

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Justine Hodges	:	
	:	
v.	:	F-2016-2576089
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This decision denies the request for a first payment arrangement from the Public Utility Commission because the total gross income of all four adults residing in the household was not submitted into evidence.

HISTORY OF THE PROCEEDING

On November 9, 2016, Justine Hodges (Ms. Hodges or Complainant) filed a timely formal complaint against PPL Electric Utilities Corporation (PPL or Respondent). Ms. Hodges' formal complaint requests a payment agreement¹ because she cannot afford the one offered to her. On December 6, 2016, Respondent filed an Answer in response to Complainant's formal complaint, in which Respondent averred it has provided Ms. Hodges with the most

¹ Complainant specifically requested a "payment agreement" because that is the term used in the Commission's formal complaint form. Pursuant to 66 Pa.C.S.A. §1401, *et seq.*, the appropriate term to use is "payment arrangement." For purposes of this Initial Decision, it is assumed Complainant wants a "payment arrangement."

advantageous payment arrangement to which she is entitled. PPL avers it agrees with the payment arrangement as outlined by the Bureau of Consumer Services (BCS) at BCS No. 3471739.

On December 29, 2016, the Office of Administrative Law Judge issued a Call-In Telephone Hearing Notice, which scheduled a telephonic initial hearing to be conducted on February 7, 2017. On the same date, the presiding officer issued a Prehearing Order which, *inter alia*, advised the parties concerning various procedural matters, including how to request a continuance, and that Complainant was responsible to prove the facts she alleged in her formal complaint.

The presiding officer convened the initial hearing as scheduled on February 7, 2017. Complainant appeared *pro se*. Respondent was represented by Graig M. Schultz, Esquire. Complainant presented testimony from herself but did not offer any exhibits. Respondent presented the testimony of one witness, and offered one exhibit, marked and admitted as PPL Exhibit 1. Complainant and Respondent issued final statements on the hearing record in lieu of filing briefs.

The transcript of the hearing, containing 29 pages, was received in the Commission's offices on Wednesday, March 8, 2017 and was received in the presiding officer's office on Thursday, March 23, 2017. On Monday, March 27, 2017, the presiding officer closed the hearing record by issuing the Interim Order Closing the Hearing Record.

FINDINGS OF FACT

1. Complainant, Justine Hodges, resides with her husband, and two children at 540 Everett Street, Lot 35, Benton, Pennsylvania (service address). (Tr. 7, 8; PPL Exhibit R-1).
2. Respondent, PPL, provides electric service to the service address. (PPL Exhibit R-1).

3. The service address is a mobile home which Complainant owns. (Tr. 8).

4. Complainant has lived at the service address for seven years. (Tr. 8).

5. In addition to her husband and two children, Complainant's sister moved into the service address in December 2016 along with her husband (Complainant's brother-in-law) and with her sister's three children. (Tr. 8-10).

6. Complainant's sister buys the food which her family of five eats but has not paid any money to Complainant since she moved into the service address in December 2016. (Tr. 10, 19).

7. Complainant's sister does not contribute towards the costs of the household and will not tell Complainant when she intends to vacate the service address. (Tr. 11, 19).

8. The service address has an electric furnace but must be heated using three plug-in electric space heaters because the furnace is inoperable and Complainant cannot afford the cost to repair or replace it. (Tr. 9, 25).

9. Complainant was denied low income heating assistance because the space heaters are not built into or wired into the residence. (Tr. 9, 12, 13).

10. Complainant was enrolled in OnTrack² several times during the previous four years but became ineligible when the service address used up the OnTrack allowance. (Tr. 13, 24).

² OnTrack is an assistance program made available to PPL's low income customers which allows customers to make reduced monthly payments based on household size and income, and will "forgive" unpaid amounts if the customers stay current on paying the bills.

11. Complainant will not be eligible again for OnTrack until September 2017. (Tr. 13, 24).

12. Complainant receives \$775 in Supplemental Security Income (SSI) monthly benefits which she has received for the past 14 years. (Tr. 13, 14).

13. Complainant receives \$633 in food stamps monthly and has health insurance from the local assistance office. (Tr. 16).

14. Complainant's total available monthly household income includes the SSI and food stamps, plus an unknown monthly income available from Complainant's sister and brother-in-law, for a household consisting of four adults and five children. (Tr. 9-16).

15. Complainant's husband was unemployed as a laborer at the time of the hearing because the family does not have an operational vehicle, and the service address is not serviced by public transportation. (Tr. 14, 15).

16. Complainant's husband was employed for three weeks in 2016. (Tr. 15).

17. Complainant and her husband cannot apply for cash assistance benefits because they have no means to travel to the classes required in order to receive cash assistance benefits. (Tr. 16).

18. Complainant owns the service address but must pay \$300 per month in lot rental fees plus approximately \$30 per month for property tax on the mobile home. (Tr. 16, 17).

19. Complainant does not have landline telephone service or cable television, but does have has one cellular telephone costing \$35 per month and internet service costing \$60 per month. (Tr. 16-18).

20. Complainant's water bills are approximately \$80 per month and garbage collection costs \$25 per month. (Tr. 18, 19).

21. PPL's account balance for the service address totaled \$563.89, as of the date of the hearing. (Tr. 23; PPL Exhibit R-1).

22. Complainant makes regular monthly payments for current usage and has had only six late payments from February 2013 to January 2017. (PPL Exhibit R-1).

23. From January 2016 through January 2017, Complainant's monthly charges ranged from \$77.37 to \$239.29. (PPL Exhibit R-1).

24. Complainant is enrolled in budget billing and her monthly budget bill amount at the time of the hearing was \$178. (Tr. 24).

DISCUSSION

Complainant argues she is a low income customer who receives only SSI and food stamp benefits, and her husband is unemployed. Ms. Hodges averred PPL advised her to go on budget billing in order to avoid receiving a shut-off notice. She asks the Commission to lower her monthly billing amounts because she cannot get heating assistance while her furnace is not operational, and she is not eligible to re-enroll in OnTrack until September 2017. She requested a lower payment arrangement that works with her low income. Ms. Hodges agreed \$15 per month to pay down her arrears was fair but Ms. Hodges struggles to pay the current budget billing amount because her sister's family occupies the service address with her and because she is no longer enrolled in OnTrack.

Respondent contends it plans to refer Ms. Hodges to the OnTrack program once she qualifies to reapply in August 2017. PPL agreed it expects Complainant will qualify for the program again. PPL asks the Commission to institute a payment arrangement for Ms. Hodges

which would be the current budget billing amount plus \$15 per month towards the back balance totaling \$563.89.

Burden of Proof

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proving by substantial evidence she is entitled to the requested relief. 66 Pa.C.S.A. § 332(a). To satisfy this burden, Complainant must show Respondent utility is responsible or accountable for the problem described.³ Complainant must show this fact to be true by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that evidence presented by the other party.⁴ Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.⁵ Furthermore, more evidence is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁶

Payment Arrangement

The Responsible Utility Customer Protection Act, 66 Pa.C.S.A. § 1401, *et seq.* (the Act or Chapter 14) applies to this proceeding. This law provides strict guidelines that the Commission must follow in handling customer complaints. The issue presented by this complaint is whether Complainant is entitled to a lower Commission-ordered payment arrangement than outlined by the Bureau of Consumer Services, pursuant to Section 1405 of the Code, 66 Pa.C.S.A. § 1405.

³ Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976).

⁴ 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).

⁵ 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.A. § 704.

⁶ 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).

Section 1405 of the Code provides as follows:

§ 1405. Payment Arrangements.

(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.

(b) Length of Payment Arrangements. The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

(1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.

(2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

(3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

(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.

(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. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

(e) Extension of Payment Arrangements. If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

(f) Failure to Comply with Payment Arrangement. Failure of a customer to comply with the terms of a payment arrangement shall be grounds for a public utility to terminate the customer's service. Pending the outcome of a complaint filed with the commission, a customer shall be obligated to pay that portion of the bill which is not in dispute and subsequent bills which are not in dispute.

66 Pa.C.S.A. § 1405.

Based on the evidence presented, it is impossible to determine Complainant's gross monthly household income. The income she and her husband generate totals \$1,408 monthly which, for a family of four, would qualify Complainant's household as a Level 1 household and would be eligible for a 5-year (or 60 month) payment arrangement on her account arrears.

However, Complainant testified that her household currently includes two additional adults (Complainant's sister and brother-in-law) and three additional children, so her household includes a total of four adults and five children. The income levels of Complainant's sister and brother-in-law are unknown. Complainant credibly testified that her extended family members refuse to contribute to the costs of the household except to pay for the food consumed by their nuclear family of five.

What is clear from Complainant's credible testimony is that there are two additional adult members of the household who could be contributing to the available household income. Complainant's testimony that her sister does not give Complainant any money to pay for household expenses was believable but the law requires that the presiding officer must

consider the income available from all members of the household. Pursuant to 66 Pa.C.S.A. § 1403, “household income” is defined as the “combined gross income of all adults in a residential household who benefit from the public utility service.” Obviously, Complainant’s sister and brother-in-law benefit from living at the service address which has electric service. Therefore, while the presiding officer accepted Complainant’s testimony as true (that her sister contributes no money to the household expenses), the law requires Complainant to show what her sister and brother-in-law’s income is before Complainant can show that she is entitled to a payment arrangement.

The evidence clearly shows that the strain on Complainant’s already-strained finances was exacerbated once her extended family took up residence at the service address and caused increased electricity costs since December 2016. Despite providing credible testimony that she struggled to pay for the electric service incurred by her household before December 2016 even despite her attempts to reduce her monthly expenses, the continued presence of these two additional adults and three children who contribute nothing to the household expenses exacerbates a barely-tenable situation.

However, it must be noted that Complainant is a customer in good standing. Although she struggles to pay the monthly bills on time, she has only been late six times over the last four years, and her unpaid balance is relatively low. Not surprisingly, PPL agreed Complainant is entitled to a payment arrangement and contends she will be eligible to re-enroll in the OnTrack program in September. PPL also contends the BCS-established payment arrangement is the arrangement most advantageous to Complainant.

Ms. Hodges requested a payment arrangement but she testified her real problem is not the size of the amount paid towards the arrears. Complainant’s real complaint at the hearing was that she could not pay the monthly budget bill for current usage. However, because Ms. Hodges did not provide the income levels for her sister and brother-in-law, she has failed to

meet the burden of proving that she is entitled to a payment arrangement at this time, pursuant to 66 Pa.C.S.A. § 1401, *et seq.*

Accordingly, the request for a payment arrangement is denied in the ordering paragraphs to follow.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over the parties to and subject matter of this case. 66 Pa.C.S.A. § 701.

2. Complainant has the burden of proving she is entitled to a lower payment arrangement than the one provided by the Bureau of Consumer Services. 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 Public Utility Code permits the Commission to grant one payment arrangement and dictates its terms. 66 Pa.C.S.A. § 1405(b).

5. Complainant failed to prove the total monthly income available to her household. 66 Pa.C.S.A. § 332(a); 66 Pa.C.S.A. § 1403 and §1405(b)(1).

6. Complainant failed to prove she is entitled to a payment arrangement. 66 Pa.C.S.A. § 332(a); 66 Pa.C.S.A. § 1405(b)(1).

