

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lynette Lopez	:	
	:	
v.	:	C-2019-3011646
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision grants the Complaint, finding that the Complainant defaulted on her prior Commission-issued payment arrangement as a result of having experienced a significant change in circumstance. As a result, this Decision reinstates and extends the Complainant’s prior payment arrangement.

HISTORY OF THE PROCEEDING

On July 18, 2019, Lynette Lopez (Complainant or Ms. Lopez) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW) indicating that PGW was threatening to shut off her service and seeking a payment arrangement. Specifically, Ms. Lopez asserted that she defaulted on a payment arrangement as a result of financial hardship and cannot afford the down payment to reinstate the arrangement.

On August 7, 2019, PGW filed an Answer to the Complaint, admitting that it sent Ms. Lopez a shut off notice on July 10, 2019, informing Ms. Lopez that she would need to pay \$1,728.29 to retain service. PGW requested that the Commission dismiss the Complaint.

By Hearing Notice served upon the parties on January 9, 2020, the Commission scheduled this matter for a telephonic evidentiary hearing on February 26, 2020.¹

A Prehearing Order, served upon the parties on February 10, 2020, addressed, inter alia, the procedures applicable to the hearing.

The February 26, 2020 hearing was held as scheduled. Ms. Lopez was present for the hearing and testified in support of her Complaint. Ms. Lopez sponsored no exhibits for the record. Attorney Laureto Farinas was present on behalf of PGW and presented the testimony of Patricia Bernard, a customer review officer employed by PGW, who sponsored the following five exhibits:

- PGW Exhibit 1 – Statement of Account
- PGW Exhibit 2 - Negotiated Payment Arrangements
- PGW Exhibit 3 – BCS Decision 3544000
- PGW Exhibit 4 – BCS Decision 3712179
- PGW Exhibit 5 – Settlement Documents October 17, 2019

The record² closed on February 26, 2020, following the conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be granted.

FINDINGS OF FACT

1. The Complainant is Lynette Lopez.
2. The Respondent is Philadelphia Gas Works.

¹ The evidentiary hearing was rescheduled on three prior occasions.

² The telephonic hearing was recorded over the phone by means of a digital recorder. No Court Reporter was present.

3. Ms. Lopez receives service from PGW at 1851 E. Lippincott Street, Philadelphia, PA (service address).
4. Ms. Lopez resides at the household at the service address with her step-brother.
5. Ms. Lopez' step-brother has been residing with her for eight or nine years.
6. Ms. Lopez has a gross monthly income of \$3,066.
7. Ms. Lopez' step-brother provides the household with no income.
8. Ms. Lopez' health deteriorated in September 2018, causing her financial hardship until December 2019.
9. On July 12, 2017, Ms. Lopez filed an Informal Complaint with the Commission's Bureau of Consumer Services (BCS) at BCS No. 3544000 seeking a payment arrangement. (PGW Exhibit 3, p. 1).
10. On August 7, 2017, the BCS granted the Informal Complaint filed at BCS No. 3544000 and awarded Ms. Lopez a payment arrangement, to begin with the September 2017 bill due date. (PGW Exhibit 3, p. 3).
11. The payment arrangement issued at BCS No. 3544000 for Ms. Lopez was based on a household income of \$2,959.13 for a household of one. (PGW Exhibit 3, p. 1).
12. Ms. Lopez defaulted on the payment arrangement issued at BCS No. 3544000. (PGW Exhibit 2, p. 1).
13. Ms. Lopez defaulted on three Company-issued payment arrangements, including her most recent Company-issued payment arrangement issued on September 10, 2018. (PGW Exhibit 2, p. 1).

14. As of the day of the hearing, the catch-up amount that Ms. Lopez must pay in order to reinstate the September 10, 2018 Company-issued payment arrangement is \$2,974.59.

15. On June 21, 2019, Ms. Lopez filed an Informal Complaint at BCS No. 3712179 seeking a payment arrangement. (PGW Exhibit 4, p. 1).

16. On July 1, 2019, the BCS denied the Informal Complaint filed at BCS No. 3712179. (PGW Exhibit 4, p. 3).

17. As of the date of the hearing, Ms. Lopez' outstanding account balance was \$3,425.08.

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 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).

In this matter, Ms. Lopez testified that she defaulted on a payment arrangement because she experienced financial hardship and cannot afford the down payment necessary to reinstate the arrangement. Therefore, Ms. Lopez filed her Complaint seeking the Commission's assistance in providing her with 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. 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.

(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.

A previous Commission-issued payment arrangement was established for Ms. Lopez by the BCS at BCS No. 3544000. The payment arrangement established through this BCS decision became a final Commission-issued payment arrangement once Ms. Lopez did not timely appeal the decision through filing a Formal Complaint. See 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. Lopez defaulted upon this Commission-issued payment arrangement. Given her default on this prior Commission-issued payment arrangement, Ms. Lopez is now seeking a second Commission-issued payment arrangement. A second Commission-issued payment arrangement may be established for Ms. Lopez only if she has

experienced a change in income since the prior Commission-issued payment arrangement was issued and became final. 66 Pa.C.S. § 1405(d).

Ms. Lopez testified that her gross monthly household income is \$3,066 for a household of two. Ms. Lopez' gross monthly household income reported at BCS No. 3544000 was \$2,959.13 for a household of one. Thus, Ms. Lopez has experienced an increase in her gross monthly household income since the issuance of the payment arrangement at BCS No. 3544000. As "change in income" is defined as having experienced a decrease in household income, not an increase in household income, Ms. Lopez has not experienced a change in income. "**Change in income**" 66 Pa.C.S. § 1403. Thus, Ms. Lopez is not eligible for a second Commission-issued payment arrangement.

Although Ms. Lopez is not eligible for a second Commission-issued payment arrangement, she may be eligible for reinstatement and extension of her payment arrangement issued at BCS No. 3544000. As cited, customers who have a household income of less than 300% of the Federal poverty level are eligible for reinstatement and extension of a Commission-issued payment arrangement if they defaulted on the arrangement as a result of having experienced a significant change in circumstance. 66 Pa.C.S. §§ 1403, 1405(e). Ms. Lopez' household income of \$3,066 for a household of two is below 300% of the Federal poverty level,³ so it may be considered whether Ms. Lopez is eligible for reinstatement and extension of the arrangement issued at BCS No. 3544000.

Regarding whether Ms. Lopez experienced a significant change in circumstance causing her to default on the arrangement issued at BCS No. 3544000, Ms. Lopez provided no evidence relating to having experienced the second or third significant change in circumstance criteria (catastrophic damage to the customer's residence or loss of the customer's residence). With respect to the first criteria, that is, whether Ms. Lopez experienced the onset of a chronic or acute illness resulting in a significant loss in her household income, Ms. Lopez testified that her health deteriorated in September 2018, causing her financial hardship until December 2019. Ms. Lopez cited to these health issues to explain her default on her September 2018 Company-issued

³ 300% of the Federal poverty level for a household of two is \$4,228. See Federal Register, Vol. 84, No. 22 at 1168 (February 1, 2019). Also available at <http://aspe.hhs.gov/poverty>.

payment arrangement. However, these health issues are not connected to her default on her Commission-issued payment arrangement that was issued to her in August 2017, before her health deteriorated and caused her financial hardship. As such, the first criteria is not met here.

With respect to the fourth criteria, that is, whether Ms. Lopez experienced an increase in the number of dependents in her household, the payment arrangement issued at BCS No. 3544000 was based on a household of one. Ms. Lopez testified during the hearing that she has a household of two including herself and her step-brother.⁴ Finding Ms. Lopez' testimony credible, it must be concluded that Ms. Lopez has experienced an increase in the number of dependents in her household from one to two. Thus, Ms. Lopez has met the fourth significant change in circumstance criteria, and her Commission-issued payment arrangement will be reinstated and extended for a period of six-months.

In conclusion, Ms. Lopez' Complaint will be granted, and Ms. Lopez's Commission-issued payment arrangement, issued at BCS no. 3544000, will be reinstated and extended pursuant to 66 Pa.C.S. § 1405(e).

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 Although Ms. Lopez testified that her step-brother has lived with her for the past eight or nine years, there was no evidence presented as to why BCS based its 2017 payment arrangement upon a household of one. Nonetheless, as noted above, I find Ms. Lopez' testimony as to her household size credible.

4. The Commission is authorized to establish a payment arrangement between public utilities and customers. 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. 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).

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 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.

8. If a customer defaults on a payment arrangement 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).

9. A "significant change in circumstance" is 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, or (4) increase in the customer's number of dependents in the household. 66 Pa.C.S. § 1403.

10. The Complainant defaulted on her Commission-issued payment arrangement as a result of having experienced a significant change in circumstance.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Lynette Lopez' Complaint against Philadelphia Gas Works at Docket No. C-2019-3011646 is granted.

2. That, in accordance with Section 1405(e) of the Public Utility Code, 66 Pa.C.S. § 1405(e), the payment arrangement issued by the Bureau of Consumer Services on August 7, 2017 in BCS Case No. 3544000 is reinstated, and the remaining term is extended for an initial period of six months following the entry of a final Commission order in this case.

3. That as long as Ms. Lopez maintains the terms of the reinstated payment arrangement, 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 Ms. Lopez does not keep the reinstated payment arrangement, Philadelphia Gas Works is authorized to suspend or terminate her service in accordance with the Commission's statutes and regulations.

5. That the docket at Docket No. C-2019-3011646 is marked closed.

Date: April 6, 2020

/s/
Alphonso Arnold III
Special Agent