

56.97

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held September 3, 1998

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
David W. Rolka
Nora Mead Brownell
Aaron Wilson, Jr.

Richard Coppola, Jr.

v.

C-00970688

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration are the Exceptions of Richard Coppola, Jr., (the Complainant) filed on July 7, 1998,¹ to the Initial Decision of Administrative Law Judge (ALJ) Charles E. Rainey, Jr., which was issued June 1, 1998. PECO Energy Company (PECO or the Respondent) did not file Reply Exceptions.

DOCKETED
OCT 08 1998

The Initial Decision was sent to the Complainant via certified mail but was returned as unclaimed. The Initial Decision was subsequently sent to the Complainant by regular mail on June 29, 1998.

DOCUMENT
FOLDER

History of the Proceeding

On August 25, 1997, the Complainant filed a Formal Complaint against PECO wherein he alleged that the Respondent failed to submit bills for months. The Complainant alleged further that PECO promised to refund to him a sum of \$750. The Complainant requested that PECO be directed to reimburse him the amount of \$750. The Complainant requested further that a penalty be assessed upon PECO for failing to bill him. The instant Complaint is occasioned by a late filed appeal of a Decision of the Bureau of Consumer Services (BCS) on an informal complaint filed by the Complainant. By that Decision, which was issued on June 4, 1997, at No. S.T. 0345461, BCS directed the Complainant to pay current actual monthly bills when due, plus \$10 per month toward the arrearage.

On September 25, 1997, the Respondent filed an Answer to the instant Complaint, wherein it averred, *inter alia*, that: (1) the Complainant's outstanding balance is \$2,562.04; and (2) that the Complainant's payments are sporadic and less than current bills. On January 4, 1998, the Complainant submitted a Motion for Summary Judgment (Motion). PECO submitted a timely Answer to the Motion. On January 5, 1998, ALJ Rainey conducted a hearing. The Complainant participated *pro se* at the hearing. The Respondent was represented by counsel. Both the Complainant and the Respondent filed Main and Reply Briefs.

Discussion

ALJ Rainey made 34 Findings of Fact. Any Finding of Fact not specifically identified or discussed is incorporated herein by reference. The Findings of Fact critical to the resolution of this matter are set forth below:

4. Complainant receives two rates of service at his present address. (Tr. 65-66).
5. Residential electric heat service was placed in Complainant's name on January 30, 1996. (Tr. 65).
6. Off-peak water heater service was instituted for Complainant on July 23, 1996. (Tr. 66).
7. Respondent installed an off-peak meter at Complainant's residence on July 23, 1996. (Tr. 68).
8. On July 23, 1996, Respondent also changed Complainant's residential electric heat meter at Complainant's request. (Tr. 67-68).
9. Respondent rendered bills to Complainant for residential electric heat service from January 30, 1996 through July 16, 1996. (Tr. 65-66).
10. Respondent did not render any bills to Complainant for off-peak water heater service from the inception of that account on July 23, 1996, until November 8, 1996. (Tr. 67).
11. Respondent did not render any bills to Complainant for residential electric heat service from

- July 23, 1996 until November 8, 1996. (Tr. 68-69).
- 12. During the period from July 23, 1996 until November 8, 1996 Respondent issued statements to Complainant which stated that no monies were due on either of his accounts. (Tr. 93-95).
- 13. Respondent read both of Complainant's meters on August 15, 1996; September 16, 1996; and October 16, 1996. (Tr. 69).
- 14. Both meters, when read, indicated usage of electricity by Complainant during the period when no bills were rendered by Respondent. (Tr. 69-70).
- 15. Respondent rendered a bill to Complainant on November 8, 1996, for his usage of both electric services from July 23, 1996 through November 8, 1996. (Tr. 71-72).
- 16. The total amount of the bill, for the four month period, rendered by Respondent to Complainant on November 8, 1996, was \$704.58. (Tr. 72).
- 17. After the residential electric heat meter was changed on July 23, 1996, the reading taken from that meter, which was supposed to be the basis of Complainant's August, 1996 bill, was less than the reading billed in July, 1996. (Tr. 42-43, 67; Complainant Exh.).
- 18. Respondent's computer consequently rejected the reading taken from Complainant's new residential electric heat meter since it was not in line with readings taken from the old meter. (Tr. 42-43, 67; Complainant Exh.).
- 19. It then became necessary for Respondent to manually bill Complainant. (Tr. 42-43, 67; Complainant Exh.).

20. Complainant admitted that he used electricity at his residence during the period of time in which he was not billed for service by Respondent. (Tr. 7-12).
21. Complainant made no payments on either of his two electric service accounts from August 30, 1996 until July 15, 1997. (Tr. 73).
22. Complainant made no payments on either of his two electric service accounts from the time a make-up bill was rendered by Respondent on November 8, 1996 until July 15, 1997. (Tr. 73-74).
23. The BCS Decision rendered on June 4, 1997, provided that Complainant was responsible for services rendered from July 23, 1996 through November 22, 1996. (Respondent Exh. 2).
24. The BCS Decision also provided that Complainant, beginning on June 27, 1997, was to pay current bills plus \$10.00 each month toward his then-outstanding balance of \$2,383.35. (Tr. 74; Respondent Exh. 2).
25. Complainant has not fully complied with the BCS Decision. (Tr. 74-75).
26. Complainant made a payment in the amount of only \$81.27 on December 1, 1997. (Tr. 75; Respondent Exh. 1).
- ***
29. Complainant's outstanding balance at the time of the hearing in this case was \$2,597.91. (Tr. 63).
30. Complainant claimed that the bill for electric service provided from July 23, 1996 through

November 8, 1996 was the responsibility of Linda Gresh. (Tr. 12).

31. Linda Gresh was an "informal tenant" of Complainant during the time when Complainant was not billed for service by Respondent. (Tr. 13).
32. Complainant claimed that he had an informal arrangement with Ms. Gresh for her to pay the electric bills during the period when no bills for service were rendered by Respondent. (Tr. 13).
33. Complainant claimed that Ms. Gresh did not pay the make-up bill rendered by Respondent, and she is no longer residing at his residence. (Tr. 18).
34. Complainant admitted that electric service for both accounts was in his name, and that he was the responsible party for those accounts during the period when no bills for service were rendered by Respondent. (Tr. 12-13).

(I.D., pp. 3-7)

The ALJ recommended that the instant Complaint be dismissed reasoning as follows:

Commission regulations provide that public utilities shall normally render bills to residential customers on a monthly basis. 52 Pa. Code §56.11. However, public utilities may render make-up bills to customers for previously unbilled utility service resulting from one of a number of circumstances. Those enumerated circumstances are: (1) a utility billing error; (2) meter failure; (3) leakage that could not reasonably have been detected; or (4) four or more consecutive estimated bills. 52 Pa. Code §56.14.

Here, the make-up bill was the result of the inability of Complainant's new residential electric heat meter to provide a reading which was in line with previous readings from the old meter, and the resulting requirement that Respondent manually compute Complainant's bills. (Tr. 42-43, 67; Complainant Exh. J). Arguably, the present facts fall under the category "utility billing error" under 52 Pa. Code §56.11. That is because Complainant received statements from Respondent during the period from July 23, 1996 until November 8, 1996, which all stated that Complainant did not owe Respondent any money. (Tr. 6-12, 93-95). The only other enumerated category under 52 Pa. Code §56.11 which arguably applies to the present case is "meter failure." However, the record does not indicate that Complainant's new residential electric heat meter failed - just that it did not initially provide a reading in line with the reading from the old meter. The record does not show that the new meter was found by Respondent to have malfunctioned, necessitating replacement. In fact, evidence of record shows that Respondent wrote to Complainant that after he was initially manually billed, his "billing will return back to normal." (Tr. 42-43, 67; Complainant Exh. J).

In any event, Respondent should work diligently to timely bill customers even if that billing is done manually. In its main brief, Respondent stated that the delay in billing was due to an administrative backlog. (Respondent Main Brief at 9). However, that claim is not evidence of record and, therefore, cannot be the basis of my decision. Notwithstanding my disregard of that information, under the facts presented in this case, I do not believe that the four-month delay in billing was so inordinate a delay so as to constitute unreasonable service in violation of 66 Pa. C.S. §1501. However, Respondent should make every effort to do better in the future. As for the present, the remedy for Complainant should be a reasonable arrangement for payment of the make-up bill, not free service.

(I.D., pp. 12-13).

The ALJ found that the Complainant did not comply with the BCS' recommended payment plan under appeal, and that the amount in arrears pursuant to that plan was \$540. 21 at the time of the hearing. (I.D., p. 15). The ALJ recommended that the Complainant be directed to make a lump sum payment in an amount sufficient to become current with the BCS Decision, within thirty (30) days of the date of entry of a final Commission Order consistent with our prior action in *Claypool v. T. W. Phillips Gas & Oil Company*, docketed at No. Z-00248730 (Order entered December 22, 1995).

The ALJ further recommended changing the BCS' recommended payment schedule from current bills plus \$10.00 per month to current bills plus \$100.00 per month. The ALJ proffered the following support for his recommendation:

If the make-up bill of \$704.58 was the only amount which remained to be paid, I would direct that it be paid over four months - the length of time Complainant received no bills for service. However, as of the hearing, a total of \$2,597.91 remained to be paid by Complainant. BCS decided that \$10 per month should be paid toward that outstanding balance. Respondent points out, however, that at that rate it would take Complainant twenty years to extinguish the debt. (Respondent Main Brief at 13). Respondent recommends that Complainant be required to pay \$100 per month toward his outstanding balance. (Respondent Main Brief at 7, 13-14). At that rate, Respondent argues, Complainant would extinguish his debt over two years - the same amount of time in which he accrued the debt. (Respondent Main Brief at 7, 13-14). (Electric service was initiated at Complainant's residence on January 30, 1996). (Tr. 66).

I agree with Respondent. The payback period under the BCS Decision is inordinately long. Conversely, the

payback period proposed by Respondent is reasonable and it has a reasonable basis.

Therefore, Complainant is required, beginning with the next billing period subsequent to the Commission's final order in this proceeding, to pay Respondent current bills plus \$100 per month toward his account balance and continue making such monthly payments until the arrearage is liquidated.

(I.D., pp. 15-16).

The ALJ recommended denial of the Complainant's Motion reasoning as follows:

There is one other matter which I must address. Complainant submitted a Motion for Summary Judgment (Motion) dated January 4, 1998. In his Motion, Complainant argued that his exhibits and Respondent's pleadings supported his Motion. Respondent filed a Response to Complainant's Motion (Response) on January 12, 1998. In its Response, Respondent denied that its Answer supports Complainant's Complaint.

In Pennsylvania Public Utility Commission Bar Association v. Thornburgh, 62 Pa. Commw. 88, 93, 434 A.2d 1327, 1329-1330 (1981), affirmed 498 Pa. 589, 450 A.2d 613 (1982), the Commonwealth Court set forth the following criteria for granting a summary judgment motion:

Our Court has delineated the following standards before summary judgment may be entered: 1) the case must be clear and free from doubt; 2) the moving party must prove that there is no genuine issue of material fact to be tried and that it is entitled to judgment as a matter of law; and 3) the record must be viewed in the light most favorable to the non-moving party.

and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.

J. Berman and Sons, Inc. v. Department of Transportation, 21 Pa. Cmwlth. 317, 345 A.2d 303 (1975).

434 A.2d at 1329-1330.

As stated above in this Initial Decision, I do not find that Complainant is entitled to judgment as a matter of law. Therefore, I must deny Complainant's Motion for Summary Judgment.

(I.D., p. 16).

The Complainant's Exceptions:

We note that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. (*University of Pa. v. Pa. P.U.C.*, 86 Pa. 410, 485 A.2d 1217, 1222) (1984). Any Exception or argument which has not been specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

The Complainant's Exceptions consist of three typewritten pages. Therein, the Complainant alleges essentially that he did, in fact, comply with the BCS recommendation. The Complainant alleges further that he was denied the opportunity to examine the Respondent's witnesses in order to prove critical aspects of his case. Finally, the Complainant contends that the ALJ erred in not granting his Motion for a Summary Judgment against the Respondent.

Although the Respondent did not file Reply Exceptions, it addressed the dispute in its Main Brief as follows:

An Examination of the testimony of record clearly shows that the Complainant did not carry his burden of proof. His testimony regarding the period was contradictory and obscure. His testimony that he paid all his bills was belied by [the] Respondent's testimony that \$2,597.91, not the \$750 claimed by [the] Complainant was due and owing on the account. The Respondent's testimony was clear and convincing regarding the entire transaction.

(PECO Main Brief, p. 9).

Analysis

Our careful analysis of the positions of the parties, and the ALJ's Initial Decision leads us to conclude that the instant Complaint is without merit and should be dismissed. Our reading of the Initial Decision left us with the clear impression that ALJ Rainey did not find the Complainant's testimony credible as illustrated by the following colloquy from the record:

JUDGE RAINEY: It shows a balance of \$2,383.35

THE WITNESS: That's correct

JUDGE RAINEY: Where does it show your payment?

THE WITNESS: Well, you know, I - - you know, I submit these [bills] as an example of how - how these things are paid and there's no carried forward or late assessments on each of these bills so I submit - -

JUDGE RAINEY: Mr. Coppola, you just characterized this as showing what you have paid. I'm asking you, where does it show what you have paid on this bill?

THE WITNESS: I didn't say this showed what I paid. I said, this indicated that from month to month, as shown in these exhibits, there's no carried forward balances, there's no late fees. This is an example that the bills were paid on time and as agreed.

JUDGE RAINEY: It does not show that. It does not show that a payment was made with respect to these bills. I see - -

THE WITNESS: Well, short of bringing in the checks, Your Honor, --I mean, you'd have to lay these out and see that there's no late notices between March - - or January and March and June, okay? there's no late assessments. There's no - -

JUDGE RAINEY: Again, the dates are something that we have to get focused on and we have to get clarification on here because again, the BCS decision refers to dates from July 23rd, '96 through November 22nd, '96 and you're showing me bills June 19, 1997, but go on. You're not reconciling what is at issue here, at least from the BCS decision and what these bills are stating.

(Tr. 31-32).

In *Danovitz v. Portnoy*, 161 A.2d 146, (1960), the Supreme Court of Pennsylvania recognizing the purview of a presiding judge stated as follows:

In determining the weight to be attached to the testimony of a witness it is proper to consider his appearance, general bearing, conduct on the stand, demeanor, manner of testifying, such as candor or frankness, or the clearness of his statement, and even the intonation of his voice. So the positiveness of the witness, as well as his uncertainty as to the facts as to which the testimony is given may be considered.

161 A.2d 149.

Based upon the foregoing discussion, we adopt the determination of ALJ Rainey that the Complainant did not meet his burden of proof pursuant to Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a). We find that the Complainant's Exceptions do not contain any arguments that would cause us to reject the conclusion of the ALJ that the Respondent did not violate the Commission Regulations regarding customer billing.

We reject the Complainant's contention that he should be excused from paying the make-up bill in the amount of \$704.58 issued by PECO on November 8, 1996. We find that there is no legal or logical basis upon which to grant the Complainant's request. The evidence of record clearly indicates that the Complainant used electric service during the time period during which he was receiving bills with a zero balance and either knew, or should have known, that eventually he would be billed for the service. (See Finding of Fact No. 21, *supra*)

We also reject the Complainant's contention that he should be entitled to damages due to the fact that "an informal tenant" resided at his home during the period from July 23, 1996, to November 8, 1996, and assumed responsibility for the utility bills. The Complainant asserted that the third party was no longer living with him at the time that the make-up bill was issued, and thus, he could not collect the amount of the electric bill from her.

It is well settled in the law that this Commission does not have the legal authority to award damages. See *Feingold v. Bell* 383 A.2d 791, 477 Pa. 1 (1977). Further, as noted by the ALJ, the ratepayer, defined as the person in whose name a residential service account is listed, is primarily responsible for payment of bills rendered for the service pursuant to the Commission's Regulations at Chapter 56 Section 2, 52 Pa. Code §56.2. (I.D., p. 13).

As noted previously, the ALJ recommended that the Complainant be directed to make a lump sum payment in an amount sufficient to become current with the BCS Decision pursuant to *Claypool, supra*. In as much as the Complainant refused to provide income and expense information, we conclude that a payment plan is not appropriate. PECO shall issue a bill for the entire outstanding balance to the Complainant within ten (10) days of the date of entry of this Opinion and Order. The due date shall be stated on the bill in conformance with Chapter 56 Regulations.

Finally, we adopt the ALJ's recommended disposition of the Complainant's Motion for Summary Judgment.

Conclusion

Based upon the foregoing discussion, we deny the Exceptions of Richard Coppola Jr. We adopt the Initial Decision of ALJ Rainey as modified by this Opinion and Order; THEREFORE,

IT IS ORDERED:

1. That the Exceptions of Richard Coppola, Jr., are hereby denied.
2. That the Initial Decision of Administrative Law Judge Charles E. Rainey, Jr. is hereby adopted as modified by this Opinion and Order.
3. That PECO Energy Company shall, within ten (10) days of the date of entry of this Opinion and Order, issue a bill to the Complainant for

payment of the entire outstanding balance for gas and electric service by cash, certified check or money order. The due date shall be stated on the bill in conformance with Chapter 56 Regulations.

4. That if Richard Coppola, Jr., fails to make the payment described in Ordering Paragraphs 4 and 5 herein, PECO Energy Company is authorized to suspend or terminate service in accordance with Chapter 56 Regulations.

BY THE COMMISSION,

James J. McNulty
James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: September 3, 1998

ORDER ENTERED: OCT - 6 1998

SEP 3 1998

RICHARD COPPOLA (COMPLAINANT)
PECO ENERGY COMPANY (RESPONDENT)

PUBLIC MEETING
SEPTEMBER 3, 1998
SEP-98-OSA-343*
DOCKET NO. C-00970688

MOTION OF VICE CHAIRMAN ROBERT K. BLOOM

Before the Commission for consideration are the Exceptions of Richard Coppola ("Complainant") to the Initial Decision of Administrative Law Judge Charles Rainey, Jr. ("ALJ") regarding his Complaint against PECO Energy Company ("PECO")

The instant Complaint is a late filed appeal of a Decision of the Bureau of Consumer Services ("BCS") which directed the Complainant to pay current actual monthly bills plus \$10 per month towards the arrearage. As of January 5, 1998, the outstanding balance was \$2,597.91. The Office of Special Assistants ("OSA") recommends affirming the BCS payment plan in its entirety.

A review of the BCS Decision regarding this Complaint reveals that the Complainant refused to provide income and expense information to BCS. Therefore NO PAYMENT ARRANGEMENT IS APPROPRIATE. If PECO chooses, it can enter into a payment plan with the Complainant. However given his poor payment history and large arrearage, the payment plan should be aggressive.

THEREFORE, I MOVE THAT:

1. The OSA recommendation to affirm the BCS payment plan is rejected
2. A payment plan is not appropriate since Richard Coppola refused to provide income and expense information.
3. BCS should not direct a payment plan when the complainant refuses to provide income and expense information.
4. OSA shall prepare the appropriate Order consistent with this Motion.

DOCUMENT
FOLDER

9-2-98
DATE

Robert K. Bloom
ROBERT K. BLOOM, VICE CHAIRMAN