

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|----------------------------------|---|----------------|
| Darshell Bennett | : | |
| | : | |
| v. | : | C-2016-2531049 |
| | : | |
| Peoples Natural Gas Company, LLC | : | |

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses a Formal Complaint filed by a customer seeking a payment arrangement because the Pennsylvania Public Utility Commission (Commission) already ordered a payment arrangement for the customer in a prior decision. The customer defaulted on this first arrangement. Under 66 Pa.C.S. §1405(d), absent a change in income, the Commission may not order a second payment arrangement for a customer if the customer defaulted on the first arrangement.

HISTORY OF THE PROCEEDING

On February 25, 2016, Darshell Bennett (Complainant) filed a Formal Complaint with the Commission against Peoples Natural Gas Company, LLC (Respondent or Peoples). The Complainant is seeking a new payment arrangement for her outstanding balance. She claims she did not receive the Commission’s judgment in a prior complaint proceeding and that she has been paying every month, but the company wants her to pay \$1,537.84. She believes she is entitled to a payment arrangement, as was directed in the prior Commission order.

On March 16, 2016, Peoples filed an answer to the Complaint. Respondent averred that Ms. Bennett's outstanding account balance at that time was \$1,645.21. It further averred that, because Mr. Bennett was given a payment arrangement for her balance in a previous complaint proceeding, and she defaulted on that arrangement, the Commission may not order a second payment arrangement in this proceeding. Peoples requested that her complaint be dismissed.

Also on March 16, 2016, Peoples filed preliminary objections (POs) to Ms. Bennett's complaint. In its POs, Peoples noted the previous complaint proceeding and argued that, since the issues in this proceeding were addressed in the previous proceeding, the instant complaint should be dismissed preliminarily on the basis of *res judicata*. Ms. Bennett did not submit a response to Peoples' POs.

By order dated May 13, 2016, I denied Peoples' POs and directed that a hearing be scheduled. I noted in my order that the Complainant alleged in her complaint that she had been paying her bills every month and that, in accepting this averment as true for purposes of ruling on the POs, she was entitled to a hearing on whether, in light of her regular payments, Peoples' insistence that she pay \$1,537.84 was proper.

By Hearing Notice dated June 1, 2016, the Commission scheduled an initial telephonic hearing in this proceeding for Thursday, July 14, 2016, and assigned the proceeding to me. The telephonic hearing was held as scheduled. Ms. Bennett appeared on behalf of herself and presented testimony in support of her complaint. Respondent was represented by Jennifer Petrisek, Esquire, who presented the testimony of Matthew Szalankiewicz. Mr. Szalankiewicz sponsored Peoples Exhibits A, B and Post Hearing Exhibit 1, all three of which were admitted into the record during the hearing.

The record closed on August 15, 2016, upon my receipt of the hearing transcript, and consists of a 41 page transcript and three Peoples exhibits.

The proceeding is now ready for a ruling.

FINDINGS OF FACT

1. The Complainant in this proceeding is Darshell Bennett.
2. The Respondent in this proceeding is Peoples Natural Gas Company, LLC.
3. Respondent provides natural gas distribution service to the Complainant at 349 Whittier Drive, Pittsburgh, PA 15235. (Tr. p. 7; Peoples Ex. A).
4. Matthew Szalankiewicz is a Customer Relations Specialist with Peoples whose duties include investigating complaints submitted by customers to the Commission. (Tr. p. 16).
5. Peoples Ex. A is a statement of account for Ms. Bennett's account with Peoples that contains billing and payment information from July of 2012 through June of 2016. (Tr. p. 17).
6. Peoples Ex. B is a copy of the Commission's Final Order on Ms. Bennett's previous formal complaint, at Docket No. F-2014-2428027, wherein the Commission established a payment arrangement for payment of the outstanding balance on her account. (Tr. pp. 23-24).
7. Peoples Post Hearing Ex. 1 is a printout of a summary of contacts between Peoples and the Complainant that occurred in June of 2015. (Tr. pp. 35-37).
8. The most recent bill that had been issued on the Complainant's account at the time of the hearing was the June 15, 2016 bill, which contained a total outstanding balance of \$1,425.93. (Tr. p. 19; Peoples Ex. A).

9. Ms. Bennett filed a previous formal complaint against Peoples in June of 2014, at Docket No. F-2014-2428027, concerning payment of the outstanding balance on he account. (Tr. p. 24; Peoples Ex. B).

10. In its decision on Ms. Bennett's previous formal complaint, the Commission established a payment arrangement whereby she was required to pay her budget amount plus 1/12 of the outstanding balance on the account each month. (Tr. p. 24; Peoples Ex. B).

11. The first payment due under the Commission's payment arrangement would have been toward the Complainant's February 16, 2015 bill in the amount of \$256.32. (Tr. pp. 21-22; Peoples Ex. A).

12. The Complainant defaulted on this Commission ordered payment arrangement. (Tr. p. 22; Peoples Ex. A).

13. The first payment made by the Complainant after issuance of the Final Order at Docket No. F-2014-2428027 was received by Peoples on May 13, 2015 in the amount of \$150.00. (Peoples Ex. A).

14. A review of the Commission's records in the Complainant's previous proceeding at Docket No. F-2014-2428027 confirms that the Final Order was served on Ms. Bennett at 349 Whittier Drive, Pittsburgh, PA 15235.

15. A review of the Commission's records also confirms that the Final Order that was served on Ms. Bennett in the previous proceeding at Docket No. F-2014-2428027 was not returned to the Commission as undeliverable.

DISCUSSION

The Complainant has not disputed any of the outstanding charges on her account. She is asking the Commission to establish a payment arrangement for the payment of these outstanding charges. She also alleges that she did not receive the Commission's order in the previous complaint proceeding. In her previous proceeding, the Commission established a payment arrangement of Ms. Bennett's budget amount plus 1/12 of her outstanding balance each month. (Peoples Ex. B). Ms. Bennett defaulted on this Commission-ordered payment arrangement. She claims that she became aware of the prior Commission order recently and believes she is entitled to a payment arrangement for her current outstanding balance. Peoples, however, is insisting that she pay her entire balance and will not give her a payment arrangement.

As the Complainant in this proceeding, Ms. Bennett bears the burden of proving that the utility is responsible or accountable for the actions or inactions alleged in the complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). In order to meet this burden of proof, the Complainant must show, by a preponderance of the evidence, that the Respondent is responsible for any violations alleged in the complaint. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 529 A.2d 654, 602 A.2d 863 (1992). The "preponderance of the evidence" standard is met when one party presents evidence that is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Comm'w.*, *Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993), 2 Pa.C.S. §704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation*

Bd. of Review, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

Finally, in order to ultimately prevail, the Complainant must prove that the action or inaction of the Respondent alleged in the complaint constitutes a violation of the Public Utility Code, the Commission's regulations, or an order of the Commission. 66 Pa.C.S. § 701. As explained below, the Complainant has failed to do so in this case.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418 (Chapter 14), applies to this proceeding.

The Commission has the authority to investigate payment disputes and establish payment arrangements, pursuant to 66 Pa.C.S. § 1405(a), within the guidelines set forth in 66 Pa.C.S. § 1405(b), which states:

(a) **General Rule.**-The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

As stated, the Commission may establish a payment arrangement between a public utility and a customer or applicant only within the limits established by 66 Pa.C.S. §§ 1401-1418.

Chapter 14 provides that, absent a change in income, the Commission is precluded from establishing a second payment arrangement for a customer where the customer defaulted on a prior Commission-ordered payment arrangement. 66 Pa.C.S. § 1405(d) states as follows:

(d) **Number of payment arrangements.** – Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a

customer has defaulted on a previous payment arrangement established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

The Complainant is not disputing any of the outstanding charges on her account. She alleges she did not receive the Commission's order in her previous complaint proceeding and she is asking the Commission to establish a payment arrangement for her now.

I will first address the prior formal complaint proceeding and Ms. Bennett's contention that she did not receive the Commission's order in that proceeding.

Ms. Bennett testified she was told there was a judgment from the Commission, but that she did not receive it. (Tr. p. 8). She testified that in now looking over the judgment, she only owed \$265.96. (Tr. pp. 8-9). She stated that Peoples told her she did not have a payment arrangement but, rather, insisted she pay the full balance of \$1,425.93 on her account. (Tr. p. 10). She believed that, according to the Commission's prior order, she should be on a payment arrangement. (Tr. p. 8-9).

Peoples' Ex. B is a copy of the Commission's Final Order from Ms. Bennett's prior formal complaint proceeding. The order was entered on February 6, 2015, at Docket No. F-2014-2428027. In its order, the Commission established a payment arrangement for the payment of the outstanding charges on Ms. Bennett's account. She was ordered to pay her budget bill plus 1/12 of the outstanding balance beginning with the first billing due date after the order's entry date. (Peoples Ex. B). Mr. Szalankiewicz testified that the first payment due under the Commission's order would have been for her February 16, 2015 bill, and would have been in the amount of \$256.32 (budget bill of \$95.00 and \$161.32 toward the balance). (Tr. pp. 21-22; Peoples Ex. A). Mr. Szalankiewicz testified that Ms. Bennett did not make the initial payment required by the Commission. (Tr. p. 22; Peoples Ex. A). In fact, the first payment made by Ms. Bennett after the February 6, 2015 entry date was received by Peoples on May 13, 2015 in the amount of \$150.00. (Peoples Ex. A).

Ms. Bennett claims she did not receive the Commission's order in the prior proceeding. If true, this arguably may help explain why Ms. Bennett did not make the required payments in the months following issuance of the order. However, my review of the Commission's records confirms that the Commission's order was mailed to the Complainant's address at 349 Whittier Drive, Pittsburgh, PA 15235, which is the address she provided on her complaint form, and that it was not returned to the Commission as undeliverable. This is confirmed by the testimony of Mr. Szalankiewicz, who stated that he reviewed the entries in the Commission's electronic docketing system and found no indication that the order was ever returned as undeliverable. (Tr. p. 31).

Regardless of whether Ms. Bennett did, in fact, ever actually see the order, I find that it was properly served on her by the Commission. As noted, the order was mailed to Ms. Bennett at the address provided by her, and was not returned to the Commission as undeliverable. Accordingly, it must be presumed that the order sent to Ms. Bennett in the ordinary course of business was received by her. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa.Super.Ct. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa.Super.Ct. 221, 444 A.2d 658 (1982). Accordingly, the payment arrangement established in the prior proceeding was the operative Commission-ordered payment arrangement.

As set forth above, Chapter 14 provides that, absent a change in income, the Commission is precluded from establishing a second payment arrangement for a customer where the customer defaulted on a prior Commission-ordered payment arrangement. 66 Pa.C.S. § 1405(d).

I agree with Peoples that, since the Commission already established a payment arrangement for payment of the balance on Ms. Bennett's account, and she defaulted on that arrangement, she is not entitled to another Commission-ordered payment arrangement.

With respect to the issue of whether Ms. Bennett experienced a change in income, she testified that her income in February of 2015, when the Commission's order in the prior

proceeding was issued, was approximately \$14.00 an hour and that she was working full time. (Tr. P. 13). She further testified that she was still working full time, was now making \$15.50 an hour and that she lives alone in her house. (Tr. p. 14).

The definition of “change in income” is set forth at 66 Pa.C.S. § 1403, and requires: “[a] decrease in household income of 20% or more if the customer’s household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer’s household income level is 200% or less of the Federal poverty level.” As described above, Ms. Bennett’s income is higher now than it was when her initial Commission-ordered payment arrangement was established. Accordingly, there has been no change in income that would allow or justify the establishment of a second Commission-ordered payment arrangement.

There is substantial, undisputed, record evidence in support of Peoples’ position that, under, 66 Pa.C.S. § 1405(d), Ms. Bennett is not entitled to a second Commission-ordered payment arrangement. Since the Commission lacks the authority to establish a second payment arrangement for the Complainant, the complaint must be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and the subject matter of this dispute. 66 Pa.C.S. § 701.
2. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418, applies to this proceeding.
3. Absent a change in income, the Commission does not have the authority to order a second payment arrangement for a customer where the customer defaulted on a previous Commission-ordered payment arrangement. 66 Pa.C.S. § 1405(d).

4. 66 Pa.C.S. § 1403 defines a change in income as: “[a] decrease in household income of 20% or more if the customer’s household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer’s household income level is 200% or less of the Federal poverty level.”

5. An order mailed to a party at the address provided by him or her in the ordinary course of business, and not returned to the Commission as undeliverable, is presumed to have been received by the party. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa.Super.Ct. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa.Super.Ct. 221, 444 A.2d 658 (1982).

6. Complainant has not sustained her burden of proving entitlement to a second Commission-ordered payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Darshell Bennett against Peoples Natural Gas Company, LLC at Docket No. C-2016-2531049 is dismissed.

2. That the proceeding at Docket No. C-2016-2531049 be marked closed.

Date: November 1, 2016

/s/
Steven K. Haas
Administrative Law Judge