

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kimberly Curley	:	
	:	
v.	:	C-2023-3041686
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Formal Complaint of Kimberly Curley against Metropolitan Edison Company because she failed to carry her burden of proving that she is entitled to a new or subsequent Commission-issued payment arrangement. This Initial Decision also precludes Kimberly Curley from filing further informal and formal complaints pertaining to the electric account with Metropolitan Edison Company until such time as the current balance on that account is paid in full.

HISTORY OF THE PROCEEDING

On June 30, 2023, Kimberly Curley (Ms. Curley or Complainant) filed a Formal Complaint (Complaint) against Metropolitan Edison Company (Met Ed or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Ms. Curley alleged her inability to pay her utility bills to Met-Ed and averred that “there are two medical conditions in the household” which necessitate the use of electricity. Complainant ¶ 6. As relief, Ms. Curley requested a payment arrangement.

On August 1, 2023, Met-Ed filed an Answer to the Complaint along with New Matter. In its Answer, Met Ed denied the material allegation of the Complaint. In its New Matter, Met Ed argued that the Complainant is not entitled to another Commission-issued payment arrangement nor an extension of the defaulted Commission-issued payment arrangement because there has been no change in income or significant change of circumstances as required by 66 Pa.C.S. §§ 1405(d) and 1405(e). In addition, the Respondent argued that the Complainant has a history of filing meritless complaints to prevent lawful termination. According to Met-Ed, Ms. Curley's conduct constitutes an abuse of the Commission's complaint process, and consequently, she should be barred from the filing of any complaint until her outstanding balance with the Company is paid in full.

By Hearing Notice dated September 11, 2023, an Initial Call-In Telephonic Hearing was scheduled for November 15, 2023, and the matter was assigned to me.

A Prehearing Order was issued on October 12, 2023, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On November 15, 2023, the hearing convened as scheduled. The Complainant appeared *pro se* and testified on her own behalf. The Respondent was represented by Margaret Morris, Esquire, who presented the testimony of Alison Walker, who is an Advanced Customer Service Compliance Specialist in the Pennsylvania Compliance Department at First Energy Company.¹ During the hearing, the Respondent offered 15 exhibits, all of which were entered into the record without objection.

During the hearing, I instructed the Respondent to submit an updated Exhibit 4 to reflect the changes that were made to the original Exhibit 4 during the oral testimony of Ms. Walker. In addition, Ms. Curley requested an opportunity to submit documentation regarding a Low-Income Home Energy Assistance Program (LIHEAP) application as a late-filed exhibit.

¹ First Energy Corporation is the parent company of Met-Ed.

Her request was granted, and the parties were instructed to provide their respective documents by no later than November 22, 2023.

On November 15, 2023, counsel for Met-Ed submitted Met-Ed's Exhibit 4R. On November 21, 2023, Ms. Curley informed me via email that she had been unable to locate the document regarding her LIHEAP application. Also in that communication, Ms. Curley made several averments regarding her Complaint. These averments were not made under oath and were not subject to cross-examination by the opposing party. They are not part of the record in this matter and will not be considered in the making of this decision.

The record closed on December 26, 2023, upon receipt of the hearing transcript.

FINDINGS OF FACT

1. The Complainant is Kimberly Curley, who resides at 32 North Chestnut Street, Boyertown, PA 19512 (Service Address). Tr. 8.

2. The Respondent is Metropolitan Edison Company, an electric utility under the jurisdiction of the Pennsylvania Public Utility Commission.

3. The Complainant receives electric residential heating and water heating service from Met-Ed at the Service Address. Tr. 24.

4. On October 5, 2023, Complainant enrolled with Direct Energy Services as her electric generation supplier. Tr. 26.

5. The Complainant resides at the Service Address with her fiancé and her 17-year-old daughter. Tr. 14.

6. The Complainant suffers from asthma and uses a breathing machine. Tr. 15.

7. The Complainant's fiancé suffers from sleep apnea and uses a CPAP² machine. Tr. 15.

8. The Complainant's income consists of \$1,178 per month in Social Security Disability (SSD) benefits. Tr. 14.

9. The Complainant's fiancé's income consists of \$1,340 per month in SSD benefits. Tr. 14.

10. During the period June 1, 2019, to November 15, 2023, the Complainant made only nine valid payments to her account with Met-Ed. Tr. 27; Met-Ed Exhibit 3.

11. During the period June 1, 2019, to November 15, 2023, the Complainant made five payments towards her account with Met-Ed, which were not honored by the bank due to insufficient funds or for account not found. Tr. 27; Met-Ed Exhibit 3.

12. The total amount of Ms. Curley's payments to Met-Ed which were not honored by her bank is \$26,462.56. Tr. 28; Met-Ed Exhibit 3.

13. During the period June 2, 2017, to November 15, 2023, Complainant requested six medical certificates from the Respondent but submitted only four of them. Met-Ed Exhibit 4.

14. Three of the submitted medical certificates were accepted by the Company and prevented the lawful termination of service to the Service Address due to outstanding balance: one on June 2, 2017, one on September 1, 2022, and the third one on October 7, 2022. Met-Ed Exhibit 4.

² Continuous Positive Airway Pressure (CPAP).

15. While medical certificates were active on her account, the Complainant failed to make payments in accordance with 52 Pa. Code § 56.116. Tr. 29; Met-Ed Exhibit 2.

16. A fourth medical certificate was submitted on May 24, 2023, and denied by the Company on May 25, 2023. Met-Ed Exhibit 4.

17. Two medical certificates were requested by the Complainant – one on October 1, 2021, and another on June 10, 2022, but were not returned to the Respondent. Tr. 29; Met-Ed Exhibit 4.

18. Every time a customer requests a medical certificate, the Company places a temporary hold on her account. Tr. 29.

19. The Complainant was enrolled in Met-Ed's Pennsylvania Customer Assistance Program (PCAP) on June 30, 2017. Tr. 30; Met-Ed Exhibit 5.

20. The Complainant was removed from PCAP on July 27, 2018, for failure to verify the household income as required by the program. Tr. 30; Met-Ed Exhibit 5.

21. On September 5, 2018, the Complainant filed an informal complaint with the Commission's BCS at BCS Case No. 3649307, seeking a payment arrangement to prevent termination of services. Tr. 32-33; Met-Ed Exhibit 6.

22. On September 24, 2018, BCS issued an informal decision in BCS Case No. 3649307 denying the Complainant's request for a payment arrangement because her outstanding balance consisted of PCAP arrearages. Met-Ed Exhibit 6.

23. On April 5, 2019, the Complainant filed a second informal complaint with the Commission's BCS at BCS Case No. 3688753, seeking a medical certificate and a payment arrangement. Tr. 34; Met-Ed Exhibits 5 and 7.

24. On December 9, 2019, BCS issued an informal decision at BCS Case No. 3688753, finding the Complainant to be a Level 1 income customer and establishing a payment arrangement which required the Complainant to make monthly payments consisting of the regular budget bill amount plus \$71.00 per month towards the arrearages, beginning with the January 2020 billing due date. Tr. 31, 34-35; Met-Ed Exhibits 5 and 7.

25. The Complainant defaulted on the payment arrangement issued by BCS on December 6, 2019. Tr. 31-32.

26. On June 28, 2021, the Complainant filed a third informal complaint with the Commission's BCS at BCS Case No. 3793170, requesting a payment arrangement. Met-Ed Exhibits 5 and 8.

27. On June 28, 2021, the Complainant reported to BCS a household of two adults and one child, and a combined income of \$2,310.00 per month from SSD benefits. Met-Ed Exhibits 5 and 8.

28. On July 1, 2021, BCS issued an informal decision at BCS Case No. 3793170, finding the Complainant to be a Level 1 income customer and establishing a payment arrangement which required the Complainant to make monthly payments consisting of the regular budget bill amount of \$197.00 per month, plus \$146.00 per month towards the arrearages, beginning with the August 2021 billing due date. Tr. 32; Met-Ed Exhibits 5 and 8.

29. The Complainant defaulted on the payment arrangement issued by BCS on July 1, 2021. Tr. 32.

30. On October 25, 2021, the Complainant filed a fourth informal complaint with the Commission's BCS at BCS Case No. 3809897, alleging that the Company was threatening termination of her service because they had not received a payment which she had sent. Tr. 36, Met-Ed Exhibit 9.

31. On December 15, 2021, BCS issued an informal decision at BCS Case No. 3809897, dismissing the informal complaint upon finding that the payment in question was still not received by the Company and that the last payment credited in Ms. Curley's account was made on April 3, 2021, in the amount of \$100.00. Tr. 36-37, Met-Ed Exhibit 9.

32. On January 3, 2022, the Complainant filed a Formal Complaint against Met-Ed at Docket No. F-2022-3030597 timely appealing BCS's decision at BCS Case No. 3809897. Tr. 37; Met-Ed Exhibit 10.

33. On June 17, 2022, the Complainant filed her fifth informal complaint with the Commission's BCS at BCS Case No. 3845443, seeking a payment arrangement. Tr. 38, Met-Ed Exhibits 11 and 14.

34. On June 24, 2022, BCS verbally closed the informal complaint at BCS Case No. 3845443, upon finding that a formal complaint was pending for Ms. Curley's account. Tr. 38, Met-Ed Exhibit 11.

35. On July 1, 2022, the Complainant filed her sixth informal complaint with the Commission's BCS at BCS Case No. 3848282, seeking a payment arrangement. Tr. 39, Met-Ed Exhibits 12 and 14.

36. By Initial Decision dated August 3, 2022, Administrative Law Judge (ALJ) F. Joseph Brady denied Ms. Curley's formal Complaint at Docket No. F-2022-303059, upon finding that the Complainant had failed to carry her burden of proving that she was entitled to a third or subsequent Commission-issued payment arrangement or to an extension of the previous payment arrangement. Tr. 37; Met-Ed Exhibit 10.

37. On August 9, 2022, BCS issued an informal decision at BCS Case No. 3848282, dismissing the informal complaint pursuant to 66 Pa.C.S. § 1405(d). Tr. 39, Met-Ed Exhibits 12 and 14.

38. By Final Order entered September 6, 2022, the Commission adopted ALJ Brady's decision in the matter of *Kimberly A. Curley v. Metropolitan Edison Company*, at Docket No. F-2022-303059. Tr. 37; Met-Ed Exhibit 10.

39. On June 1, 2023, the Complainant filed her seventh informal complaint with the Commission's BCS at BCS Case No. 3914039, seeking a payment arrangement. Tr. 40, Met-Ed Exhibits 13 and 14.

40. On June 13, 2023, BCS issued an informal decision at BCS Case No. 3914039, dismissing the informal complaint pursuant to 66 Pa.C.S. § 1405(d). Tr. 40, Met-Ed Exhibits 13 and 14.

41. On July 12, 2023, Ms. Curley filed the present Formal Complaint as a timely appeal of the BCS decision issued at BCS Case No. 3914039. Met-Ed Exhibit 14.

42. From February 15, 2017, to November 15, 2023, the Company issued 28 Ten-Day Termination Notices against Ms. Curley's account. Met-Ed Exhibit 15.

43. As of the date of the hearing, Ms. Curley's outstanding balance with Met-Ed was \$15,078.46. Tr. 25-26; *see also* Met-Ed Exhibit 2.

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 Cntr.*, 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).

By law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. W. Penn Power Co.*, 55 Pa.P.U.C. 637 (1982); *Kea v. Peoples Nat'l Gas Co.*, 60 Pa.P.U.C. 215 (1985); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982). Consequently, the Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303; *Neal v. Metro. Edison Co.*, Docket No. Z-00871874 (Final Order entered Jan. 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa.P.U.C. 213 (1990).

Additionally, 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).

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 and the length of the payment arrangement.

Section 1405(d) of the Responsible Utility Customer Protection Act reads in pertinent part:

(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). Section 1403 of the Public Utility Code defines “change in income” 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. In addition, "Household income" is defined in section 1403 as "[t]he combined gross income of all adults in a residential household who benefit from the public service." 66 Pa.C.S. § 1403 (Definition of "Household income").

In this case, the Complainant has already received two Commission-issued payment arrangements and defaulted on both for non-payment. The second Commission-issued payment arrangement was issued on July 6, 2021, based on a gross monthly income of \$2,310 and household size of three. The Complainant defaulted on this Commission-issued payment arrangement due to non-payment.

During the hearing, the Complainant testified that her monthly household income is \$2,518, consisting of her and her fiancé's SSD benefits. This represents an increase over the gross household income of \$2,310 that she reported to BCS on June 28, 2021, in BCS Case No. 3793170. The number of people in her household has remained unchanged. Because the Complainant has experienced an increase instead of a decrease in income, she is not eligible for a subsequent Commission-issued payment arrangement. Accordingly, the Complaint shall be denied.

Finally, Met-Ed witness, Alison Walker, testified that, during the period June 1, 2019, to November 15, 2023, the Complainant made only nine valid payments to her account with Met-Ed, and that, as of the date of the hearing, Ms. Curley's outstanding balance with Met-Ed was \$15,078.46. Tr. 27. In addition to a very poor payment history, Ms. Walker testified that the Complainant has been able to halt Met-Ed's collection activities by requesting and/or submitting multiple medical certifications, engaging in dishonorable tender of payments, and filing numerous informal and formal complaints with the Commission in order to stay the Company's termination procedures. More specifically, Ms. Walker testified that during the period June 1, 2019, to November 15, 2023, the Complainant made five payments to her account with Met-Ed, which were not honored by her bank due to insufficient funds or for account not found. The total amount of these bad payments is \$26,462.56. Tr. 28. Also, during the period June 2, 2017, to November 15, 2023, the Complainant requested six medical certificates from the Respondent and submitted four of them. Tr. 28-29. Lastly, Ms. Curley filed seven informal and two formal complaints, with the Commission during the period September 5, 2018, to November 15, 2023.³ Each time the Complainant took one of these actions, the Respondent was required to halt collection activities until the medical certificate had expired or the matter was investigated and resolved. See Tr. 29.

³ In order to understand the pace with which Ms. Curley has been filing informal and formal complaints with the Commission, I note that one week after BCS verbally closed her fifth informal complaint at BCS Case No. 3845443 on June 24, 2022 (upon finding that a formal complaint was pending for Ms. Curley's account at Docket No. F-2022-3030597, seeking a payment arrangement), she filed her sixth informal complaint with the Commission's BCS on July 1, 2022, at BCS Case No. 3848282 (also seeking a payment arrangement).

The record in this case highlights a disturbing trend in Complainant's use of fraudulent payments, regulatory protections, and this Commission's informal and formal proceedings to avoid paying her electric bills while evading the Company's termination procedures. The Commission has on occasion precluded a party from filing further informal and formal complaints when the party has been an abuser of the process. *See, Patora v. UGI Penn Nat. Gas, Inc.*, Docket No. C-2018-3003485 (Opinion and Order entered Aug. 8, 2019), *Mazza v. PECO Energy Co.*, C-2012-2318472 (Opinion and Order entered Apr. 23, 2014), *Manu v. Bell Tel. Co. of Pa.*, Docket No. F-09029141 (Opinion and Order entered May 9, 1994), *Seidenstricker v. Metro. Edison Co.*, Docket No. F-2008-2019388 (Opinion and Order entered July 23, 2009). In particular, in *Seidenstricker* the Commission adopted the Administrative Law Judge's Initial Decision which, *inter alia*, ordered that complainant be precluded from filing further informal and formal complaints pertaining to the same account until such time as the current balance on that account was paid in full, after finding that complainant had abused the system by using its provisions to prevent termination of service over the course of many years while receiving electric utility service from respondent and while accruing a large outstanding balance. Similarly, in the present case, I find that the Complainant here has abused the system by using its provisions to prevent termination of service while receiving electric service from Met-Ed and while accruing a large outstanding balance. Therefore, the Complainant should be precluded from filing further informal and formal complaints pertaining to the electric account for the Service Address until such time as the current balance on that account is paid in full.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).
3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419, applies to this proceeding.

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. The Complainant has failed to carry her burden of proving that she is entitled to a third Commission-issued payment arrangement. 66 Pa.C.S. §§ 1405(d).

7. The Commission has on occasion precluded a party from filing further informal and formal complaints when the party has been an abuser of the system. *Potora v. UGI Penn Nat. Gas, Inc.*, Docket No. C-2018-3003485 (Opinion and Order entered Aug. 8, 2019), *Mazza v. PECO Energy Co.*, C-2012-2318472 (Opinion and Order entered Apr. 23, 2014), *Manu v. Bell Tel. Co. of Pa.*, Docket No. F-09029141 (Opinion and Order entered May 4, 1994), *Seidenstricker v. Metro. Edison Co.*, Docket No. F-2008-2019388 (Opinion and Order entered July 23, 2009).

8. The Complainant has abused the system by using its provisions to prevent termination of service while receiving electric service from Respondent and while accruing a large outstanding balance.

9. The Complainant should be precluded from filing further informal and formal complaints pertaining to her electric account for the Service Address until such time as the current balance on that account is paid in full.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Metropolitan Edison Company's Exhibit 4R is admitted into the record in this case.
2. That the Formal Complaint of Kimberly Curley in Kimberly Curley v. Metropolitan Edison Company at Docket No. C-2023-3041686 is denied.
3. That Kimberly Curley be, and hereby is, precluded from filing further complaints with the Pennsylvania Public Utility Commission, whether of an informal or formal nature, regarding the arrearages on her account for electric service rendered by Metropolitan Edison Company until all such arrearages are paid in full and that the filing of any complaint pertaining to such arrearages shall be dismissed without further proceedings.
4. A copy of this Opinion and Order shall be served on the Commission's Secretary and on the Commission's Bureau of Consumer Services.
5. That Docket No. C-2023-3041686 be marked closed.

Date: March 22, 2024

_____/s/
Eranda Vero
Administrative Law Judge