

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Elizabeth Thorpe	:	
	:	
v.	:	C-2021-3030079
	:	
UGI Utilities, Inc.	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

A gas utility service customer filed a Complaint seeking a payment arrangement for the restoration of her gas service. This Initial Decision dismisses the Complaint, finding that the customer did not meet her burden of proving that she is eligible for a payment arrangement because the customer has not made a good faith effort to pay her utility bills.

HISTORY OF THE PROCEEDING

On December 3, 2021, Elizabeth Thorpe (Ms. Thorpe or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against UGI Utilities, Inc. (UGI or Respondent) seeking a payment arrangement for the restoration of her gas service.

On January 3, 2022, UGI filed an Answer to the Formal Complaint. UGI admitted that it terminated Ms. Thorpe’s gas service on September 27, 2021, because her account was delinquent. UGI denied that Ms. Thorpe was entitled to a payment arrangement, arguing

that she has not made a good faith effort to pay her utility bills. UGI stated that it is seeking payment of \$6,922.47 to restore Ms. Thorpe's gas service.

On January 3, 2022, a Hearing Notice was served to the parties scheduling this matter for a telephonic evidentiary hearing on February 22, 2022 and assigning the case to me as presiding officer. On January 6, 2022, Ms. Thorpe requested a continuance of the hearing date. Ms. Thorpe requested that the hearing be moved to an earlier date. UGI did not object to the continuance request. Therefore, by Order served to the parties on January 11, 2022, Ms. Thorpe's continuance request was granted. The February 22, 2022 hearing was cancelled and rescheduled for January 20, 2022.

On January 11, 2022, a Prehearing Order was served to the parties, informing the parties of the various procedures applicable to the January 20, 2022 evidentiary hearing.

The evidentiary hearing was held as scheduled on January 20, 2022. Ms. Thorpe appeared and presented testimony in support of her Complaint. Ms. Thorpe sponsored no exhibits for the record. Attorney Larry R. Crayne appeared on behalf of UGI and presented the testimony of Amy Wynn, a senior compliance representative, employed by UGI who sponsored the following three exhibits that were admitted into the record.

- UGI's Exhibit R-1 – Account Statement for 8/2017 – 9/27/21
- UGI's Exhibit R-2 – Payment Arrangement History
- UGI's Exhibit R-3 – Bureau of Consumer Services' Decision

The record was closed on February 4, 2022, when the transcript of the January 20, 2022 hearing was filed with the Commission. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Elizabeth Thorpe.
2. The Respondent is UGI Utilities, Inc.

3. Ms. Thorpe received gas service from UGI at 1339 Howard Street, Harrisburg, Pennsylvania (service address). UGI's Exhibit R-1.

4. Ms. Thorpe resides at the service address with her four minor grandchildren. Tr. 8, 9.

5. Ms. Thorpe has no income. Tr. 9 – 14, 17.

6. UGI's Exhibit R-1 is the Statement of Account for Ms. Thorpe's gas account. The Statement spans the period of August 7, 2019, to September 27, 2021. UGI's Exhibit R-1.

7. Ms. Thorpe has made two payments to her account (\$300 on March 3, 2021 and \$185.44 on June 17, 2021) during the period of the Statement of Account. UGI's Exhibit R-1.

8. Ms. Thorpe has defaulted upon five Company-issued payment arrangements since 2016. Tr. 22, 23; UGI's Exhibit R-2.

9. Ms. Thorpe's gas service was terminated on September 27, 2021. Tr. 22; UGI's Exhibit R-1.

10. On October 4, 2021, Ms. Thorpe filed an Informal Complaint with the Commission's Bureau of Consumer Services (BCS), docketed at BCS No. 3806714, seeking a payment arrangement for restoration of her gas service. UGI's Exhibit R-3.

11. On October 6, 2021, the BCS issued its decision at BCS No. 3806714, denying Ms. Thorpe's request for a payment arrangement. The BCS found that Ms. Thorpe was ineligible for a Commission-issued payment arrangement because she had not made a good faith effort to pay her utility bills. UGI's Exhibit R-3.

12. Ms. Thorpe's outstanding account balance with UGI is \$6,922.47, which includes \$6,776.47 in unpaid charges and a reconnection fee of \$146. UGI's Exhibit R-1.

13. UGI is willing to restore Ms. Thorpe's service with a payment of \$3,200. Tr. 24.

14. If Ms. Thorpe's service were to be restored after payment of \$3,200, Ms. Thorpe would have the option to either (1) enroll in UGI's Customer Assistance Program (CAP) for the remaining balance, if she were to qualify, or (2) be placed on a payment plan for the remaining balance. Tr. 24.

DISCUSSION

Section 332(a) of the Public Utility Code (Code) provides that the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a). As the party seeking relief from the Commission, the Complainant bears the burden of proving that she is entitled to the requested relief. 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. Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called 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. See, Moore v. Nat'l Fuel Gas Distrib., Docket No. C-2014-2458555 (Final Order entered August 25, 2015). 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 a 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 & W. Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980).

Reconnection of Service

In this matter, Ms. Thorpe is seeking a payment arrangement for an account by which gas service was terminated for non-payment.¹ Ms. Thorpe's outstanding account balance is \$6,922.47, which includes \$6,776.47 in unpaid charges and a reconnection fee of \$146. UGI may require payment of the full outstanding account balance, plus a reconnection fee, before it restores Ms. Thorpe's gas service.² However, UGI's witness Ms. Wynn testified that UGI is willing to restore Ms. Thorpe's service with a payment of \$3,200. With respect to the remaining balance due after payment of \$3,200, Ms. Thorpe could then either (1) enroll in UGI's CAP, if she were to qualify, or (2) be placed on a payment plan.

Payment Arrangement

Even though UGI has dictated restoration terms for Ms. Thorpe, the Commission also has the authority to order a payment arrangement for a customer whose service was lawfully terminated for non-payment. Crawford v. Nat'l Fuel Gas Distrib. Corp., Docket No. C-20066348 (Opinion and Order entered December 6, 2007) (Crawford); Rogito v. UGI Utils., Inc., Docket No. F-02263457 (Opinion and Order entered December 3, 2008). In that regard, the Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 (Act), specifically Section 1405 of the Act, applies to complaints alleging inability to pay and requesting Commission-issued payment arrangements. Section 1405 of the Act states the following:

¹ See 66 Pa.C.S. § 1406(a)(1).

² See 66 Pa.C.S. § 1407(c)(2)(i).

§ 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).

Therefore, the Commission is authorized to establish a payment arrangement between Ms. Thorpe and UGI. The length of the payment arrangement that can be established for Ms. Thorpe is based on her gross monthly household income in relation to the Federal poverty level. 66 Pa.C.S. § 1405(b).

The evidentiary record indicates that Ms. Thorpe's household of five has no gross monthly household income.³ This places Ms. Thorpe at 0% of the Federal poverty level. The Commission is authorized to establish a five-year payment arrangement for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level. 66 Pa.C.S. § 1405(b)(1). Therefore, the Commission is authorized to establish a five-year payment arrangement for Ms. Thorpe. However, analysis of Ms. Thorpe's Complaint does not end here.

Although the Commission is authorized to establish a payment arrangement for Ms. Thorpe, the Commission has a responsibility to exercise its authority very judiciously when

³ "Household income" is defined as the combined gross income of all adults in a residential household who benefit from the public utility service. 66 Pa.C.S. § 1403.

a utility has lawfully terminated a customer's service for nonpayment. Specifically, the Commission should exercise its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills, or who have experienced a significant change of circumstance outside of their control. Crawford. The Commission has considered a customer's payment history, or lack thereof, compliance history with any utility issued payment arrangements, and account balance to determine if the customer has made a good faith effort to pay their utility bills. Rohrbach v. Phil. Gas Works, F-2018-3006723 (Final Order entered May 8, 2019).

Review of the evidentiary record shows that Ms. Thorpe has not made a good faith effort to pay her utility bills. Ms. Thorpe's Statement of Account reveals that Ms. Thorpe has only made two payments towards her account during the two-year period of August 7, 2019, to September 27, 2021. Ms. Thorpe's payment arrangement history reveals that Ms. Thorpe has defaulted on five Company-issued payment arrangements. Ms. Thorpe's poor payment history in addition to her poor compliance history with Company-issued payment arrangements has led to a substantial outstanding account balance of \$6,922.47. Based on this evidence, Ms. Thorpe has not made a good faith effort to pay her utility bills. Discretion will not be exercised in this instance to issue Ms. Thorpe a Commission-issued payment arrangement.

Although Ms. Thorpe will not be issued a Commission-issued payment arrangement through this Decision, there are options available to Ms. Thorpe to assist her in the restoration of her gas service. Ms. Thorpe is encouraged to complete her Low Income Home Energy Assistance Program (LIHEAP) application. Ms. Thorpe indicated that she had started to apply for LIHEAP but had not completed the application process at the time of the hearing. In addition, Ms. Wynn brought to Ms. Thorpe's attention UGI's assistance program called "Operation Share" which Ms. Thorpe could apply for and receive a grant. The grants that can be provided to Ms. Thorpe through these assistance programs would assist Ms. Thorpe in paying the \$3,200 that UGI is seeking for the restoration of her service. Furthermore, if Ms. Thorpe's service were to be restored, the remaining balance could then be placed into UGI's CAP, if Ms. Thorpe were to qualify and enroll, or placed in a payment arrangement. Ms. Wynn indicated that Ms. Thorpe would be able to self-certify for UGI's CAP if she was found to be eligible for LIHEAP.

In conclusion, for the above reasons, Ms. Thorpe has not met her burden of proving that she is eligible for a Commission-issued payment arrangement. The Complaint will be dismissed 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 and a customer. 66 Pa.C.S. § 1405(a).

5. A customer's gross monthly household income level 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. When the Commission is authorized to establish a payment arrangement between a customer and a utility, the Commission has a responsibility to exercise that authority very judiciously when a utility has lawfully terminated a customer's service for nonpayment. The Commission should exercise its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills, or who have experienced a significant change of circumstance outside of their control. Crawford v. Nat'l Fuel Gas Distrib. Corp., Docket No. C-20066348 (Opinion and Order entered December 6, 2007).

7. The Commission has considered a customer's payment history, or lack thereof, compliance history with any utility issued payment arrangements, and account balance to determine if the customer has made a good faith effort to pay their utility bills. Rohrbach v. Phila. Gas Works, F-2018-3006723 (Final Order entered May 8, 2019).

8. The Complainant has not made a good faith effort to pay her utility bills, and therefore has not met her burden of proving that she is eligible for a Commission-issued payment arrangement. Crawford v. Nat'l Fuel Gas Distrib. Corp., Docket No. C-20066348 (Opinion and Order entered December 6, 2007); 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Elizabeth Thorpe in the matter of Elizabeth Thorpe v. UGI Utilities, Inc., Docket No. C-2021-3030079, is dismissed.

2. That the docket at Docket No. C-2021-3030079 is marked closed.

Date: February 24, 2022

/s/
Alphonso Arnold III
-Special Agent