**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Iesha Mull :

:

v. : F-2015-2466606

:

Metropolitan Edison Company :

**ORDER**

**DENYING MOTION FOR SUMMARY JUDGMENT AND**

**REFERRING CASE TO MEDIATION UNIT FOR MEDIATION REVIEW**

On January 23, 2015, Iesha Mull filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against Metropolitan Edison Company (Met-Ed or “the Company”), Docket Number F-2015-2466606. The Complaint was a timely appeal of a decision of the Commission’s Bureau of Consumer Services (BCS) at case number 3311504. In her Complaint, Ms. Mull averred that she would like a payment agreement. Ms. Mull stated: “they are asking for too much a month for me to afford and they claim there is nothing else they can do for me. Between rent and all my other bills and taking care of my 6 year old niece full time, I just can’t afford it.” Ms. Mull requested a payment arrangement of around $100.

On March 2, 2015, Met-Ed filed an Answer and New Matter in response to Ms. Mull’s Complaint. In its Answer, Met-Ed admitted or denied the various averments made by Ms. Mull. In particular, Met-Ed denied that Ms. Mull is eligible for a new or different payment arrangement. Furthermore, Met-Ed averred that Ms. Mull must pay Met-Ed for the electric service she consumes and Met-Ed has a right to bill and receive payment for the utility service actually supplied. In its New Matter, which was accompanied by a Notice to Plead, Met-Ed averred that, based upon the information provided by Ms. Mull, BCS has already provided Ms. Mull the maximum length of a payment arrangement she can receive and that there is no statutory provision allowing for a longer repayment period.

On March 30, 2015, Met-Ed also filed a Motion for Summary Judgment. The Motion was also accompanied by a Notice to Plead. In its Motion, Met-Ed argued that there is no genuine issue of material fact and that the Commission cannot grant the relief requested by Ms. Mull for a more favorable payment arrangement and, therefore, the Complaint should be dismissed. Met-Ed attached to its Motion an Affidavit of Tammy Taylor, a Senior Business Analyst for the Corporate Compliance Department, who testified in the Affidavit that Ms. Mull has already received from BCS a payment arrangement of the maximum length. Ms. Taylor made this determination based on information that Ms. Mull provided to BCS. Met-Ed argued, as discussed further below, that the Affidavit demonstrates that Met-Ed has committed no violation of the Public Utility Code or any regulation or order of the Commission and that Met-Ed is entitled to relief as a matter of law.

Ms. Mull’s Answer to Met-Ed’s New Matter was due no later than March 25, 2015. 52 Pa.Code §§ 5.63(a), 1.12(a), 1.56(a)(1) and (b). Ms. Mull’s Answer to Met-Ed’s Motion for Summary Judgement was due no later than April 22, 2015. 52 Pa.Code §§ 5.101(f)(1), 1.12(a), 1.56(a)(1) and (b). Ms. Mull filed neither an Answer to Met-Ed’s Motion nor to its New Matter.

On April 15, 2015, the Commission issued a Motion Judge Assignment Notice indicating that I am responsible to resolve any issues which may arise during the preliminary phase of this proceeding.

Met-Ed’s Motion for Summary Judgment is now ready for disposition. For the reasons discussed below, Met-Ed’s Motion will be denied and Ms. Mull’s Complaint will be referred to the Commission’s Mediation Unit for mediation review.

The Commission’s Rules of Administrative Practice and Procedure, 52 Pa. Code Chapters 1, 3 and 5, provide for the filing of Motions for Summary Judgment. In particular, Section 5.102 of the Commission’s Rules provides in relevant part:

**§ 5.102 Motions for summary judgment and judgment on the pleadings.**

1. *Generally*. After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

\* \* \*

(d) *Decisions on Motions*.

1. *Standard for grant or denial on all counts*. The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

(2) *Standard for grant or denial in part*. The presiding officer may grant a partial summary judgment if the pleadings, depositions, answers to interrogatories and admissions, together with the affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law on one or more but not all outstanding issues.

52 Pa. Code § 5.102(a), (d)(1) and (d)(2). When disposing of a Motion for Summary Judgment, the record must be examined in the light most favorable to the nonmoving party. First Mortgage Co. of Pennsylvania v. McCall, 313 Pa. Superior Ct. 54, 56, 459 A.2d 406, 408 (1983). To avoid the motion for summary judgment, the nonmoving party must set forth facts showing that there is a genuine issue for trial. Id. at 58-59.

In this case, Ms. Mull stated in her Complaint that she cannot afford the payment arrangement that she has been provided along with all of her other financial responsibilities. Ms. Mull also stated in her Complaint that “between rent and all of my other bills plus taking care of my 6 year old niece full time, I just can’t afford it.” Ms. Mull requested a payment arrangement of approximately $100 per month. In response, Met-Ed argued that Ms. Mull is already receiving the maximum length of payment arrangement that can be afforded as set forth in the Public Utility Code – five years – and that there is no statutory provision allowing for a longer period. Met-Ed, therefore, argued that the Commission cannot grant the relief requested – a more favorable (i.e., longer) payment arrangement.

To begin, Chapter 14 of the Public Utility Code grants the Commission the authority to establish a payment agreement for customers with outstanding bills pursuant to certain guidelines related to total household income and household size. 66 Pa.C.S. § 1405(b). Chapter 14 limits the length of time the Commission can order a company to allow a customer to resolve an unpaid balance on an account that is subject to a payment agreement based on the gross monthly household income in relation to the federal poverty level. For example, the Commission may order a company to allow a customer whose gross monthly household income does not exceed 150% of the federal poverty level a payment agreement over a period of up to five (5) years. 66 Pa.C.S. § 1405(b)(1). Furthermore, the Commission’s ability to order a utility to provide a payment agreement is limited to requiring a utility to provide only one payment agreement to a customer, absent a change in income or a significant change in circumstance. 66 Pa.C.S. § 1405(d).

When viewing the Complaint in the light most favorable to Ms. Mull, it appears that Ms. Mull’s Complaint pertains to more than just her payment arrangement but also raises issues regarding the care of her niece. For example, her care for her niece may invoke the Commission’s medical certification regulations if her niece is seriously ill or affected with a medical condition which will be aggravated by a cessation of electric service. *See*, 52 Pa.Code §§ 56.112-56.114. Ms. Mull’s Complaint should not be dismissed on a preliminary basis but she should be given an opportunity to orally explain her Complaint, particularly with regard to the care of her niece.

As a result, Met-Ed’s Motion for Summary Judgment will be denied because Ms. Mull averred in her Complaint that she would like a payment agreement because, among other things, she is taking care of her six year old niece. Based on this averment, there is genuine issue of material fact that warrants denying Met-Ed’s Motion for Summary Judgment. Ms. Mull is advised, however, that Met-Ed is correct that Chapter 14 does not allow for payment agreements longer than five years. Furthermore, a payment agreement following a hearing could result in a shorter payment agreement if it is determined that Ms. Mull’s household income and size limit the length of a payment agreement the Commission can order to a shorter amount of time. Ms. Mull is also advised that Chapter 14 does not consider a consumer’s expenses when establishing the length of a payment agreement. Yet, Ms. Mull will be given an opportunity to be heard orally because, when examined in a light most favorable to Ms. Mull, as is required when disposing of Met-Ed’s Motion, a genuine issue of material fact exists regarding the care of her niece that warrants a hearing and Met-Ed’s Motion be denied.

It is also relevant that Ms. Mull is not represented by counsel. Commission precedent supports allowing unrepresented complainants an opportunity to be heard orally, and not have their case dismissed on the basis of a preliminary pleading. *See*, Richard Carlock v. The United Telephone Company of Pennsylvania, Docket No. F-00163617, Order (entered July 14, 1993)(Carlock)(in many cases unrepresented complainants can explain their dispute orally much better than they can communicate their grievance in written form and to deny unrepresented complainants a meaningful opportunity to be heard in such cases can be viewed as a gross abuse of authority) at 7, *citing*, Halpern v. The Bell Telephone Company of Pennsylvania, Docket No. C-00923950, Order (entered October 1992) and William Schleisher v. The Bell Telephone Company of Pennsylvania, Docket No. F-00161252 (adopted at Public Meeting December 17, 1992); *see also*, John M. Gera v. PPL Electric Utilities Corporation, Docket No. C-20054657, Opinion and Order (entered November 2, 2005).[[1]](#footnote-1) It may be, for example, that Ms. Mull could demonstrate orally an issue affecting her electric service from Met-Ed, such as taking care of her niece full time, that she could not explain in response to Met-Ed’s Motion. Carlock, therefore, supports denying Met-Ed’s Motion and giving Ms. Mull an opportunity to be heard orally regarding her Complaint.

As noted above, the standard for granting a Motion for Summary Judgment is very high. Summary Judgment may only be granted in those cases where the record clearly shows that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law when viewing the record in the light most favorable to the nonmoving party. Met-Ed has failed to satisfy this standard with regard to Ms. Mull’s Complaint. Genuine issues of material facts exist that require a hearing and cannot be dismissed on a preliminary basis. In this case, Ms. Mull’s Complaint will be referred to the Commission’s Mediation Unit for mediation review prior to being sent to a hearing.

Ms. Mull is advised, however, that a hearing on her Complaint will require her to carry her burden of proof by a preponderance of the evidence and that all decisions of the Commission must be supported by substantial evidence. This is a different standard of review than when addressing a Motion for Summary Judgment. Ms. Mull is further advised that the Commission does not have the authority to order a utility to provide a payment arrangement longer than five years and that she may be given a shorter payment agreement depending on the record developed during a hearing. Nonetheless, Ms. Mull is entitled to have her Complaint heard and not be dismissed as a result of a Motion for Summary Judgment. Ms. Mull’s Complaint will be referred to the Commission’s Mediation Unit for mediation review.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Summary Judgment filed by Metropolitan Edison Company at Docket Number F-2015-2466606 on March 30, 2015 is hereby denied.
2. That the formal Complaint filed by Iesha Mull against Metropolitan Edison Company dated January 23, 2015 is referred to the Commission’s Mediation Unit for mediation review consistent with the above discussion.

Date: May 4, 2015

Joel H. Cheskis

Administrative Law Judge

**F-2015-2466606 - IESHA MULL v. METROPOLITAN EDISON COMPANY**IESHA MULL777 COURT ST APT # 606READING PA 19602484.338.3485

TORI L GIESLER ESQUIREFIRSTENERGY2800 POTTSVILLE PIKEPO BOX 16001READING PA 19612-6001610.921.6658***-ACCEPTS ELECTRONIC SERVICE-***

1. The Commission’s decision in Carlock was subsequently clarified to allow ALJ’s the discretion to dispose of the pleadings in a proceeding provided that the action is neither arbitrary nor capricious, and that it is in accordance with the law. John A. Graham Jr. v. Philadelphia Suburban Water Company and Bell Atlantic-Pennsylvania, Inc., Docket No. C-00957557, Opinion and Order (entered June 12, 1996). [↑](#footnote-ref-1)