

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jaime Leggett	:	
	:	
v.	:	C-2018-3001033
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision dismisses the Complaint because the Complainant failed to carry her burden of proving that she is eligible for a second Commission-issued payment arrangement, or to an extension of her Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On April 6, 2018, Jaime Leggett (Complainant or Ms. Leggett) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Respondent or West Penn). In her Complaint, Ms. Leggett indicated that West Penn was threatening to shut off her service and requested a payment arrangement that she could afford.

On April 26, 2018, the Respondent filed an Answer to the Complaint. Respondent admitted to threatening to terminate service at the service address for a past-due balance. The Respondent alleged that the Complainant is not eligible for a further payment

arrangement due to her history of defaulting on payment arrangements. The Respondent requested that the Commission find against the Complainant and dismiss the Complaint.

By Hearing Notice issued May 2, 2018, the Commission scheduled this matter for a call-in telephonic hearing on June 5, 2018, at 10:00 a.m., and assigned the case to me.

I issued a Prehearing Order on May 3, 2018, addressing, inter alia, the method by which the parties could call-in to participate in the hearing, the procedures applicable to the hearing, and the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them.

By letter through fax and through the U.S. mail, West Penn, through its attorney John L. Munsch, Esquire, made a request for continuance of the June 5, 2018 hearing date. The request was granted by Order issued May 15, 2018.

By Hearing Notice issued May 17, 2018, the June 5, 2018 hearing was cancelled and rescheduled to July 18, 2018, at 10:00 a.m.

A Second Prehearing Order was issued on May 22, 2018.

I conducted the July 18, 2018, rescheduled call-in telephonic hearing as scheduled. The Complainant appeared *pro se* and testified on her own behalf. The Complainant presented no exhibits for the record.

The Respondent was represented by John L. Munsch, Esquire, who presented the testimony of Tammy J. Taylor, Senior Customer Service Compliance Specialist. The following exhibits were also presented, all of which were admitted into the record:

West Penn Exhibit 1 – Account Statement (2 pages)
West Penn Exhibit 2 – BCS Case (3492621) Opening and Closing (4 pages)
West Penn Exhibit 3 – PAR and PCAP History (1 page)

The record¹ closed on July 18, 2018, following the conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Jaime Leggett.
2. The Respondent is West Penn Power Company.
3. The Complainant's household consists of six individuals: two adults and four children.
4. The Complainant has not had any income for the past seven months.
5. The Complainant's husband has a gross income of approximately \$7,833.84 a month.²
6. Neither the Complainant nor her husband derive income from any other sources.
7. Since 2014, the Complainant has defaulted on three Company-issued payment arrangements. West Penn Exhibit 3.
8. The Complainant has defaulted on one Commission-issued payment arrangement. West Penn Exhibit 3.

¹ The telephonic hearing was recorded by means of a tape recorder. No Court Reporter was present.

² At the hearing, the Complainant stated that her husband made \$45.23 an hour and worked 40 hours a week. ($\$45.23 * 40 * 4.33 = \$7,833.84$).

9. The Complainant's Commission-issued payment arrangement was issued to Ms. Leggett by the Bureau of Consumer Services (BCS) at Case No. 3377780 on February 08, 2016. West Penn Exhibit 3.

10. Under the payment arrangement at BCS Case No. 3377780, the Complainant was to pay her budget bill plus \$302 in arrearages per month beginning with the March 30, 2016 billing date. West Penn Exhibit 3. The Complainant defaulted on this payment arrangement.

11. The payment arrangement at BCS Case No. 3377780 was a level three payment arrangement based on a reported monthly gross household income of \$7,189 for a household of six. West Penn Exhibit 3.

12. As of June 7, 2018, the Complainant has a past-due balance of \$7,765.59. West Penn Exhibit 1, pg. 2.

13. Complainant was enrolled on October 4, 2013 in West Penn's prior Customer Assistance Program (CAP) entitled LIPURP.³ West Penn Exhibit 3. Complainant was removed from LIPURP in April 2014 because her household income was too high.

14. None of Complainant's current arrearages are made up of CAP arrearages.

15. From July 7, 2016 to June 7, 2018, the Complainant has made seven payments towards her past-due balance in the amount of \$3,275.02. West Penn Exhibit 1, pg. 1-2.

16. On July 9, 2018, Complainant made a \$300 payment for her current consumption charges.

³ LIPURP stands for Low Income Payment and Usage Reduction Program.

17. As of the day of the hearing, the Complainant has a past-due balance of \$7,687.91.

18. West Penn is not willing to establish another payment arrangement with the Complainant.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 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, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980).

In this proceeding, Ms. Leggett filed a Complaint against West Penn seeking legal relief in the form of a payment arrangement. As a result, the burden of proof is on Ms. Leggett to show that she is eligible for a payment arrangement.

If the Complainant presents evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied her burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa. Cmwlth. 2001).

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418, applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued and the length of the payment arrangement.

(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.

66 Pa.C.S. §§ 1405(a)-(b).

Ms. Leggett received a Commission-issued payment arrangement at BCS Case No. 3377780 under 66 Pa.C.S. § 1405(a) and 66 Pa.C.S. § 1405(b)(3) on February 08, 2016. This decision was not appealed by Ms. Leggett, so this BCS payment arrangement became a formal Commission-issued payment arrangement. 52 Pa. Code § 56.172(d). Ms. Leggett defaulted on this Commission-issued payment arrangement. By filing the present Formal Complaint, Ms. Leggett is seeking to be provided with a second Commission-issued payment arrangement. 66 Pa.C.S. § 1405(d) limits the circumstances by which the Commission can establish a second payment arrangement if a customer has defaulted on a previous Commission-issued payment arrangement.

(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.

66 Pa.C.S. § 1405(d). “Change of income” is defined as the following:

“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. Additionally, “Household income” is defined as the following:

“Household income.” The combined gross income of all adults in a residential household who benefit from the public utility service.

66 Pa.C.S. § 1403.

To summarize, Ms. Leggett must have suffered a change in income of 20%⁴ or more since her first Commission-issued payment arrangement to be eligible for a second Commission-issued payment arrangement. At the time of the hearing for this proceeding, Ms. Leggett reported a gross household income of \$7,833.84 a month for a household of six people. Ms. Leggett's first Commission-issued payment arrangement was established using a reported gross household income of \$7,189 a month for a household of six people. Thus, Ms. Leggett has not suffered a change (decrease) in income since her Commission-issued payment arrangement. She instead has experienced an increase in income since her Commission-issued payment arrangement. Therefore, Ms. Leggett has not suffered a change in income that would make her eligible for a second Commission-issued payment arrangement.

I will also note, that given her status as a level 3 customer⁵, a payment arrangement awarded to Ms. Leggett would require her to retire her unpaid balance in a year. Thus, a Commission-issued payment arrangement would require Ms. Leggett to pay her budget bill plus approximately \$640.66⁶ monthly. Based off the payment arrangements that Ms. Leggett has broken in the past, a monthly electric bill nearing \$1000 a month would likely not be an affordable payment arrangement for her.

The Responsible Utility Customer Protection Act provides the Commission with another method to assist customers who have defaulted on a previous Commission-issued payment arrangement. The Act authorizes the Commission to reinstate and extend a Commission-issued payment arrangement on which a customer has defaulted. Section 1405(e) provides:

(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

⁴ Ms. Leggett's household income of \$7,833.84 exceeds 200% of the Federal poverty level. 200% of the Federal poverty level for a household of six is \$5,623.33. Federal Register, Vol. 83, No. 12, January 18, 2018, pg. 2643. Also see <http://aspe.hhs.gov/poverty-guidelines>.

⁵ A household income of \$7,833.84 for a household of six is approximately 278% of the Federal poverty level. Federal Register, Vol. 83, No. 12, January 18, 2018, pg. 2643. Also see <http://aspe.hhs.gov/poverty-guidelines>. Thus, Ms. Leggett is a level three customer pursuant to 66 Pa.C.S. § 1405(b)(3).

⁶ $\$7,687.91/12 = \640.66 .

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.

66 Pa.C.S. § 1405(e). “Significant change in circumstance” is defined as the following:

“Significant change in circumstance.” Any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income.
- (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household.
- (3) Loss of the customer's residence.
- (4) Increase in the customer's number of dependents in the household.

66 Pa.C.S. § 1403.

To summarize, Ms. Leggett has a household income of less than 300% of the Federal poverty level, so she is eligible for reinstatement and extension of her payment arrangement at BCS No. 3377780 if she defaulted on said arrangement as a result of a significant change in circumstance. Ms. Leggett did not at the hearing provide any facts relating to the onset of a chronic or acute illness, catastrophic damage to her household, loss of her household, or an increase in the number of dependents in her household that caused her to default on her payment arrangement at BCS No. 3377780. Therefore, I find that she did not default on her Commission-issued payment arrangement as a result of a significant change in circumstance.

In view of all of the above, I find that the Complainant has not met her burden of proving by a preponderance of the evidence that she is eligible for a second Commission-issued payment arrangement or to a reinstatement and an extension of her Commission-issued payment arrangement. Therefore, her Complaint will be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).
3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418, 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 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. 66 Pa.C.S. § 1405(d).
6. If a customer defaults on a payment arrangement established by the Commission under subsections 1405(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. 66 Pa.C.S. § 1405(e).
7. The Complainant has not met her burden of proving that she is eligible for a second payment arrangement or to an extension of the last Commission-issued payment arrangement. 66 Pa.C.S. §§ 1405(d)-(e).

