**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Lundy :

:

v. : F-2015-2466629

:

PECO Energy Company :

**ORDER GRANTING IN PART THE MOTION OF PECO ENERGY COMPANY**

**FOR JUDGMENT ON THE PLEADINGS AND DIRECTING**

**THAT THE CASE BE SET FOR HEARING**

HISTORY OF THE PROCEEDING

On January 27, 2015, James Lundy (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent or Company). The case is a timely appeal from a BCS informal decision at #3252384 issued December 31, 2014. Complainant alleges that he was incarcerated from July 2012 through September 2013 and claims therefore that he is not responsible for any utility charges that accrued at 5243 Burton Street, Philadelphia, Pennsylvania (Burton Street address) during that time period. Complainant also alleges he was unaware that utility service was still listed under his name at the Service Address while he was incarcerated. As relief, Complainant requests that the charges that accrued on his account while he was incarcerated from July 2012 through September 2013 be removed from his bill. Complainant also requests a payment arrangement.

The Complaint was served electronically by the Commission’s Secretary on February 10, 2015.[[1]](#footnote-1)

On February 23, 2015, PECO filed its Answer and New Matter, properly accompanied by a notice to plead. In its Answer, PECO avers that the final balance from the Service Address is correctly calculated at $224.74 and was properly transferred when Complainant established service at 542 West Wyoming Avenue, 2nd Floor, Philadelphia, Pennsylvania (West Wyoming Ave. address) on December 3, 2015 consistent with Commission regulations. PECO alleges that Complainant never contacted Respondent to discontinue service at the Service Address until after his period of incarceration. Furthermore, the outstanding balance of $224.74 has already been paid off with LIHEAP payments, and therefore PECO alleges that the transferred balance issue is moot.

In New Matter, PECO alleges that the Complainant was enrolled in its Customer Assistance Program (CAP) when he resided at the Burton Street address. Complainant was removed from CAP on September 13, 2015, when service to the Service Address was discontinued upon the Complainant’s request. Complainant re-enrolled in the CAP program when he moved to the West Wyoming Ave. address, and is scheduled to recertify on July 10, 2016. He is still actively enrolled in CAP, and his account’s entire arrearage is CAP arrears. Therefore, PECO avers, Complainant is not entitled to a payment arrangement.

On March 17, 2015, PECO filed its Motion for Judgment on the Pleadings, properly accompanied by a notice to plead, asking that the averments in its New Matter be deemed admitted and stating that the only remedy sought by Complainant is a payment arrangement, which cannot be granted under the Public Utility Code. Therefore, PECO asks that the Complaint be dismissed.

By Motion Judge Assignment Notice issued April 14, 2015, the Motion for Judgment on the Pleadings (MJOP) was assigned to me.

The Complainant has filed no responsive pleadings. The matter is ripe for decision.

FINDINGS OF FACT

1. Complainant is James Lundy of 542 West Wyoming Avenue, Apartment B, Philadelphia, Pennsylvania.

2. Respondent is PECO Energy Company, a jurisdictional public utility company providing electric service in the Commonwealth of Pennsylvania.

3. On August 14, 2012, Complainant was enrolled in PECO's CAP program for the service address of 5245 Burton Street, 2nd Floor, Philadelphia PA. New Matter ¶1.

4. Complainant was incarcerated and did not reside at 5245 Burton Street from July 2012 to September 2013. Complaint ¶5.

5. On September 19, 2013, service was discontinued at 5245 Burton Street and Complainant was removed from CAP. New Matter ¶2.

6. On December 4, 2013, Complainant established service at 542 West Wyoming Avenue, 2nd Floor, Philadelphia PA and was enrolled in PECO's CAP program, Tier D. New Matter ¶ 3.

7. The balance of $224.74 from the Burton Street account was transferred to the West Wyoming Avenue account on December 4, 2013. Exhibits 1 and 2 to PECO's Answer and New Matter.

8. Complainant's balance at the time of the filing of the Answer and New Matter was $1,230.43. New Matter ¶4.

9. PECO applied three LIHEAP payments to Complainant's West Wyoming account: on February 17, 2014 for $156.00; on March 20, 2014 for $292.16; and on April 3, 2014 for $207.84. Exhibit 2 to PECO's Answer and New Matter.

10. Complainant's entire arrearage accumulated while Complainant was paying CAP rates.

11. No responsive pleading was filed to the Answer and New Matter, or to the Motion for Judgment on the Pleadings.

DISCUSSION

The Complainant wants the Respondent utility to remove charges that accrued on his account during the time period he was incarcerated. He also requests a payment arrangement. PECO moves to dismiss the Complaint because it properly transferred the Complainant’s final balance from the Burton Street address to the West Wyoming Avenue address, because LIHEAP payments covered the transferred balance, and because the Commission cannot grant a payment arrangement on CAP arrears.

The Commission’s Rules of Practice and Procedure at 52 Pa.Code § 5.102 govern motions for judgment on the pleadings. The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa.Code § 5.102(d)(1). Only in a case where the moving party’s right to prevail is so clear that a trial would be a fruitless exercise should judgment on the pleadings be granted. *Williams v. Lewis*, 466 A.2d 682(Pa.Super. 1983); *Service Employees International Union, Local 69, AFL-CIO v. The Peoples Natural Gas Company, d/b/a Dominion Peoples*, Docket No. C-20028539 (Order entered December 19, 2003). In ruling on a motion for judgment on the pleadings, the tribunal must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against her only those facts admitted. Judgment on the pleadings should be entered only when the case is clear and free from doubt. *Reuben v. O’Brien*, 496 A.2d 913 (Pa.Super 1985).

The facts alleged in the Complaint are that the Complainant was incarcerated from July 2012 to September 2013, and that PECO continued to bill him during that time. Facts alleged and deemed to be admitted in the Respondent’s New Matter are: (1) Complainant was enrolled in the CAP program at the Service Address from August 14, 2012 through September 19, 2013; (2) Complainant reenrolled in the CAP on December 4, 2014 at the New Address; (3) Complainant is presently enrolled in the CAP; (4) Complainant's next scheduled recertification date is July 10, 2016; and (4) the Complainant’s entire balance of $1,230.43 is comprised of CAP arrears. These facts are deemed admitted. 52 Pa.Code § 5.63(b).

**1. Transfer of arrearage to West Wyoming Avenue account**

Commission regulations state that it is a utility customer’s duty to contact the utility company and request discontinuance of service in the event that a customer plans to vacate a service address. Section 56.16 provides, in relevant part:

**§ 56.16. Transfer of accounts**   
  
 (a) A customer who is about to vacate premises supplied with public utility service or who wishes to have service discontinued shall give at least 7 days’ notice to the public utility and a noncustomer occupant, specifying the date on which it is desired that service be discontinued. *In the absence of a notice, the customer shall be responsible for services rendered.*

(b) In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, *a public utility may transfer an unpaid balance to a new residential service account of the same customer.*

52 Pa.Code § 56.16. (Emphasis added).

Furthermore, PECO’s tariff states:

20.1 TERMINATION NOTICE. Customers who have fulfilled their initial contract term and wish to discontinue service from the Company must give the Company at least 7 days' written notice to that effect.

PECO Tariff, Section 20.1, p. 26. (Issued February 1, 2012 Effective April 1, 2012).

Whether or not the Complainant properly gave seven days’ notice to PECO to request termination of service in his name at the Burton Street address is a question of material fact. PECO's New Matter does not contain an allegation that the Complainant failed to give such notice, nor has PECO provided any customer contact records or other documentation that would support such an allegation.

If PECO had been properly notified by the Complainant that he intended to discontinue service at the Burton Street address prior to his incarceration, then Complainant would not be responsible for charges that accrued on his account at the Burton Street address during the period of his incarceration. However, if Complainant had not notified PECO that he no longer wanted service under his name at the Burton Street address, PECO would properly hold Complainant responsible for service to the Burton Street address during the time he was incarcerated. In that case, PECO's transfer of any final balance from the Complainant’s previous account at the Burton Street address to the Complainant’s account at the West Wyoming Avenue address would be consistent with applicable law.

As this material fact was not addressed in PECO's New Matter and not supported in the Motion for Judgment on the Pleadings, the Complainant will be given an opportunity to pursue this claim at an evidentiary hearing.

**2. Payment arrangement**

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418, as amended by Act 155 of 2014, reenacting the Responsible Utility Customer Protection Act, applies to this proceeding. Although the Commission has the authority to establish payment arrangements, this authority is limited by the strict guidelines set forth in the statute. 66 Pa.C.S. §§ 1401-1418.

The statute bars the Commission from establishing a payment arrangement where a customer is enrolled in a utility’s CAP, pursuant to the Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418:

**(c) Customer Assistance Programs.** – Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.

66 Pa.C.S. § 1405(c).

Accordingly, the Commission cannot grant a payment arrangement to the Complainant, and the Respondent is entitled to judgment as a matter of law on the issue of a possible payment arrangement.

Therefore, Respondent’s motion for judgment on the pleadings is granted insofar as it seeks to dismiss the request for a payment arrangement, but denied insofar as it seeks dismissal of the Complaint.

This matter will be set for hearing on the sole issue of whether PECO should have taken the service at 5245 Burton Street, 2nd Floor, out of Complainant's name during his incarceration. The Complainant is cautioned that no evidence regarding his request for a payment arrangement will be entertained at the evidentiary hearing.

In the meantime, if Complainant should wish to end this litigation prior to the evidentiary hearing, he may do so by either: (a) giving PECO permission to file a certificate of satisfaction, which will end the proceeding; or (b) filing a written petition requesting leave to withdraw his Complaint and setting forth the reasons for withdrawal. This petition must be filed with the Commission's Secretary, served upon PECO counsel and upon the undersigned presiding officer. 52 Pa.Code § 5.94.

The parties are encouraged to seek an amicable resolution of this matter.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Judgment on the Pleadings filed by PECO Energy Company in the case captioned James Lundy v. PECO Energy Company, at Docket No. F-2015-2466629, is granted insofar as it seeks to dismiss the count seeking a payment arrangement.

2. That the Motion for Judgment on the Pleadings filed by PECO Energy Company in the case captioned James Lundy v. PECO Energy Company, at Docket No. F-2015-2466629, is denied insofar as it seeks to dismiss the Complaint.

3. That this matter be set for hearing.

Dated: April 24, 2015 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Susan D. Colwell

Administrative Law Judge

**F-2015-2466629: JAMES LUNDY v. PECO ENERGY COMPANY**

JAMES LUNDY

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***-ACCEPTS ELECTRONIC SERVICE-***

1. PECO has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. 702, and has agreed to electronic service instead under the Commission’s Waiver of 702 program. Service is listed in the Audit History of the case as having been effected on February 10, 2015. [↑](#footnote-ref-1)