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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, Pa. 17105-3265

Public Meeting held April 24, 1997

Commissioners Present:

John M. Quain, Chairman
John Hanger
David W. Rolka
Robert K. Bloom

DOCKETED
MAY 01 1997

Saul H. Segan

v.

C-00967954

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration are the Exceptions of Saul H. Segan (Complainant or Mr. Segan), filed March 12, 1997, to the Initial Decision of Administrative Law Judge (ALJ) Herbert Smolen, which issued February 25, 1997. PECO Energy Company (PECO or Respondent) filed Reply Exceptions on March 24, 1997.

History of the Proceeding

On May 5, 1996, Mr. Segan filed a Formal Complaint against PECO wherein he sought to modify the payment schedule contained in a determination of the Bureau of Consumer Services (BCS) which issued in May 1995. The Complainant requested, *inter alia*, a stay of termination and a reduction of the payments ordered by the BCS decision. The BCS decision required the Complainant to pay \$1,192.48 by May 31, 1995, and thereafter current budget bills of \$335.00/month plus \$200.00/month on the arrearage owed to the Respondent.

The Respondent filed an Answer wherein it averred, *inter alia*, that the Complainant has filed at least three informal Complaints since May 31, 1994, and that the Complainant's account balance was \$16,879.11.

A hearing was held on February 5, 1997. The Complainant, an attorney, represented himself and testified on his own behalf. The Respondent was represented by Karyn Gordon, Esquire.

Discussion

ALJ Smolen made eight Findings of Fact and reached two Conclusions of Law. The said Findings of Fact and Conclusions of Law are incorporated herein by reference, and unless specifically identified and discussed, are adopted without comment.

The ALJ recommended that the Complaint be dismissed. The ALJ also recommended that the Complainant pay to PECO the sum of \$7,311.48 within 30 days of the entry of a final Order, and thereafter pay current bills when due plus \$200 per month toward the then existing arrearage of \$19,490.

The ALJ proffered the following analysis of the Complainant's financial situation:

In this proceeding, Complainant who resides with his wife and three children, filed a Complaint against PECO Energy Company seeking lower monthly payments. The record discloses that as of January 10, 1997, Complainant's balance was \$19,490.00; that five prior payment arrangements were not kept; that a May 1995 BCS decision was not kept; and that he has offered to pay only current bills plus \$50.00 per month on all arrearages.

At the outset, it must be noted with emphasis that the Commission's regulations require customers to pay current bills and all undisputed amounts during the pendency of a Complaint proceeding. See, 52 Pa. Code

§56.174(3), 56.181. In the instant matter, Complainant has made payments totalling \$5,137.00 to February 4, 1997 since the BCS decision of May 1995 which required a payment of \$1,192.48 by May 31, 1995 plus the then current budget of \$335/month and \$200 on the arrearage. As can be seen, Complainant's payments to February 4, 1997 do not comport with the BCS decision. In addition, Complainant's past payment arrangements have not been kept.

Moreover, Complainant's alleged inability to pay his electric/gas bill is not supported by the record evidence especially in light of certain non-essential monthly expenditures set forth above in Finding of Fact No. 4. Further, from Complainant's testimony, there currently appears to be an excess of monthly income over expenses which would enable Complainant to pay the electric/gas bill without incurring additional arrearages. If the Commission were to allow ratepayers to make payments at such times and in such amounts as the customer decided, then it would encourage those customers to use their income to pay for luxuries first and essential services last; and in addition, other utility customers might come to understand that they, too, could avoid paying for utility services and instead purchase non-essential goods and services. O'Toole v. The Bell Tel. Co. of Pa., Docket No. C-923964 (Initial Decision which became final by operation of law August 20, 1992). Moreover, if Complainant's requested payment schedule (current bills plus \$50.00 on arrearage) were approved, the result would be that the payment of Complainant's arrearages would take 389 months or in excess of 32 years, and the other ratepayers would, in effect, be financing an unreasonable and unconscionable interest-free payment arrangement.

By reason of all of the foregoing, Complainant has not demonstrated an inability to pay and has not proffered a reasonable payment schedule. Accordingly, the May 1995 BCS decision will be affirmed and brought up to date.

(I.D. pp. 4-6).

The ALJ proffered the following calculation of his recommended \$7311 lump sum payment:

By May 31, 1995	\$1,192.48
Monthly Budget of \$335 from 6/95 to 1/97 (20 months x \$335)	6,200.00
Monthly Arrearage Payments of \$200 per month (20 months x \$200)	<u>4,000.00</u>
Due under BCS Decision to 1/97	\$11,892.48
Less	
Amount paid by Complainant from date of BCS Decision to 2/4/97	<u>\$5,117.00</u>
Amount Necessary to Bring BCS Decision up to date	\$6,755.48
Plus	
Amount due from 2/4/97 to 3/4/97 (current budget of \$356 plus \$200 on arrears)	<u>556.00</u>
Total	\$7,311.48

(I.D., p. 6).

The Complainant's Exceptions

The Complainant's Exceptions consist of a two-page typewritten document. The Complainant argues that an agreement previously reached with PECO wherein the Complainant was to pay

current charges, plus \$100 per month toward the arrearage superseded the aforesaid BCS Order which issued in May of 1995. (Exc., p. 1; paragraph 1).

The Complainant argues that the three year statute of limitations is unconstitutional and confiscatory. (Exc., p. 1; paragraph 3). Mr. Segan alleged that his bills for service were incorrect. Specifically, Mr. Segan alleged that during the time period from 1983 to 1985, meter readings were not taken. (N.T. 4-9). Mr. Segan's allegation was barred from consideration pursuant to Section 3314(a) of the Public Utility Code (Code), 66 Pa. C.S. §3314(a).

The Complainant requests that the agreement wherein he would pay current bills plus \$100.00 per month toward the arrearage be reinstated. The Complainant further requests that no late penalty fees be added to the payment plan. The Complainant repeats his contention that the said agreement supersedes the BCS Order of May, 1995. (Exc., p. 2; paragraph 5).

The Respondent's Reply

PECO replies to the Complainant's contention that the 1996 agreement supersedes the BCS decision by stating that BCS is an arm of the Commission. Therefore, PECO maintains that a BCS decision is an order of the Commission and that a private agreement between parties to a complaint can never completely negate a standing order of the appropriate administrative agency with jurisdiction over the dispute. (R. Ex., p. 1; Paragraph 1).

Next, PECO points out that the Complainant has a long history of filing "inability to pay cases." PECO continues that the Complainant's arrearage is nearly \$20,000, and that only six payments have been made in approximately three years. PECO adds that the Complainant's allegations of high bills have been

time-barred, because the cause of action for the said allegations occurred more than three years before the filing of the instant Complainant. Moreover, PECO insists that the filing of a billing dispute does not absolve the Complainant from paying for utility service obtained over the past three years. (R. Ex., pp. 1-2; paragraph 2).

The Respondent continues that Mr. Segan's contention that the three-year statute of limitations at 66 Pa. C.S. §3314(a) is confiscatory is unsupported by the record in this proceeding, or by the law. PECO states that the said statute exists for an important purpose: to ensure the timely bringing of complaints regarding service provided by public utilities to their customers. PECO posits that the Complainant provided no evidence that the statute is not in the public interest. (R. Exc., p. 2; paragraph 3).

Analysis

Our review of the record, the Initial Decision, and the Exceptions and Replies thereto, lead us to the conclusion that the Complaint before us has little, if any, merit. Furthermore, our analysis of the record evidence in this matter leads us to conclude that it is inappropriate to establish any payment schedule for the Complainant.

First, we note that the Complainant's income amounts to an estimated \$10,041 per month. (Finding of Fact No. 4). The Complainant's estimated monthly expenses are \$7,528.09. (Finding of Fact No. 5). Accordingly, if all of the said expenses were of a character to be properly considered in fashioning a payment arrangement, the Complainant would have approximately, \$2,500 available to pay for gas and electric service. However, analysis of the Complainant's expenses reveals that the Complainant is

making expenditures for items which could be considered luxuries. The said expenditures are as follows:

Private school tuition and expenses for one child	\$ 1016
Children's extracurricular expenses	\$ 225
Religious School	\$ 45
Housecleaning Services	\$ 260
Cable Television	\$ 85
Extra telephone line and fax	\$ 250
Entertainment	\$ 260
Visa	\$ 110

(Id).

Although the Commission is not in the business of making customers' personal choices regarding expenses, we will not fashion a payment arrangement which will allow PECO's other ratepayers to finance Mr. Segan's arrearage. This arrearage has been occasioned, in large part, by Mr. Segan's choice to pay for non-essential items instead of his bills for electric and gas service from the Respondent.

Next, the Complainant has a very poor payment record. The Complainant has not made any payments pursuant to the BCS decision under appeal. Also, as noted by the ALJ, the Complainant has entered into five (5) payment arrangements with the Respondent, and has failed to abide by any of them. (Finding of Fact No. 6). In 1995, the Complainant had an arrearage of approximately \$16,000. Mr. Segan's arrearage was accumulated from several addresses since 1981. Each time the Complainant moved, the balance was transferred and the arrearage grew. As of March 12, 1997, Mr. Segan's arrearage amounted to \$19,490. We find that the Complainant clearly has the income to pay his electric/gas bills but has chosen to ignore that obligation.

The Initial Decision did not reach the issue of the disposition of further Informal or Formal complaints. This issue

is germane to the matter before us, because the Complainant has filed several Informal Complaints since May 31, 1994, in addition to the instant Formal Complaint. In Manu v. AT&T Communications of Pennsylvania, Inc., Consolidated Docket Numbers F-09029141, C-00935014, C-00934970, C-00923621, C-00924554, (Order entered May 4, 1994), (Manu), we found that a party can be precluded from filing additional Formal or Informal Complaints with the Commission if there appears to be an abuse of the administrative process. See also, Theresa Gunter v. PECO Energy Company, docketed at No. C-00945633 (Order entered February 17, 1995). The Complainant's history of filing frequent Complaints, and his poor payment record, lead us to a conclusion that he has abused the administrative process. Accordingly, we shall preclude the Complainant and his spouse from filing any additional Informal or Formal Complaints regarding the account arrearage. The Office of Prothonotary and BCS are directed not to accept any filings from the Complainant regarding his arrearage.

We found previously herein that the Complainant ignored his obligation to pay his bills for electric and gas service, and abused the administrative process by filing frequent Complaints. We will not permit these practices to continue. We find that a payment arrangement is not appropriate for a Complainant who has abused the administrative process. Therefore, we will direct PECO to render to Mr. Segan a statement of the total amount due. The statement shall be rendered within ten (10) days of the entry date of this Opinion and Order. In order to retain utility service, the Complainant shall pay the amount due to the Respondent within fifteen (15) days of the date of the statement. If the arrearage is not paid in full during the fifteen day period, the Respondent is authorized to begin termination proceedings. Late payment fees shall not be waived.

With regard to the time-barring of the Complainant's allegation of excessive bills, Section 1314(a) of the Code, reads as follows:

(a) **General Rule-** No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor(e) arose, except as otherwise provided in this part.

Accordingly, we reject without further comment, the Complainant's arguments regarding the three year statute of limitations pursuant to Section 1314(a) of the Code.

Conclusion

Based upon the foregoing discussion, we deny the Exceptions of the Complainant, Saul H. Segan. We will adopt the Initial Decision of ALJ Smolen in all respects except for the recommended payment plan which is rejected; THEREFORE,

IT IS ORDERED:

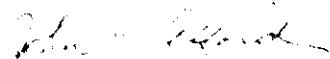
1. That the Exceptions of the Complainant, Saul H. Segan, are hereby denied.
2. That the Initial Decision of Administrative Law Judge Herbert Smolen in Saul H. Segan v. PECO Energy Company, docketed at No. C-00967954, is hereby adopted in all respects except for the payment plan which is rejected.
3. That within ten (10) days after the entry date of the Opinion and Order, the Respondent shall render a statement of the

total amount owed by the Complainant for utility service, including late penalty fees which shall not be waived.

4. That, in order to retain utility service, the Complainant shall pay, in full, to the Respondent the amount owed for utility service within fifteen (15) days of the date of the statement from the Respondent. The Respondent is authorized to begin termination proceedings if the Complainant does not make the required payment during the time period specified herein.

5. That the Bureau of Consumer Services and the Office of Prothonotary shall not accept any Complaints of an informal or formal nature from the Complainant regarding the subject matter of this proceeding.

BY THE COMMISSION



John G. Alford
Secretary

(Seal)

ORDER ADOPTED: April 24, 1997

ORDER ENTERED: APR 28 1997

APR 24 1997

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265****Saul H. Segan
v.
PECO Energy Company****PUBLIC MEETING
April 24, 1997
APR-97-OSA-137
DOCKET NO. C-00967954****MOTION OF COMMISSIONER ROBERT K. BLOOM**

Before us for consideration is the Initial Decision of Administrative Law Judge Herbert Smolen ("ALJ") and the Exceptions of Saul H. Segan ("Complainant") regarding his request to modify the payment schedule contained in the Bureau of Consumer Services ("BCS") Decision¹. The Complainant owes PECO Energy Company ("PECO") \$19,490 as of March 12, 1997.

The ALJ found that the Complainant's alleged inability to pay his electric/gas bill to PECO was not supported by the record evidence. He ordered that the Complainant pay to PECO \$7,311.48 within 30 days of entry of the order and thereafter current bills (\$356) when due plus \$200 per month. OSA recommends that the Initial Decision be adopted and the Complainant's Exceptions be denied.

I agree with OSA's analysis and disposition of the Complainant's Exceptions. They are without merit. However, I object to the establishment of any payment schedule.

According to the record evidence, the Complainant's income is *\$10,000 monthly with expenses of \$7,528*. These expenses include telephone for extra line and fax (\$250), cable (\$85), private tuition for one child (\$1,016), housecleaning (\$260), entertainment (\$260), and Visa (\$110). Even with these expenses the Complainant has approximately \$2,500 remaining to pay his electric/gas bill. The Complainant has not made any payments pursuant to the 1995 BCS Decision. It should also be noted that the Complainant in 1995 owed to PECO \$16,000. This amount was from several addresses since 1981. Each time the Complainant moved, the balance was transferred and the arrearage grew.

The Complainant clearly has the income to pay his electric/gas bill but has chosen to ignore that obligation. This will not continue. A payment arrangement is not appropriate for a Complainant who has abused the administrative process. The entire arrearage is due within 15 days. So that there is no confusion as to the amount due, PECO shall render to the Complainant a statement as to the total delinquent amount due within 10 days of entry of the Order. The statement shall indicate that the Complainant shall pay the total amount 15 days thereafter. Late payment fees are not to be waived.

¹ BCS Decision 0274024, dated May 5, 1995 required that the Complainant pay \$1,192 before May, 1995 and thereafter the current budget bill of \$335 plus \$200.

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APR 24 1997**

The Office of the Prothonotary and BCS are directed not to accept any filings from the Complainant (or his spouse) regarding the arrearage

THEREFORE, I MOVE THAT:

1. The Complaint of Saul H. Segan alleging an inability to pay his arrearage of approximately \$20,000 is dismissed
2. The OSA recommendation is adopted except for the establishment of a payment arrangement.
3. PECO Energy Company shall render a statement as to the total delinquent amount due to Saul H. Segan within 10 days of entry of the Order
4. Saul H. Segan shall pay that delinquent amount 15 days thereafter. If he does not satisfy the delinquent amount, PECO Energy Company is authorized to begin termination proceedings
5. Late payments charges are not to be waived
6. The Bureau of Consumers Services and the Prothonotary is directed not to accept any filings from Saul H. Segan regarding the subject matter of this proceeding
7. OSA shall prepare the appropriate Order consistent with this Motion for entry no later than Monday, April 28, 1997

4-24-97

DATE

Robert K. Bloom
ROBERT K. BLOOM, COMMISSIONER