

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LaRessa Tate	:	
	:	
v.	:	F-2018-3005114
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision grants the Complaint because the Complainant met her burden of proof to show that she is eligible for a Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On September 19, 2018, LaRessa Tate (Complainant or Ms. Tate) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW) seeking a payment arrangement. The Complaint is a timely appeal of a decision of the Commission's Bureau of Consumer Services (BCS) at BCS No. 3637021.

The Respondent filed an Answer on October 23, 2018 denying the material allegations of fact in the Complaint and requesting that the Commission deny the Complainant's Complaint.

By Hearing Notice issued October 31, 2018, the Commission scheduled this matter for a telephonic hearing on December 19, 2018, at 10:00 a.m., and assigned the case to me.

I issued a Prehearing Order on November 5, 2018, addressing, inter alia, the procedures applicable to the hearing.

I conducted the December 19, 2018, telephonic hearing as scheduled. The Complainant was present and testified on her own behalf. The Complainant presented no exhibits. Attorney Graciela Christlieb was present at the hearing on behalf of the Respondent and presented the testimony of Adrian Pinkney, a Customer Review Officer at PGW. PGW presented the following three exhibits, all of which were admitted into the record:

- PGW Exhibit 1 – Statement of Account
- PGW Exhibit 2 – Payment Arrangement History
- PGW Exhibit 3 – BCS Complaint and Decision

The record¹ closed on December 19, 2018, following the conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be granted.

FINDINGS OF FACT

1. The Complainant is LaRessa Tate.
2. The Respondent is Philadelphia Gas Works.
3. Ms. Tate receives service from Philadelphia Gas Works at 2103 North Hobart Street, Philadelphia, Pennsylvania (service address).
4. Ms. Tate's household consists of herself and her 38-year old grandson.

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

5. Ms. Tate receives social security in the amount of \$1,514 a month.
6. Ms. Tate's grandson provides the household with no income.
7. The BCS awarded Ms. Tate a payment arrangement at BCS No. 3637021, whereupon she was to pay a special budget amount of \$140 (\$125 budget bill + \$15 towards arrearages) beginning September 2018. (PGW Exhibit 3, p. 3). The present Formal Complaint is a timely appeal of this BCS decision.
8. Ms. Tate has made 18 payments towards her account in the last 24 months, totaling \$3,635.07. (PGW Exhibit 1, pp. 1, 2).
9. Ms. Tate has been assessed \$61.93 in late payment charges. (PGW Exhibit 1, pp. 1, 2).
10. Ms. Tate is eligible for PGW's Customer Responsibility Program (CRP) and has a pending CRP application submitted to PGW.
11. Ms. Tate must submit further documentation to PGW to be placed on its CRP.
12. Given the income provided during the hearing, Ms. Tate's monthly payment under PGW's CRP would be \$136.
13. As of December 12, 2018, Ms. Tate had an outstanding balance with PGW of \$498.44. (PGW Exhibit 1, p. 2).
14. As of the day of the hearing, Ms. Tate's outstanding balance with PGW is \$693.92.

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. Tate filed a Complaint against PGW seeking legal relief in the form of a payment arrangement. The burden of proof is on Ms. Tate 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 his/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).

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. Cmwlth. 1982). Public utilities are entitled 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-8721758 (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).

Before I analyze Ms. Tate's request for a Commission-issued payment arrangement, I will first note that PGW has indicated that Ms. Tate is eligible for PGW's CRP. At the time of the hearing, she had a pending CRP application submitted to PGW. Ms. Tate has been informed that she must submit more documentation to PGW to complete her CRP application. Typically, the Customer Assistance Program is the most affordable payment plan for an eligible, low-income customer. I recommend that Ms. Tate complete her CRP application, as it is more than likely that the payment plan provided under PGW's CRP (\$136 monthly at the time of the hearing) would be more beneficial than any payment plan I may award with this Initial Decision.

Requests for payment arrangements are governed by The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418 (Chapter 14). 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.

§ 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.

66 Pa.C.S. §§ 1405(a)-(b).

If a customer is issued a payment arrangement by the Commission, under 66 Pa.C.S. § 1405(b), and defaults on said payment arrangement, the Commission may only issue a second or subsequent payment arrangement under a specific set of circumstances.

§ 1405. Payment arrangements

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

§ 1403. Definitions

“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.

Ms. Tate filed an Informal Complaint with the Commission on July 27, 2018 at BCS No. 3637021 seeking a payment arrangement. The BCS awarded her a payment arrangement whereupon she would pay a special budget amount of \$140 (\$125 budget bill + \$15 towards arrearages) to begin September 2018. Ms. Tate timely appealed this decision through the filing of this present Formal Complaint. As Ms. Tate timely appealed the BCS decision, the payment arrangement awarded at BCS No. 3637021 was cancelled and not defaulted upon. Ms. Tate has not yet received her one Commission-issued payment arrangement permitted by Chapter 14. See Ronald diOrazio v. North East Heat and Light Company, F-2008-2052918 (Opinion and Order entered June 15, 2009) for the proposition that a BCS issued payment arrangement only becomes the one Commission issued payment arrangement, as permitted by Chapter 14, if the decision is not timely appealed. See also Kalamets v. Columbia Gas of PA, Inc., Docket No. Z-01701441 (Order Entered October 14, 2005) for the proposition that a customer cannot be deemed in default of a timely appealed payment arrangement directed by a BCS informal decision until the Formal Complaint on appeal is ultimately adjudicated and a final Order is issued by the Commission.

Ms. Tate’s gross monthly household income of \$1,514 for a household of two puts her between 100% and 125% of the Federal poverty level.² This makes her a level 1 customer under 66 Pa.C.S. § 1405(b)(1). Level 1 customers may be provided with five years to resolve their unpaid balance.

² See Federal Register, Vol. 83, No. 12, pp. 2642-2644 (January 18, 2018). *Also available at* <http://aspe.hhs.gov/poverty> (providing that 125% of the Federal poverty level for a household of two is \$1,715).

In cases where 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 will exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of a good faith effort to pay their utility bills or who have experienced a significant change of circumstances beyond their control. Crawford v. National Fuel Gas Distribution Corp., Docket No. C-20066348 (Opinion and Order entered December 6, 2007). Ms. Tate has made a good faith effort to pay her utility bills, as evidenced by the 18 payments that she has made on her account in the past two years totaling \$3,635.07. I will exercise my discretion and award Ms. Tate a payment arrangement on her balance.

Furthermore, a review of Ms. Tate's Statement of Account reveals that Ms. Tate has been assessed late payment charges in the amount of \$61.93. The Commission may order the waiver of late payment charges levied by a public utility under certain circumstances.

§ 1409. Late payment charge waiver

A public utility shall waive late payment charges on any customer accounts if the charges were improperly assessed. The commission may order a waiver of any late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level.

66 Pa.C.S. § 1409.

Ms. Tate has a gross monthly household income not exceeding 150%. Therefore, I may and will order that the late payment charges levied to Ms. Tate by PGW in the amount of \$61.93 be waived.

In conclusion, Ms. Tate has met her burden of proof to show that she is eligible for a payment arrangement. She will be issued a payment arrangement in the ordering paragraphs below.

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. 66 Pa.C.S. §§ 1401-1418.

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

5. A BCS issued payment arrangement only becomes the one Commission issued payment arrangement, as permitted by Chapter 14, if the decision is not timely appealed. Ronald diOrazio v. North East Heat and Light Company, F-2008-2052918 (Opinion and Order entered June 15, 2009).

6. The Commission will exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of a good faith effort to pay their utility bills or who have experienced a significant change of circumstances beyond their control. Crawford v. National Fuel Gas Distribution Corp., Docket No. C-20066348 (Opinion and Order entered December 6, 2007).

7. The Complainant has met her burden of proving that she is eligible for a Commission-issued payment arrangement.

8. The Commission may order a waiver of any late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level. 66 Pa.C.S. § 1409.

ORDER

THEREFORE,

IT IS ORDERED:

1. That LaRessa Tate's Complaint against Philadelphia Gas Works at Docket No. F-2018-3005114 is granted.
2. That Philadelphia Gas Works shall cancel \$61.93 in late payment charges assessed to LaRessa Tate's account.
3. That LaRessa Tate shall make monthly payments consisting of her budget bill plus one-sixth (1/60th) of the balance accrued on her account, beginning with the first billing due date following the entry of a final Commission Order in this case.
4. That as long as LaRessa Tate keeps the payment schedule stated in this order, Philadelphia Gas Works shall not suspend or terminate her utility service except for valid safety or emergency reasons or assess late payments or finance charges against her account.
5. That, if LaRessa Tate does not keep the payment schedule stated in this order, Philadelphia Gas Works is authorized to suspend or terminate her utility service in accordance with the Commission's statute and regulations.
6. That the docket at Docket No. F-2018-3005114 is marked closed.

Date: December 20, 2018

/s/
Alphonso Arnold III
Special Agent