

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nina Johnson	:	
	:	
v.	:	F-2019-3013586
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision finds the Complainant eligible for a payment arrangement and as a result grants her a Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On October 9, 2019, Nina Johnson (Complainant or Ms. Johnson) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW) seeking a payment arrangement that she could afford.

The Complaint is a timely appeal of a decision made by the Commission’s Bureau of Consumer Services (BCS) at BCS No. 3727428. The BCS decision awarded Ms. Johnson a payment arrangement.

On November 6, 2019, PGW filed an Answer to the Complaint, admitting or denying the averments in the Complaint. PGW requested that the Commission dismiss the Complaint.

By Hearing Notice served upon the parties on November 8, 2019, the Commission scheduled this matter for a telephonic hearing on December 18, 2019 and assigned the case to me as presiding officer.

A Prehearing Order, served upon the parties on November 12, 2019, addressed, inter alia, the procedures applicable to the hearing.

The December 18, 2019 hearing was held as scheduled. Ms. Johnson was present for the hearing and testified in support of her Complaint. Ms. Johnson sponsored no exhibits for the record. Attorney Graciela Christlieb was present on behalf of PGW and presented the testimony of Tiffany Jones, a senior customer review officer employed by PGW, who sponsored the following three exhibits 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 at the conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be granted.

FINDINGS OF FACT

1. The Complainant is Nina Johnson.
2. The Respondent is Philadelphia Gas Works.

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

3. Ms. Johnson receives service from PGW at 5827 Filbert Street, Philadelphia, Pennsylvania (service address).
4. Four people reside at the service address, including three adults: Ms. Johnson, her mother, and her father.
5. Ms. Johnson has a gross monthly income of \$5,333.33.²
6. Ms. Johnson's mother receives \$1,500 monthly in social security disability payments.
7. On August 19, 2019, Ms. Johnson filed an Informal Complaint with the BCS at BCS No. 3727428 requesting a payment arrangement to prevent termination of her service. (PGW Exhibit 3, p. 1).
8. On August 20, 2019, the BCS issued a decision granting Ms. Johnson's Informal Complaint at BCS No. 3727428 and awarding her a payment arrangement. (PGW Exhibit 3, p. 3).
9. The present Formal Complaint is a timely appeal of the BCS decision issued at BCS No. 3727428.
10. Ms. Johnson has broken one Company-issued payment arrangement. (PGW Exhibit 2).
11. Two payments have been made towards Ms. Johnson's PGW gas account during the period of the Statement of Account (December 12, 2017 – December 12, 2019) totaling an amount of \$650. (PGW Exhibit 1).

² Ms. Johnson testified that her gross yearly income is \$64,000. ($\$64,000 / 12 \text{ months} = \$5,333.33$ per month).

12. As of the date of the hearing, Ms. Johnson's outstanding account balance with PGW was \$5,342.79. (PGW Exhibit 1).

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.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).

Ms. Johnson requests a payment arrangement that she can afford. Therefore, the burden is on Ms. Johnson to prove that she is eligible for a payment arrangement. 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. If a customer defaults on a Commission-issued payment arrangement, then 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. Johnson was awarded a payment arrangement through the BCS decision issued at BCS No. 3727428. The present Formal Complaint is a timely appeal of that BCS decision. A timely appeal of a BCS decision results in an automatic stay of the BCS decision. See 52 Pa. Code § 56.174(b). Timely appeals of BCS decisions are reviewed *de novo*,³ and if the Formal Complaint on an appeal is litigated to the issuance of an Initial Decision, then the formal decision will replace the informal BCS decision. Ruskey v. Pennsylvania Electric Company, Docket No. C-2018-3003153 (Opinion and Order entered March 13, 2019). Since the payment arrangement issued to Ms. Johnson at BCS No. 3727428 was stayed, the BCS payment arrangement never became a final, Commission-issued payment arrangement. As a result, Ms. Johnson has never received a final, Commission-issued payment arrangement. Chapter 14 authorizes the Commission to issue Ms. Johnson a payment arrangement, and Ms. Johnson’s gross monthly household income in relation to the Federal poverty level determines the length of the payment arrangement that the Commission may issue. 66 Pa.C.S. § 1405(b).

Ms. Johnson testified at the hearing that her gross monthly household income is \$6,833.33⁴ for a household of four, placing her above 300%⁵ of the Federal poverty level. This

³ Review “*de novo*” means that the decision issued in this matter will be based on the evidence presented at the evidentiary hearing. 52 Pa.Code § 56.173(a).

⁴ \$5,333.33 (Ms. Johnson’s income) + \$1,500 (Ms. Johnson’s mother’s income) = \$6,833.33.

⁵ Federal Register, Vol. 84, No. 22 at 1168 (February 1, 2019). Also available at <http://aspe.hhs.gov/poverty> (providing that 300% of the Federal poverty level for a household of four is \$6,438).

makes Ms. Johnson a level 4 customer, which is defined as a customer with a gross monthly household income level exceeding 300% of the Federal poverty level. 66 Pa.C.S. § 1405(b)(4). Level 4 customers are eligible for a payment arrangement of six months to resolve their unpaid balance. As such, the Commission is authorized to issue Ms. Johnson a six-month payment arrangement.⁶

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).

It is PGW's position that Ms. Johnson has not made a good faith effort to pay her gas bills. In support of its position, PGW witness Ms. Jones sponsored Ms. Johnson's Statement of Account which shows that Ms. Johnson has made two payments totaling \$650 towards her account during the 24-month period of the Statement of Account (December 12, 2017 – December 12, 2019). Ms. Jones also sponsored Ms. Johnson's payment arrangement history which shows that Ms. Johnson has defaulted on one Company-issued payment arrangement. As of the date of the hearing, Ms. Johnson's outstanding account balance with PGW was \$5,342.79.

Admittedly, the record evidence does show that Ms. Johnson does not have a strong payment history, as Ms. Johnson has only made two payments towards her gas account within the last two years. However, Ms. Johnson has failed to comply with only one Company-issued payment arrangement and has not yet had the opportunity to comply with a Commission-

⁶ Ms. Johnson also testified that she was unsure if her father, who is disabled, receives social security disability but that if he did receive any disability payments it was \$500 per month. Due to this uncertainty, this amount was not included in totaling Ms. Johnson's gross monthly household income. Further, it is noted that the addition of \$500 to Ms. Johnson's household income would not affect her status as a level 4 customer.

issued payment arrangement. Ms. Johnson will be given the opportunity to comply with a Commission-issued payment arrangement through this Initial Decision.

It is noted that the terms of the payment arrangement to be issued through this Initial Decision will consist of the same terms as the payment arrangement issued through the decision at BCS No. 3727428. Ms. Johnson testified that she timely appealed this BCS decision because the payment arrangement was not affordable for her. However, as explained above, a customer's gross monthly household income in relation to the Federal poverty level determines the length of the payment arrangement that the Commission may issue. 66 Pa.C.S. § 1405(b). Given Ms. Johnson's gross monthly household income, the Commission is not authorized to award Ms. Johnson a payment arrangement with terms better than six-months to pay her unpaid balance.

In conclusion, Ms. Johnson has met her burden of proving that she is eligible for a Commission-issued payment arrangement. Ms. Johnson will be issued a six-month 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 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 may issue. 66 Pa.C.S. § 1405(b).

6. 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. 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).

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 Nina Johnson's Complaint against Philadelphia Gas Works at Docket No. F-2019-3013586 is granted.

2. That Nina Johnson shall make monthly payments consisting of her budget bill plus one-sixth (1/6th) of the balance accrued on her account, for the payment of each regular monthly bill, beginning with the first billing due date following the entry of a final Commission Order in this case, and continuing until the arrearage on her account has been paid in full.

