that the Commission is prohibited from establishing a second or subsequent payment arrangement, absent a change of income, if the customer defaults on a prior payment arrangement. Section 1405(d) of the Code, states the following with regard to the establishment of Commission-issued payment arrangements:

- (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 established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

66 Pa. C.S. § 1405(d).⁷

⁷ In relevant part, Section 1403 of the Code defines the following terms:

Change in income. 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.

* * *

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.

Furthermore, the Act authorizes the Commission to reinstate and extend a Commission-issued payment arrangement on which a customer has defaulted as a result of significant change in circumstances. Section 1405(e) provides:

- (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 extension period may be extended for an additional six months for good cause shown.

66 Pa. C.S. § 1405(e).⁸

B. Positions of the Parties

The Complainant requested a payment arrangement and a meter reading at his home. Complaint at 3. At the hearing, the Complainant testified that he resides with his wife at the service address and their current total monthly household income is

⁸ 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.

approximately \$3,370. Tr. at 12. The Complainant stated that, given his current financial situation and health setbacks, he wants PPL and the Commission to help him with a new payment arrangement. Tr. at 10-11, 36-37.

PPL requested that the Commission deny the Complaint in its entirety. Answer at 4. PPL's witness testified that, at the end of December 2022, the Complainant's outstanding account balance was \$3,962.97. Tr. at 17; PPL Exh. 1 at 6. Also, PPL's witness testified that the Complainant is enrolled in PPL's Budget Billing Plan⁹ and, at the time of the January 2023 Hearing, the Complainant's monthly budget bill was \$529 per month. Tr. at 18; PPL Exh. 1 at 6. In addition, PPL's witness testified that the Complainant has defaulted on a Commission-issued payment arrangement, which was established in April 2022, for not adhering to the terms of the arrangement. Tr. at 23, 27-29; PPL Exh. 2 at 1-2. PPL's witness also testified that the Complainant entered into a Company-issued payment arrangement in July 2022, but the Complainant defaulted on the terms of that agreement. Tr. at 21-22; PPL Exh. 2 at 1-3. Also, PPL's witness testified that on March 4, 2022, the Complainant applied for two of the Company's payment assistance programs, but he was deemed ineligible for both programs because he was over the income eligibility limit. Tr. at 26; PPL Exh. 2 at 3. Additionally, PPL's witness testified that although the Complainant has been making payments on his account, his last five payments had been insufficient to cover the full monthly bill amount and, at the time of the January 2023 Hearing, the Company is continuing to receive about half of the amount towards the overdue balance on Mr. Scanlon's account. Tr. at 17-18, 33.

⁹ PPL's budget billing plan is a levelized payment plan that a customer is in for one year, subject to review every three months. Tr. at 18.

C. ALJ's Initial Decision

In the Initial Decision, ALJ Buckley made eighteen Findings of Fact and reached seven Conclusions of Law. I.D. at 3-5, 9. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

In addressing the Complainant's request for a payment arrangement and a meter reading, the ALJ noted that at the hearing, the Complainant did not: (1) present any evidence to establish that he is eligible for a new payment arrangement; (2) expand upon his reference to a meter reading; and (3) raise the issue of misbilling. The ALJ further noted that, although the Complainant referenced his poor health and financial issues, he did not establish how those matters justify a new Commission-issued payment arrangement. The ALJ referred to 66 Pa. C.S. § 1405 to note that the Commission has limitations in issuing payment arrangements, including the number of payment arrangements and whether the complainant established a "change in income," as defined by 66 Pa. C.S. § 1403. I.D. at 7.

The ALJ found that the Complainant failed to establish that he is eligible for a new payment arrangement from the Commission. The ALJ explained that, pursuant to 66 Pa. C.S. § 1405(d), the Commission cannot issue another payment arrangement because the Complainant: (1) defaulted on a Commission-issued payment arrangement;¹⁰ (2) exhibited a poor payment history; and (3) presented no evidence to prove that since April 2022, when the prior Commission-issued payment arrangement was established, he

¹⁰ As previously discussed, the BCS Informal Decision at BCS Case No. 3829351 recommended a payment arrangement consisting of a monthly budget bill amount of \$392.00 and an additional monthly payment of \$68.00 against the Complainant's balance in arrears. Answer at 3; Tr. at 23.

experienced a change in income. In fact, the ALJ highlighted that the Complainant's household income when the April 2022 payment arrangement was established was \$3,010; however, at the time of the January 2023 Hearing, the Complainant testified that his household income was approximately \$3,370, thereby representing an *increase* in household income since the April 2022 payment arrangement was established. I.D. at 7-8 (citing Tr. at 12).

The ALJ also stated that the Commission is not required to grant a payment arrangement and will only exercise its authority to establish a further payment arrangement judiciously but may decline to do so if the Complainant exhibits a poor payment history, inability to pay, and/or likeliness to default. I.D. at 7-8 (citing *Brown v. Philadelphia Gas Works*, Docket No. C-2022-3032000 (Order entered November 10, 2022); *Stephen Getz v. Metropolitan Edison Company*, Docket No. C-2014-2459964 (Order entered May 28, 2015); *Joy Turner v. Philadelphia Gas Works*, Docket No. C-2013-2388319 (Order entered June 19, 2014); *Susan Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271 (Order entered September 12, 2013)). The ALJ further noted that a payment arrangement, which prevents service termination if a complainant complies with it, is a privilege and not a right. I.D. at 8 (citing *David Mandell v. Duquesne Light Company*, Docket No. C-20030234 (Order entered March 17, 2004)).

The ALJ acknowledged that PPL's evidence was uncontested and PPL's witness testimony, which was that the Complainant defaulted on both the Company and Commission-issued payment arrangements and has a poor payment history, was uncontradicted. The ALJ found PPL's witness testimony credible. I.D. at 8.

The ALJ also noted that BCS' determination was based on the requirements of the Act and the Complainant failed to show any misapplication of the Act. The ALJ further noted that a public utility is entitled to full payment for service provided to

customers and there is an obligation for all customers to pay for the utility service provided to them. Otherwise, unpaid customer's bills are included in the utility's uncollectible expenses and, ultimately, paid for by other utility customers. I.D. at 8 (citing *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Scaccia v. West Penn Power Company*, 55 Pa. P.U.C. 637 (1982)).

In light of the above, the ALJ found that the Complainant failed to:

(1) prove, by a preponderance of the evidence, that PPL violated any provision of the Code or the Commission's rules and regulations; (2) demonstrate that he is entitled to a second Commission-issued payment arrangement; and (3) establish a basis for the exercise of Commission discretion in ordering a new payment arrangement. Therefore, the ALJ concluded that Mr. Scanlon's Complaint must be dismissed. I.D. at 1, 8.

D. Exceptions¹¹ and Reply Exceptions

The Complainant's Exceptions consist of a single-page, typewritten letter in which the Complainant, essentially, argues that his current situation is not feasible because: (1) he only receives half of his social security; (2) his monthly pension goes straight to his mortgage; and (3) he does not receive unemployment. Mr. Scanlon also argues that he has contacted PPL "several times [and] they want \$500.00 a month," which he cannot afford. Exc. at 1. Mr. Scanlon explains that he is a retired police officer and was "dismissed" as a security guard due to an injury. *Id.* Further, Mr. Scanlon notes that as a police officer, he was "not taxed for Social Security," and "[a]ny Social Security

¹¹ We acknowledge that the format of the Complainant's Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusions of law to which exceptions is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainant is appearing *pro se*, we will accept the Exceptions as filed, pursuant to Section 1.2(a) and (d) of our Regulations, 52 Pa. Code § 1.2(a) and (d), in order to secure a just, speedy, and inexpensive determination.

[he] collected from outside jobs is taxed for the rest of [his] life.” *Id.* Moreover, Mr. Scanlon notes that he has severe spinal stenosis and a brain tumor that has left him deaf on his right side. The Complainant closes his Exceptions by requesting reconsideration of the Initial Decision. *Id.*

In its Reply Exceptions, PPL submits that the Complainant’s Exceptions are without merit and should be denied. PPL explains that because the Complainant failed to present any evidence that there has been a change in income that would warrant a new payment arrangement, the Complainant’s requested relief cannot be granted. Further, PPL notes that the Complainant fails to identify or challenge any of the ALJ’s findings or legal reasoning. R. Exc. at 3-4 (citing Exc. at 1).

E. Disposition

Upon our review and consideration of the record evidence, the Complainant’s Exceptions, and the applicable law, we find that the Complainant has failed to meet his burden of proving that he is eligible for a new Commission-issued payment arrangement.

As discussed, *supra*, the Act provides strict guidelines that we must follow in handling customer complaints. Under the Act, we may grant one payment arrangement, consistent with the terms set forth in 66 Pa. C.S. § 1405(b). If the customer defaults on this arrangement, we cannot grant a second or subsequent payment arrangement absent a change in income. Similarly, we may not extend a payment arrangement absent a significant change in circumstance. 66 Pa. C.S. §§ 1403, 1405(d)-(e).

The record shows that the Complainant received a Commission-issued payment arrangement, at BCS Case No. 3829351, dated April 22, 2022. Specifically, the

terms of the Commission-issued payment arrangement are a budget bill of \$392, and an additional \$68 to reduce the overdue balance, beginning with the May 2022 bill due date. Subsequently, the Complainant failed to comply with the terms of the Commission-issued payment arrangement. Tr. at 23, 28-29; PPL Exhs. 2 at 2, 4 at 5-6.

Furthermore, the Complainant did not present any evidence or make a showing of either a change in income or a significant change in circumstance after defaulting on the previously Commission-issued payment arrangement.¹² As the ALJ found, there is no change in the Complainant's income to support the establishment of a second payment arrangement. I.D. at 8. Indeed, as noted by the ALJ, Mr. Scanlon's monthly household income when the Commission-issued payment arrangement was established in April 2022 was \$3,010; however, the Complainant testified that his monthly household gross income at the time of the January 2023 Hearing was approximately \$3,370, which represents an *increase* in income.¹³ I.D. at 7; Tr. at 12. In addition, the ALJ correctly concluded that the Complainant failed to establish a basis for the Commission to exercise its discretion in ordering a new payment arrangement. I.D. at 1. Therefore, pursuant to 66 Pa. C.S. § 1405(d)-(e), we cannot issue another payment arrangement.

¹² We note that the Complainant has been making payments, but the payments have not been in-full, and/or timely at times, due to a loss of additional income as the result of a personal injury resulting in subsequent health issues prior to the time of the payment arrangements. Notwithstanding, the Complainant's payment history has within the last several years resulted in an outstanding balance in arrears of \$3,962.97 as of December 28, 2022. Tr. at 10-12, 17, 33; PPL Exh. 1 at 3-6.

¹³ As noted, *supra*, a change in income is defined as a "decrease" in a customer's household income. 66 Pa. C.S. § 1403.

Accordingly, for the reasons set forth above, the Complainant's Exceptions shall be denied.¹⁴

Conclusion

Based upon our review of the Exceptions, the Initial Decision, and the record in this proceeding, we shall deny the Complainant's Exceptions and adopt the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Thomas J. Scanlon, filed on May 1, 2023, to the Initial Decision of Administrative Law Judge Dennis J. Buckley, at Docket No. C-2022-3033984, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Dennis J. Buckley, issued on April 28, 2023, at Docket No. C-2022-3033984, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint of Thomas J. Scanlon against PPL Electric Utilities Corporation, filed on July 11, 2022, at Docket No. C-2022-3033984, is denied and dismissed, consistent with this Opinion and Order.

¹⁴ We note that, to assist Mr. Scanlon in lowering his monthly bills, we suggest that PPL assist the Complainant by conducting energy use offerings, recommendations, and/or options that are available, if any.

4. That this proceeding, at Docket No. C-2022-3033984, be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: June 15, 2023

ORDER ENTERED: June 15, 2023