

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|------------------------|---|----------------|
| Timothy Adkins | : | |
| | : | |
| v. | : | F-2023-3042509 |
| | : | |
| Duquesne Light Company | : | |

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This decision grants the Formal Complaint filed by Timothy Adkins against Duquesne Light Company. The Complaint is granted because Mr. Smith met his burden to prove he is eligible for a payment arrangement.

HISTORY OF THE PROCEEDINGS

On August 28, 2023, Timothy Adkins (Complainant or Mr. Adkins) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (DLC, Company, or Respondent), averring the Company was threatening to shut off or had already shut off his service and requesting a payment arrangement (PAR) for the balance on his account for service at his residence, 967 Woodbourne Avenue, Pittsburgh, PA (service location). Complainant noted the Commission’s Bureau of Consumer Services (BCS) had recently awarded a PAR at BCS Decision No. 3926450, which imposed a

special budget amount of \$505.¹ Complainant averred this amount is not affordable for him. As relief, Mr. Adkins requested he be awarded a PAR with a lower monthly payment.

On September 18, 2023, DLC filed an Answer. In its Answer, DLC explained Complainant repeatedly and consistently fails to pay his monthly bills for electric service in full and on a timely basis. DLC averred that, since August 2017, Complainant has had three PARs with the Company and one PAR issued by the Commission. DLC explained that Complainant defaulted on each Company payment arrangement. DLC noted the Commission PAR, which was referenced by Mr. Adkins in his Complaint, was initiated on August 1, 2023, based on an account balance of \$8,196.29 with terms of budget bill plus \$137 for a term of 60 months.

On September 19, 2023, the Commission issued a Notice, assigning this matter to me and scheduling an evidentiary hearing for November 15, 2023.

On September 20, 2023, I issued a Prehearing Order.

The hearing convened as scheduled on November 15, 2023. Complainant was present and represented himself. David Beane, Esq., appeared on behalf of DLC. Complainant testified on his own behalf, and DLC presented the testimony of Roxane Morris, Supervisor of Regulatory Consumer Relations. DLC Exhibits 1-16 and ALJ Exhibit 1 were admitted into the record.

The transcript was filed on December 6, 2023, and later that day, I issued an Interim Order closing the evidentiary record.

This matter is now ripe for adjudication.

¹ The instant Complaint is an appeal of BCS Decision No. 3926450.

FINDINGS OF FACT

1. Complainant is Timothy Adkins.
2. The Respondent, Duquesne Light Company, is a jurisdictional public utility.
3. Complainant resides at 967 Woodbourne Avenue, Pittsburgh, PA. Tr. 20.
4. On July 21, 2023, Complainant contacted BCS seeking a PAR, and BCS opened an informal complaint at BCS No. 3926450. ALJ Ex. 1.
5. Prior to Complainant contacting BCS, his service had been terminated due to nonpayment. Tr. 29, 32.
6. On July 21, 2023, DLC received a \$200 pledge from the Salvation Army for Complainant's account, and DLC restored service to the service location. Tr. 28-29, 32; DLC Ex. 10.
7. On August 1, 2023, BCS issued a written decision in BCS No. 3926450, awarding Mr. Adkins a PAR consisting of a special budget amount of \$505 each month, which includes a regular monthly budget amount of \$368, plus \$137 toward his account balance. ALJ Ex. 1.
8. On August 28, 2023, Complaint filed the instant Complaint, timely appealing BCS Decision No. 3926450. *See* Complaint; ALJ Ex. 1.
9. Complainant does not work but receives \$1,777 per month for Social Security Disability. Tr. 15.
10. Complainant has no other form of income. Tr. 16.
11. Complainant resides alone but has an adult daughter who stays with him about half the time. Tr. 16

12. Complainant's daughter is a 24-year-old full-time student and is not employed. Tr. 16.
13. Complainant has been receiving Social Security Disability since about 1995. Tr. 15.
14. Complainant has gas heat at his residence. Tr. 17.
15. Complainant does not dispute that he owes the amount of the account balance. Tr. 19.
16. Complainant has some health issues that require him to use medical equipment which needs to be plugged in. Tr. 17.
17. Complainant has had three Company PARs.
18. The first Company PAR was initiated on August 31, 2017, and defaulted due to non-payment. Tr. 24-25; DLC Ex. 16.
19. The second Company PAR was initiated on August 18, 2021, and defaulted due to non-payment. Tr. 24-25; DLC Ex. 16.
20. The third Company PAR was initiated on November 2, 2021, and defaulted due to non-payment. Tr. 24-25; DLC Ex. 16.
21. As of the date of the hearing, Complainant's balance was \$ 8,472.12. Tr. 29.
22. Excluding grants received from third party sources, Complainant's account statement shows Complainant made five payments since September 2021: February 10, 2022, January 11, 2023, June 12, 2023, July 12, 2023, and August 10, 2023. DLC Ex. 11.

23. The Company issued Complainant nine termination notices since August 2021, with issuance dates of: August 10, 2021, March 13, 2022, May 19, 2022, July 14, 2022, August 9, 2022, November 8, 2022, March 13, 2023, and June 19, 2023. Tr. 31; DLC Exs. 1-9.

24. The only termination notice that resulted in termination of Complainant's service was the June 19, 2023, termination notice. Tr. 32.

25. The other termination notices were cancelled due to Complainant filing a complaint with the Commission or submitting a medical certificate to the Company. Tr. 33.

26. Complainant submitted medical certificates to prevent termination of service on October 15, 2021, April 8, 2022, June 1, 2022, and August 30, 2022. Tr. 38; DLC Exs. 14, 15.

27. On May 10, 2023, DLC advised Complainant that he was ineligible for any additional medical certificates because he had exceeded the number of medical certificates permitted for an account. DLC Ex. 14.

28. The Company has discussed its Company's Customer Assistance Program (CAP) with Complainant multiple times, including on July 22, 2022, December 14, 2022, and May 10, 2023. Tr. 35-36; DLC Ex. 14.

29. As of the date of the hearing, Complainant had not applied for the Company's Customer Assistance Program. Tr. 9.

30. Mr. Adkins testified credibly.

31. Ms. Morris testified credibly.

DISCUSSION

In his Formal Complaint, Complainant alleged his inability to pay his electric bills and requested a payment arrangement. As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

To satisfy this burden, Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990); *Se-Ling Hosiery v. Marquies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. 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. 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. 1960); *Murphy v. Dep't. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Complainant seeks a payment arrangement from the Commission. The instant case is a timely appeal of a PAR awarded by BCS. Therefore, I consider his request for a Commission-awarded payment arrangement *de novo*. 52 Pa. Code § 56.173 (a).

Chapter 14 of the Code, the Responsible Utility Customer Protection Act (Act), 66 Pa.C.S. §§ 1401–1419, applies to this proceeding. Section 1405 of the Act provides in pertinent part as follows:

§ 1405. Payment arrangements.

(a) General rule.—The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants, and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

66 Pa. C.S. § 1405(a).

A complainant who claims an inability to pay their utility bills, is not entitled as a matter of right to receive a Commission-issued payment arrangement. *E.g., DeGannaro v. Pa. Elec. Co.*, Docket No. C-2012-2300818 (Final Order Nov. 8, 2012). 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.*, Docket No. C-2008-2079322 (Final Order entered Feb. 4, 2010).

While the Commission has the authority to establish a payment arrangement, the Commission exercises this authority very judiciously. *Hayes v. Phila. Gas Works*, Docket No. C-2017-2634526 (Opinion and Order entered Oct. 1, 2018) (*Hayes*) (citing *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013) (*Hewitt*)). Specifically, the Commission exercises its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills. *Hayes*.

DLC has previously entered into payment arrangements with Mr. Adkins, but Complainant has never received a payment arrangement issued by the Commission. In reviewing Complainant's payment history, I note that in over 24 months, excluding grants received from third party sources, Complainant made five payments since September 2021: February 10, 2022, January 11, 2023, June 12, 2023, July 12, 2023, and August 10, 2023.

In a recent Commission decision, the Commission awarded a payment arrangement to a customer who, despite a poor payment history and an account balance totaling nearly \$6,000, had never defaulted on a Commission-issued payment arrangement. The Commission held:

as the Complainant has not defaulted on a Commission-issued payment arrangement, she should be afforded this final opportunity to pay down the subject arrearages over the applicable number of months in accordance with Section 1405 of the Code. Thus, our decision in this matter seeks to ensure that this Complainant is afforded a payment arrangement

opportunity akin to similarly-situated ratepayers in arrears on utility balances.

West v. Phila. Gas Works, Docket No. F-2022-3034727 (Opinion and Order entered May 23, 2023) (*West*).

Consistent with the Commission's decision in *West*, Complainant is eligible for a Commission-issued payment arrangement. Complainant lives alone and has monthly income in the amount of \$1,777. This equates to \$21,324 per year. Complainant's Household income falls below 150% of the Federal Poverty Level.²

Since Complainant's income falls below 150% of the Federal Poverty Level Guidelines for a household size of one, Complainant is eligible for a five-year payment arrangement (level 1 PAR) to address his outstanding balance. 66 Pa.C.S. § 1405(b)(1). Therefore, beginning with the first bill following the Commission's Final Order in this case, Complainant is required to pay his current bill plus an amount equal to one sixtieth (1/60th) of the balance accrued on his account. Complainant should adhere to this payment arrangement because it is the best arrangement the Commission can grant under Chapter 14 of the Act. Further, I anticipate DLC will timely utilize all available collection methods available to it pursuant to the Code, the Commission's regulations, and its Tariff should Complainant default on this payment arrangement.

CONCLUSIONS OF LAW

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

2. As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

² See, Federal poverty guidelines, 88 Fed. Reg. 3424 (Jan. 19, 2023); <https://aspe.hhs.gov/sites/default/files/documents/98087be2f7c9586ee24c35a011bc7ac8/guidelines-1983-2023.xlsx> .

3. The Commission has the authority to establish and review a payment arrangement to ensure compliance with Chapter 14 of the Public Utility Code. 66 Pa.C.S. § 1405(a).

4. Review of informal complaint decisions made by the Bureau of Consumer Services will be heard *de novo* by a law judge or special agent. 52 Pa Code § 56.173 (a).

5. 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. 66 Pa.C.S. § 1303; *DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *see also Creekmur v. PECO Energy Co.*, Docket No. C-2008-2079322 (Order entered Feb. 4, 2010).

6. Complainant is eligible for a five-year payment arrangement on his arrears. 66 Pa.C.S. § 1405(b)(1).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Timothy Adkins against Duquesne Light Company at Docket No. F-2023-3042509 is sustained in that Mr. Adkins is granted a 60-month payment arrangement.

2. That the Formal Complaint filed by Timothy Adkins against Duquesne Light Company at Docket No. F-2023-3042509 is otherwise dismissed.

3. That, Timothy Adkins shall make monthly payments consisting of his current budget bill plus one-sixtieth (1/60th) of the arrearage owed on the account, commencing with the first billing due date following the entry of the Commission's Final Order in this case, and continuing thereafter on the due date for the payment of each regular monthly bill.

4. That as long as Timothy Adkins maintains the terms of the payment arrangement stated herein, Duquesne Light Company shall not suspend or terminate his utility service except for valid safety or emergency reasons or assess late payments or finance charges against his account.

5. That, if Timothy Adkins does not keep the payment schedule stated herein, Duquesne Light Company is authorized to suspend or terminate his utility service in accordance with the Public Utility Code and Commission Regulations.

4. That the Secretary's Bureau shall mark this case closed.

Dated: March 1, 2024

/s/
Emily I. DeVoe
Administrative Law Judge