

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William J. Harding	:	
	:	
v.	:	C-2023-3040645
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This Decision dismisses a Formal Complaint filed by a customer of an electric distribution company seeking a second Commission-ordered payment arrangement in order to avoid possible termination of service. The Formal Complaint is dismissed because the Complainant has failed to meet his burden of proving that he is entitled to the requested relief or that the utility violated the Public Utility Code or a Commission Order or Regulation.

HISTORY OF THE PROCEEDING

On May 12, 2023, the Complainant, William J. Harding, filed a Formal Complaint (complaint) against West Penn Power Company (West Penn) with the Pennsylvania Public Utility Commission at Docket Number C-2023-3040645. On his complaint form, Mr. Harding checked the boxes indicating that the utility was threatening to shut off his service and that he would like a payment arrangement. In the “Requested Relief” section of the complaint form, he merely stated, “Payment plan.”

On June 1, 2023, West Penn filed an answer and new matter in response to Mr. Harding's complaint. In its answer, West Penn admitted that it had issued to the Complainant a 10-day termination notice due to outstanding charges on the account. West Penn denied that the Complainant was entitled to a Commission-ordered payment arrangement. West Penn also averred that Complainant defaulted on a prior Commission payment arrangement in 2019, and that Complainant's outstanding balance on his West Penn account as of May 6, 2023, was \$24,722.75. In its new matter, West Penn again averred that the Complainant is not entitled to a second Commission-ordered payment arrangement.

By Initial Call-In Telephonic Hearing Notice dated July 17, 2023, the parties were advised that an Initial Telephonic Hearing had been scheduled for Friday, September 15, 2023, and that I was assigned as the Presiding Officer. A prehearing order was issued on August 28, 2023, setting forth various rules that would govern the hearing.

The hearing was convened as scheduled on September 15, 2023. Mr. Harding appeared *pro se*. Margaret Morris, Esquire appeared on behalf of West Penn. Prior to the start of the hearing, the parties discussed Mr. Harding's complaint and agreed on settlement terms as a resolution of the complaint. Pursuant to the settlement terms, Mr. Harding was to make an initial, up-front payment toward his outstanding balance by October 1, 2023. Thereafter, he was to pay his current charges plus an additional amount each month until the outstanding balance was paid in full. The parties further agreed to schedule another telephonic hearing for October 16, 2023, but that this hearing would be canceled if Mr. Harding made the initial payment by the October 1, 2023, deadline.

By electronic mail dated October 2, 2023, I was informed by Attorney Morris that Mr. Harding has not made the initial payment required under the settlement terms. Accordingly, the October 16, 2023, telephonic hearing was conducted as scheduled. Mr. Harding appeared at the hearing and represented himself. Ms. Morris appeared on behalf of West Penn and presented the testimony of Alison Walker, a Customer Service Compliance Specialist. Ms. Walker sponsored seven West Penn exhibits, all of which were admitted into the record. The record in

this case closed on November 20, 2023, upon my receipt of the hearing transcript, and consists of a 46-page transcript and seven Met Ed exhibits.

FINDINGS OF FACT

1. The Complainant is William Harding.
2. The Respondent is West Penn Power Company.
3. The service address is 15 Acorn Circle, Chambersburg, PA 17202. Tr. 18.
4. There are three people currently residing at the service address: Mr. Harding, his wife and a 23 year old son. Tr. 20.
5. Mr. Harding's wife's gross monthly income is approximately \$2,000. Tr. 21.
6. Mr. Harding's son's gross monthly income is approximately \$1,200. Tr. 24.
7. The total gross monthly income of Mr. Harding's household is approximately \$3,200. Tr. 25.
8. The total balance on Mr. Harding's West Penn account as of October 16, 2023, was \$25,073.20. Tr. 37.
9. Since 2017, Mr. Harding has made the following number of good payments toward the charges on his Met Ed account: 2017 – zero; 2018 – one; 2019 – zero; 2020 – zero; 2021 – zero; 2022 – zero; 2023 (through the date of the hearing) – one. Tr. 4; West Penn Ex. 4.
10. Mr. Harding filed a previous informal complaint with the Commission's Bureau of Consumer Services (BCS) on October 8, 2019, at BCS Case No. 3740051, in which he

sought a stay of termination of his electric service and a payment arrangement. Tr. 37-38; West Penn Ex. 6.

11. In his informal complaint at BCS Case No. 3740051, Mr. Harding reported a household size of three adults and a total gross monthly household income of \$2,283.33. West Penn Ex. 6.

12. The outstanding balance on Mr. Harding's West Penn account at the time of the informal complaint at BCS Case No. 3740051 was over \$10,000.00. Tr. 38; West Penn Ex. 6.

13. In its decision at BCS Case No. 3740051, issued on October 10, 2019, the BCS ordered a Level 4 payment arrangement whereby Mr. Harding was directed to pay his budget amount plus an additional \$1,697.00 each month until his outstanding balance was paid in full. West Penn Ex. 6.

14. Mr. Harding did not appeal the BCS decision at BCS Case no. 3740051.

15. Mr. Harding defaulted on the October 10, 2019 Commission ordered payment arrangement. Tr. 38.

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). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). 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 (1990). The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the

Commission. 66 Pa.C.S. § 701. In this proceeding, Mr. Harding filed a complaint against West Penn seeking a payment arrangement. Mr. Harding, therefore, has the burden of proof.

By law, a public utility is entitled to receive payment for the service it provides. Scaccia v. Met Ed Co., 55 Pa.P.U.C. 637 (1982); *see also*, Kea v. Peoples Nat. Gas Co., 60 Pa.P.U.C. 215 (1985); Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa. Cmwlth. 1982). Public utilities are entitled to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. §1303; Neal v. Phila. Gas Works, Docket No. Z-00871874 (Final Order entered Jan. 4, 2002); Angie's Bar v. Duquesne Light Co., 72 Pa.P.U.C. 213 (1990). All customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. 66 Pa.C.S § 1402(1). A payment arrangement, which prevents service termination as long as the Complainant complies with it, is a privilege, not a right. Mandell v. Duquesne Light Co., Docket No. C-20030234 (Opinion and Order entered Mar. 17, 2004).

In his complaint, Mr. Harding is seeking a second Commission-ordered payment arrangement. As noted above, he never appealed the decision issued by the BCS on October 10, 2019, at BSC Case No. 3740051, and he defaulted on that payment arrangement.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§1401-1419, applies to this proceeding. The Commission has the authority to establish a payment arrangement pursuant to 66 Pa.C.S. §1405(a), within the strict guidelines set forth in 66 Pa.C.S. §1405(b).

The Commission may establish a payment arrangement between a public utility and a customer only within the limits established by 66 Pa.C.S. §§1401-1419. The statute at 66 Pa.C.S. §1405(d) of the Public Utility Code states:

(d) Number of Payment Agreements. – Absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. A

public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

Since the Complainant failed to make the payments ordered by the BCS in BCS Case No. 3740051, he has defaulted on that payment arrangement. According to 66 Pa.C.S. §1405(d), the Complainant may receive another payment arrangement only if he has experienced a change in income. The statute at 66 Pa.C.S. §1403 defines a “Change in Income” 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.

In this case, Mr. Harding testified that his current total gross monthly household income is approximately \$3,200.00. Tr. 25. This is considerably greater than his total gross monthly household income of \$1,697.00, which he reported at the time of his October 2019 informal complaint at BCS Case No. 3740051. Tr. 25; West Penn Ex. 6. The Complainant did not timely appeal that BCS decision. I cannot order a second payment arrangement, pursuant to 66 Pa.C.S. §1405(d), since the Complainant testified that the gross household income had greatly increased at the time of the hearing.

Alternatively, the Commission may reinstate a payment arrangement where the customer has defaulted due to a significant change in circumstance. The statute at 66 Pa.C.S. §1405(e) speaks to that issue as follows:

(e) Extension of payment agreements.--If the customer defaults on a payment agreement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment agreement 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.

The statute at 66 Pa.C.S. §1403 defines “significant change in circumstance” as follows:

[a]ny 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.

In this case, the Complainant did not produce any evidence that the household suffered a significant loss in income due to illness. In fact, the record evidence demonstrates that there has been a significant increase in the household income. The Complainant also did not produce any evidence of catastrophic damage to his residence, loss of the residence or increase in the number of dependents in the household. Therefore, the Commission may not reinstate the BCS payment arrangement ordered in BCS Case No. 3740051, because Complainant has not experienced a significant change in circumstance as defined by the Public Utility Code.

CONCLUSION

Mr. Harding has failed to meet his burden of proving that he is entitled to a second Commission-ordered payment arrangement because he has failed to demonstrate, by a preponderance of the evidence, that he has suffered either a change in income or a significant change in circumstance as those terms are defined in the Public Utility Code. Accordingly, Mr. Harding's Formal Complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and parties to this proceeding. 66 Pa.C.S. §701, 1401-1419.

2. Pursuant to 66 Pa.C.S. §332(a), the burden of proof in this proceeding is on the Complainant.

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

4. Public utilities have the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. §1303; Neal v. Phila. Gas Works, Docket No. Z-00871874 (Final Order entered Jan. 4, 2002); Angie's Bar v. Duquesne Light Co., 72 Pa.P.U.C. 213 (1990).

5. A payment arrangement, which prevents service termination as long as the Complainant complies with it, is a privilege, not a right. Mandell v. Duquesne Light Co., Docket No. C-20030234 (Opinion and Order entered Mar. 17, 2004).

6. The Commission is authorized to establish a payment arrangement between a public utility and a customer under certain conditions as set forth in 66 Pa.C.S. §1405(a).

7. The Complainant has not met his burden of proving that he is entitled to a second Commission-ordered payment arrangement under 66 Pa.C.S. §1405(d).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by William Harding in William Harding v. West Penn Power Company at Public Utility Commission Docket Number C-2023-3040645 is hereby dismissed.
2. That the Secretary's Bureau shall mark the record at Docket No. C-2023-3040645 as closed.

Dated: February 8, 2024

_____/s/
Steven K. Haas
Administrative Law Judge