

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tiffany Rogers	:	
	:	
v.	:	F-2019-3013098
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Kailey B. Maguire
Special Agent

INTRODUCTION

This decision grants the complaint of a gas service customer because the customer has established by a preponderance of the evidence that she is eligible for a second or subsequent Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On September 23, 2019, Tiffany Rogers (Complainant) filed a formal 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 gas service. As relief, Ms. Rogers requests “to be placed on a program that is for customers who have no income.”¹

The complaint is a timely appeal from a decision of the Commission's Bureau of Consumer Services (BCS) at case number 3702950, dated July 29, 2019. The BCS found that

¹ Complainant’s request will be considered a request for a Commission-issued payment arrangement.

Ms. Rogers was eligible for a level one² payment arrangement and directed her to pay a total of \$174 per month, consisting of \$104 for her current budget bill usage, plus \$70 towards her arrearage, beginning with her August 2019 billing due date.

On October 15, 2019, PGW filed an answer in which it admitted, *inter alia*, that it issued a shut off notice for service at 216 E. Durham Street, Philadelphia PA (service address) for nonpayment on May 6, 2019. PGW denied all other material allegations in the complaint and requested dismissal of the complaint.

On October 18, 2019, the Commission issued a hearing notice to the parties, establishing an initial telephonic hearing for December 5, 2019, at 10:00 a.m., and assigning the undersigned as presiding officer.³ On October 19, 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 5, 2019, at 10:00 a.m. Ms. Rogers appeared *pro se*, testified on her own behalf, and sponsored no exhibits for the record. Ms. Rogers' 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, Jessica Antonetti, a Customer Review Officer for PGW. Ms. Antonetti sponsored the following three (3) 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. 3702950

² A level one customer is defined as a customer having a household with a gross monthly income not exceeding 150% of the Federal poverty level and is provided with a repayment period of not more than five years. 66 Pa.C.S. § 1405(b)(1).

³ 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.

During the hearing, Respondent was directed to file BCS Decision No. 3620049 as a late-filed exhibit since testimony was presented that in this 2018 BCS decision, Complainant was awarded her first Commission-issued payment arrangement, which has not been satisfied. Complainant requested the opportunity to file documents supporting her income and medical documentation regarding her child's disability. At the hearing, the parties were directed to file their exhibits by December 13, 2019 and objections if any were due by December 20, 2019.

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

Both parties submitted late-filed exhibits and neither party submitted objections to the proposed exhibits. Subsequently, BCS Decision No. 3620049 was admitted into the record as PGW Exhibit 4. Due to the confidential nature of the medical documentation submitted by Complainant as a proposed late-filed exhibit, the medical documents were not admitted into the record since the medical condition was not in dispute. The record closed upon expiration of the objection period, which was extended to December 27, 2019.

During the process of writing this Initial Decision the undersigned became aware that the tape-recorded testimony of the December 5, 2019 hearing was inaccessible due to a mechanical or human error in the recording process. As a result, no testimony was recorded.

A further hearing notice dated January 17, 2020 was issued to the parties which scheduled a further call-in telephonic hearing on February 19, 2020 at 10:00 a.m.

Through an Interim Order dated January 22, 2020, the record in this case was reopened for the purposes of recreating the record and reminded the parties of the date and time of the further hearing. *See*, Interim Order Reopening the Record for a discussion of this ruling.

On February 19, 2020, at 10:00 a.m., the further hearing to recreate the record convened as scheduled. Ms. Rogers appeared *pro se*. Graciela Christlieb, Esquire, appeared on behalf of PGW along with the witness who testified at the December 5, 2019 hearing,

Jessica Antonetti. No testimony was taken and no evidence was admitted into the record. Pursuant to the January 22, 2020 Interim Order, the undersigned reviewed the detailed notes of the December 5, 2019 hearing in order to allow the parties to participate in recreating the record of this hearing.

The record closed on February 19, 2020, at the conclusion of the further hearing. This hearing was digitally recorded; no court reporter was present.

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

FINDINGS OF FACT

1. The Complainant is Tiffany Rogers, who resides at 216 E. Durham Street, Apartment 2F, 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 has been granted one Company-issued payment arrangement and one Commission-issued payment arrangement since service was established at the service address on May 6, 2013. PGW Exhibit 2.
4. On August 5, 2014, Complainant was granted a Company-issued payment arrangement, the status of which is broken. PGW Exhibit 2.
5. On June 1, 2018, Complainant filed an informal complaint with the BCS at BCS Case No. 3620049 seeking a payment arrangement. PGW Exhibit 4.

6. By decision dated July 16, 2018, at BCS Case No. 3620049, BCS granted Complainant a 36-month, level 2 payment arrangement⁴ which directed Ms. Rogers to pay her monthly budget bill of \$96 plus an additional \$94 towards her arrears, for a total of \$190 per month, beginning with the due date of her August 2018 bill. PGW Exhibit 4.

7. At BCS Case No. 3620049, Ms. Rogers reported a gross monthly household income of \$3,033.33 and that she resided alone. PGW Exhibit 4, p. 1.

8. Complainant defaulted on the 2018 BCS payment arrangement granted at BCS Case No. 3620049 and the balance has not been satisfied. PGW Exhibit 2.

9. On May 17, 2019, Respondent filed an informal complaint with BCS at BCS Case No. 3702950 seeking the issuance of another payment arrangement. PGW Exhibit 3, p. 1.

10. By decision dated July 31, 2019, at BCS Case No. 3702950, BCS granted Complainant a 60-month, level 1 payment arrangement which directed Ms. Rogers to pay her monthly budget bill of \$104 plus an additional \$70 towards her arrears, for a total of \$174 per month, beginning with the due date of her August 2019 bill. PGW Exhibit 3, p. 3.

11. At BCS Case No. 3702950, Ms. Rogers reported a gross monthly household income of \$0 with a household size of three individuals comprised of Complainant and her two minor children. PGW Exhibit 4, p. 1.

12. On August 13, 2019, Complainant timely appealed the BCS July 31, 2019 decision at BCS Case No. 3702950.

⁴ 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).

13. Ms. Rogers' current household size is three individuals comprised of Complainant and her two minor children.
14. Ms. Rogers has a minor child with a disability.
15. Due to the minor child's disability, the child has been hospitalized which required Ms. Rogers to take off work.
16. Ms. Rogers worked for the Philadelphia School District for 15 years as a teaching assistant.
17. On January 28, 2019, Ms. Rogers began a long-term absence from work which was attributed to her disabled minor child.
18. On August 30, 2019, due to the long-term absence, the Philadelphia School District informed Ms. Rogers via letter that her absence was considered a voluntary resignation.
19. Ms. Rogers' current gross monthly household income is \$0.
20. As of the date of the December 5, 2019 hearing, Ms. Rogers' outstanding balance was \$4,307.34. PGW Exhibit 1, p. 2.

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).

As a timely appeal from the decision at BCS Case No. 3702950, this is a *de novo* review of the BCS determination. 52 Pa. Code § 56.403(a). The term "*de novo*" simply means anew thereby requiring that the party with the burden of proof develop a record that contains substantial evidence that supports the desired outcome. *Stammel v. P.G. Energy*, Docket No. C-20027994 (Opinion and Order entered May 21, 2003). Further, as a timely appeal from the BCS decision issuing a payment arrangement, the customer cannot be in default of the payment arrangement until the formal complaint on appeal is fully adjudicated and a final order is entered. *Harnett v. PPL Electric Utilities Corp.*, Docket No. F-2012-2329578 (Opinion and Order entered November 14, 2013).

Ms. Rogers requests a new Commission-issued payment arrangement for customers with no income. Therefore, as the proponent of the request for relief, Ms. Rogers bears the burden to prove that she is eligible for a second Commission-issued payment arrangement.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 (Act), 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 and number of payment arrangements it 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:

- (1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.

66 Pa.C.S. §§ 1405(a)-(b)(1).

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).

A previous Commission-issued payment arrangement was established for Ms. Rogers by the BCS at BCS No. 3620049. This payment arrangement became a final Commission-issued payment arrangement once Ms. Rogers failed to appeal the decision through filing a formal complaint. Ms. Rogers defaulted upon this Commission-issued payment arrangement. The Commission recently 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 [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. Rogers is eligible for a second 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 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, “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.*

Ms. Rogers testified at the hearing that her gross monthly household income is \$0 for a household of three, placing her below 50%⁵ of the Federal poverty level. Ms. Rogers’ gross monthly household income at the time of the 2018 BCS payment arrangement at BCS Case No. 3620049 was \$3,033. Thus, Ms. Rogers suffered a 100% loss of her income thereby sustaining her burden of proof that she suffered a change in income as defined by the Act.⁶

Further, a gross monthly income of \$0 for a household of three makes Ms. Rogers a level 1 customer, which is defined as a customer with a gross monthly household income level not exceeding 150% of the Federal poverty level. 66 Pa.C.S. § 1405(b)(1). Level 1 customers

⁵ 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 \$905 for a household of three is 50% of the Federal poverty guidelines).

⁶ As noted above, the Act requires 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, which Ms. Rogers income clearly is.

are eligible for a payment arrangement of five years to resolve their unpaid balance. As such, the Commission is authorized to issue Ms. Rogers a five-year payment arrangement.

Next, while the Complainant is eligible for a second Commission payment arrangement, 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 Respondent's position that Ms. Rogers has not made a good faith effort to pay her gas bills. In support of its position, PGW witness Ms. Antonetti sponsored Ms. Rogers' Statement of Account which shows that Ms. Rogers has made two payments towards her account during the 24-month period of the Statement of Account (November 25, 2017 – November 25, 2019). Ms. Antonetti also sponsored Ms. Rogers' payment arrangement history which shows that Ms. Rogers defaulted on one Company-issued payment arrangement. As of the date of the hearing, Ms. Johnson's outstanding account balance with PGW was \$4,307.34.

Nonetheless, discretion is warranted in granting Ms. Rogers a payment arrangement. Although Ms. Rogers has failed to comply with one Company-issued payment arrangement, she has suffered some recent hardships that have made it difficult to make full payments towards her gas account, including the need to tend to a hospitalized minor child. At the time of the hearing, Ms. Rogers was also hopeful that she would be able to obtain some income for her household and was in the process of trying to do so.

Finally, it should be noted that Ms. Rogers testified that she timely appealed this BCS decision because she wanted a better payment arrangement given her loss of income. However, as explained above, the Commission is constrained by the limitations of the Act. As a

level one customer, Complainant is being given the maximum amount of time available under the Act to repay the arrearage, which is five years. 66 Pa.C.S. § 1405(b)(1).

Consequently, the record supports the conclusion that Ms. Rogers is eligible for a second Commission-issued payment arrangement due to her change in income. Ms. Rogers will be issued the maximum repayment terms allowable under the Act which is five years.

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. The customer seeking a payment arrangement must demonstrate some evidence of a good faith effort to pay his or her utility bills. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013).
5. 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).
6. 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.

7. Complainant has satisfied 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).

8. 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint of Tiffany Rogers against Philadelphia Gas Works at Docket No. F-2019-3013098 is granted.

2. That Tiffany Rogers shall make monthly payments consisting of her budget bill plus one-sixtieth (1/60th) 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.

3. That as long as Tiffany Rogers keeps the payment schedule stated in this Order, 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 Tiffany Rogers does not keep the payment schedule stated in this Order, Philadelphia Gas Works is authorized to suspend or terminate her utility service in accordance with the Commission's statute and regulations.

5. That the docket at Docket No. F-2019-3013098 be marked closed.

Date: May 21, 2020

_____/s/
Kailey B. Maguire
Special Agent