

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Taska Taylor	:	
	:	
v.	:	C-2022-3036796
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION ON REMAND

Before
Gail M. Chiodo
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint of an electric service customer because the customer has not met her burden of proving that she is eligible for a second Commission payment arrangement or reinstatement and extension of her prior Commission payment arrangement.

HISTORY OF THE PROCEEDING

On November 14, 2022, Taska Taylor (“Complainant”) filed a Formal Complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission” or “PUC”) against Pennsylvania Electric Company (“Penelec” or “Company”) in which she alleged that the utility was threatening to shut off her electric service. As relief, Ms. Taylor requested a Commission payment arrangement she could afford.

On December 5, 2022, Penelec timely filed an answer and denied the material allegations of the complaint. Penelec also averred, *inter alia*, that the Complainant was not

eligible for another Commission payment arrangement because she defaulted on one, as well as three Company payment agreements. Penelec requested that a hearing be scheduled as soon as practicable due to the Complainant's large balance of over \$11,000, and following the hearing, that the Complaint be dismissed or denied in its entirety.

On December 9, 2022, a Telephonic Hearing Notice and Prehearing Order were served on both parties scheduling a call-in telephonic evidentiary hearing on February 9, 2023.¹ I was assigned as the presiding officer. On February 9, 2023, the hearing convened as scheduled but the Complainant did not appear. Ms. Margaret A. Morris, Esquire, who appeared on behalf of the Company, along with a witness, moved to dismiss the Complaint.

On April 6, 2023, the Commission issued my Initial Decision ("I.D.") which dismissed the Complaint for the failure of the Complainant to appear and prosecute her Complaint. No exceptions were filed by either party to the I.D. However, the Commission exercised its right to review the I.D. pursuant to 66 Pa.C.S. § 332(h).

On July 31, 2023, the Complainant caused to be filed a letter ("*July 2023 letter*") requesting an evidentiary hearing.

By Opinion and Order entered on August 28, 2023, the Commission modified the I.D. ("*August 2023 Order*"). The Commission held that, notwithstanding the Commission's *Waiver Order*, given the Complainant's *pro se* status and her lack of affirmative agreement to accept service at her email address, the Complainant should be afforded an opportunity for an evidentiary hearing if she files a written request for a hearing within twenty days of the entry of its Order. *Id.*

On August 30, 2023, the OALJ issued my Prehearing Order After Remand wherein I deemed the Complainant's *July 2023 letter*, which was filed prior to the Commission's

¹ The Office of Administrative Law Judge ("OALJ") served the Hearing Notice and Prehearing Order on Complainant by email pursuant to the Commission's *Order re Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered Sept. 15, 2022, effective until Apr. 3, 2023) (providing that service by the Commission on the parties shall be exclusively electronic) ("*Waiver Order*").

August 2023 Order, a timely request for an evidentiary hearing pursuant to the Commission's *August 2023 Order*. (See my Prehearing Order after Remand, Aug. 30, 2023, for a fuller discussion).

On August 31, 2023, a Telephone Hearing Notice after Remand scheduling a call-in telephonic evidentiary hearing on October 30, 2023, was issued. On this same date, the OALJ issued my Second Prehearing Order on Remand.

On October 30, 2023, the hearing convened as scheduled. The Complainant appeared *pro se*, testified on her own behalf, and offered no exhibits for the record. Attorney Morris appeared on behalf of the Company and presented the testimony of one witness, Allison Walker, Advanced Customer Service Compliant Specialist. Ms. Walker sponsored the following ten exhibits, which were admitted into the record without objection:

- Respondent's Exhibit 1 – Customer Contacts
- Respondent's Exhibit 2 – Statement of Account
- Respondent's Exhibit 3 – Med Cert. History
- Respondent's Exhibit 4 – Payment History
- Respondent's Exhibit 5 – Payment Agreement History
- Respondent's Exhibit 6 – BCS Decision No. 3525754, closed 5/12/2017
- Respondent's Exhibit 7 – BCS Decision No. 3710043, closed 7/24/2019
- Respondent's Exhibit 8 – BCS Decision No. 3734001, closed 3/13/2020
- Respondent's Exhibit 9 – BCS Decision No. 3861772, closed 10/13/2022
- Respondent's Exhibit 10 – Collection History

The record closed on November 28, 2023, upon the filing of the 41-page transcript and exhibits with the Commission.

FINDINGS OF FACT

1. The Complainant is Taska Taylor, who receives electric service at her residence in Mount Union, Pennsylvania (Service Location). (Tr. at 12).

2. The Respondent is Pennsylvania Electric Company, a jurisdictional public utility, which provides electric service to the Complainant at the Service Location. (Tr. at 24-25; Respondent's Exhibit 2).

3. The Complainant established service with the Company, effective April 11, 2013. (Tr. at 25).

4. On November 5, 2014, the Complainant was enrolled in the Company's Pennsylvania Customer Assistance Program ("PCAP")² with a deferred balance of \$1,397.52. (Tr. at 30).

5. On October 2, 2015, the Complainant was removed from PCAP because the Complainant did not reverify her household income as required to remain on PCAP. (Tr. at 30).

6. In 2017, the Complainant submitted an informal complaint to the Commission's Bureau of Consumer Services ("BCS") seeking a payment arrangement. (Tr. at 30; Respondent's Exhibit 6).

7. In 2017, the BCS granted the Complainant a level-1 payment arrangement³ on a balance of \$4,027.55 in BCS No. 3525754; the terms called for the Complainant to pay her monthly budget bill of approximately \$300, plus \$68 towards her arrears, beginning with her June 2017 bill due date. ("2017 PUC-PAR"). (Tr. at 31; Respondent's Exhibit 6).

² PCAP is the Company's low-income customer assistance program which provides, *inter alia*, to a qualified participant a monthly credit based on income, heat source and energy burden and a potential arrearage forgiveness for timely in full payments. (*See* Tr. at 30, Answer at 2, n.2).

³ A level-1 customer is defined as a household with a gross monthly income level not exceeding 150% of the Federal poverty level and is provided with a repayment period of not more than 60 months. 66 Pa.C.S. § 1405(b)(1).

8. At the time of the Complainant's 2017 PUC-PAR, the Complainant's total gross monthly household income was \$733 and her household size was three individuals (herself and two minor children). (Tr. at 32; Respondent's Exhibit 6).

9. In June 2019, the Complainant submitted an informal complaint to the BCS seeking a new payment arrangement due to an alleged loss of income; the BCS dismissed the informal complaint because the 2017 PUC-PAR was not satisfied, and Complainant's claim was not supported by evidence. (Tr. at 33; Respondent's Exhibit 7, BCS No. 3710043, closed July 24, 2019).

10. In September 2019, the Complainant submitted an informal complaint to the BCS seeking a new payment arrangement due to an alleged loss of income; the BCS dismissed the informal complaint because the 2017 PUC-PAR was not satisfied and the Complainant's claim was not supported by evidence. (Tr. at 34; Respondent's Exhibit 8, BCS No. 373400018, closed March 13, 2020).

11. In September 2022, the Complainant submitted an informal complaint to the BCS alleging that the Company did not apply two assistance grants she received to her outstanding balance; the BCS verbally closed this informal complaint after reviewing the Complainant's account statement with her which showed the grants were properly credited. (Tr. at 35; Respondent's Exhibit 9).

12. The Complainant and the Company entered into three payment agreements, all of which the Complainant has defaulted on; they were entered into on August 13, 2018; June 24, 2021; and August 3, 2021. (Tr. at 31; Respondent's Exhibit No. 5).

13. Three medical certificates ("Med Certs.") were applied to the account: on June 6, 2016, a Med Cert. was used to restore service without payment; and on October 16, 2017 and June 11, 2018, Med Certs were used to prevent termination. (Tr. at 28; Respondent's Exhibit 3).

14. The Complainant's current gross monthly household income is \$918 and her current household size consists of three individuals (two adults and one minor child). (Tr. at 20).

15. The 2017 PUC-PAR has not been satisfied. (Tr. at 28, 36; Respondent's Exhibits 2, 4, 5).

16. The Complainant's outstanding balance at the time of the hearing was \$11,677.42. (Tr. at 28; Respondent's Exhibit 2).

DISCUSSION

Burden of Proof

The Public Utility Code ("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); *Samuel J. Lansberry, Inc. v. Pa. Pub. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). In addition, the Commission's decision 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. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. Cmwlth. 1980).

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).

Therefore, as the party seeking relief in the form of a second or subsequent payment arrangement, Ms. Taylor bears the burden of proof in this proceeding.

Payment Arrangement

The Complainant requests a second Commission payment arrangement. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401–1419 (“Chapter 14”), applies to complaints alleging inability to pay and requesting a Commission payment arrangement. *See* 66 Pa.C.S. § 1405(a), which provides that, “[t]he [C]ommission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers . . . within the limits established by this chapter.” (emphasis added).

One of the limits established by Chapter 14 is the number of payment arrangements the Commission may issue. In general, the Act limits the Commission to grant only one payment arrangement unless there has been a “change of income.” Specifically, this limiting provision of Chapter 14 provides:

(d) Number of payment arrangements. — Absent a *change in income*, the [C]ommission 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 [C]ommission 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) (emphasis added).

Next, “change in income” is defined as “[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.” 66 Pa.C.S. § 1403 (definitions, “change of income”)

(emphasis added). Additionally, “household income” is defined as, “[t]he combined gross income of all adults in a residential household who benefit from the public utility service.” 66 Pa.C.S. § 1403 (definitions, “household income”).

There is no dispute that Ms. Taylor defaulted on the payment arrangement granted by the BCS in 2017. There is also no dispute that Ms. Taylor did not appeal from this 2017 BCS decision. As the Commission explained, when a BCS decision is not timely appealed, “then the BCS payment arrangement becomes final and the complainant must prove a change in income to be awarded a different payment arrangement....” *Horinka v. Pa. Power Co.*, No. C-2017-2582842, at 3 (Opinion and Order entered Aug. 4, 2017).

Pursuant to the definitions in Chapter 14, Ms. Taylor has not experienced a “change in income.” A “change of income” requires the customer to show a decrease in household income since the prior Commission payment arrangement was issued. In the instant case, instead of showing a decrease of income, the evidence shows that Ms. Taylor has experienced an increase in income. At the time of her 2017 PUC-PAR, Ms. Taylor reported an income of \$733. (Tr. at 32; Respondent’s Exhibit 6). At the time of the hearing, Ms. Taylor testified that her current income is \$918, which is an increase from the prior period. (Tr. at 20). Therefore, Ms. Taylor is not eligible for another Commission payment arrangement. 66 Pa.C.S. § 1405(d).

Next, although the Complainant is not eligible for another Commission payment arrangement, Chapter 14 provides that the Commission may reinstate and extend a previously ordered payment arrangement in limited circumstances where the customer has defaulted on that payment arrangement. Specially, this provision provides:

(e) Extension of payment arrangements. — If the customer defaults on a payment arrangement . . . as a result of a *significant change in circumstance*, the [C]ommission 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) (emphasis added).

Chapter 14 defines “significant change in circumstance” as a customer with an income less than 300% of the Federal poverty level, who experienced one of the following: (1) an onset of a chronic or acute illness resulting in a significant loss in the customer's household income; (2) a catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household; (3) a loss of the customer's residence, or (4) an increase in the customer's number of dependents in the household. 66 Pa.C.S. § 1403 (definition of “significant change in circumstance”).

Although the Complainant may qualify for this consideration since her household income is less than 300% of the Federal Poverty Guidelines,⁴ the Complainant did not demonstrate a “significant change in circumstance.” There was no evidence that Complainant defaulted on her 2017 PUC-PAR payment arrangement as the result of the onset of a chronic or acute illness, catastrophic damage to her residence, or loss of residence, and her household size has remained the same at three individuals. 66 Pa.C.S. § 1403.

Finally, I note that even if Ms. Taylor were granted another Commission payment arrangement, or an extension of her 2017 PUC-PAR, she acknowledges that she could not afford the terms. (*See* Tr. at 15). During the hearing, Ms. Taylor testified that she could only afford to pay her bills if the outcome of this proceeding calls for forgiveness of most of her arrears and for her to be placed back on PCAP. (Tr. 15, 18-19). Ms. Taylor also testified that she did not understand why she was removed from PCAP. (Tr. at 13). However, the Company objected to the Complainant raising a claim that she was improperly removed from PCAP. The Company argued that the Commission’s three-year statute of limitations was applicable, that the Complainant never raised this issue in any of her four informal complaints following her removal which was the time to do so, and that the Company should not have to defend actions that occurred over eight years ago. (Tr. at 14).

⁴ See 89 Fed. Reg. 2961 (Jan. 17, 2024), also available at: <http://aspe.hhs.gov/poverty> (providing that for a household size of three, 300% of the Federal poverty guidelines is \$6,455 per month). The Complainant’s income of \$918 per month is below this.

During the hearing, I sustained the Company's objection on the basis that the claim of improper removal from PCAP was not sufficiently raised in the Complaint to provide the Company with notice of the claim and the need to present evidence to defend against it. (Tr. at 14). However, even if properly raised in the Complaint, I also find I would be constrained to conclude that Ms. Taylor is time barred from contesting her removal from PCAP in this proceeding.

The Code provides that prosecutions must be brought within three years from the date of which the liability therefrom arose. 66 Pa.C.S. § 3314(a). Additionally, if an individual pays an amount in excess of what is owed, the Code allows four years to file a complaint to seek an order from the Commission requiring a refund of excess payments. 66 Pa.C.S. § 1312(a).

In the instant case, there is no dispute that the Complainant was removed from PCAP on October 2, 2015, and the instant Complaint was filed on November 22, 2022, over seven years later. Therefore, whether applying the three- or four-year statute of limitations, the Complainant is time-barred from raising this claim.⁵

Accordingly, the record evidence compels the conclusion that the Complainant's request for a Commission payment arrangement must be denied.

CONCLUSIONS OF LAW

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

⁵ I also note that a review of the four informal BCS complaints that Ms. Taylor submitted subsequent to her removal from PCAP, reveals that Ms. Taylor never raised any issue regarding being improperly removed from PCAP.

Further, in the instant case, Ms. Taylor does not claim there are incorrect charges on her bill. *Compare, Blitzer v. PECO Energy Co.*, No. C-2022-3033912 (Opinion and Order entered May 31, 2023). In *Blitzer*, the Commission held that the customer's complaint regarding an unauthorized switch of her generation service was time barred since raised in her complaint eight years after she was switched. However, since Ms. Blitzer also alleged that there were recent incorrect charges on her bill, the statute of limitations did not apply to this allegation to the more recent charges. In the instant case, there is no allegation of incorrect charges.

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.

4. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).

5. 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. 66 Pa.C.S. § 1405(d).

6. If the customer defaults on a payment arrangement established under section 1405 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. 66 Pa.C.S. § 1405(e).

7. The Complainant has failed to carry her burden of proving that she is eligible for a second or subsequent Commission-issued payment arrangement or an extension of her prior Commission-issued payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Taska Taylor filed against Pennsylvania Electric Company, at Docket Number C-2022-3036796, is denied and dismissed.

2. That Docket No. C-2022-3036796 be marked closed.

Date: February 23, 2024

_____/s/
Gail M. Chiodo
Administrative Law Judge