

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robin Widener	:	
	:	
v.	:	F-2019-3010214
	:	
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 proving that she is eligible for a Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On May 23, 2019, Robin Widener (Complainant or Ms. Widener) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW). The Complaint is a timely appeal of a determination made by the Commission's Bureau of Consumer Services (BCS) at BCS No. 3685622, wherein the Complainant was granted a payment arrangement. In her Complaint, the Complainant requested a payment arrangement with terms lower than the one granted at BCS No. 3685622.

On June 20, 2019, the Respondent filed an Answer. The Respondent admitted or denied the various averments in the Complaint and requested that the Commission dismiss the Complaint.

By Hearing Notice served on the parties on June 27, 2019 the Commission scheduled this matter for a telephonic hearing on August 2, 2019 and assigned the case to me.

By Prehearing Order served on the parties on July 2, 2019 the parties were informed, inter alia, of the procedures applicable to the scheduled hearing.

I conducted the August 2, 2019 telephonic hearing as scheduled. Ms. Widener was present and testified in support of her Complaint. Ms. Widener sponsored no exhibits for the record. Attorney Graciela Christlieb was present on behalf of PGW and presented the testimony of Patricia Bernard, a customer review officer employed by PGW. Ms. Bernard sponsored 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 record¹ closed on August 2, 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 Robin Widener.
2. The Respondent is Philadelphia Gas Works.
3. Ms. Widener resides at 242 Laveer Street, Philadelphia, Pennsylvania (service address).
4. Ms. Widener lives alone at the service address.

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

5. Ms. Widener's job is seasonal in nature.
6. Ms. Widener received a \$1,200 paycheck and a \$1,400 paycheck within the last thirty days.
7. Ms. Widener derives no income from any other sources.
8. On March 29, 2019, Ms. Widener filed an Informal Complaint with the BCS at BCS No. 3685622 seeking a payment arrangement. (PGW Exhibit 2, p. 1).
9. The income for Ms. Widener's household reported at BCS No. 3685622 was \$1,950 for a household of one. (PGW Exhibit 2, p. 1).
10. On April 2, 2019, Ms. Widener was granted a level 2 payment arrangement at BCS No. 3685622, whereupon she was to pay a special budget amount of \$390 (\$171 budget bill + \$219 towards arrearages) per month beginning with the May 2019 billing due date. (PGW Exhibit 2, p. 3).
11. The present Formal Complaint is a timely appeal of the determination made at BCS No. 3685622.
12. During the time period of the Statement of Account (July 2017 to July 2019) nineteen payments have been made on Ms. Widener's account, totaling \$1,665.48. (PGW Exhibit 1).
13. On March 16, 2019, Ms. Widener was removed from PGW's customer assistance program.
14. No portion of Ms. Widener's outstanding balance is made up of customer assistance program arrears.

15. As of the date of the hearing, Ms. Widener's outstanding balance on her account was \$7,863.59. (PGW Exhibit 1, pp. 2, 3).

DISCUSSION

Section 701 of the Public Utility Code (Code) provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission. 66 Pa.C.S. § 701.

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).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the Complainant will prevail. If the utility rebuts the Complainant's evidence, the burden of going forward with the evidence shifts back to the Complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a Complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlt. 2001); see also, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlt. 1982).

Additionally, this Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a

reasonable mind might accept as adequate to support a conclusion. 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, 413 A.2d 1037 (Pa. 1980).

In this matter, Ms. Widener requested a payment arrangement. The burden is on Ms. Widener to prove that she is eligible for a payment arrangement. This matter is a *de novo* review of a BCS determination, which means that Ms. Widener's eligibility for a Commission-issued payment arrangement will be based on the evidence presented at the evidentiary hearing held in this matter. See, 52 Pa.Code § 56.173(a).

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. §§ 1401-1419 (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.

Generally, the Commission is permitted to establish only one payment arrangement between a customer and a utility. The Commission may only issue a second or subsequent payment arrangement under a specific set of circumstances. See 66 Pa.C.S. § 1405(d).

Ms. Widener made a payment arrangement request at BCS No. 3685622, whereupon the BCS granted Ms. Widener a payment arrangement. The present Formal Complaint is a timely appeal of this BCS determination. 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). Therefore, Ms. Widener has not received her one Commission-issued payment arrangement permitted under 66 Pa.C.S. § 1405(a). The length of the payment arrangement that can be established for Ms. Widener is based on her gross monthly household income in relation to the Federal poverty level. 66 Pa.C.S. § 1405(b).

Ms. Widener has a gross monthly household income of \$2,600, placing her between 150% and 250% of the Federal poverty level.² This makes Ms. Widener a level 2 customer under 66 Pa.C.S. § 1405(b)(2). Level 2 customers are eligible for a payment arrangement of up to three years to resolve their unpaid balance. As such, the Commission is authorized to issue Ms. Widener a three-year payment arrangement.

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 (Order entered May 28, 2015); Hewitt v. PECO Energy Company, Docket No. F-2011-2273271 (Order entered September 12, 2013).

Concerning Ms. Widener's good faith effort to pay her utility bills, Ms. Widener has made nineteen payments towards her account in the last twenty-four months in an amount totaling \$1,665.48. There is no evidence that Ms. Widener defaulted on any Company-issued payment arrangements. I deem the nineteen payments that Ms. Widener has made towards her account in the last twenty-four months to be an attempt by Ms. Widener to make a good faith effort to pay her utility bills. Thus, discretion is warranted, and a payment arrangement will be

² Federal Register, Vol. 84, No. 22 at 1168 (February 1, 2019). Also available at <http://aspe.hhs.gov/poverty> (providing that 250% of the Federal poverty level for a household of one is \$2,602).

established for Ms. Widener. Ms. Widener has not yet had the opportunity to comply with a Commission-issued payment arrangement, and she will be provided with that opportunity.

Ms. Widener requested a payment arrangement with terms lower than those issued at BCS No. 3685622, wherein Ms. Widener was granted a three-year payment arrangement as a level 2 customer. Ms. Widener's gross monthly household income provided during the hearing again makes her a level 2 customer. As a result, a three-year payment arrangement is the most generous payment arrangement that the Commission may grant Ms. Widener under Chapter 14. A more generous payment arrangement of five-years to resolve an unpaid balance is available only for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level. 66 Pa.C.S. § 1405(b)(1). Ms. Widener has the option of filing another Formal Complaint in the future if her gross monthly household income, which is seasonal in nature, drops below 150% of the Federal poverty level.

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. 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. Cmwlt. 1982).
4. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419, applies to this proceeding. 66 Pa.C.S. §§ 1401-1419.
5. The Commission is authorized to establish a payment arrangement between a public utility, customers and applicants. 66 Pa.C.S. § 1405(a).

6. A customer's gross monthly household income in relation to the Federal poverty level determines the length of the payment arrangement that the Commission can issue. 66 Pa.C.S. § 1405(b).

7. 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. Hewitt v. PECO Energy Company, Docket No. F-2011-2273271 (Order entered September 12, 2013).

8. The Complainant has met her burden of proving that she is eligible for a Commission-issued payment arrangement over a three year period.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Robin Widener against Philadelphia Gas Works at Docket No. F-2019-3010214 is granted.

2. That Robin Widener shall make monthly payments consisting of her budget bill plus one-thirty-sixth (1/36th) 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 Robin Widener 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.

4. That if Robin Widener 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.

5. That the docket at Docket No. F-2019-3010214 is marked closed.

Date: August 7, 2019

_____/s/
Alphonso Arnold III
Special Agent