

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Katherine Watts	:	
	:	
v.	:	F-2016-2568870
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

The customer filed this complaint against the utility indicating that her service had been terminated. The customer requests that she be given a payment arrangement for the total outstanding balance amount the utility requires to have her service reconnected.

HISTORY OF THE PROCEEDING

On September 28, 2016 Katherine Watts (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent). This was a timely appeal to a Bureau of Consumer Services (BCS) decision issued in BCS case #3470595. The complaint alleges that the Respondent has improperly required the Complainant to pay her entire outstanding balance amount in order to reconnect her gas utility service. The complaint requests a payment arrangement be made available to her for this outstanding balance and that her service be reconnected.

The Respondent filed an answer on October 19, 2016. The answer generally admits all of the averments contained in the complaint. The answer admits that Respondent provided natural gas service to the Complainant at the residence with the address set forth in the complaint, 8341 Forrest Avenue, Philadelphia, Pennsylvania. The answer further admits that gas service to the residence was terminated on August 23, 2016 for non-payment. The answer further indicated that the complaint was an appeal by the Complainant of a BCS decision dismissing the Complainant's initial informal complaint.

By hearing notice dated February 28, 2017, the Commission scheduled an initial hearing for this matter on March 17, 2017, at 10:00 a.m. and assigned the case to the undersigned. A prehearing order was previously issued on November 18, 2016, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

The initial hearing was conducted as scheduled on March 17, 2017. The Complainant appeared *pro se* and testified. Laureto A. Farinas, Esquire represented the Respondent which presented one witness who sponsored six exhibits which were admitted into the record. The initial hearing resulted in a transcript of 44 pages. The record closed on March 23, 2017, the date the transcript was filed with the Secretary's Bureau. After a review of the entire evidentiary record and for the reasons set forth below, the Complainant's request for a payment arrangement to establish reconnection of her service will be denied.

FINDINGS OF FACT

1. The Complainant is Katherine Watts.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant's residence and service address is 8341 Forrest Avenue, Philadelphia, Pennsylvania. N.T. 4.

4. On April 3, 2012 the Complainant received a Commission-ordered payment arrangement which was to begin with her May 2012 bill in BCS # 294821. N.T. 29, 31.
5. The Complainant defaulted on this payment arrangement. N.T. 29.
6. Between July 7, 2015 and November 13, 2015 the Complainant submitted and was approved for three medical certificates which delayed the disconnection of her account during this period of time. N.T. 30.
7. On June 2, 2016 the Complainant filed an informal complaint with the BCS in #3445489 requesting a payment arrangement. N.T. 31.
8. On July 12, 2016 the BCS issued a decision in #3445489 dismissing the complaint and denying the Complainant's request for a second Commission-ordered payment arrangement. N.T. 31.
9. On July 13, 2016 the Respondent issued the Complainant a 10-day shut off notice which indicated an outstanding balance of \$3,504.72. N.T. 37.
10. The Respondent attempted to contact the Complainant by telephone on July 21, 2016 regarding the shut off notice but was required to leave a message. N.T. 37-38.
11. The Respondent made telephone contact with the Complainant regarding the shut off notice on July 25, 2016. N.T. 38.
12. On August 23, 2016 the Respondent disconnected the Complainant's service for nonpayment. N.T. 38.
13. The total amount required to restore the Complainant's service is \$3,470.90. N.T. 34.

14. This amount includes the Complainant's outstanding account balance as well as \$70 for half the security deposit, \$123.23 for the reconnection fee and \$372 for the dig fee. N.T. 34.

15. On August 24, 2016 the Complainant filed a complaint with the BCS in #3470595 regarding the shut off of her service. N.T. 32.

16. This complaint was dismissed by the BCS on August 29, 2016. N.T. 32.

17. Throughout the course of the Complainant's relationship with the Respondent, she has had 22 payment arrangements with six of those arrangements occurring between 2011 and the present. N.T. 35-36.

18. The Complainant last defaulted on a payment arrangement with the Respondent on May 23, 2014. N.T. 37.

19. In 2013 the Complainant made four payments towards her outstanding balance, four payments in 2014, one payment in 2015, four payments in 2016 and one payment in 2017. N.T. 34.

20. In 2015 the Complainant had an annual salary of \$53,000 and in 2016 an annual salary of \$56,000. N.T. 17.

21. The Complainant resides with her adult son and minor granddaughter. N.T. 12-13.

22. The Complainant's son has begun working within the last six months at \$8.00 per hour from 20 to 30 hours per week. N.T. 18.

DISCUSSION

In this case, the Complainant's service was terminated by the Respondent for nonpayment of her outstanding account balance. N.T. 38. To restore the service, the Respondent has required the Complainant to pay her total outstanding account balance plus a reconnection and other related fees. N.T. 34. The Complainant has filed a complaint with the Commission seeking the restoration of her service and a payment arrangement for this outstanding balance rather than the lump sum payment that the Respondent has demanded to reconnect her service.

The Complainant in this proceeding has the burden of proof to show that the Respondent is responsible or accountable for the problem described in the complaint. Patterson v. Bell Telephone Co. of Pennsylvania, 72 Pa. P.U.C. 196 (1990), Feinstein v. Philadelphia Suburban Water Co., 50 Pa. P.U.C. 300 (1976). The Complainant must establish her case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992) To meet her burden of proof, the Complainant must present evidence more convincing, by even the smallest amount, than that presented by the Respondent. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

The relief requested by the Complainant that she be afforded a payment agreement for her outstanding account balance and the reconnection of her service is governed by §1407 of the Public Utility Code. It provides in part,

§ 1407. **Reconnection of service.**

(a) **Fee.** — A public utility may require a reconnection fee based upon the public utility's cost as approved by the commission prior to reconnection of service following lawful termination of the service.

...

(c) **Payment to restore service.**—

...

(2) A public utility may require:

(i) Full payment of any outstanding balance incurred together with any reconnection fees by the customer or applicant prior to reconnection of service if the customer or applicant has an income exceeding 300% of the Federal poverty level or has defaulted on two or more payment agreements. If a customer or applicant with household income exceeding 300% of the Federal poverty level experiences a life event the customer shall be permitted a period of not more than three months to pay the outstanding balance required for reconnection. For purposes of this paragraph, a life event is:

- (A) A job loss that extended beyond nine months.
- (B) A serious illness that extended beyond nine months.
- (C) Death of the primary wage earner.

66 Pa.C.S. §1407.

Here, the Complainant does not dispute the total amount of her outstanding balance with the Respondent. N.T. 42. The Respondent has required the Complainant to pay the total outstanding balance of her account, plus associated reconnection fees, before the Respondent will restore service as permitted under §1407 above. N.T. 34. The Complainant however requests to have her service reconnected and to be afforded a payment arrangement for the outstanding balance owed to the Respondent. N.T. 42. Under § 1407 above, the Respondent is able to require the full payment of the Complainant's outstanding balance, plus a reconnection fee, prior to the reconnection of service when the Complainant has an income exceeding 300% of the Federal poverty level or has defaulted on two or more payment agreements. Despite only requiring one of these circumstances to occur in order for the Respondent to require the full outstanding balance to reconnect service, both of these circumstances apply to the Complainant.

First, with respect to criteria relating to the Federal poverty guideline, the Complainant testified that her household consists of three individuals – herself, her adult son and minor granddaughter. In 2016 the Complainant's annual salary was \$56,000. N.T. 17. Approximately six months prior to the date of hearing in this matter, the Complainant's son had found employment in a position paying \$8.00 per hour with between 20 and 30 hours of work per week. N.T. 18.

In order to calculate the Complainant's income level under the 2017 poverty guidelines, it will be assumed that her son typically only works 20 hours per week so as to conservatively calculate the Complainant's gross monthly household income.

With the Complainant's annual \$56,000 salary, and her son realizing income of \$8.00 per hour at 20 hours per week, the Complainant has gross monthly household income of \$5360.00 per month. Under the 2017 Federal poverty guidelines, effective January 31, 2017 and found at Federal Register Vol. 82, No. 19 January 31, 2017 p. 8832, the Complainant is at 300% or more of the Federal poverty level.

Second, with respect to the other criteria relating to defaulted payment arrangements, the evidence indicates that the Complainant has defaulted on the requisite two or more payment arrangements under §1407. The Complainant has had 22 payment arrangements with the Respondent and has, at minimum, defaulted on at least two – the April 3, 2012 Commission-ordered arrangement and the last payment arrangement with the Respondent in which the Complainant defaulted on May 23, 2014. N.T. 29, 36, 37.

Under §1407, the Complainant can establish the occurrence of a "life event" which could qualify her for a period of three months in which to pay the outstanding balance required for reconnection. The Complainant did testify to several health issues that required her be out of work from March to May of 2015. N.T. 15. This however is insufficient under §1407 to qualify her for a three month period in which to pay her outstanding balance.

Given that the Complainant's monthly income exceeds 300% of the Federal poverty level and the Complainant has defaulted on two or more payment arrangements, and given that the Complainant has failed to show that she experienced a "life event" as contemplated under §1407 as described above, the Respondent is well within its discretion to require the Complainant to pay the entire outstanding balance of her account plus associated reconnection fees prior to the restoration of her service. As such, the Complainant's complaint requesting a payment agreement and reconnection of service will be denied.

It is noted that the Commission has held that while 66 Pa.C.S. § 1407 sets out the terms that a utility may impose on a customer requesting reconnection of service, it does not divest the Commission of its authority to order a payment arrangement, pursuant to 66 Pa.C.S. § 1405, for a customer who was lawfully disconnected for nonpayment. Crawford v. National Fuel Gas Distribution Corporation, Docket No. C-20066348 (Opinion and Order entered December 6, 2007) (Crawford); Rogito v. UGI Utilities, Inc., Docket No. F-02263457 (Opinion and Order entered December 3, 2008). The Commission has stated that it will exercise its authority to establish a payment arrangement in these circumstances judiciously.

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); Kea v. Peoples Natural Gas Co., 60 Pa. PUC 215 (1985); Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa.Cmwlt. 1982). The Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303. Neal v. Philadelphia Gas Works, Docket No. Z-00871874, (Final Order entered January 4, 2002); Angie's Bar v. Duquesne Light Co., 72 Pa. PUC 213 (1990).

All customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. Bolt v. Duquesne Light Co., Docket No. Z-8712758 (Opinion and Order entered April 8, 1988). A payment arrangement, which prevents service termination as long as the Complainant complies with it, is a privilege, not a right. Mandell v. Duquesne Light Co., Docket No. C-20030234, (Opinion and Order entered March 17, 2004).

In Crawford, the Commission noted that while it has the authority to grant payment arrangements to customers or applicants such as Complainant,¹ it also has a responsibility to exercise that authority very judiciously when a utility has lawfully terminated a customer for nonpayment. Specifically, the Commission held that it should only exercise its discretion on the behalf of customers who have demonstrated some evidence of good faith efforts

¹ 66 Pa.C.S. § 1403 defines both "applicant" and "customer". There is no dispute between the parties that for the purposes of this matter the Complainant is a customer as it relates to the reconnection of service.

to pay their utility bills, or who have experienced a significant change of circumstances outside of their control.

Here, the evidence indicates that the Complainant has had a total of 22 payment arrangements. N.T. 36. In addition, despite such payment arrangements from the Respondent and the Commission, her payment history can be described as spotty at best. In 2013 the Complainant only made four payments towards her outstanding balance. N.T. 34. In 2014 when the Complainant received the last payment arrangement from the Respondent, she made four payments. N.T. 34. During the entire year of 2015, the Complainant made one payment. N.T. 34. Despite the Complainant's testimony that her annual salary increased by \$3,000 in 2016 and her son began working a part-time job, the Complainant only made four payments in 2016 and has only made one payment in 2017. N.T. 34. This does not evidence good faith on the behalf of the Complainant to pay her utility bill with the Respondent.

Last, the Complainant testified at the time of hearing that she had obtained a loan from her mother in the amount of \$1200 to put towards her outstanding balance and restore her service with the Respondent. N.T. 24. The Complainant paid \$400 of that amount to the Respondent one or two weeks prior to the hearing in this matter. N.T. 24. The Complainant admitted that she was withholding payment of the additional \$800 of this amount to the Respondent because she was "waiting for the hearing to see how things were going to work out..." N.T. 24.

This again does not lead to the conclusion that the Complainant has made good faith efforts to pay her outstanding balance with the Respondent. The Complainant's testimony implies that while she would be willing to pay the Respondent the additional \$800 towards her outstanding balance, it is contingent upon the hearing "working out" to her satisfaction. It is therefore reasonable to conclude that despite having the funds, the Complainant is not willing to pay this additional \$800 amount towards her balance if, after "waiting for the hearing to see how things were going to work out", she felt they in fact hadn't "worked out." This clearly demonstrates a lack of good faith, and unwillingness to resolve, the Complainant's outstanding account balance. The Complainant has failed to demonstrate that the Commission should

exercise its discretion on her behalf and afford her a payment arrangement under § 1405 to establish reconnection of her service.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa. C.S. §701.

2. Pursuant to 66 Pa. C.S. §332(a), the burden of proof in this proceeding is on the Complainant.

3. The Complainant must establish her case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

4. The Complainant has not met her burden of proving that she is entitled to relief. 66 Pa. C.S. §332(a).

5. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401, *et seq.*, applies to this proceeding.

6. The Respondent may require the full payment of any outstanding balance incurred together with any reconnection fees by the customer or applicant prior to reconnection of service if the customer or applicant has an income exceeding 300% of the Federal poverty level or has defaulted on two or more payment agreements. 66 Pa.C.S. § 1407(c)(2)(i).

7. The Complainant has an income exceeding 300% of the Federal poverty level and has defaulted on two or more payment agreements. 66 Pa.C.S. § 1407(c)(2)(i).

8. A customer or applicant with household income exceeding 300% of the Federal poverty level who experiences a life event shall be permitted a period of not more than

three months to pay the outstanding balance required for reconnection. 66 Pa.C.S. § 1407(c)(2)(i).

9. The Complainant has a household income exceeding 300% of the Federal poverty level but has not experienced a life event that would permit the Complainant a period of not more than three months to pay the outstanding balance required for reconnection. 66 Pa.C.S. § 1407(c)(2)(i).

10. The Complainant has not demonstrated good faith efforts to pay her utility bill or that she has experienced a significant change of circumstances outside of her control which would warrant an exercise of the Commission's discretion to grant a payment arrangement. 66 Pa.C.S. § 1405; Crawford v. National Fuel Gas Distribution Corporation, Docket No. C-20066348 (Opinion and Order entered December 6, 2007).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Katherine Watts against Philadelphia Gas Works, at Docket No. F-2016-2568870 is hereby denied.

2. That the docket at Docket No. F-2016-2568870 is marked closed.

Date: June 6, 2017

_____/s/
Benjamin J. Myers
Administrative Law Judge