

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Justin R. Vasile	:	
	:	
v.	:	C-2016-2549935
	:	
UGI Penn Natural Gas, Inc.	:	

INITIAL DECISION

Before
Tiffany L. Tran
Special Agent

INTRODUCTION

This decision denies the customer’s request for a payment arrangement. The Complainant has not demonstrated a change in income or circumstances that would warrant another Commission-issued payment arrangement, and has demonstrated a lack of good faith effort in paying his bills.

HISTORY OF THE PROCEEDING

On May 18, 2016, Justin R. Vasile (Mr. Vasile or Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against UGI Penn Natural Gas, Inc. (UGI, Company or Respondent). In his Complaint, Mr. Vasile alleged that he tried to get “income verification” in March of 2016 and it took a second call to receive the forms for verifying his income. As relief, Mr. Vasile requested that his income be verified, he be given a payment arrangement, and that his service be turned back on.

On June 20, 2016, UGI filed an Answer to the Complaint by and through its attorney, Jeffrey H. Sunday, Esquire. In its Answer, UGI averred that the Complainant's gas service has been terminated due to non-payment with an outstanding balance of \$6,325.77. UGI alleges that the Complainant had defaulted on a Company-issued payment arrangement and a Commission-issued payment arrangement, and that a BCS decision at Case No. 3268814 determined that the Complainant was not entitled to any further payment arrangements. UGI further alleges that the Complainant has not made a good-faith effort to pay his bills, having paid nothing toward his gas account balance in over two years. In response to the Complainant's claim that he has had a change in income, UGI states that the Complainant has failed to file any proof of change in income. It is UGI's position that the Complainant must pay the entire balance due and owing on his gas account in order to reinstate his gas service, and that the Complaint be denied and dismissed.

By Telephone Hearing Notice dated August 1, 2016, I advised the parties that an initial telephonic hearing was scheduled for August 30, 2016, at 10:00 a.m. The case was assigned to me, pursuant to 52 Pa.Code § 56.174.

A Prehearing Order dated August 3, 2016, advised the parties of the date and time of the scheduled hearing and informed them of the procedures applicable to this proceeding.

The initial telephonic hearing convened as scheduled on Friday, August 26, 2016, at 10:00 a.m.¹ The Complainant appeared *pro se* and testified on his own behalf. Jeffrey H. Sunday, Esq., counsel for Respondent, presented the testimony of one witness, Ann Blaskiewicz, a data analyst for Respondent. During Ms. Blaskiewicz's testimony, the Complainant testified that he had not received a copy of the Respondent's proposed exhibits, and therefore had not had an opportunity to look at them, and did not have them to follow during the hearing. Counsel for UGI represented that he had mailed a copy of the proposed exhibits to the Complainant at the address listed on the Complaint under cover letter dated August 15, 2016. Out of an abundance of caution, and pursuant to my authority as a presiding officer under 52 Pa. Code § 5.483(a), I

¹ A tape recording of the hearing was made for both August 26, 2016, and September 26, 2016, no court reporter being present.

continued the hearing. Attorney Sunday stated he would send another copy of the Respondent's exhibits to the Complainant.

By Interim Order dated September 1, 2016, I memorialized the continuance and ordered a further hearing scheduled. I also ordered the Complainant to contact both Attorney Sunday and the Office of Administrative Law Judge (OALJ) upon his receipt of Respondent's re-sent proposed exhibits. The Complainant did not contact either OALJ or Respondent.

On September 12, 2016, at 11:10 a.m., a member of OALJ, contacted the Complainant by telephone to ascertain whether he had received Respondent's proposed exhibits. The Complainant confirmed that he had received them.

By telephonic hearing notice dated September 12, 2016, advised the parties that a further telephonic hearing was scheduled for September 26, 2016, at 10:00 a.m.

The further telephonic hearing convened as scheduled on September 26, 2016. The Complainant again appeared *pro se* and testified on his own behalf. The Complainant presented no exhibits and confirmed on the record that he had received the Respondent's proposed exhibits. Jeffrey H. Sunday, Esq., counsel for Respondent, presented the testimony of one witness, Ann Blaskiewicz, a data analyst for Respondent, who sponsored three exhibits, which were admitted into the record.

The record closed on September 26, 2016, at the conclusion of the further telephonic hearing.

FINDINGS OF FACT

1. The Complainant is Justin R. Vasile.
2. The Respondent is UGI Penn Natural Gas, Inc.

3. The Complainant receives service from the Respondent at 1310 Winton Street, Archbald, Pennsylvania 18403 (Service Address).

4. The Complainant lives at the Service Address with his wife, and three children aged 4, 8, and 14.

5. At the time of the hearing, the Complainant's wife was working part time at St. Joseph's Center in Scranton/Dunmore, earning approximately \$10 per hour and working eight hours per week, or \$80 per week.

6. The Complainant's wife suffers from rheumatoid arthritis, which affects her ability to perform certain kinds of work.

7. The Complainant was last employed two years ago.

8. The Complainant's household receives \$700 in food stamps every month.

9. The Complainant's monthly household income is approximately \$1,020 per month for a household of five persons. ($\$80 \text{ per week} \times 4 \text{ weeks} = \320) + \$700 in food stamps per month = \$1,020.

10. The Complainant's service was terminated for non-payment on September 29, 2014. Exh. UGI PNG I.

11. The Complainant made a payment of \$244.00 on September 29, 2014, to restore service. Exh. UGI PNG I.

12. The Complainant made no other payments toward his account in 2014. Exh. UGI PNG I.

13. The Complainant paid a security deposit of \$179.82 on June 22, 2015. Exh. UGI PNG I.

14. The Complainant made no other payments toward his account in 2015. Exh. UGI PNG I.

15. The Complainant's service was terminated for non-payment on May 9, 2016. Exh. UGI PNG I.

16. The Complainant has made no payments toward his account in 2016. Exh. UGI PNG I.

17. On December 22, 2014, BCS issued an informal decision at Case No. 3268814, that determined that the Complainant's family was a Level 1 household with a monthly income of \$1,200.00, and directed the Complainant to pay his monthly budget bills of \$176.00 plus \$41.00 per month towards his account balance. The Complainant defaulted on this payment arrangement.²

18. On March 1, 2016, BCS opened an informal complaint at Case No. 3414619, wherein the Complainant claimed that his wife's income had decreased from \$1,200.00 to \$360.00 per month and that he was seeking for service to be maintained and a payment arrangement. Exh. UGI PNG IV.

19. On March 17, 2016, BCS Case No. 3414619 was closed due to the failure of the Complainant to return the change in income forms. Exh. UGI PNG IV.

20. Service was terminated on May 9, 2016 and remains off.

21. The Complainant has defaulted on at least one Company-issued payment arrangement, and a Commission-issued payment arrangement at BCS Case No. 3268814. Exh. UGI PNG II.

22. The Complainant has not made a good faith effort to pay down his arrearage.

23. As of the date of the hearing, the Complainant's account balance was \$6,325.77. Exh. UGI PNG I.

² Pursuant to Pa.R.E. 201, I take judicial notice of Commission records for BCS Case No. 3268814.

DISCUSSION

In his Complaint, Mr. Vasile alleges that he tried to get “income verification,” and it took a second call after two months to receive the forms for verifying his income. As relief, Mr. Vasile requests that his income be verified, that he be given a payment arrangement, and that his service be turned back on. For the reasons stated below, his Complaint will be denied.

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving by substantial evidence that he is entitled to the requested relief. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. Mill v. 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, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Compensation Bd. of Review, 166 A.2d 96 (Pa. Super. 1960); Murphy v. Dep’t. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Cmwlth. 1984).

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), 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 Commission issued a payment arrangement to the Complainant at BCS Case No. 3268814 on December 22, 2014. BCS determined that the Complainant was a Level 1 household with a monthly income of \$1,200.00, and directed the Complainant to pay his monthly budget bills of \$176.00 plus \$41.00 per month towards his account balance. The Complainant failed to make the payments ordered by the Commission at BCS Case No. 3268814. He therefore defaulted on the payment arrangement.³

Because he defaulted on the Commission-issued payment arrangement, the Complainant would be entitled to a second or subsequent payment arrangement from the

³ Pursuant to Pa.R.E. 201, I take judicial notice of Commission records for BCS Case No. 3268814.

Commission only if he had experienced a “Change in Income,” as defined in the Public Utility Code. 66 Pa.C.S. § 1403.⁴

On March 1, 2016, BCS opened an informal complaint at Case No. 3414619, wherein the Complainant claimed that his wife’s income had decreased from \$1,200.00 to \$360.00 per month and that he was seeking for service to be maintained and a payment arrangement. UGI PNG IV. On March 17, 2016, BCS Case No. 3414619 was closed due to the failure of the Complainant to return the change in income forms. UGI PNG IV. Mr. Vasile stated in his Complaint and testified at the hearings that he never received the income verification forms from BCS and only received them when he called BCS two months later to ask why they had not been sent. Similarly, during the first evidentiary hearing in this matter on August 26, 2016, Mr. Vasile claimed that he had never received the proposed exhibits from the Respondent. By Interim Order dated September 1, 2016, I continued the hearing and specifically instructed in the ordering paragraphs that Mr. Vasile contact both counsel for Respondent and OALJ upon his receipt of Respondent’s re-sent proposed exhibits. Mr. Vasile failed to comply with this Order. Out of an abundance of caution, the Legal Division Supervisor of OALJ called Mr. Vasile on September 12, 2016, at which time Mr. Vasile confirmed he had received the re-sent proposed exhibits. There is no record that the BCS income verification forms were ever returned to the Commission as undeliverable, and counsel for UGI also testified that the first set of proposed exhibits sent to the Complainant were not returned to him as undeliverable. Documents mailed to a party’s last known address and not returned by the post office are presumed to have been received. *See Meierdierck v. Miller*, 394 Pa. 484, 147 A.2d 406 (1959); *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974). Therefore, these documents are presumed to have been mailed to and received by the Complainant.

The Complainant’s service was terminated on May 9, 2016, and remains off.⁵ UGI’s position is that the Complainant is an applicant under 66 Pa.C.S. § 1403 and is therefore

⁴ “Change in Income.” - 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. 66 Pa.C.S. § 1403.

⁵ Heather O’Boyle filed an informal complaint on May 10, 2016, at BCS Case No. 3438165, claiming that she wanted to apply for service at the service address but that UGI wanted payment of \$6,000.00. The case was closed on May 13, 2016, with BCS finding that Ms. O’Boyle was listed as a resident at the service address with Mr.

requiring an up-front payment of the full balance of \$6,325.77 for reconnection of service.⁶ I disagree. An applicant does not include a person who, within 30 days after service termination or discontinuance of service, seeks to have service reconnected at the same location or transferred to another location within the service territory of the public utility. 66 Pa.C.S. § 1403. A person who seeks to have service reconnected at the same location or transferred to another location within the service territory of the public utility within 30 days after service termination or discontinuation of service is properly considered a customer. 66 Pa.C.S. § 1403.

Mr. Vasile's service was terminated on May 9, 2016. He filed this complaint on May 18, 2016, seeking for reconnection of service at the service address, nine days after termination of service. Therefore, I find that Mr. Vasile is a customer under 66 Pa.C.S. § 1403. As a customer, Mr. Vasile may be eligible for a Commission-issued payment arrangement, and cannot be required to pay the full balance of \$6,325.77 for reconnection of service.

Since the Complainant has defaulted on a Commission-issued payment arrangement, he will be required to demonstrate a change in income in order to be eligible for a second Commission-issued payment arrangement. A 10% decrease in income required to meet the definition of a "change in income" under 66 Pa.C.S. § 1403. I will therefore compare the Complainant's reported income from the December 22, 2014 BCS decision at Case No. 3268814 to the income the Complainant reported during the evidentiary hearings in this proceeding.

During the evidentiary hearings in this matter, Mr. Vasile testified that he currently lives at the Service Address with his wife, and three children aged 4, 8, and 14. The Complainant has not worked in two years. The Complainant's wife works part time at St. Joseph's Center in Scranton/Dunmore, earning approximately \$10 per hour and working 8 hours per week, or \$80 per week. The Complainant's household receives \$700 in food stamps every month. The Complainant's monthly household income is \$1,020 per month, for an annual income of \$12,240. For a household of five, the Complainant's monthly household income is

Vasile and was equally responsible for the account balance. Exh. UGI PNG III. During the hearings, Mr. Vasile testified that Heather O'Boyle is his former wife.

⁶ A public utility may require the payment of an outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there, not exceeding 4 years from the date of the service request. 52 Pa.Code § 56.35(b)(1).

less than 150% of the Federal Poverty Level, and remains a Level 1 household. 66 Pa.C.S. § 1405(b)(2).⁷ The Complainant has experienced a decrease in his household income, from \$1,200 to \$1,020 per month since the December 22, 2014 BCS decision. This represents a 15% decrease in income.⁸ 15% is greater than the 10% decrease in income required to meet the definition of a “change in income” under 66 Pa.C.S. § 1403. Therefore, he is eligible for a second payment arrangement from the Commission.

Although the Complainant has experienced a change in income as defined in 66 Pa.C.S. § 1403 and is eligible for a second payment arrangement, granting a second payment arrangement is discretionary. The Commission has a responsibility to exercise its authority very judiciously when a utility has lawfully terminated a customer for nonpayment. Specifically, the Commission should exercise its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills, or who have experienced a significant change of circumstances outside of their control. While the Commission has the authority to establish a payment arrangement in cases such as this, the customer is not entitled as a matter of right to the award of a Commission issued payment arrangement. George Crawford v. National Fuel Gas Distribution Corp., C-20066348 (Order entered December 6, 2007) (Crawford). A customer's poor payment history and inability to keep prior Company-issued payment agreements may cause the commission to decline to issue a payment agreement. Hewitt v. PECO Energy Company, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013); and Dorsey v. Philadelphia Gas Works, Docket No. F-2012-2312679, (Opinion and Order entered December 19, 2013).

It is noted that from July of 2014 through September 26, 2016, the date of the further hearing, the Complainant made payments toward his account totaling \$211.82, and that his total arrearage is \$6,325.77.⁹ His payment history demonstrates a lack of good faith effort to pay his arrearage. Citing Crawford, the Commission has held that, although Section 1405(a) gives the Commission authority to establish payment agreements between public utilities,

⁷ \$1,020 per month x 12 months = \$12,240 annual income.

⁸ $(\$1,200 - \$1,020) / \$1,200 = 15\%$

⁹ On November 7, 2016, Mr. Vasile contacted OALJ and notified OALJ staff that UGI received a payment for \$785 from the Low-Income Home Energy Assistance Program (LIHEAP). Since the record in this case closed on September 26, 2016, the LIHEAP payment will not be considered in the disposition of this matter.

customers, and applicants, the Commission may determine that the facts of a case do not warrant a Commission-issued payment agreement where a customer has failed to demonstrate a good faith effort to pay his bills. Moses Rogito v. UGI Utilities Inc.-Gas Division (Complaint-Appellant), F-02263457 (Order entered December 3, 2008). The Complainant has failed to demonstrate a good faith effort to pay his bills. Therefore, he is not entitled a second Commission-ordered payment arrangement.

Furthermore, the Commission may not reinstate a payment arrangement where the customer has defaulted except in limited circumstances. 66 Pa.C.S. §§ 1403, 1405(e). The Complainant did not testify and the evidence does not reflect that he has experienced a significant change in circumstance, as that phrase is defined and applied in the Public Utility Code. The Complainant did testify that his wife suffers from rheumatoid arthritis, which limits the type of work she is capable of doing, but did not suggest that this condition directly resulted in a significant loss in the customer's household income under to 66 Pa.C.S. § 1403. Therefore, the Commission has no authority to reinstate the prior Commission-issued payment arrangement.

However he manages his household budget, the Complainant will have to pay the Respondent for the electric service he consumes. By law a public utility is entitled to receive payment for the service it provides. Scaccia v. West Penn Power Co., 55 Pa. PUC 637 (1982). Otherwise, customers' unpaid bills are included in the utility's uncollectible expense and ultimately paid by the remaining ratepayers. Cf., Bolt v. Duquesne Light Co., 66 Pa. PUC 463 (1988); Thomas P. O'Toole v. Bell Telephone Co. of Pa., Docket Number C-00923964, (Final Order entered August 20, 1992).

In conclusion, I decline to exercise the Commission's authority to order a payment arrangement in these circumstances. Although the Complainant has undergone a change in income that makes him eligible for a second Commission-issued payment arrangement, his request for a payment arrangement is denied because he failed to demonstrate a significant change in circumstances that would justify reinstating the previous Commission-ordered payment arrangement, and has also demonstrated a lack of good faith effort to pay his bills. The Complaint is denied.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The Complainant had the burden of proof. 66 Pa.C.S. § 332(a).
3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401, et seq., applies to this proceeding.
4. Documents mailed to a party's last known address and not returned by the post office is presumed to have been received. Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974).
5. The Commission has the authority to investigate payment disputes and establish payment arrangements. 66 Pa.C.S. § 1405.
6. Absent a change in income, the Commission cannot grant a second or subsequent payment arrangement, if a customer has defaulted on a previous payment arrangement. 66 Pa.C.S. § 1405(d).
7. The Commission may not reinstate a payment arrangement where the customer has defaulted except in limited circumstances. 66 Pa.C.S. § 1405(e).
8. The Commission has held that, although Section 1405(a) gives the Commission authority to establish payment agreements between public utilities, customers, and applicants, the Commission may determine that the facts of a case do not warrant a Commission-issued payment agreement where a customer has failed to demonstrate a good faith effort to pay his bills. Moses Rogito v. UGI Utilities Inc.-Gas Division (Complaint-Appellant), F-02263457 (Order entered December 3, 2008).

9. A customer's poor payment history and inability to keep prior Company-issued payment agreements may cause the commission to decline to issue a payment agreement. Hewitt v. PECO Energy Company, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013); and Dorsey v. Philadelphia Gas Works, Docket No. F-2012-2312679, (Opinion and Order entered December 19, 2013).

10. By law a public utility is entitled to receive payment for the service it provides. Scaccia v. West Penn Power Co., 55 Pa. PUC 637 (1982).

11. The Complainant has failed to sustain his burden of proof that he is eligible for another Commission-ordered payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Justin Vasile against UGI Penn Natural Gas, Inc. at Docket No. C-2016-2549935 is denied.
2. That the Secretary mark this docket closed.

Date: November 30, 2016

_____/s/
Tiffany L. Tran
Special Agent