

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tyra Payne	:	
	:	
v.	:	C-2019-3012638
	:	
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 or subsequent Commission-issued payment arrangement or an extension of her prior one. This decision also denies the customer’s request that the Commission waive late fees and taxes as part of her Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On August 29, 2019, Tyra Payne (Complainant) filed a formal complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) in which she averred the utility is threatening to shut off her service or had already shut off her service. As relief, Ms. Payne requests that the Commission issue her a better payment arrangement including a waiver of “late fees and taxes.”

On September 25, 2019, PGW filed an answer in which it admitted, *inter alia*, that it issued a shut off notice for service at 1105 E. Stafford Street, Philadelphia PA (service address) for nonpayment on July 19, 2019 and terminated gas service at the service address on July 29, 2019. PGW denied all other material allegations in the complaint and requested dismissal of the complaint.

On October 1, 2019, the Commission issued a hearing notice to the parties, establishing an initial telephonic hearing for November 19, 2019, at 10:00 a.m. and assigning the undersigned as Presiding Officer.¹ On October 2, 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 November 19, 2019, at 10:00 a.m. Ms. Payne appeared *pro se*, testified on her own behalf, and offered no exhibits into the record. Ms. Payne's gas service was on at the time of the hearing. Graciela Christlieb, Esquire, appeared on behalf of PGW and presented the testimony of one witness, Tiffany Jones, a Senior Customer Review Officer for PGW. Ms. Jones sponsored the following four (4) exhibits, which were admitted into the record:

PGW Exhibit 1 - Detailed Statement of Account
PGW Exhibit 2 - Payment Arrangement History
PGW Exhibit 3 - BCS Decision No. 3449462
PGW Exhibit 4 - BCS Decision No. 3732462

Pursuant to 52 Pa. Code § 56.174(3), the testimony was tape recorded; no court reporter was present. The record closed following the conclusion of the hearing.

During the process of writing this Initial Decision the undersigned became aware that the tape-recorded testimony of the November 19, 2019 hearing was inaccessible due to a mechanical or human error in the recording process. As a result, no testimony was recorded.

¹ 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.

A further hearing notice dated January 8, 2020 was issued to the parties which scheduled a further call-in telephonic hearing on February 5, 2020 at 10:00 a.m.

Through an Interim Order dated January 15, 2020, the record in this case was reopened for the purposes of recreating the record. This Interim Order also reminded the parties of the date and time of the further hearing. *See*, Interim Order Reopening the Record for a discussion of this ruling and process. Both the further hearing notice and the Interim Order were mailed to the Complainant at the address provided by her on her complaint.

On February 5, 2020, at 10:00 a.m., the further hearing to recreate the record convened as scheduled. Graciela Christlieb, Esquire, appeared on behalf of PGW along with the witness who testified at the November 19, 2019 hearing, Ms. Jones. Ms. Payne was not present. No testimony was taken and no evidence was admitted into the record. Pursuant to the January 15, 2020 Interim Order, the undersigned reviewed her detailed notes of the November 19, 2019 hearing in order to allow the parties an opportunity to participate in recreating the record of this hearing, which was accomplished.

The record closed on February 5, 2020, at the conclusion of the further hearing. Pursuant to 52 Pa. Code § 56.174(3), this hearing was digitally recorded. No court reporter was present.

For the reasons discussed below, the complaint will be denied.

FINDINGS OF FACT

1. The Complainant is Tyra Payne, who resides at 1105 East Stafford 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. Late payment charges were levied against Complainant's residential gas service bill. PGW Exhibit 1.
4. Sales taxes were not assessed on Complainant's residential gas service bill.
5. Complainant has been granted two Company-issued payment arrangements and one Commission-issued payment arrangement since service was established at the service address on September 1, 2007. PGW Exhibit 2.
6. On June 13, 2016, Complainant was granted a Company-issued payment arrangement, the status of which is broken. PGW Exhibit 2.
7. On June 14, 2016, Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3449462 seeking a payment arrangement. PGW Exhibit 3, p. 1.
8. By decision dated November 9, 2016, at BCS Case No. 3449462, BCS granted Complainant a 36-month, level 2 payment arrangement² which directed Ms. Payne to pay her monthly budget bill of \$289 plus an additional \$66 towards her arrears, for a total of \$355 per month, beginning with the due date of her December 2016 bill. PGW Exhibit 3, p. 2.
9. At BCS Case No. 3449462, Ms. Payne reported a gross monthly household income of \$2,000 and that she resided alone. PGW Exhibit 3, p. 1.
10. Complainant defaulted on the 2016 BCS payment arrangement granted at

² A level 2 customer is defined as a household with a gross monthly income level exceeding 150% and not more than 250% of the Federal poverty level and is provided with a repayment period of not more than 36 months. 66 Pa.C.S. § 1405(b)(2).

BCS Case No. 3449462 and the balance has not been satisfied. PGW Exhibit 2.

11. On July 19, 2019, Respondent issued Ms. Payne a 10-day Shut Off Notice.
12. On July 29, 2019, Respondent terminated gas service at the service address.
13. On September 6, 2019, Respondent filed an informal complaint with BCS at BCS Case No. 3732462 seeking restoration of service and the issuance of another payment arrangement. PGW Exhibit 4, p. 1-2.
14. On September 16, 2019, BCS dismissed Ms. Payne's informal complaint at BCS No. 3732462 as PGW offered a reduced restoration terms to be followed by a 12-month payment arrangement. PGW Exhibit 4, p. 3.
15. On October 11, 2019, Complainant complied with Respondent's restoration of service terms, paying \$627.68 plus a reconnection fee in the amount of \$123. PGW Exhibit 1, p. 3.
16. On October 13, 2019, gas service was restored at the service address and Ms. Payne's gas service was on at the time of the hearing.
17. On October 14, 2019, Complainant was granted a Company-issued payment arrangement, the status of which at the time of the November 19, 2019 hearing was active.³ PGW Exhibit 2.
18. Ms. Payne current household size is one individual, herself.

³ At the February 5, 2020 further hearing, Respondent noted this payment arrangement had been broken due to non-payment.

19. Ms. Payne's current gross monthly household income is \$2,288, which she receives from her employment.⁴

20. As of the date of the November 19, 2019 hearing Ms. Payne's outstanding balance was \$5,533.62.⁵ PGW Exhibit 1, p. 3.

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). For a complainant to prevail, the offense alleged must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. 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).

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).

⁴ Ms. Payne testified that she earned \$11.00 per hour and works 48 hours per week. Thus, Ms. Payne's income is calculated as follows: \$11.00 per hour x 48 hours per week = \$528 per week x 52 weeks = \$27,456 per year ÷ 12 months = \$ 2,288 per month.

⁵ At the February 5, 2020 further hearing, Respondent noted Complainant's current balance was \$6,817.91.

Complainant requests a second Commission-issued payment arrangement including the waiver of late fees and sales taxes. Therefore, as the proponent of the request for relief, Ms. Payne bears the burden of proof.

Ms. Payne requests a lower payment arrangement than the one ordered in the 2016 BCS decision. 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-ordered payment arrangement. *See*, 66 Pa.C.S. § 1405(a), which provides that, “[t]he [C]ommission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers . . . within the limits established by this chapter.”

However, the Act provides strict guidelines that the Commission must follow, including a provision that generally permits the Commission to grant only one payment arrangement with limited exceptions. Specifically, the relevant provision of the Act 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) (emphasis added).

In the instant case, Ms. Payne seeks her second Commission payment arrangement. Since Ms. Payne did not timely appeal from the BCS decision issued at BCS Case No. 3449462 on November 9, 2016 granting her a level 2 payment arrangement, this BCS payment arrangement became final.⁶ As the Commission explained, when a BCS decision is not timely appealed, “then the BCS payment arrangement becomes final and the complainant must prove a change in income to be awarded a different payment arrangement before the BCS PAR

⁶ (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).

[payment arrangement] is paid off.” *Horinka v. Pa. Power Company*, Docket No. C-2017-2582842, p. 3 (Opinion and Order entered August 4, 2017).

Therefore, pursuant to 66 Pa.C.S. § 1405(d), Ms. Payne is eligible for another Commission-issued payment arrangement if she has suffered a change in income. The Act defines a “change in income” as follows:

“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 (emphasis added). 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.” 66 Pa.C.S. § 1403.

Ms. Payne’s first Commission-issued payment arrangement was based upon a gross monthly household income of \$2,000 for a household of one. PGW Exhibit 3, p. 1. Ms. Payne testified at the hearing in this matter that she lives alone, and her current gross monthly income is \$2,288 which she receives from her employment. Thus, the record evidence shows that Ms. Payne has not suffered a change in income as defined by the Act as Ms. Payne has experienced an increase, not a decrease, in her gross monthly household income since her 2016 Commission-issued payment arrangement. The Act requires a decrease in income to establish a change of income. 66 Pa.C.S. § 1403.

Therefore, Ms. Payne did not satisfy her burden of proving that she is eligible for a second or subsequent Commission-issued payment arrangement. 66 Pa.C.S. § 1405(d).

Although the Complainant is not eligible for a second Commission-issued 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 is authorized to reinstate, and extend the remaining term for a period of six months,

the previously Commission-ordered payment arrangement. Specifically, the relevant portion of the Act provides:

(e) Extension of payment arrangements.--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) (emphasis added).

Further, “significant change in circumstance” is defined as 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) 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.

While Ms. Payne’s gross monthly income of \$2,288 places her less than 300% of the Federal poverty level,⁷ none of these criteria are applicable since Ms. Payne did not present any testimony or evidence to support any of them. Therefore, Ms. Payne has not established she suffered a significant change in circumstance pursuant to 66 Pa.C.S. § 1405(e). Accordingly, Ms. Payne is not eligible for a reinstatement and extension of her 2016 BCS payment arrangement.

Next, Ms. Payne requested that the Commission waive her late fees and sales taxes as part of a better Commission-issued payment arrangement. Complainant does not dispute that she made late payments to PGW or the accuracy of PGW's calculation of late payment charges. *See* PGW Exhibit 1. However, the Pennsylvania Public Utility Code (Code) and the Commission's regulations provide that the Commission may only order a waiver of any late

⁷ *See, Federal Register*, Vol. 85, No. 12 at 3060 (January 17, 2020), also available at: <https://aspe.hhs.gov/poverty> (providing that a gross monthly income of \$3,190 for a household of one is 300% of the Federal poverty guidelines).

payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level. 66 Pa.C.S. § 1409, 52 Pa.Code § 56.22(d). Since Ms. Payne's monthly household income of \$2,288 exceeds 150% of the Federal poverty level,⁸ she is ineligible for a waiver of the late payment charges.

Complainant also requested a waiver of the sales tax assessed on her account. The Commission has previously held it does not have jurisdiction to adjudicate disputes arising from a public utility collecting the state sales tax from its customers, and that the proper venue to seek a refund would be from the Pennsylvania Department of Revenue. *See Rossi v. Equitable Gas Co.*, Docket No. C-00970256 (Final Order entered January 7, 1998).

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).

⁸ *See, Federal Register, supra.* (providing that a gross monthly income of \$1,595 for a household of one is 150% of the Federal poverty guidelines).

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 due to a change in income. 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 a reinstatement and extension of her prior Commission-issued payment arrangement issued on November 9, 2016 in BCS Case No. 3449462 due to a significant change in circumstance. 66 Pa.C.S. § 1405(e).

9. The Pennsylvania Public Utility Code (Code) and the Commission's regulations provide that the Commission may only order a waiver of any late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level. 66 Pa.C.S. § 1409, 52 Pa.Code § 56.22(d).

10. Complainant has failed to carry her burden of proving that she is eligible for a waiver of the late payment charges levied on her gas service bill.

11. The Commission does not have jurisdiction to adjudicate disputes arising from a public utility collecting the state sales tax from its customers. *See Rossi v. Equitable Gas Co.*, Docket No. C-00970256 (Final Order entered January 7, 1998).

12. The Complainant failed to carry her burden of proving that Respondent violated any applicable statutes, regulations or Commission orders.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint of Tyra Payne against Philadelphia Gas Works at Docket No. C-2019-3012638 is denied.
2. That the docket at Docket No. C-2019-3012638 be marked closed.

Date: May 12, 2020

_____/s/
Kailey B. Maguire
Special Agent