

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lydia Jackson	:	
	:	
v.	:	F-2018-2646638
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal Complaint of Lydia Jackson against Philadelphia Gas Works because she failed to sustain her burden of proof that she was entitled to a payment arrangement in order to pay off her outstanding balance and have service restored.

HISTORY OF THE PROCEEDING

On February 4, 2018, Lydia Jackson (Complainant or Ms. Jackson) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant requests her service be restored and she be given a payment arrangement in order to pay off her outstanding balance.

This matter is the timely appeal of a decision from the Bureau of Consumer Services (BCS) dated December 28, 2017, at Case No. 3582932, which dismissed the informal complaint of the Complainant.

On March 2, 2018, PGW filed an Answer to the Complainant's Complaint. In its Answer, PGW admits that the Complainant's service was terminated on May 30, 2017, for non-payment.

By Hearing Notice dated March 13, 2018, an Initial In-Person Hearing was scheduled for May 1, 2018.

A Prehearing Order was issued on April 4, 2018, advising the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

The hearing convened as scheduled on May 1, 2018. The Complainant appeared *pro se* and testified on her own behalf. The Complainant offered no exhibits.

The Respondent appeared and was represented by Graciela Christlieb, Esquire, who presented the testimony of Joyshalyn Moore, a Customer Review Officer at PGW. During the hearing, the Respondent offered the following five exhibits, all of which were entered into the record:

- PGW 1: May 15, 2017 10-Day Shut Off Notice (1 page)
- PGW 2: Termination Screenshot (1 page)
- PGW 3: Statement of Account (5 pages)
- PGW 4: Payment Arrangement Records (4 pages)
- PGW 5: BCS Informal Complaint (#3582932) (4 pages)

The record in this case consists of a 41-page transcript and five exhibits. The record closed on May 30, 2018, when I received a copy of the transcript.

FINDINGS OF FACT

1. The Complainant is Lydia Jackson.

2. The Respondent is Philadelphia Gas Works.
3. The Complainant resides at 1852 Merribrook Road, Philadelphia, Pennsylvania 19151 (Service Address). Tr. 6.
4. The Complainant established service with PGW at the Service Address in July of 2008 and assumed a balance of \$6,675.96 from a prior occupant. Tr. 31.
5. In November of 2011, the Complainant filed for bankruptcy, which was dismissed in May of 2012, leaving her with an accumulated balance of \$11,556.08. Tr. 31.
6. On November 24, 2015, PGW issued a payment arrangement to the Complainant, which was subsequently broken for non-payment. Tr. 15-16; PGW 4.
7. On February 23, 2017, PGW issued a second payment arrangement to the Complainant, which was also broken for non-payment on May 12, 2017. Tr. 25; PGW 4.
8. On May 15, 2017, PGW issued a 10-Day Shut Off Notice to the Complainant. Tr. 19; PGW 1.
9. On May 30, 2017, PGW terminated service to the Complainant. Tr. 20; PGW 2.
10. From February 4, 2015 through April 27, 2018, the Complainant made three payments on her account – \$849.23 (November 24, 2015), \$58.26 (February 3, 2017), and \$200.00 (December 29, 2017). Tr. 7, 22-23; PGW 4.
11. The Complainant resides at the Service Address along with her 17-year old daughter and two grandchildren – ages 12 and 13. Tr. 7-8.

12. The Complainant receives \$1,526.00 per month from Social Security Disability (SSD). Tr. 8.

13. The Complainant's current household income of \$1,526.00 per month with four household members places the household at 73% of the Federal Poverty guidelines.¹

14. The Complainant was enrolled in PGW's Customer Responsibility Program² (CRP) from February 7, 2012 through October 22, 2014. Tr. 26.

15. The Complainant's CRP status was suspended due to failure to recertify. Tr. 26.

16. As of the date of the hearing, the Complainant's outstanding balance was \$17,047.75. Tr. 22; PGW 3.

17. The Complainant's balance contains \$876.74 in CAP arrears. Tr. 26.

DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving that she is entitled to the requested relief. 66 Pa.C.S. § 332(a). 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.

¹ *Federal Register*, Vol. 83, No. 12, January 18, 2018, pp. 2642-2644. See also <http://aspe.hhs.gov/poverty>.
² PGW's customer assistance program (CAP).

§ 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).

Reconnection of Service

The underlying facts are undisputed. The Complainant established service with PGW at the Service Address in July of 2008 and assumed a balance of \$6,675.96 from a prior occupant. Due to a series of unfortunate events, the Complainant had accumulated a balance of \$11,556.08 by May of 2012. The Complainant continued to struggle to pay her bills and on November 24, 2015, PGW issued a payment arrangement to the Complainant. However, this payment arrangement was subsequently broken for non-payment. Nevertheless, on February 23, 2017, PGW issued a second payment arrangement to the Complainant. This payment arrangement was also broken for non-payment on May 12, 2017. As a result, PGW issued a 10-Day Shut Off Notice to the Complainant on May 15, 2017, and ultimately terminated service to the Complainant on May 30, 2017. As of the date of the hearing, the Complainant's outstanding balance was \$17,047.75.

The rules pertaining to reconnection of service are set forth at 66 Pa.C.S. § 1407 of the Public Utility Code, and state in pertinent part:

(c) Payment to restore service.--

- (1) A public utility shall provide for and inform the applicant or customer of a location where the customer can make 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 arrangements*. 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 subparagraph, 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(c) (emphasis added).

In this case, the Complainant has defaulted on two payment arrangements with PGW, therefore, PGW is entitled to require the full payment of the Complainant's \$17,047.75 outstanding balance before reconnecting her service pursuant to 66 Pa.C.S. § 1407(c)(2)(i).

Payment Arrangement

Even though PGW is entitled to require full payment of the Complainant's outstanding balance under 66 Pa.C.S. § 1407(c)(2)(i), the Commission also has the authority to establish a payment arrangement 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.

The Commission may establish a payment arrangement between a public utility and a customer only within the limits established by the Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401, *et seq.* (the Act or Chapter 14). In order to be eligible for a payment arrangement, the Complainant must be a “customer” or “applicant” as defined by the Act. If the

Complainant is not a “customer” or “applicant”, the Commission is not authorized to establish a payment arrangement between her and the Respondent. The Act defines an “Applicant” as follows:

"Applicant." A natural person not currently receiving service who applies for residential service provided by a public utility or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested. The term 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.

Here, the Complainant did not dispute the termination. Further, she did not seek restoration of her service until December 26, 2017, when she filed an informal complaint with the BCS. Thus, since the Complainant did not seek to have her service reconnected within 30 days of it being terminated on May 30, 2017, she is an “applicant” under the Act.

The Act also provides strict guidelines regarding payment arrangements allowed to be issued by the Commission:

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.

66 Pa.C.S. § 1405(b).

Further, Section 1405(c) of the Public Utility Code prohibits the Commission from establishing a payment arrangement on any outstanding Customer Assistance Program (CAP) arrears. 66 Pa.C.S. § 1405(c). Of the Complainant's current outstanding balance, \$876.74 is composed of CAP arrears. As such, the Commission cannot grant the Complainant a payment arrangement on this amount.

The remaining amount of non-CAP arrears is \$16,171.01, upon which the Commission can issue a payment arrangement. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013). However, the Commission is not required to do so, and may decline to do so if the Complainant exhibits a poor payment history, inability to pay, and/or likeliness to default. *Id.*; *see also*, *Stephen Getz v. Metropolitan Edison Company*, Docket No. C-20142459964 (Final Order entered May 28, 2015). Therefore, even though the Commission is authorized by law to establish a payment arrangement between a customer and a utility, it has the responsibility to exercise its authority very judiciously. Specifically, the Commission should exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of good faith effort to pay their utility bills. *George Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007).

Furthermore, by law, a public utility is entitled to receive payment for the service it provides and the Complainant must pay the Respondent for the service she consumes. *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. Cmwlth. 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-00971874, (Final Order entered January 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa. PUC 213 (1990). 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-8721758 (Opinion and Order entered April 8, 1988). A payment arrangement, which prevents service termination if 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).

Here, the record does not support awarding the Complainant a payment arrangement. The Complainant has a poor payment history and has demonstrated an inability or unwillingness to comply with payment arrangements established by PGW. Since February 4, 2015, the Complainant has only made three payments on her account and defaulted on both of the payment agreements provided by PGW.

In addition, given the Complainant's financial circumstances, she is likely to default on any payment arrangement issued by the Commission. The Complainant's current household income of \$1,526.00 per month with four household members places the household at 73% of the Federal Poverty guidelines. This would make the Complainant a Level 1 applicant and qualify her to amortize her outstanding balance over a maximum of 5 years. Unfortunately, since the Complainant's outstanding balance is so high, this would mean she would still have to pay \$269.52 per month³ *in addition to* her current usage bills, which it is doubtful she could afford. In fact, during the hearing, the Complainant stated she was seeking a payment agreement of around only \$200 per month. Tr. 12.

Based on the foregoing, I conclude that the Complainant has not demonstrated that she should be granted a Commission-issued payment arrangement. Accordingly, the Complaint is dismissed.

CONCLUSIONS OF LAW

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

³ \$16,171.01 ÷ 60 months = \$269.52.

2. The burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).

3. 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.

4. Under the Public Utility Code, a public utility may notify a customer and terminate service provided to a customer for nonpayment of an undisputed delinquent account and/or failure to comply with the terms of a payment arrangement. 66 Pa.C.S. § 1406(a).

5. A public utility may require 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 defaulted on two or more payment arrangements. 66 Pa.C.S. § 1407(c)(2)(i).

6. The Commission is authorized to establish a payment arrangement between a public utility and a customer or applicant. 66 Pa.C.S. § 1405(a).

7. The Commission is prohibited from establishing a payment arrangement on any outstanding Customer Assistance Program arrears. 66 Pa.C.S. § 1405(c).

8. 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 five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level. 66 Pa.C.S. § 1405(b)(1).

9. The Commission should exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of good faith

effort to pay their utility bills. *George Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007).

10. The Commission may decline to issue a payment arrangement if the Complainant exhibits a poor payment history, inability to pay, and/or likeliness to default. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013); *Stephen Getz v. Metropolitan Edison Company*, Docket No. C-20142459964 (Final Order entered May 28, 2015).

11. A public utility is entitled to receive payment for the service it provides, and the Complainant must pay the Respondent for the service she consumes. *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. Cmwlth. 1982).

12. The Complainant failed to sustain her burden of demonstrating that she should receive a Commission-issued payment arrangement. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Lydia Jackson against Philadelphia Gas Works at Docket No. F-2018-2646638 is dismissed; and
2. That Docket No. F-2018-2646638 be marked closed.

Date: July 20, 2018

/s/
F. Joseph Brady
Administrative Law Judge