

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Suzanne Seiders	:	
	:	
v.	:	F-2018-3005298
	:	
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 27, 2018, Suzanne Seiders (Complainant or Ms. Seiders) 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. 3637026, in which Ms. Seiders was awarded a payment arrangement.

The Respondent filed an Answer on October 31, 2018 denying the material allegations of fact in the Complaint and requesting that the Commission deny the Complainant's Complaint.

By Hearing Notice issued November 8, 2018, the Commission scheduled this matter for a telephonic hearing on January 14, 2019, at 10:00 a.m., and assigned the case to me.

I issued a Prehearing Order on November 14, 2018, addressing, inter alia, the procedures applicable to the hearing.

I conducted the January 14, 2019, 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 Patricia Bernard, a Customer Review Officer for PGW. PGW presented the following two exhibits, both of which were admitted into the record:

- PGW Exhibit 1 – Statement of Account
- PGW Exhibit 2 – BCS Complaint and Decision

The record<sup>1</sup> closed on January 14, 2019, following the conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be granted.

#### FINDINGS OF FACT

1. The Complainant is Suzanne Seiders.
2. The Respondent is Philadelphia Gas Works.
3. Ms. Seiders receives gas service from Philadelphia Gas Works at 1 Christian Street, Apartment 24, Philadelphia, Pennsylvania (service address).
4. Ms. Seiders' household consists only of herself.

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

5. Ms. Seiders receives disability payments from her former employer in the amount of \$2,400 a month.

6. Ms. Seiders receives social security disability (SSD) in the amount of approximately \$2,500 a month.

7. The BCS awarded Ms. Seiders a payment arrangement at BCS No. 3637026, whereupon she was to pay a special budget amount of \$1,222 (\$114 budget bill + \$1,108 towards arrearages) beginning with the September 2018 bill due date. (PGW Exhibit 2, p. 3).

8. The present Formal Complaint is a timely appeal of this BCS decision.

9. During the time period of January 7, 2016 to January 7, 2019, Ms. Seiders made five payments towards her account. (PGW Exhibit 1, pp. 1-3).

10. Ms. Seiders had an outstanding balance with PGW of \$6,694.77 on the day of the hearing. (PGW Exhibit 1, p. 3).

### 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.Cmwlt. 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. Seiders filed a Complaint against PGW seeking legal relief in the form of a payment arrangement. The burden of proof is on Ms. Seiders 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).

This proceeding is a review from an Informal Complaint Decision of BCS. Review of a BCS Decision is de novo, meaning that the review is based on the evidentiary record created at the hearing. 52 Pa. Code § 56.173(a). Thus, Ms. Seiders' eligibility for a Commission-issued payment arrangement will be based on my evaluation of the evidence provided at the evidentiary hearing.

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).

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). “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.

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).

Ms. Seiders filed an Informal Complaint with the Commission on July 27, 2018 at BCS No. 3637026 seeking a payment arrangement. The BCS awarded her a payment arrangement consisting of a special budget amount of \$1,222 (\$114 budget bill + \$1,108 towards arrearages). Payment under the terms of this payment arrangement was to begin with the September 2018 PGW bill due date. Ms. Seiders timely appealed this decision through the filing of this present Formal Complaint. Ms. Seiders’ timely appeal of the payment arrangement directed by the BCS Informal Complaint decision resulted in a stay of the BCS payment arrangement. 52 Pa. Code § 56.172(d). Thus, the payment arrangement awarded at BCS No. 3637026 is not in default and will not count towards the one payment arrangement permitted under 66 Pa.C.S. § 1405(d). 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. Kalamets v. Columbia Gas of PA, Inc., Docket No. Z-01701441 (Order Entered October 14, 2005); Harnett v. PPL

Electric Utilities Corp., Docket No. F-2012-2329578 (Opinion and Order entered November 14, 2013).

Ms. Seiders's gross monthly household income of \$4,900<sup>2</sup> for a household of one places her above 400% of the Federal poverty level.<sup>3</sup> This makes her a level 4 customer under 66 Pa.C.S. § 1405(b)(4). Level 4 customers are eligible for up to six months to resolve their unpaid balance. I am authorized to establish a six-month payment arrangement for Ms. Seiders.

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. The Commission has refused to award payment arrangements for those who have a poor payment history and/or inability or unwillingness to comply with payment arrangements established by the utility. Getz v. Metropolitan Edison Company, Docket No. C-2014-2459964 (Final Order entered May 28, 2015); Hewitt v. PECO Energy Company, Docket No. F-2011-2273271 (Order entered September 12, 2013). As stated, Ms. Seiders has made five payments on her account from January 7, 2016 to January 7, 2019. Ms. Seiders testified at the hearing that she mistakenly thought that someone was making payments on her utility bills on her behalf, and upon discovery that payments were not being made, has begun to personally make payments on her utility bills. Four payments have been made on her account within the last four months showing a recent good faith effort to pay her utility bills upon discovery that payments were not being made on her behalf. I will exercise my discretion and establish a payment arrangement for Ms. Seiders on her balance.

I understand that the terms of the payment arrangement that I will establish will contain the same terms as the BCS payment arrangement that Ms. Seiders timely appealed. Ms. Seiders timely appealed the BCS payment arrangement because she felt that she could not abide by its terms. Thus, it may be difficult for Ms. Seiders to keep the terms of the six-month

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<sup>2</sup> \$2,400 employer disability payments + \$2,500 SSD = \$4,900.

<sup>3</sup> Federal Register, Vol. 84, No. 22 at 1168 (February 1, 2019). Also available at <http://aspe.hhs.gov/poverty> (providing that 400% of the Federal poverty level for a household of one is \$4,163).

payment arrangement that I will order through this Decision. However, I am constrained by the guidelines of Chapter 14 in the length of the payment arrangement I can award the Complainant. As cited above, where one rests on the Federal poverty level dictates the length of the Commission-issued payment arrangement. 66 Pa.C.S. § 1405(b)(1)-(4). Longer payment arrangements are available for those who rest lower on the Federal poverty level. A six-month payment arrangement is the only Commission-issued payment arrangement available for the Complainant given where she rests on the Federal poverty level. Being provided with a payment arrangement through this Decision will give Ms. Seiders an opportunity to avoid termination of her gas service if she can comply with its terms.

In conclusion, Ms. Seiders 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 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. Kalamets v. Columbia Gas

of PA, Inc., Docket No. Z-01701441 (Order entered October 14, 2005); Harnett v. PPL Electric Utilities Corp., Docket No. F-2012-2329578 (Opinion and Order entered November 14, 2013).

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.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That Suzanne Seiders's Complaint against Philadelphia Gas Works at Docket No. F-2018-3005298 is granted.

2. That Suzanne Seiders shall make monthly payments consisting of her budget bill plus one-sixth (1/6th) 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.

3. That as long as Suzanne Seiders 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.

