

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Natasha Nicholson	:	
	:	
v.	:	C-2024-3052298
	:	
FirstEnergy Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint of a residential electric, heat, and hot water service customer. The customer did not meet her burden of proof under the Public Utility Code or Commission regulations that she is eligible for a second or subsequent Commission payment arrangement, or for a reinstatement and extension of her prior one.

HISTORY OF THE PROCEEDING

On November 26, 2024, Natasha Nicholson (Complainant) filed a Formal Complaint (Complaint) against FirstEnergy Pennsylvania Electric Company (FirstEnergy, Respondent, or Company) with the Pennsylvania Public Utility Commission (Commission). Ms. Nicholson is served by the Company’s West Penn Power Rate District. In her Complaint, Ms. Nicholson avers that the Company is threatening to shut off her service or

has already shut off her service. As relief, Ms. Nicholson seeks to have her monthly payment of almost \$800 a month lowered due to a drastic cut in hours. Ms. Nicholson asserts that she cannot pay the current amount. (Complaint ¶¶ 4-5).

On December 16, 2024, the Company timely filed an Answer. In its Answer, FirstEnergy admits to issuing a 10-day termination notice on November 18, 2024, for an outstanding balance over \$10,156.99, but avers that any termination activity was stayed upon the receipt of the Complaint. The Company denies that Complainant is eligible for a Commission payment arrangement. As relief, the Company requests that the Complaint be dismissed with prejudice or, alternatively, that this matter be set for mediation.

On December 18, 2024, an Interim Order Setting Resolution Conference was served on Ms. Nicholson and FirstEnergy (the Parties).

On January 29, 2025, a Hearing Notice was issued scheduling a hearing on March 20, 2025, and assigning this matter to Administrative Law Judge (ALJ) Conrad A. Johnson.

On January 31, 2025, Margaret A. Morris, Esquire, filed a Notice of Appearance.

On February 4, 2025, a Prehearing Order was issued which addressed the procedures that would apply to the hearing.

On March 3, 2025, a Judge Change Notice was issued reassigning this matter to me as the presiding officer, and the March 20, 2025 hearing date remained the same. On March 3, 2025, I issued a Prehearing Order.

On March 20, 2025, a telephonic evidentiary hearing was held. The Complainant represented herself and testified on her own behalf. Ms. Nicholson did not offer any exhibits for the record. The Company was represented by Margaret A. Morris, Esquire. The Company presented the testimony of one witness, Laurie Parker, who sponsored eleven exhibits, which were all admitted into the record.

On April 4, 2025, a 44-page hearing transcript was filed with the Commission. The record was closed by Interim Order dated April 4, 2025.

FINDINGS OF FACT

1. Complainant is Natasha Nicholson, a residential electric, heat, and hot water service customer of Respondent who resides at 103 Medsger Road, Connellsville, Pennsylvania (the service address). (Tr. 12-13, 22).

2. Respondent is FirstEnergy Pennsylvania Electric Company, West Penn Power Rate District, the jurisdictional public utility that provides electric utility service to Ms. Nicholson. (Tr. 13).

3. On August 22, 2014, service was established for Ms. Nicholson by FirstEnergy. (Tr. 22).

4. Ms. Nicholson is enrolled in budget billing (equal payment plan) with FirstEnergy. (Tr. 24.).

5. Ms. Nicholson's account balance is \$13,173.93. (Tr. 25).

6. Ms. Nicholson's account was enrolled in FirstEnergy's PCAP on March 2, 2018, and arrearages in the amount of \$2,387.03 were deferred. (Tr. 28).

7. Ms. Nicholson's account was removed from PCAP on September 26, 2022, for failure to re-verify household income. (Tr. 28).

8. On October 4, 2023, Ms. Nicholson received a Level 2 payment arrangement (PAR) from the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3944827, with an account balance of \$2,330.08, requiring her to pay her budget bill amount plus an additional \$61 beginning November 20, 2023. (Tr. 29; Exhibits 5, 6).

9. Ms. Nicholson's Level 2 PAR was based upon a household size of 2 adults with a gross household income in the amount of \$3,703.00 monthly. (Tr. 30; Exhibit 5).

10. Ms. Nicholson's Level 2 PAR defaulted from non-payment. (Tr. 29; Exhibit 5, 6).

11. Ms. Nicholson contacted the BCS to log a second informal complaint, classified by BCS as a change in income (CII) PAR, on April 25, 2024, which was assigned BCS Case No. 3981032. (Tr. 30-31; Exhibit 7).

12. On July 24, 2024, BCS Case No. 3981032 was closed and dismissed because Ms. Nicholson's gross monthly household income for two adults had not decreased 20% or more. (Tr. 32; Exhibit 7).

13. Ms. Nicholson contacted the BCS to log a third informal complaint, classified by BCS as a change in income (CII) PAR, on September 25, 2024, which was assigned BCS Case No. 4020829. (Tr. 32-33; Exhibit 8).

14. On October 22, 2024, BCS Case No. 4020829 was closed and dismissed because Ms. Nicholson failed to provide adequate evidence of a change in income. (Tr. 32-33; Exhibit 8).

15. Ms. Nicholson currently resides with her adult son at the service address. (Tr. 12-13).

16. Ms. Nicholson's most recent payment on her account was in the amount of \$225.68 on April 12, 2024. (Tr. 27; Exhibit 4).

DISCUSSION

Burden of Proof

As the party seeking affirmative relief from the Commission, a complainant has the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than that presented by the opposing party. *Se-Ling Hosiery, Inc. 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 to prevail and that the offense is a violation of the Public Utility Code, the Commission's regulations, or order. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. P.U.C. 196 (1990); 66 Pa.C.S. § 701.

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 customer shifts to the company. If the evidence presented by the company is of co-equal value or "weight," the burden of proof has not been satisfied. The complainant now must provide some additional evidence to rebut that of the

company. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982) (*Burleson*). While the burden of going forward with the evidence may shift back and forth during a 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) (*Milkie*).

Additionally, any decision of the Commission 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. 2 Pa.C.S. § 704; *Norfolk & W. Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Therefore, Ms. Nicholson, as the party seeking relief, bears the burden of proof in this proceeding.

Payment Arrangement

Although Ms. Nicholson testified that her household consists of herself and her adult son and testified regarding a decrease in household income, she did not provide any documentary evidence to support her oral testimony concerning income. Tr. 13-14. Even if she did provide documentary evidence and I found her testimony credible she would not be entitled to a second payment arrangement or to have her Commission-ordered payment arrangement reinstated because she has not made any payments at all in almost a year and the account balance is extremely high.

For approximately twenty years, Chapter 14 of the Code, the Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 (Chapter 14 or Act), applied to customers seeking a Commission payment arrangement. However, Chapter 14 expired on December 31, 2024. Nonetheless, this decision will apply Chapter 14 for two reasons.

First, the Complaint was filed prior to the expiration of Chapter 14, that is, on November 26, 2024. Second, applying Chapter 14 is consistent with the Commission’s guidance in its Statement of Policy addressing the anticipation of the sunset of Chapter 14 in *Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Dkt. No. M-2024-3052328 (Statement of Policy entered Dec. 24, 2024). In this Policy Statement, the Commission explained that, pursuant to Commission regulations and to provide certainty to the utilities, consumers and all affected stakeholders, the Commission will maintain the *status quo* and clarify that the principles provided in Section 1405(b) of the Code including the relevant definitions of “change in income” and “significant change in circumstance” as provided in Section 1403 of the Code will be maintained. Therefore, for all the reasons discussed at length in the Commission’s Statement of Policy, these Sections and definitions will apply to the instant matter.

While Chapter 14 provides that the Commission is authorized to establish payment arrangements between a public utility and customers, it must do so “within the limits established by [Chapter 14].” 66 Pa.C.S. § 1405(a). One of those limits established by Chapter 14 is the number of payment arrangements the Commission may issue. In general, the Act does not authorize the Commission to order a second 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 (definition of “household income”).

A public utility is entitled to receive payment for the service it provides. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982). A complainant, who claims an inability to pay her utility bills, does not have an absolute right to a Commission-ordered payment arrangement. *E.g., DeGannaro v. Pa. Elec. Co.*, Dkt. No. C-2012-2300818 (Final Order entered Nov. 8, 2012). While the Commission has the authority to establish a payment arrangement, the Commission exercises this authority very carefully. It is entirely within the discretion of the Commission to determine on a case-by-case basis whether both parties, the customer, and the utility company, will benefit from the issuance of a payment arrangement. *Id.*; *see also Creekmur v. PECO Energy Co.*, Dkt. No. C-2008-2079322 (Final Order entered Feb. 4, 2010).

The Commission will only approve a payment arrangement if the customer has demonstrated some evidence of good faith efforts to pay utility bills or has experienced a significant change of circumstance outside of their control. *Stormer v. Pa. Am. Water Co.*, Docket No. C-2011-2249169 (Final Order Mar. 28, 2012). *See also Crawford v. Nat’l Fuel Gas Distrib. Corp.*, Docket No. C-20066348 (Opinion and Order entered Dec. 6, 2007); *Maye v. Nat’l Fuel Gas Distrib. Corp.*, Docket No. F-02140445 (Opinion and Order entered Oct. 22, 2008); *Sayre v. UGI Utils., Inc.*, Docket No. F-

02292619 (Opinion and Order entered Nov. 4, 2008); *Thomas v. Nat'l Fuel Gas Distrib. Corp.*, Docket No. F-02144645 (Opinion and Order entered Dec. 9, 2008).

In the instant case, Ms. Nicholson received a Commission-ordered payment arrangement at BCS Case No. 3944827 on October 4, 2023. Tr. 29; Exhibit 6. This payment arrangement defaulted due to non-payment.

Although I am sympathetic to Ms. Nicholson's financial situation and recognize the importance of electric service to a household, a second Commission payment arrangement or a revised payment arrangement based upon a significant reduction in monthly gross household income is not appropriate in this case. The account balance owed on the date of hearing, March 20, 2025, is extremely high. Ms. Nicholson owes FirstEnergy \$13,173.93. Tr. 25; Exhibit 3. Also, Ms. Nicholson's last payment was made on April 12, 2024, nearly a year before the hearing, in the amount of \$225.68. Tr. 27. Frankly, Ms. Nicholson has not demonstrated a good faith effort to pay her electric bill. She is not entitled to a second Commission-ordered 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).

For the same reasons set forth above in discussing whether a second payment arrangement is appropriate, an extension of Ms. Nicholson's Commission-ordered payment arrangement must be denied. The balance is extremely high, and Ms. Nicholson has not been paying FirstEnergy.

Ms. Nicholson's electricity usage and her monthly bills are not in dispute in this proceeding. FirstEnergy is entitled to payment for the electric utility service it provides to Ms. Nicholson. Unpaid utility bills of customers create an uncollectible account expense that must be borne by others.

Therefore, the Complaint requesting a payment arrangement is dismissed in the ordering paragraphs below for the reasons set forth above.

CONCLUSIONS OF LAW

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

2. The party seeking relief from the Commission has the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

3. The Responsible Utility Customer Protection Act applies to this proceeding. 66 Pa.C.S. §§ 1401–1419; *Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Dkt. No. M-2024-3052328 (Statement of Policy entered Dec. 24, 2024).

4. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a); *Sunset of Chapter 14*,

Title 66 of the Pennsylvania Public Utility Code, Dkt. No. M-2024-3052328 (Statement of Policy entered Dec. 24, 2024).

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) of Chapter 14 because 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-ordered payment arrangement or an extension of her prior Commission-ordered payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Natasha Nicholson in *Natash Nicholson v. FirstEnergy Pennsylvania Electric Company* at Docket No. C-2024-3052298 is dismissed.

