

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bernard S. McKenzie	:	
	:	
v.	:	C-2023-3037982
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Michael J. Mroczka
Special Agent

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of an electric service customer seeking a payment arrangement because Complainant’s balance fully consists of customer assistance program arrears which cannot be a subject of a Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On January 27, 2023, Bernard J. McKenzie (Complainant or Mr. McKenzie) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Penelec, Company or Respondent) requesting a payment arrangement.

On February 21, 2023, Penelec filed its Answer to the Formal Complaint which admitted in part and denied in part various material allegations of the Complaint. In its Answer, Respondent alleged that Complainant is enrolled in Penelec’s Pennsylvania Customer Assistance

Program (PCAP). Respondent also alleged that if Complainant elected to be removed from the PCAP program, he is not eligible for a second or subsequent payment arrangement because he defaulted on a previous Commission-issued payment arrangement. Penelec requested the Complaint be dismissed.

By Hearing Notice dated February 23, 2022, an Initial Call-In Telephonic Hearing was scheduled for March 29, 2023, and the matter was assigned to me.

A Prehearing Order was issued and served on March 20, 2023, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On March 29, 2023, the hearing convened as scheduled. The Complainant appeared *pro se*. Attorneys Margaret A. Morris, Esq. and Daniel A. Garcia, Esq. appeared on behalf of Penelec. At the hearing, I asked Mr. McKenzie if he received Penelec's proposed exhibits that were sent to him by Penelec via email. Mr. McKenzie stated that he did not receive the exhibits because he does not have access to the email. Tr. 8. Attorney Garcia requested a continuance so that they could serve the exhibits via regular mail. I granted the continuance request and we agreed to schedule further hearing on April 17, 2023.

On March 29, 2023, a Further Telephonic Hearing Notice was issued scheduling a further hearing on April 17, 2023.

On April 17, 2023, the hearing convened as scheduled. The Complainant appeared *pro se*, testified on his own behalf, and offered no exhibits for the record. Attorneys Margaret A. Morris, Esq. and Daniel A. Garcia, Esq. appeared on behalf of Penelec and presented the testimony of one witness, Charles J. Howlett, a senior compliance specialist. Mr. Howlett sponsored the following nine exhibits, which were admitted into the record without objection:

- Penelec Exhibit 1 – Customer Contact History
- Penelec Exhibit 2 – 24-Month Account Statement
- Penelec Exhibit 3 – Payment History
- Penelec Exhibit 4 – PAR History
- Penelec Exhibit 5 – 3/17/23 Bill
- Penelec Exhibit 6 – BCS Opening and Closing Reports, Case No. 3716031
- Penelec Exhibit 7 – BCS Opening and Closing Reports, Case No. 3789503
- Penelec Exhibit 8 – BCS Opening and Closing Reports, Case No. 3807781
- Penelec Exhibit 9 – Initial Decision and Final Order, Docket No. C-2022-3032022

The record closed on May 11, 2023, upon the filing of the 56-page transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Bernard McKenzie, who resides at 504 North Center Avenue, Apartment C, Somerset, Pennsylvania 15501 (Service Address). Tr. 15.
2. The Respondent is Pennsylvania Electric Company, a jurisdictional public utility, which provides residential electric service to Complainant at the Service Address. Tr. 32.
3. Complainant resides with his daughter at the Service Address. Tr. 23.
4. Complainant receives social security, and his gross monthly income is \$914. Tr. 23.
5. Complainant's social security is his only income. Tr. 23.
6. Complainant's outstanding Penelec balance at the time of the hearing was \$3,261.89. Tr. 37, 43.

7. Complainant's budget amount at the time of the hearing was \$284. Tr. 35.
8. Complainant has previously been provided a Commission-issued payment arrangement at BCS No. 3716031 on March 17, 2020 (2020 PAR). Penelec Ex. 6; Tr. 41, 44.
9. Complainant's gross monthly household income at the time of the 2020 PAR was \$772 with a household size of two. Penelec Ex. 6; Tr. 41, 44.
10. Complainant defaulted on the 2020 PAR due to nonpayment. Penelec Ex. 4; Tr. 41.
11. Complainant was enrolled in Penelec's PCAP program on April 14, 2021. Penelec Ex. 4; Tr. 42.
12. Complainant was enrolled in Penelec's PCAP Program at the time of the hearing and his arrears are Customer Assistance Program arrears. Penelec Ex. 5; Tr. 42-43.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A complainant can meet that burden if he presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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

Payment Arrangement

Complainant requests a Commission-issued payment arrangement. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419, applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued. Section 1405(a) of the Code reads 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 arrangements.—The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement 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.
- (2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.
- (3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.
- (4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

(c) Customer assistance programs.—Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.

(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.

(e) Extension of payment arrangements.—If the customer defaults on a payment arrangements 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.

Mr. McKenzie's gross monthly household income of \$914 for a household size of two does not exceed 150% of the Federal poverty level.¹ Tr. 23. Therefore, pursuant to the Code, Mr. McKenzie would be eligible for a five-year payment arrangement under 66 Pa.C.S. § 1405(b), absent a restriction in the Code.

The Commission does not have authority to order a payment arrangement on customer assistance program (CAP) arrearages. 66 Pa.C.S. § 1405(c). A "customer assistance program" is defined as follows:

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by Section 2202 (relating to definitions) or Section 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

66 Pa.C.S. § 1403. Penelec's PCAP rates are CAP rates that cannot be the subject of a payment arrangement ordered by the Commission. Mr. McKenzie is currently enrolled in Penelec's PCAP program and therefore his arrears are CAP arrears. Penelec Ex. 5; Tr. 42-43. Therefore, the Commission does not have authority to establish a payment arrangement under 66 Pa.C.S. § 1405.

Further, even if Mr. McKenzie's arrears were not CAP arrearages, he would still be ineligible for a Commission-issued payment arrangement. Mr. McKenzie was granted a prior Commission-issued payment arrangement which defaulted for nonpayment. Therefore, had Mr. McKenzie not been enrolled in PCAP or if he were to withdraw from PCAP with no PCAP arrearages, Mr. McKenzie would need to show that he experienced a "change of income" to receive a second or subsequent Commission-issued payment arrangement. 66 Pa.C.S. § 1405(d). "Change in income" is defined by the Code as "[a] decrease in household income of 20% or

¹ See, Federal poverty guidelines, 88 Fed. Reg. 3424 (Jan. 19, 2023); <https://aspe.hhs.gov/sites/default/files/documents/98087be2f7c9586ee24c35a011bc7ac8/guidelines-1983-2023.xlsx>.

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.

Mr. McKenzie’s monthly household income at the time of his prior Commission-issued payment arrangement was \$772. Penelec Ex. 6; Tr. 41, 44. Complainant’s current monthly income of \$914 is an increase of \$142 per month since the 2020 PAR. Penelec Ex. 6; Tr. 23, 41, 44. Therefore, since Mr. McKenzie’s income increased, not decreased, he would not be eligible for a second or subsequent Commission-issued payment arrangement had he not been enrolled in PCAP. 66 Pa.C.S. §§ 1403; 1405(d).

Mr. McKenzie is encouraged to seek any grants or assistance that may be available to him to lower any arrearage owed to Penelec so that he may catch up on his PCAP payments. Also, Penelec is encouraged to work with Mr. McKenzie the best it can while he attempts to get assistance to overcome this issue.

Accordingly, the Complainant's request for a Commission-issued payment arrangement will be denied and the Complaint will be dismissed.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over the parties to and subject matter of this case. 66 Pa.C.S. §§ 701, 1401–1419.

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

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

