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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

James & Beth Nardelli

v.

Z-00426416

Duquesne Light Company

F I N A L O R D E R

In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge Robert P. Meehan dated August 4, 1999, has become final without further Commission action; THEREFORE,

IT IS ORDERED:

1. The complaint of James and Beth Nardelli against Duquesne Light Company, at Docket No. Z-00426416, is sustained for the limited purpose of establishing a payment arrangement, and dismissed in all other respects for the failure to satisfy the burden of proof.

2. Within 10 days of the date on which the Commission's Order in this proceeding is entered, Duquesne Light Company shall render a bill to James and Beth Nardelli in the total amount of the then outstanding, past due balance on their account for electric service.

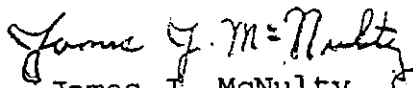
3. Within 30 days of the date on which the Commission's Order in this proceeding is entered, James and Beth Nardelli shall pay to Duquesne Light Company the full amount of the then outstanding past due balance on their account for electric service.

4. In addition, James and Beth Nardelli shall pay the full budget or optional payment amount of each month's electric bill for current service by the due date of each month's bill.

5. As long as James and Beth Nardelli comply with all of the payment terms of this Order, Duquesne Light Company shall not assess any late payment charges or penalties, and shall not interrupt their electric service except for valid emergency or safety reasons.

6. If James and Beth Nardelli fail to comply with all of the payment terms of this Order, Duquesne Light Company is authorized to terminate their electric service, in accordance with the provisions of the Public Utility Code, 66 Pa. C.S. §§101, et seq., and 52 Pa. Code §§56.1, et seq.; Provided, however, that termination of James and Beth Nardelli's electric service for noncompliance with any or all of the terms of this Order shall not be precluded by 52 Pa. Code §56.92 solely because James and/or Beth Nardelli file either an informal or formal complaint with the Commission which raises the same matter addressed in this complaint proceeding or addresses the terms of the payment arrangement specified herein; And Further Provided, that any termination of James and Beth Nardelli's electric service for noncompliance with any or all of the terms of this Order shall be exempted from the provisions of 52 Pa. Code §56.100.

BY THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ENTERED: OCT 19 1999

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

James & Beth Nardelli

v.

Duquesne Light Company

: Docket No.
: Z-00426416
:
:
:
:

INITIAL DECISION ON COMMISSION REMAND

Before
Robert P. Meehan
Administrative Law Judge

History of the Proceeding

In its Order, entered April 30, 1999, the Commission remanded this case for further hearing in light of the conversion of the Complainant's bankruptcy case from Chapter 13 to Chapter 7. The telephonic hearing on remand was held on July 7, 1999. Beth Nardelli appeared, without counsel, and testified. The Respondent, represented by counsel, presented one witness and submitted exhibits 6-9, which were admitted into the record. The transcript of the hearing on remand is 30 pages in length (Tr. 65-95). Briefs are not being filed in this case. The record was closed by Order issued August 3, 1999.

Findings of Fact

1. The Complainants are James and Beth Nardelli, who continue to reside at 1667 Charlton Heights Rd., in Coraopolis (Tr. 69).
2. The Complainants are still renting their residence. Their household still consists of four people and they have not added any electrical appliances since the initial hearing in July 1998 (Tr. 69).

3. Beth Nardelli remains employed by the Ambridge Area School District. Her net monthly income is \$2,200.00 (Tr. 76).

4. James Nardelli receives about \$1,814.00 in net monthly disability, of which approximately \$567 is for the children (Tr. 70).

5. The Complainants' total net monthly income is approximately \$4,014.00 (Tr. 70, 76).

6. The Complainants claim the following monthly expenses (Tr. 70-75, 91-92):

Item	Amount	Balance
Rent	\$ 825.00	
Gas	194.00 ¹	
Telephone	112.50 ²	\$ 300.00
Water/Sewer/Trash	66.67 ³	
Food	600.00	
Car loan	188.00	2,900.00
Car insurance	50.00 ⁴	
Car repairs	200.00	
Car—gasoline	62.50 ⁵	
Medical	40.00 ⁶	
Visa	20.00	800.00

¹ This is the "budget" amount. The amount of the balance was not known.

² The telephone bill is between \$100 and \$125 per month. This is the approximate mid-range.

³ The total bill for these services is about \$200.00 every three months. This is approximately 1/3 of the quarterly total.

⁴ The premium is \$150.00 every three months. This is for one month.

⁵ They spend between \$50--\$75 per month for gasoline.

⁶ They spend between \$30--\$50 per month for medical reasons.

Penney's	20.00	
Tuition	<u>1,500.00⁷</u>	
	\$3,878.67	<u>\$4,000.00</u>

7. Beth Nardelli drives a 1994 Chevrolet Cavalier. It is approximately 12 miles, one-way, from her home to her place of employment (Tr. 73, 76).

8. Beth Nardelli does not dispute any portion of the current balance on the Complainants' electric account (Tr. 78).

9. On or about July 23, 1998, the Complainants' Chapter 13 bankruptcy proceeding was converted to a Chapter 7 bankruptcy proceeding.

10. As of the July 7, 1999 hearing on remand, the balance on the Complainants' electric account was \$692.22, excluding the bill that was to become due on July 19, 1999. This balance is for the period between July 23, 1998 and June 19, 1999 (Resp. Ex. 6).

11. At the time of the hearing on remand, a bill had been rendered on June 5, 1999, in the amount of \$97.11 (Tr. 83).

12. As of the July 7, 1999 hearing on remand, the current monthly budget or optional payment amount for the Complainants' electric service was \$89.00, calculated as a rolling 12-month average (Tr. 83).

13. The last payment received by the Respondent for the Complainant's account was on May 10, 1999, in the amount of \$184.94 (Tr. 83; Resp. Ex. 6).

⁷ They anticipate paying between \$1,000--\$2,000 per month in private school tuition beginning sometime in the fall of 1999.

14. The \$164.00 received by the Respondent on September 30, 1998 was the security deposit paid by the Complainants (Tr. 83-84).

15. In March 1999, after the conversion of the Complainants' bankruptcy proceeding from Chapter 13 to Chapter 7, the Complainants and the Respondent entered into an agreement for the payment of the Complainants' electric bills (Tr. 87; Resp. Ex. 8).

16. The terms of the March 1999 payment agreement were for the Complainants to pay their regular monthly budget amount, plus an additional \$100.00 per month toward the arrearage, beginning in April 1999 (Tr. 87; Resp. Ex. 8).

17. The Complainants did not comply with the March 1999 payment agreement.

18. Beth Nardelli testified that the Complainants have no reason and no excuse for not complying with the March 1999 payment agreement they had made with the Respondent (Tr. 89).

Discussion

As I noted at pages 10-11 of my Initial Decision in this case, dated July 15, 1998, the Complainants are the party having the burden of proof in this proceeding. This burden remains on the Complainants until the final conclusion of the case, including the hearing on remand.

In my Initial Decision, I also noted that where there was an existing payment arrangement established by the Commission's Bureau of Consumer Services (BCS), and that arrangement had not been complied with, a complainant was going to be required to make a lump sum payment equal to the total payments that should have been made. However, if a

complainant could demonstrate good cause for not making the payments, that requirement could be waived. (Initial Decision, at 11-12).

There is no BCS payment arrangement in the case on remand. However, there is a payment agreement between the Complainants and the Respondent. In my opinion, the principles applicable to BCS established payment arrangements⁸ should also be made applicable to payment agreements between the Complainants and Respondent.

In considering an appropriate payment arrangement for complainants with an arrearage on their utility accounts, the Commission has held, in *Bolt v. Duquesne Light Company*, 66 PA PUC 463, 464 (1988), that it is obligated to only recognize reasonable personal expenses in establishing a payment plan for an outstanding arrearage. This obligation is rooted in the fact that these payment plans are financed at the expense of all other ratepayers. The expense which the Commission questioned in *Bolt* was a \$413.88 per month car payment.

Consistent with its obligation to recognize only reasonable personal expenses, the Commission has held that, in determining a complainant's reasonable personal expenses for establishing a payment plan, the monthly expenses for such items as: credit or charge cards; cable TV; clothing purchases; private school tuition; and transportation, are not to be considered, and that it will allow a reasonable monthly telephone expense of \$25.00. *Napoli v. PECO Energy Co.*, Docket No. Z-00237160, entered October 14, 1994; *Brown v. PECO Energy Co.*, Docket No. Z-00236726, entered January 26, 1995; *Lazorcak v. Duquesne Light*

⁸ See, e.g., *Claypool v. T.W. Phillips Gas & Oil Co.*, Docket No. Z-00248730, entered December 22, 1995; *Palmer v. Duquesne Light Company*, Docket No. Z-00314726, entered April 23, 1997; *Paner v. Duquesne Light Company*, Docket No. Z-00325087, entered June 17, 1997; *Downey v. Duquesne Light Company*, Docket No. C-00968410, entered September 16, 1997; and *Stathakis v. Pennsylvania Power & Light Company*, Docket No. F-00294590, entered October 24, 1996.

Company, Docket No. Z-00288641, entered August 12, 1996; *Young v. PECO Energy Co.*, Docket No. C-00956790, entered February 14, 1996; and *Downey v. Duquesne Light Company*, Docket No. C-00968410, entered September 16, 1997. See also, *Whyel v. Duquesne Light Company*, Docket No. C-00967899, entered April 7, 1997, where the Complainant's expenses included a \$466.00 per month car payment and a \$300.00 per month computer rental.

As required by these decisions, the Complainants' claimed total monthly expenses of \$3,878.67 must be adjusted by eliminating from that total the estimated private school tuition of \$1,500.00 and the monthly payments for the Visa and Penney's accounts of \$20.00 each, or a total of \$40.00. Additionally, the claimed monthly telephone expense must be reduced by \$87.50 to permit a reasonable expense of \$25.00 per month. With these adjustments, the Complainant's total reasonable net monthly expenses are \$2,251.17. When this total reasonable net monthly expense amount is subtracted from the Complainants' total net monthly income of approximately \$4,014.00, the Complainants have a net positive income of \$1,762.83 with which to pay their electric bills. Accordingly, it is clear that the Complainants have failed to satisfy the burden of proving a financial inability to pay their electric bills.

Given the income and expense information that the Complainants placed on the record during the July 7, 1999 hearing on remand and the Complainants' noncompliance with the March 1999 payment agreement, the Respondent requested that the Commission direct the Complainants to make a lump sum payment equal to the total amount of the then \$692.22 balance on the account. Considering the Complainants' monthly income and expenses, as adjusted in accordance with Commission precedent, and that the Complainants could not offer any excuse or reason for failing to comply with their payment agreement with the Respondent, it is my opinion that the request of the Respondent should be granted.

Accordingly, the Commission should require the Complainants to make full payment of the entire balance on their electric account with the Respondent within 30 days of

the entry of the Commission's Order in this case, and to authorize the Respondent to terminate their electric service if full payment is not made. Further, considering the entire record in this case, the Commission should provide that if the Respondent initiates termination proceedings against the Complainants, such proceedings shall not be stayed simply because the Complainants file another informal or formal complaint raising the same issues as in this case. Lastly, considering the entire record in this case, the Commission should exempt this account from the winter termination provisions of its regulations.

Conclusions of Law

1. The parties to, and subject matter of this remanded inability to pay utility bills complaint proceeding, are properly before the Commission.
2. The Complainants remain the party having the burden of proof in this proceeding.
3. The Complainants have failed to satisfy the burden of proving a financial inability to pay their electric bills, either monthly or in full.
4. The Complainants failed to demonstrate any good cause or reason for their failure to pay their monthly electric bills in accordance with a March 1999 payment agreement they made with the Respondent.
5. The complaint should be sustained, for the limited purpose of establishing a payment arrangement, and dismissed, in all other respects, for the failure to satisfy the burden of proof.
6. Considering the record in this proceeding, the Complainants should be ordered to pay the full amount of the arrearage on their account for electric service within 30 days of the entry of the Commission's Order.

7. The Commission should also provide that any electric service termination proceedings, initiated by their failure to comply with the Order, will not be stayed simply because the Complainants file another informal or formal complaint with the Commission raising the same issues as in this case, and that the Complainants' electric account be exempted from the Commission's winter termination regulations.

ORDER

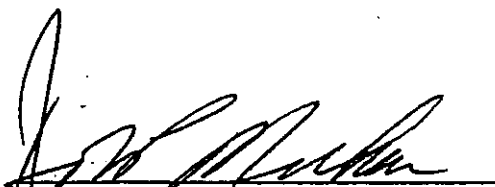
In consideration of the foregoing; IT IS ORDERED THAT:

1. The complaint of James and Beth Nardelli against Duquesne Light Company, at Docket No. Z-00426416, is sustained for the limited purpose of establishing a payment arrangement, and dismissed in all other respects for the failure to satisfy the burden of proof.
2. Within 10 days of the date on which the Commission's Order in this proceeding is entered, Duquesne Light Company shall render a bill to James and Beth Nardelli in the total amount of the then outstanding, past due balance on their account for electric service.
3. Within 30 days of the date on which the Commission's Order in this proceeding is entered, James and Beth Nardelli shall pay to Duquesne Light Company the full amount of the then outstanding past due balance on their account for electric service.
4. In addition, James and Beth Nardelli shall pay the full budget or optional payment amount of each month's electric bill for current service by the due date of each month's bill.
5. As long as James and Beth Nardelli comply with all of the payment terms of this Order, Duquesne Light Company shall not assess any late payment charges or

penalties, and shall not interrupt their electric service except for valid emergency or safety reasons.

6. If James and Beth Nardelli fail to comply with all of the payment terms of this Order, Duquesne Light Company is authorized to terminate their electric service, in accordance with the provisions of the Public Utility Code, 66 Pa. C.S. §§101, et seq., and 52 Pa. Code §§56.1, et seq.; Provided, however, that termination of James and Beth Nardelli's electric service for noncompliance with any or all of the terms of this Order shall not be precluded by 52 Pa. Code §56.92 solely because James and/or Beth Nardelli file either an informal or formal complaint with the Commission which raises the same matter addressed in this complaint proceeding or addresses the terms of the payment arrangement specified herein; And Further Provided, that any termination of James and Beth Nardelli's electric service for noncompliance with any or all of the terms of this Order shall be exempted from the provisions of 52 Pa. Code §56.100.

Date: August 4, 1999


ROBERT P. MEEHAN
Administrative Law Judge