

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kelly Roane	:	
	:	
v.	:	C-2019-3013621
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Kailey B. Maguire
Special Agent

INTRODUCTION

This decision denies the complaint of a gas service customer because the customer has failed to establish by a preponderance of the evidence that she is eligible for a second Commission-issued payment arrangement or an extension of her prior one.

HISTORY OF THE PROCEEDING

On October 17, 2019, Kelly Roane (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company, or Respondent). In her complaint, Ms. Roane averred PGW was threatening to shut off her service or had already shut off her service and requested a Commission-issued payment arrangement that she can afford.

The complaint is an untimely appeal from a decision of the Commission's Bureau of Consumer Services (BCS) at Case No. 3731442, issued on September 6, 2019, in which BCS established a payment arrangement for Ms. Roane.¹

On November 6, 2019, PGW filed an answer to the complaint asserting, *inter alia*, it issued a shut off notice for the service at 133 W. Apsley Street, Philadelphia, Pennsylvania (service address). PGW denied all other material allegations in the complaint. PGW concluded its answer by requesting dismissal of the complaint.

On November 19, 2019, the Commission issued a hearing notice to the parties, establishing an initial telephonic hearing for December 27, 2019, at 10:00 a.m. and assigning the undersigned as Presiding Officer.² On November 21, 2019, a Prehearing Order was issued reminding the parties of the date and time of the hearing and addressing, *inter alia*, the procedures applicable to the hearing.

The hearing convened as scheduled on December 27, 2019, at 10:00 a.m. Ms. Roane appeared *pro se*, testified on her own behalf, and offered no exhibits into the record. Graciela Christlieb, Esquire, appeared on behalf of Respondent and presented the testimony of one witness, Jessica Glace, a senior customer review officer for PGW. Ms. Glace 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 record³ closed following the conclusion of the hearing. For the reasons discussed below, the complaint will be denied.

¹ At BCS Case No. 3731442, Ms. Roane was awarded a level four payment arrangement. A level four customer is defined as a household with a gross monthly income level exceeding 300% of the Federal poverty level and is provided with a repayment period of not more than six (6) months. 66 Pa.C.S. § 1405(b)(4).

² 52 Pa. Code § 56.174 provides for review by a special agent of any case in which the issue is solely the ability to pay.

³ Pursuant to 52 Pa. Code § 56.174(3), the hearing was tape recorded. No court reporter was present.

FINDINGS OF FACT

1. The Complainant is Kelly Roane, who resides at 133 W. Apsley Street, Philadelphia, Pennsylvania (service address).
2. The Respondent is Philadelphia Gas Works, a jurisdictional public utility, which provides gas service to Complainant at the service address.
3. Complainant established residential service at the service address in August of 2015.
4. Complainant was provided two Company-issued payment arrangements since establishing service at the service address. PGW Exhibit 2.
5. On September 4, 2019, Complainant filed an informal complaint with the Commission's Bureau of Consumer Services at BCS Case No. 3731442 seeking a payment arrangement. PGW Exhibit 3, p.1.
6. By decision dated September 6, 2019, BCS granted Complainant a six-month, level four payment arrangement, which directed Ms. Roane to pay her monthly budget bill of \$87 plus an additional \$346 towards her arrears, for a total of \$433 per month, beginning with the due date of her October 2019 bill. PGW Exhibits 2 and 3, p. 2.
7. At BCS Case No. 3731442, Complainant reported a gross monthly household income of \$4,302 and a household size of two individuals. PGW Exhibit 3, p. 1.
8. Complainant did not timely appeal the decision at BCS Case No. 3731442.
9. Complainant defaulted on the payment arrangement at BCS Case No. 3731442. PGW Exhibit 2.

10. Complainant's current household size is two individuals, which includes herself and one minor.

11. Complainant's gross annual household monthly income is \$51,000, which she receives from her employment.

12. Complainant's gross monthly household income exceeds 300% of the Federal Poverty guidelines.⁴

13. Complainant has not made any payments on her account since March 22, 2018. PGW Exhibit 1.

14. As of the date of the hearing, Ms. Roane's outstanding account balance is \$2,214.76. PGW Exhibit 1.

DISCUSSION

The proponent of any request for relief from the Commission bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To satisfy this burden, a complainant, as the proponent of the request for relief, must show 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 presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

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

If the 2020 guidelines were to be applied in this proceeding, Complainant's gross monthly household income would fall slightly below 300% of the Federal poverty benchmark. The 2020 guidelines provide that 300% of Federal poverty level for a household of two is \$4,310 per month. *Federal Register*, Vol. 85, No. 12 at 3060 (January 17, 2020). Also available at <http://aspe.hhs.gov/poverty>. Given that the complaint was filed in 2019 and the evidentiary hearing occurred in 2019, the 2019 Federal Poverty Guidelines is the appropriate standard to apply in this proceeding. See *Wooden v. Philadelphia Gas Works*, Docket No. C-2016-2548462, n.4 (Opinion and Order entered October 5, 2017).

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

Complainant requests a second Commission-issued payment arrangement. Therefore, as the proponent of the request for relief, Ms. Roane bears the burden of proof.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 (Act or Chapter 14), applies to complainants alleging inability to pay and requesting a Commission-issued payment arrangement. 66 Pa.C.S. § 1405(a). The Act provide strict guidelines that the Commission must follow in handling customer complaints including the length of payment arrangements and the number of payments arrangements the Commission may issue. As to the length of payments arrangement, Section 1405 provides, in pertinent part:

§ 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:

(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)(4).

Additionally, the Act limits the number of payments arrangements it may issue a customer or applicant. Generally, the Commission is permitted to establish only one payment arrangement between a customer or applicant and a public utility. The Commission may only issue a second or subsequent payment arrangement if there has been a change of income since the prior Commission-issued payment arrangement. Specifically, Section 1405(d) provides:

(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).

Since Complainant filed an informal complaint with the BCS at Docket No. 3731442 on September 4, 2019 and was given a payment arrangement under 66 Pa.C.S. § 1405(a) and 66 Pa.C.S. § 1405(b)(4) on September 6, 2019, and the decision was not timely appealed, the BCS payment arrangement became a formal Commission-issued payment arrangement. 52 Pa. Code § 56.172(d).⁵ Ms. Roane defaulted on the payment arrangement as no payments were made towards her balance. Therefore, Ms. Roane is seeking a second Commission-issued payment arrangement. *See* 66 Pa.C.S. § 1405(d).

Pursuant to 66 Pa.C.S. § 1405(d), Ms. Roane is eligible for another Commission-issued payment arrangement if she has suffered a change in income. The Act defines a “change in income” as some decrease in household income. Specifically, a decrease of 20% or more is required if the customer's household income level exceeds 200% of the Federal poverty level. 66 Pa.C.S. § 1403. Additionally, “household income” is defined as, “[t]he combined gross income of all adults in a residential household who benefit from the public utility service.” *Id.*

⁵ (3) Resolution. Commission staff resolution of informal complaints is binding upon the parties unless formal proceedings are initiated under §§ 56.171-56.174 (relating to formal complaints). 52 Pa. Code § 56.163(3).

Ms. Roane's first Commission-issued payment arrangement was based upon a gross monthly household income of \$4,302.42 and a household size of two. PGW Exhibit 3. Ms. Roane's current gross monthly household income is \$4,250 derived from her employment.⁶ Thus, the record evidence shows that Ms. Roane has not suffered a change in income as defined by the Act because her household income at the time of the hearing did not decrease by 20%⁷ since her BCS payment arrangement. Therefore, I am constrained by the Act to conclude that Ms. Roane did not satisfy her burden of proving that she is eligible for a second or subsequent Commission-issued payment arrangement, as she did not experience a change of income pursuant to 66 Pa.C.S. § 1405(d).

Next, while the Complainant is not eligible for a second Commission payment arrangement, a provision of the Act provides that if the payment-defaulted customer establishes that such payment default was 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" 66 Pa.C.S. § 1405(e). "Significant change in circumstance" is defined as a customer with a household less than 300% of the Federal poverty level and who has experienced any of the following four circumstances: (1) the onset of a chronic or acute illness resulting in a significant loss in the customer's household income; (2) the catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household; (3) the loss of the customer's residence; or (4) the increase in the customer's number of dependents in the household. 66 Pa.C.S. § 1403.

Complainant's gross monthly household income of \$4,250 for a household of two exceeds 300% of the Federal poverty level. Thus, Complainant is not eligible for reinstatement and extension of her Commission-issued payment arrangement.⁸

⁶ Ms. Roane testified she makes \$51,000 annually, thus making her gross monthly income \$4,250. (\$51,000 annually / 12 months = \$4,250 per month).

⁷ A 20% decrease of \$4,302.42 = \$860.48. Complainant's gross monthly income at the time of the hearing decreased by \$52.42 since the issuance of the prior Commission payment arrangement.

⁸ I note that, if the 2020 guidelines were to be applied in this proceeding, Complainant's gross monthly household income would fall slightly below 300% of the Federal poverty benchmark. *See*, n.4 above. However, even if the 2020 guidelines were applied, Complainant did not provide any evidence of a "significant change of circumstance" as defined by the Act. 66 Pa.C.S. § 1403.

In conclusion, Ms. Roane has not satisfied her burden to prove she is eligible for a second Commission-issued payment arrangement or for a reinstatement and extension of her first Commission-issued payment arrangement. Accordingly, the complaint will be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. As the proponent of the request for relief, Complainant bears the burden of proof by a preponderance of the evidence standard. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).
3. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).
4. 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 or applicant has defaulted on a previous payment arrangement established by a commission order or decision. 66 Pa.C.S. § 1405(d).
5. A "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.
6. Complainant has failed to carry her burden of proving that she is eligible for a second or subsequent Commission-issued payment arrangement. 66 Pa.C.S. § 1405(d).

7. If the 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. 66 Pa.C.S. § 1405(e).

8. Complainant has failed to carry her burden of proving that she is eligible for reinstatement of the remaining term of the Commission-issued payment arrangement issued on October 6, 2019 in BCS Case No. 3731442. 66 Pa.C.S. § 1405(e).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Kelly Roane against Philadelphia Gas Works at Docket No. C-2019-3013621 is dismissed.

2. That the docket at Docket No. C-2019-3013621 be marked closed.

Date: April 20, 2020

_____/s/
Kailey B. Maguire
Special Agent