

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sherry and Lenny Trocki	:	
	:	
v.	:	F-2016-2574307
	:	C-2016-2578856
UGI Penn Natural Gas, Inc.	:	

INITIAL DECISION

Before
Rebecca Waldemar
Special Agent

INTRODUCTION

This decision grants the customers' request for a payment arrangement.

HISTORY OF THE PROCEEDING

On November 3, 2016, Sherry and Lenny Trocki (Complainants) filed a formal Complaint with the Pennsylvania Public Utility Commission against UGI Penn Natural Gas, Inc. (UGI or Respondent) stating that Respondent had terminated their service and requesting a payment arrangement and that their service be restored.¹

On November 14, 2016, UGI filed an Answer and New Matter in response to the Complaint. In its Answer, UGI admitted that it had terminated service to the Complainants for non-payment. Respondent also averred in its Answer that the Commission's Bureau of Consumer Services had found Complainants' ineligible for a new payment arrangement. In its

¹ The formal Complaint is a timely appeal of an informal Complaint at BCS No. 3483836.

New Matter, UGI stated that that the Complainants had filed a previous formal Complaint and failed to appear at the hearing. The Respondent requested that the Complaint be dismissed.

A Telephone Hearing Notice dated January 10, 2017, advised the parties that an initial telephonic hearing was scheduled for Thursday, February 23, 2017 at 10:00 a.m. The case was assigned to me, pursuant to 52 Pa. Code § 56.174. On January 11, 2017, Respondent filed a motion for consolidation requesting that a Complaint filed by Sherry Trocki on November 28, 2017 be consolidated with the Complaint filed on November 3, 2017 by Sherry and Lenny Trocki. The Motion averred that the Complaints raised identical issues. By Order dated February 2, 2017, I consolidated the complaints. A Prehearing Order dated February 3, 2017, again 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.² Ms. And Mr. Trocki appeared *pro se* and testified on their own behalf. Larry R. Crayne, Esq., counsel for Respondent, presented the testimony of one witness, Amy Wynn, a Senior Compliance Representative for Respondent, who sponsored five exhibits which were admitted into the record. The record closed on February 23, 2017 at the conclusion of the hearing.

FINDINGS OF FACT

1. The Complainants are Sherry and Lenny Trocki, who receive electric utility service from the Respondent at 185 Roosevelt St., Ewardsville, PA.
2. The Respondent is UGI Penn Natural Gas, Inc. a jurisdictional utility.
3. On March 21, 2013, the Commission's Bureau of Consumer Services (BCS) issued a level 1 payment arrangement on Complainants' behalf at BCS case No. 3073204. UGI Exh. R-2.

²

A tape recording of the hearing was made, no court reporter being present.

4. The balance due at the time the 2013 payment arrangement was \$1947.89.

5. Although Complainants did not make all payments on time for the 2013 Commission issued payment arrangement, they did satisfy the balance that was subject to the payment arrangement.

6. The Complainants made \$3094.90 in payments between August 15, 2013 and July 7, 2015.

7. In addition to the Complainants, one minor child lives in the household.

8. Mr. Trocki lost his job in July 2015 and became employed again in March 2016.

9. The Complainant's household income consists of \$3916.66 per month from Mr. Trocki's wages and \$568.75 per month from Ms. Trocki's wages for a total of \$4485.41.

10. As of the date of the hearing, the Complainant's past due account balance was \$1735.24. UGI Exh. R-1.

DISCUSSION

In their formal Complaint, Complainants stated that the Respondent had terminated their service and requested a payment arrangement. In its Answer, UGI asserted that it had terminated service to the Complainants for non-payment and that BCS had found Complainants ineligible for a new payment arrangement.

As the party seeking affirmative relief from the Commission, the Complainants bear the burden of proving by substantial evidence that they are entitled to the requested relief. 66 Pa. C.S. § 332(a). To satisfy this burden, the Complainants 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. Public Utility Comm.*, 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. Public Utility Comm.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Public Utility Comm.*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa. C.S.A. § 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. Public Utility Comm.*, 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, *et seq* (Chapter 14) applies to complaints alleging inability to pay and requests for Commission-issued payment arrangements. This law authorizes the Commission to establish payment arrangements between a public utility and its customers within prescribed limits that the Commission must follow. 66 Pa.C.S. § 1405(a). Absent a change of income, the Commission cannot establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by the Commission. 66 Pa.C.S. § 1405(d).

Where previous payment arrangements are completed as a result of a customer making payments sufficient to retire the outstanding balance, a request for a payment arrangement on a balance which is wholly unrelated to any prior outstanding balance is properly viewed as a request for an initial arrangement and the Commission may establish a payment arrangement on the new delinquency. *Chapter 14 Implementation*, Docket No. M-00041802F0002 at 37 (Second Implementation Order entered September 12, 2005).

The maximum length of time to resolve an unpaid balance the Commission is authorized to allow depends upon the Complainant's gross monthly household income as follows: (1) Five years for customers with an income not exceeding 150% of the federal poverty level; (2) three years for customers with an income exceeding 150% of the federal poverty level but not by more than 250%; (3) one year for customers with an income exceeding 250% of the federal poverty level but not by more than 300%; and (4) six months for customers with an income exceeding 300% of the federal poverty level. 66 Pa.C.S. § 1405(b).

At the hearing, UGI presented evidence that the Complainants had broken a prior payment arrangement issued by the Commission and that they had made a total of only eleven payments since August 15, 2013. UGI's witness testified that the Complainants had filed previous complaints with the Commission one of which was dismissed for failure to prosecute. UGI's witness also stated that UGI's position was that the Complainant's had to pay the past due balance in full, plus a \$28 reconnection fee, before service was restored. UGI asserted that because the Complainants did not make regular payments and because they did not adhere to the prior payment arrangement, the Complaint should be dismissed.

Mr. Trocki testified that their service had been terminated On August 31, 2015 and while they had not made payments in a long time, he had been unemployed and only started working in March 2016. He testified that his current income is \$47,000 a year. Ms. Trocki testified that while they have had trouble paying their bills, they now have the means to pay monthly bills but do not have the amount of money available that UGI is requesting for restoration. She explained that she works 15 hours a week and earns \$8.75 an hour and that they have a five year old child. She requested a payment arrangement and restoration of service.

In this case, the Complainants were issued a payment arrangement by the Commission on March 21, 2013. The evidence presented by the Respondent showed that, although the Complainants had not made all the payments in accordance with the arrangement set by BCS, the balance has been satisfied. At the hearing, UGI's position was that the Complainants are not entitled to another payment arrangement established by the Commission.

Respondent argued that because the Complainants had broken the previous payment arrangement, they were not entitled to another issued by the Commission.

I disagree and find that the Commission has the authority to issue a second payment arrangement to the Complainants. While making untimely payments may be considered a default during the time the balance remains unpaid, once the balance is satisfied, any default has been cured. In its *Second Implementation Order* for the implementation of Chapter 14, the Commission clarified that second or subsequent payment arrangements cannot be established on a balance which has already been the subject of a Commission issued payment arrangement but that a request for a payment arrangement on a new and wholly unrelated delinquent balance is a request for an initial payment arrangement. In this case, the Complainants have completely satisfied the balance which was subject to the 2013 Commission issued payment arrangement. The balance at the time of the Commission issued payment arrangement was \$1735.24. Since that time, the Complainants have made \$3094 in payments, satisfying the previous balance. Because that balance has been satisfied, the Complainants now seek a payment arrangement on a balance which has never been the subject of a Commission issued payment arrangement. This balance is therefore eligible for a payment arrangement established by the Commission.

UGI also argued at the hearing that the Complainants should be denied a payment arrangement because of a poor payment history. UGI's Exhibit R-1, Statement of Account, and UGI's witness' testimony show that the Complainants made eleven payments between August 2013 and June 2015. An additional payment was made but returned. No more payments were made after that time. While this demonstrates a payment made at most every other month, at least two of the payments were large payments and the Complainant's have demonstrated an effort to pay their bills. Additionally, they did not stop making payments until their service was terminated in August 2015 and right after Mr. Trocki had lost his job in July 2015. Finally, the Complainants have demonstrated a good faith effort to pay their bills by paying off the balance subject to a previous payment arrangement. I will therefore order a payment arrangement.

I find that the Complainants are level three customers consistent with Chapter 14 and will set a payment arrangement accordingly. The Complainants testified that their household consists of two adults and one child. Mr. Trocki earns \$47,000 a year or \$3916.66 per month. Ms. Trocki earns \$568.75³ per month at her part time job. The total household income is \$4485.41 per month. For a household of three, the Complainants' monthly household income falls between 250 and 300% of the Federal poverty level which makes them level three customers under Chapter 14. Consequently, they may be given a payment arrangement allowing twelve months to reconcile their past due balance. 66 Pa.C.S. § 1405(b)(3).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S.A. § 701.
2. The Complainants have the burden of proof. 66 Pa. C.S.A. § 332(a).
3. The Responsible Utility Customer Protection Act, 66 Pa. C.S.A. §§ 1401, *et seq.*, applies to this proceeding.
4. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa. C.S. § 1405(a).
5. Absent a change of income, the Commission cannot establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by the Commission. 66 Pa.C.S. § 1405(d).
6. Where a customer has retired the outstanding balance of a Commission established payment arrangement, the Commission may establish a payment arrangement on a

³ This monthly figure is derived by multiplying Ms. Trocki's hourly wage by 15 hours per week and multiplying this amount by 52 weeks a year divided by twelve.

new delinquency. *Chapter 14 Implementation*, Docket No. M-00041802F0002 at 37 (Second Implementation Order entered September 12, 2005).

7. The Complainants have met their burden of proving that the Commission may grant them a payment arrangement allowing twelve months to pay their past due balance.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaints filed by Sherry and Lenny Trocki against UGI Penn Natural Gas, Inc. at Docket Nos. F-2016-2574307 and C-2016-2578856 are sustained.
2. That Sherry and Lenny Trocki's request for a payment arrangement is granted.
3. That Sherry and Lenny Trocki shall make monthly payments consisting of their current charges plus one 1/12th of the balance accrued on their account, beginning with the first billing due date following the entry of a final Commission Order in this case.
4. That as long as Sherry and Lenny Trocki keep the payment schedule stated in this Order, UGI Penn Natural Gas, Inc. shall not suspend or terminate their utility service except for valid safety or emergency reasons or assess late payments or finance charges against their account.
5. That if Sherry and Lenny Trocki do not keep the payment schedule stated in this Order, UGI Penn Natural Gas, Inc. is authorized to suspend or terminate their utility service in accordance with the Commission's statute and regulations.

6. That the Secretary mark this docket closed.

Date: March 30, 2017

_____/s/_____
Rebecca Waldemar
Special Agent