

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tina Flohr	:	
	:	
v.	:	C-2018-3002183
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This initial decision denies a request for a payment arrangement.

HISTORY OF THE PROCEEDING

On May 23, 2018, Tina Flohr (Complainant) filed a formal complaint with the Commission against Duquesne Light Company (Duquesne Light or Respondent) at Docket No. C-2018-3002183. In her complaint, Ms. Flohr averred that Duquesne Light was threatening to shut off her service or had already shut off her service and she requested an affordable payment arrangement.

On June 13, 2018, Duquesne Light filed an answer and new matter requesting that the Commission deny the relief sought by Complainant and dismiss the complaint with prejudice. Duquesne Light alleged that the request for a payment arrangement must be denied because Complainant has not made the required payments as a Customer Assistance Program (CAP) customer and has not made a good faith effort to pay for her electric service.

Additionally, Duquesne Light alleges that it is only seeking payment for Complainant's CAP arrears, not her total account balance, and that Complainant is seeking a payment arrangement on CAP arrears. A Notice to Plead was attached to Duquesne Light's answer and new matter. Ms. Flohr did not file a pleading in response to the new matter. *See* 52 Pa.Code § 5.63.

A Call-In Telephone Hearing Notice was mailed to Ms. Flohr and Duquesne Light on July 11, 2018, scheduling an initial telephone hearing for Wednesday, August 22, 2018. A Prehearing Order was issued by me on July 26, 2018.

Also on July 11, 2018, Duquesne Light filed a Motion for Judgment on the Pleadings. Ms. Flohr did not file an answer to the motion. On August 14, 2018, an interim order was issued denying the motion.

The initial telephone hearing was held as scheduled. Ms. Flohr represented herself at the hearing. She testified on her own behalf. She did not offer any exhibits. Paul Shane Miller, Esquire, represented Duquesne Light. Duquesne Light presented one witness, Lisa Davenport, and offered Respondent's Exhibits A through K, and Respondent's Supplemental Exhibits A and B. The exhibits were admitted into evidence. The hearing record consists of the aforementioned exhibits, as well as a 46-page transcript of the hearing held on August 22, 2018. Briefs were not requested. The record closed by Interim Order Closing the Hearing Record on September 24, 2018.

FINDINGS OF FACT

1. Complainant, Tina Flohr, resides at 1723 Myer Avenue, McKeesport, Pennsylvania 15133 (Tr. 10).
2. Respondent, Duquesne Light, provides electric residential utility service to Complainant's household at 1723 Myer Avenue (Tr. 10).

3. Complainant resides with her four children at the service address, 1723 Myer Avenue (Tr. 11).
4. Complainant's gross monthly household income is \$2,000 (Tr. 11).
5. Complainant's account balance for service provided to 1723 Myers Avenue was \$19,714.25 as of July 31, 2018 (Tr. 18; Respondent's Ex. A).
6. On June 6, 2017, Complainant enrolled in Duquesne Light's customer assistance program (CAP) and the arrearage for the account in the amount of \$21,554.35 was frozen (Tr. 17-18; Respondent's Ex. A).
7. Complainant made only four of the monthly CAP payments on her account between the date she enrolled in CAP (June 6, 2017) and the date she filed the formal complaint (May 28, 2018). She made only one payment in 2018 prior to filing the formal complaint (Tr. 20; Respondent's Ex. A).
8. On April 5, 2018, Duquesne Light mailed a 10-day termination notice to Complainant seeking payment of the CAP arrears in the amount of \$1,218 by April 16, 2018 (Tr. 24-26; Respondent's Supp. Ex. A).
9. On May 28, 2018, the date the complaint was filed, the CAP amount owed was \$1,452 (Tr. 21; Respondent's Ex. K).
10. Complainant has entered into and defaulted on five payment arrangements with the Company (Tr. 29-30; Respondent's Ex. C).
11. Complainant has been a CAP participant twice before her current enrollment and defaulted both previous times (Tr. 29-30; Respondent's Ex. C).
12. Complainant did not dispute her electric bill (Tr. 13).

DISCUSSION

In her formal complaint, Ms. Flohr requested a payment arrangement on a past due amount of \$1,218. This amount was the amount included in the 10-day termination notice sent to Ms. Flohr on April 5, 2018 and represented the CAP payment and arrears due as of that date.

As the party seeking affirmative relief from this Commission, Ms. Flohr bears the burden of proof. 66 Pa.C.S. § 332(a). The term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950); and Feinstein v. Philadelphia Suburban Water Company, 50 Pa. PUC 300 (1976). “Preponderance of the evidence” means one party must present evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. *Id.*

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 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 eligible for a Commission-ordered payment arrangement pursuant to Section 1405 of the Code, 66 Pa.C.S. § 1405, for the amount included in the 10-day termination notice dated April 5, 2018 (\$1,218), which represented the CAP payment and arrears due as of that date.

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. § 1405.

Complainant's request for a payment arrangement on the CAP arrears and CAP payments she owes is denied pursuant to 66 Pa.C.S. § 1405(c) above. Participants in CAP already receive the most advantageous payment arrangement available to them. Customer assistance program rates cannot be the subject of Commission-ordered payment arrangements.

Complainant did not request a payment arrangement from the Commission on her entire account balance. Even if she had done so, a payment arrangement would not be granted because of her poor payment history.

The award of a payment arrangement is not mandatory. Buchanan v. Pike County Light and Power Company, Docket No. F-2009-2137873 (Final Order entered December 12, 2011); Creekmur v. PECO Energy Co., Docket No. C-2008-2079322 (Final Order entered February 4, 2010); Crawford v. National Fuel Gas Distribution Corp., Docket No. C-20066348 (Final Order entered December 6, 2007). The Commission is authorized to order one payment arrangement per customer. 66 Pa.C.S. § 1405(d).

A utility customer must pay for the utility service that she consumes. *E.g.*, Scaccia v. West Penn Power Co., 55 PUC 637 (1982) (holding that a public utility is entitled to payment for services provided to customers). Chapter 14 of the Code, 66 Pa.C.S. § 1401 *et seq.*, provides that in certain circumstances a customer may be permitted to amortize the amount due on a utility account:

The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The Commission is authorized to establish payment agreements between a public utility, customers and applicants within the time limits established by this chapter.

66 Pa.C.S. § 1405(a).

Complainant has failed to meet her burden of proof in this proceeding and, consequently, the request for a payment arrangement is denied in the ordering paragraphs to follow. 66 Pa.C.S. § 332(a).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, applies to this proceeding.
3. Complainant has the burden of proof and she failed to prove she is eligible for a Commission-ordered payment arrangement. 66 Pa.C.S. §§ 332(a) and 1405(c).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Tina Flohr against Duquesne Light Company at Docket No. C-2018-3002183 is denied.
2. That the docket for this proceeding, Docket No. C-2018-3002183, be marked closed.

Date: November 29, 2018

/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge