

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LaDonnia Smalls	:	C-2019-3012114
	:	C-2019-3012277
v.	:	
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision dismisses the consolidated Complaints, finding that the Complainant is not eligible for a second Commission-issued payment arrangement or to a reinstatement and extension of her first Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On August 9, 2019, LaDonnia Smalls (Ms. Smalls or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) seeking a payment arrangement. Ms. Smalls also indicated in her Complaint that she received a notice stating that an agreement was made, and subsequently received another notice stating that the prior notice was a mistake. This Formal Complaint was docketed at Docket No. C-2019-3012114.

On August 16, 2019, Ms. Smalls filed a second Formal Complaint with the Commission against PGW, again seeking a payment arrangement. This second Formal Complaint was docketed at Docket No. C-2019-3012277.

On September 9, 2019, PGW filed Answers to the Complaints at Docket Nos. C-2019-3012114 and C-2019-3012277. Both Answers were the same, in that PGW admitted or denied the various averments in the Complaints and requested that the Commission dismiss the Complaints.

Also on September 9, 2019, PGW filed a Motion to Consolidate the Complaints at Docket Nos. C-2019-3012114 and C-2019-3012277.

By Hearing Notice served on the parties on September 24, 2019, the Commission scheduled both matters to be heard at a telephonic hearing scheduled for November 25, 2019. The cases were assigned to me.

On September 30, 2019 an Interim Order was issued, granting PGW's Motion to Consolidate the Complaints at Docket Nos. C-2019-3012114 and C-2019-3012277.

A Prehearing Order, served upon the parties on October 23, 2019, addressed, inter alia, the procedures applicable to the scheduled hearing.

The November 25, 2019 hearing was held as scheduled. Ms. Smalls was present for the hearing and testified in support of her consolidated Complaints. Ms. Smalls sponsored no exhibits for the record. Attorney Graciela Christlieb was present on behalf of PGW and presented the testimony of Adrian Pinkney, a customer review officer employed by PGW, who sponsored the following five exhibits which were admitted into the record:

- PGW Exhibit 1 – Statement of Account
- PGW Exhibit 2 – Payment Arrangement
- PGW Exhibit 3 – Record of Customer Contact
- PGW Exhibit 4 – BCS Complaint and Decision
- PGW Exhibit 5 – BCS Complaint and Decision

The record closed on December 13, 2019, upon the Commission's receipt of the November 25, 2019 hearing transcript. The record in this matter consists of the hearing

transcript of twenty-three pages and PGW's five exhibits admitted into the record during the hearing. For the reasons explained below, the consolidated Complaints will be dismissed.

FINDINGS OF FACT

1. The Complainant is LaDonnia Smalls.
2. The Respondent is Philadelphia Gas Works.
3. Ms. Smalls receives gas service from PGW at 614 West Huntingdon Street, Apartment 2, Philadelphia, Pennsylvania (service address).
4. Four people live at the service address: Ms. Smalls, her adult daughter, and Ms. Smalls' two minor grandchildren. (Tr. 7-9).
5. Ms. Smalls' gross monthly income is \$2,200. (Tr. 7).
6. Ms. Smalls' daughter's gross monthly income is \$1,500. (Tr. 8).
7. On August 19, 2016, Ms. Smalls filed an Informal Complaint with the Commission's Bureau of Consumer Services (BCS) at BCS No. 3469669 seeking a payment arrangement. (PGW Exhibit 4, p. 1).
8. On November 29, 2016, the BCS issued a decision granting Ms. Smalls' payment arrangement request at BCS No. 3469669. (PGW Exhibit 4, p. 3).
9. The payment arrangement issued at BCS No. 3469669 was based on Ms. Smalls' monthly household income of \$1,299.99 for a household of five. (PGW Exhibit 4, p. 1).
10. Ms. Smalls broke the payment arrangement issued to her at BCS No. 3469669. (PGW Exhibit 2).

11. On July 2, 2019, Ms. Smalls filed an Informal Complaint with the BCS at BCS No. 3714692 seeking a payment arrangement to prevent termination of her service. (PGW Exhibit 5, p. 1).

12. The BCS issued a decision granting Ms. Smalls' payment arrangement request at BCS No. 3714692. (Tr. 11)

13. The BCS notified Ms. Smalls that its decision granting her a payment arrangement at BCS No. 3714692 was a mistake, and on July 24, 2019, issued a revised decision dismissing Ms. Smalls' payment arrangement request. (Tr. 11, 12; PGW Exhibit 3; PGW Exhibit 5, p. 3).

14. As of the date of the hearing, Ms. Smalls' outstanding account balance is \$4,551.15. (PGW Exhibit 1, p. 2).

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 the Complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); see also, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 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).

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.

(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 in income” is defined as the following:

§ 1403. Definitions

“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, the Commission may reinstate and extend a defaulted upon payment arrangement under a specific set of circumstances.

§ 1405. Payment arrangements

(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.

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

§ 1403. Definitions

“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.

Before her payment arrangement request in this consolidated matter, Ms. Smalls made two prior payment arrangement requests. Ms. Smalls’ first payment arrangement request was made through the filing of an Informal Complaint at BCS No. 3469669. The BCS issued a decision awarding Ms. Smalls a payment arrangement at BCS No. 3469669, and the payment arrangement became a Commission-issued payment arrangement once Ms. Smalls failed to timely appeal the decision through the filing a Formal Complaint. 52 Pa. Code § 56.163(3); DiOrazio v. North East Heat and Light Company, Docket No. F-2008-2052918 (Opinion and Order entered June 15, 2009). Ms. Smalls defaulted upon this Commission-issued payment arrangement.

Ms. Smalls' second payment arrangement request was made through the filing of an Informal Complaint at BCS No. 3714692. The BCS issued a decision awarding Ms. Smalls a payment arrangement at BCS No. 3714692, but subsequently issued a revised decision denying Ms. Smalls a payment arrangement. The revised decision found that Ms. Smalls was not eligible for a payment arrangement per 66 Pa.C.S. § 1405(d) because Ms. Smalls had not satisfied the prior Commission-issued payment arrangement at BCS No. 3469669. (PGW Exhibit 5, p. 3). To further clarify, because of Ms. Smalls' default on the Commission-issued payment arrangement awarded at BCS No. 3469669, she was eligible for a second Commission-issued payment arrangement only if she had experienced a change in income. 66 Pa.C.S. § 1405(d). The BCS found that Ms. Smalls had not experienced the change in income necessary to be issued a second Commission-issued payment arrangement at BCS No. 3714692. Section 1405(d) will again apply to Ms. Smalls' eligibility for a second Commission-issued payment arrangement in this consolidated matter.

Ms. Smalls testified at the hearing that her gross monthly household income is \$3,700¹ for a household of four. Ms. Smalls' gross monthly household income reported at BCS No. 3469669 was \$1,299.99 for a household of five. Thus, Ms. Smalls' income has increased following the issuance of her first Commission-issued payment arrangement. "Change in income" is defined as having experienced a decrease in income, not an increase in income. 66 Pa.C.S. § 1403. As a result, Ms. Smalls has not experienced the change in income necessary to be issued a second Commission-issued payment arrangement.

Although the Commission cannot establish a second Commission-issued payment arrangement for Ms. Smalls, the Commission-issued payment arrangement at BCS No. 3469669 can be reinstated and extended if Ms. Smalls defaulted on the Commission-issued payment arrangement as a result of a significant change in circumstance. Ms. Smalls provided no evidence at the hearing that would lead to a finding that Ms. Smalls defaulted on her Commission-issued payment arrangement as a result of any of the four circumstances which constitute a significant change in circumstance. See, 66 Pa.C.S. § 1403, supra. Therefore, Ms.

¹ \$2,200 (Ms. Smalls' monthly income) + \$1,500 (Ms. Smalls' adult daughter's monthly income) = \$3,700.

Smalls has not experienced a significant change in circumstance making her eligible for reinstatement and extension of her Commission-issued payment arrangement.

In conclusion, Ms. Smalls is not eligible for a second Commission-issued payment arrangement, nor is she eligible for reinstatement and extension of her first Commission-issued payment arrangement.

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 applies to this proceeding. 66 Pa.C.S. §§ 1401-1419.

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

5. 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).

6. 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).

7. "Change in income" is defined as 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

