

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Brumfield	:	
	:	
v.	:	C-2025-3055061
	:	
FirstEnergy Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint of a non-residential customer seeking a payment arrangement. The customer did not meet his burden of proof that he is eligible to a Commission payment arrangement.

HISTORY OF THE PROCEEDING

On May 9, 2025, John Brumfield (Complainant or Mr. Brumfield) filed a Formal Complaint (Complaint) against FirstEnergy Pennsylvania Electric Company (FE PA, Respondent, or Company) with the Pennsylvania Public Utility Commission (Commission). Mr. Brumfield is served by the Company’s West Penn Rate District. In his Complaint, Mr. Brumfield avers that the Company is threatening to shut off his service or has already shut off his service and he is seeking a payment arrangement (PAR). Complaint ¶ 4. He also checked the “other” box writing, “Shut off date for May 12, 2025. Requested

payment arrangement by phone 4/28-4/29. Also request medical certificate for illness and was denied.” As relief, Mr. Brumfield seeks a PAR so he can get caught up on his bill. Complaint ¶ 5.

On May 29, 2025, the Company filed an Answer. In its Answer, FE PA explains that it provides non-residential service to Complainant at 125 Standard Avenue, Butler, PA (service location). FE PA admits it mailed Complainant a 37-day termination notice dated March 20, 2025, for a delinquent balance of \$4,871.06, but avers that any termination activity was stayed upon the receipt of the Complaint. The Company denies that Complainant is eligible for a Commission PAR because the account is non-residential. As relief, the Company requests that the Complaint be dismissed with prejudice.

On June 4, 2025, a Hearing Notice was issued scheduling a hearing on August 5, 2025, and assigning this matter me.

On June 5, 2025, a Prehearing Order was issued which addressed the procedures that would apply to the hearing.

On August 5, 2025, a telephonic evidentiary hearing was held. The Complainant represented himself and testified on his own behalf. Mr. Brumfield 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, Alison Walker, who sponsored eleven exhibits, which were all admitted into the record.

During the hearing, Ms. Morris averred that the Company had discovered that the Commission’s Bureau of Consumer Services (BCS) had previously awarded Mr. Brumfield a PAR on his non-residential account in 2022. I directed the Company to provide records related to the 2022 PAR as a late-filed exhibit, FE PA 12. Tr. 11. I instructed the Company to email FE PA Exhibit 12 to me and Complainant by the end of

the day on August 5, 2025. Tr. 24. I told Complainant that if he had any objection to its admission, he should respond to the email by end of the day on August 8, 2025, indicating that he had an objection. Tr. 24-25.

Counsel for the Company emailed me and Mr. Brumfield FE PA Ex. 12 on August 5, 2025, as directed. On August 8, 2025, Complainant replied all to the email, simply saying, “Received.”

On August 11, 2025, a 58-page hearing transcript was filed with the Commission.

On August 11, 2025, I issued an Interim Order admitting FE PA Exhibit 12 into the evidentiary record and closing the record in this matter.

FINDINGS OF FACT

1. Complainant is John Brumfield, a non-residential electric customer of Respondent who resides at 125 Standard Avenue, Apartment 1B, Butler, PA. Tr. 7.
2. Respondent is FirstEnergy Pennsylvania Electric Company, West Penn Rate District, a jurisdictional public utility.
3. The service location is a multi-family residential building with eight individual units. Tr. 17; FE PA Ex. 2.
4. Mr. Brumfield purchased the service location in 2012 and lives in one of the units. Tr. 17, 22; FE PA Ex. 1.

5. Because Mr. Brumfield's account is a non-residential account, it is not enrolled in budget billing; only residential customers are eligible for budget billing. Tr. 36.

6. Mr. Brumfield owns the service location outright and does not owe a mortgage on it. Tr. 21.

7. As of the date of the hearing, three of the eight units were occupied, including the unit occupied by Mr. Brumfield. Tr. 17.

8. The other two units occupied are 1A and 2C. Tr. 21-22.

9. All eight units of the service location, plus common areas, are served by a single meter. Tr. 18.

10. The tariff for FE PA's West Penn Rate District provides for various Rate Schedules; Rate RS (Residential Service) is available to single family homes as well as structures converted for multiple occupancy where one meter serves no more than five units. Tr. 43; FE PA Ex. 9.

11. The service location does not qualify for Rate RS because there are eight units. Tr. 43.

12. Rate GS - Medium (General Service Secondary - Demand Metered) is available to non-residential customers that use electric service through a single delivery location and consume at least 1,500 kWh per month. Tr. 43; FE PA Ex. 10.

13. The meter at the service location registers at least 1,500 kWh per month. Tr. 43; FE PA Ex. 7.

14. The service location receives service under the GS – Medium Rate Schedule. Tr. 43.

15. Mr. Brumfield works as a Veterans Health Therapist for the Department of Veterans Affairs (VA), earning a yearly salary of \$40,000.00. Tr. 18.

16. Mr. Brumfield collects \$400.00 per month per tenant for rent. Tr. 21.

17. Mr. Brumfield has no income other than his wages from the VA and the rent he collects from his two tenants. Tr. 19.

18. Mr. Brumfield has filed bankruptcy four times: September 2018, September 2020, August 2023, and August 2024. Tr. 19-20.

19. The account balance at the time of the September 2018 bankruptcy filing was \$11,327.30; the account balance at the time of the September 2020 bankruptcy filing was \$21,572.38; account balance at the time of the August 2023 bankruptcy filing was \$36,578.12; and the account balance at the time of the August 2024 bankruptcy filing was \$42,751.15. FE PA Ex. 4.

20. The Bankruptcy Court dismissed without prejudice Mr. Brumfield's August 2024 bankruptcy filing on June 4, 2025. Tr. 20, 33; FE PA Ex. 5.

21. When the 2024 bankruptcy filing was dismissed, FE PA transferred \$42,751.15 to Mr. Brumfield's account – the amount that it had previously set aside due to the bankruptcy filing. Tr. 38; FE PA Ex. 7.

22. As of the date of the hearing, Mr. Brumfield's current account balance was \$49,971.80. Tr. 39; FE PA Ex. 8.

23. On May 26, 2022, BCS awarded Mr. Brumfield a level 1 PAR on his non-residential account at BCS No. 3833079. Tr. 40-41.

24. The 2022 PAR was based on a reported household size of three people and monthly wages of \$1,000. Tr. 41.

25. The 2022 PAR defaulted due to non-payment. Tr. 41.

26. FE PA denied Mr. Brumfield's request for a medical certificate because medical certificates are only available for residential accounts. Tr. 45.

27. Complainant does not pay his bills on time or in full. Tr. 39.

28. The Company's records show that in the year prior to the hearing, when the account was made effective following the 2024 bankruptcy filing, Complainant made one payment on the account in the amount of \$500.00, which posted on June 30, 2025. Tr. 39, 42.

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. Pub. Util. Comm'n*, 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. Pub. Util. Comm'n*, 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. Pub. Util. Comm'n*, 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. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

Therefore, Mr. Brumfield, as the party seeking relief, bears the burden of proof in this proceeding.

Although Mr. Brumfield alleged in his Complaint that he was wrongfully denied a medical certificate, he presented no testimony on this issue during the hearing.

Mr. Brumfield has failed to meet his burden of proof with respect to his claim that he was wrongfully denied a medical certificate. Therefore, this claim is dismissed.

Payment Arrangement

A public utility is entitled to receive payment for the service it provides. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982) (*Mill*). A complainant, who claims an inability to pay his utility bills, does not have an absolute right to a Commission-ordered payment arrangement. *E.g., DeGannaro v. Pa. Elec. Co.*, Docket No. C-2012-2300818 (Final Order entered Nov. 8, 2012).

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. Chapter 14 granted the Commission the authority to award PARs on *residential* accounts.

There is no dispute that the service location is a building with eight dwelling units, all served by a single meter. According to FE PA's tariff, residential service is provided when the service location is a single family home or if the service location has been converted for multiple occupancy and one meter serves no more than five units. Tr. 43; FE PA Ex. 9. As FE PA's witness testified, the service location does not qualify for residential service because there are eight units. Tr. 43.

Chapter 14 expired on December 31, 2024. There is no dispute that Mr. Brumfield's account is a non-residential account. Therefore, even if Chapter 14 had not expired, Chapter 14 would not have granted the Commission the authority to award Mr. Brumfield a PAR.

On May 26, 2022, BCS awarded Mr. Brumfield a level 1 PAR on his non-residential account at BCS No. 3833079, which defaulted due to non-payment. Tr. 40-41; FE PA Ex. 12. The 2022 PAR was based on a reported household size of three people and monthly household income of \$1,000. Tr. 41; FE PA Ex. 12. It is unclear on this record why BCS awarded this PAR on Mr. Brumfield's non-residential account in 2022, since Chapter 14 did not authorize the Commission to award PARs on non-residential accounts.¹ The Commission, as a creature of the legislature, cannot exceed its jurisdiction and must act within the jurisdiction established for the Commission. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945). Therefore, the fact that BCS awarded Mr. Brumfield a PAR in 2022 does not grant me the authority to award him one now.

In response to the expiration of Chapter 14, the Commission provided 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*, Docket. No. M-2024-3052328 (Statement of Policy entered Dec. 24, 2024) (Policy Statement). 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 will be maintained.

As discussed above, Chapter 14 is not and would not have been applicable to this case because Mr. Brumfield's account is non-residential. Therefore, I reviewed the Commission's history of awarding PARs prior to the existence of Chapter 14.

¹ At Docket M-2020-3019244, the Commission permitted second and subsequent PARs on complaints filed by December 31, 2021 as a result of the COVID-19 pandemic, but it does not appear that the PAR BCS awarded in 2022 was awarded under this special provision.

Prior to 1982, the Commission maintained that rates solely based on a customer's ability to pay were akin to tax-funded welfare payments and were considered to be in violation of 66 Pa.C.S. § 1304 (Section 1304), which prohibits rate discrimination. *Spanish Senior Citizens v. UGI Corp.*, 50 Pa.P.U.C. 256 (1976). Section 1304 provides, "No public utility shall, as to rates, make or grant any unreasonable preference for advantage to any person, corporation or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service." 66 Pa.C.S. § 1304.

Prior to 1982, the Commission prohibited charging a separate set of rates to low-income customers based on one's ability to pay because utilities would be providing the same exact service at different rates. *Phila. Elec. Co.*, 91 PUR 3rd at 373. The Commonwealth Court's decision in *Mill*, however, forever changed the Commission's position on executing payment arrangements.

In interpreting the language in Section 1304 ("a utility shall not grant any unreasonable preference or advantage to any person"), the Commonwealth Court held, "The clear implication from this language is that a person may be given a rate preference so long as it is not unreasonable, and we believe it falls to the PUC to determine under what circumstances and in what amounts such a preference would be reasonable." *Mill*, 447 A.2d at 1102. Further, the court determined that payment agreements which provide for payments less than current bills may be considered reasonable. *Mill*.

Not only did this holding grant the Commission discretion to determine "reasonableness" under Section 1304, it also granted the Commission discretion to assess factors such as a customer's inability to pay when assigning specialized lower rates. After *Mill* was decided in 1982, the Commission was granted discretion to determine when a payment arrangement would be considered reasonable. Inevitably, the discretion

granted to the Commission in *Mill* led to inconsistent results, since what is “reasonable” naturally differed between the Commission’s Administrative Law Judges (ALJs). A year after *Mill* was decided, the Commission decided *Baum v. Duquesne Light Co.*, which provided a test for determining when the Commission may order a utility to temporarily accept the payment of less than current bills. *Baum v. Duquesne Light Co.*, 57 Pa.P.U.C. 156 (Apr. 15, 1983) (*Baum*).

The Commission held that an ALJ could authorize a stay of termination and payment of less than the full amount of monthly bills in the following circumstances:

- (a) on a case-by-case basis [when the] circumstances warrant such action, such as ... medical emergency cases;
- (b) when there is good payment history on the part of the customer and the record clearly demonstrates a definite and certain positive change in the customer’s financial circumstances, which will occur on a date certain or within the reasonably foreseeable future ...

Baum at 2.

This test outlined in *Baum* incorporates the holding of *Mill*, allowing the Commission to grant payment arrangements under certain circumstances, while providing some evidentiary guidelines to allow for a more consistent application among the Commission’s Administrative Law Judges. *Mill* and *Baum* served as the Commission’s legal authority to grant temporary payment plans to utility customers until the General Assembly’s enactment of Chapter 14 in 2004.

It is unclear whether the Commission awarded PARs on non-residential accounts prior to Chapter 14. So, I gave Mr. Brumfield every benefit of the doubt and

assumed that it did. I looked to *Mill* and *Baum* as instructive. Under *Mill*, I considered what, if any, PAR would be “reasonable.” Under *Baum*, I considered whether the circumstances of this case demonstrate that Complainant has good payment history and whether the record shows Complainant’s financial circumstances will improve in the foreseeable future.

At the time of the hearing, Complainant’s account balance was almost \$50,000, and the Company’s records reflect one payment made on the account in the past year, which was credited as a partial payment on a security deposit. Complainant has filed bankruptcy four times since September 2018. While Mr. Brumfield’s financial situation has improved since he was awarded the BCS PAR in 2022, it has not improved enough for me to find that a new, second PAR would be “reasonable.”

A ten-year PAR on a \$50,000 account balance would be \$416.70 per month on top of Mr. Brumfield’s current charges ($50,000 / 120 = 416.666$). His current monthly bill since September 20, 2024 has averaged \$591.40 per month ($352.68 + 394.46 + 459.69 + 799.42 + 873.54 + 825.38 + 769.13 + 556.41 + 427.27 + 455.97 = 5,913.95 / 10 = 591.395$). *See* FE PA Ex. 7. This means that even if I awarded Mr. Brumfield a ten-year PAR, he would be required to pay \$416.70 per month *in addition to* his current charges, which average \$591.40 per month, for a total of \$1,008.10 per month, for ten years.

Mr. Brumfield earns \$40,000 per year from his job at the VA, which is \$3,333.33 per month ($40,000 / 12 = 3,333.33$). He also collects \$800.00 per month in rent from his two tenants, for a total monthly gross income of \$4,133.33 per month ($3,333.33 + 800 = 4,133.33$). The average monthly payment for a ten-year PAR (\$1,008.10) would constitute over 24% of Mr. Brumfield’s gross monthly income per month. It is simply not reasonable to award a payment-troubled customer a PAR which

would require him to pay almost a quarter of his gross monthly income to his electric company, for ten years.

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

I understand that Mr. Brumfield's tenants may suffer as a result of the Company terminating service to the service location. Their electricity will be shut off through no fault of their own. It is inherently unfair to the tenants, but I simply cannot award a PAR to Mr. Brumfield under the circumstances, for the reasons discussed above. The Public Utility Code (Code) provides for tenant protections in situations like this one where service may be terminated to a tenant's residence due to a landlord's failure to pay for utility services. 66 Pa.C.S. § 1521 et seq. The Code requires the utility to provide pre-termination notice to the tenants and provides a way for tenants to secure continued utility service by making payments directly to the utility company. 66 Pa.C.S. §§ 1523, 1526, 1528. The Code further provides a way for tenants to recover from the landlord payments the tenant may make to the utility company. 66 Pa.C.S. § 1529.

Therefore, the Complaint requesting a PAR 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. A public utility is entitled to receive payment for the service it provides. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982).

4. A complainant, who claims an inability to pay his utility bills, does not have an absolute right to a Commission-ordered payment arrangement. *E.g.*, *DeGannaro v. Pa. Elec. Co.*, Docket No. C-2012-2300818 (Final Order entered Nov. 8, 2012).

5. The Complainant has failed to carry his burden of proving that he is eligible for a second or subsequent Commission-ordered payment arrangement or an extension of his prior Commission-ordered payment arrangement.

6. The Complainant has failed to carry his burden of proving that he was wrongfully denied a medical certificate.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by John Brumfield against FirstEnergy Pennsylvania Electric Company at Docket No. C-2025-3055061 is dismissed.

2. That FirstEnergy Pennsylvania Electric Company shall follow all applicable rules, regulations, statutes, and tariff provisions regarding notice to and rights of tenants whose service is terminated due to non-payment by a landlord in any subsequent termination of electric service to the service location.

3. That the docket at Docket No. C-2025-3055061 be marked closed.

Date: October 10, 2025

/s/
Emily I. DeVoe
Administrative Law Judge