

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kimberly Hunter	:	
	:	
v.	:	C-2022-3034799
	:	
UGI Utilities, Inc.	:	

INITIAL DECISION

Before
Gail M. Chiodo
Administrative Law Judge

INTRODUCTION

This decision sustains the Formal Complaint of a gas service customer and grants the customer her first Commission payment arrangement because the customer has met her burden of proof to show that she is eligible under Chapter 14 of the Public Utility Code.

HISTORY OF THE PROCEEDING

On August 24, 2022, Kimberly Hunter (“Complainant”) filed a Formal Complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against UGI Utilities, Inc. (“UGI” or “Company”), averring that the Company is threatening to turn off her gas service. Ms. Hunter also averred that on August 18, 2022, she called customer service at the Bureau of Consumer Services (“BCS”) because she did not receive her “formal complaint papers” in order to file an appeal from the decision of the BCS, which granted her a payment arrangement. Ms. Hunter averred that she was instructed to download a formal complaint form from the Commission’s website, place her BCS Case No. on it, and submit it to the Secretary’s

Bureau, which she did. As relief, Ms. Hunter requests that the Commission issue her a payment arrangement she can afford. (Complaint ¶¶ 4, 5).

On September 19, 2022, UGI timely filed an answer, admitting that the Complainant was issued notice of termination of service for persistent failure to pay her monthly bills in full and on time. Further, UGI avers that the Complainant was provided an appropriate payment arrangement by the BCS on April 5, 2022; therefore, she is not entitled to another one under the Public Utility Code. Finally, UGI avers that the Complainant should be ordered to comply with the BCS payment arrangement. (Answer ¶¶ 4, 5).

On September 22, 2022, a hearing notice was issued scheduling a telephonic hearing for November 8, 2022, and former Deputy Chief Administrative Law Judge Joel H. Cheskis was assigned as the presiding officer. Judge Cheskis, *sua sponte*, directed that the instant proceeding be heard at the same time with the proceeding docketed at *Kimberly Hunter v. PPL Electric Utilities Corporation*, Docket No. C-2022-3034802 (“PPL proceeding”).¹

In the PPL proceeding, Ms. Hunter filed a Formal Complaint against PPL on the same date she filed the instant Complaint against UGI (August 24, 2022). In the PPL proceeding, Ms. Hunter sought a Commission payment arrangement concerning her outstanding balance for electric service with PPL. In the PPL proceeding, Ms. Hunter averred that she could not afford the BCS payment arrangement granted by the BCS at BCS No. 3827221, following the submission of her informal complaint to the BCS.²

Also on September 22, 2022, Judge Cheskis’ prehearing order was issued advising the parties of the various procedures applicable to the combined evidentiary hearing.

¹ The record is devoid of any Order consolidating the instant proceeding with the PPL proceeding, and devoid of any petition or request by UGI, PPL, or Ms. Hunter, to consolidate the two proceedings. (Tr. at 5).

² In the PPL proceeding, Ms. Hunter also averred that she did not receive her “formal complaint papers” from BCS to timely appeal the BCS determination in that matter. Further, Ms. Hunter avers that when she called BCS about her informal complaint, that BCS informed her that it was emailed to her, and if she wanted to pursue an appeal, she should download the formal complaint forms from the Commission’s website, noting the BCS case number thereon, which she also did in that proceeding. (See, *PPL proceeding*, Complaint ¶¶ 5, 7).

On November 8, 2022, the combined evidentiary hearing convened, as scheduled. Ms. Hunter appeared and represented herself. UGI was represented by Larry R. Crayne, Esquire, and PPL was represented by Garrett P. Lent, Esquire. Prior to the hearing, the parties engaged in the settlement judge process but were unable to settle. Thereafter, Judge Cheskis continued the hearing and urged the parties to continue to engage in settlement discussions. Judge Cheskis also directed the parties, if they could not reach a settlement, to confer among themselves and provide at least three dates that they could all be available, including their respective witnesses, to attend a further combined evidentiary hearing. (Tr. 6-7).

On November 21, 2022, counsel for PPL emailed Judge Cheskis and proposed three dates in February 2023 for the combined evidentiary hearing.

On November 22, 2022, a Judge Change Notice was issued advising the parties that the instant proceeding and the PPL proceeding were reassigned to the undersigned. Also on November 22, 2022, at my direction, a notice was issued scheduling a combined prehearing conference, rather than a combined evidentiary hearing, for February 15, 2023.³

On February 15, 2023, the combined prehearing conference was held as scheduled. Ms. Hunter represented herself. UGI was represented by Attorney Crayne and PPL was represented by Attorney Nicholas A. Stobbe. At this conference, the parties explained that they were unable to settle either proceeding. Further, PPL moved that the two proceedings be bifurcated, or no longer combined, expressing concerns regarding conflict of interest and customer privacy in sharing account information and exhibits with another company. UGI joined this request. I verbally granted the request to bifurcate the proceedings. (Tr. 11-12).

On February 21, 2023, a hearing notice was issued in the instant matter scheduling an evidentiary hearing on April 4, 2023.⁴

³ Also on November 22, 2022, a corrected prehearing conference notice was issued, which corrected the date of the prehearing conference to reflect the correct year (2023 rather than 2022).

⁴ The PPL proceeding was scheduled for a hearing on April 6, 2023. On April 5, 2023, a certificate of satisfaction was filed in the PPL proceeding.

On April 4, 2023, the evidentiary hearing was held, as scheduled. Ms. Hunter represented herself, testified in support of her Complaint and did not offer any exhibits. The Company was represented by Attorney Crayne. The Company presented the testimony of one witness, who sponsored the following three exhibits, all of which were admitted into the record:

Exhibit R-1 – Statement of Account (9/18/2020 – 2/21/2023)

Exhibit R-2 – Payment Arrangement History

Exhibit R-3 – Company internal document of resolution of BCS No. 3827227

The record closed on May 3, 2023, when the 32-page hearing transcript and exhibits were filed with the Commission.

For the reasons set forth below, the Complainant’s appeal from the BCS determination at BCS Case No. 3827227 will be granted *nunc pro tunc*, the Complaint will be sustained, and the Complainant will be granted a payment arrangement.

FINDINGS OF FACT

1. The Complainant is Kimberly Hunter, a gas service customer.
2. The Respondent is UGI Utilities, Inc., which supplies gas service to the Complainant.
3. The Complainant is currently receiving gas service at 2082 Kensington Road, Bethlehem, Pennsylvania (“Service Location”). (Tr. 7; Exhibit R-1).
4. Since the Complainant’s account was established on September 18, 2019, the Complainant has made no payments towards her account. (Tr. 18, 22-23; Exhibit R-1).
5. On April 13, 2020, Ms. Hunter and the Company entered into a payment agreement on a balance of \$373.73; the Complainant has defaulted on this payment agreement. (Tr. 16; Exhibit R-2).

6. Exhibit R-3 is a one-page document entitled “PUC Complaint Processing System,” which is the Company’s internal document summarizing the date and resolution of an informal complaint filed by Ms. Hunter with the BCS. (Tr. 21; Exhibit R-3).

7. Exhibit R-3 shows that on April 5, 2022, the BCS opened and closed an informal complaint submitted by Ms. Hunter, at BCS No. 3827227. (Exhibit R-3).

8. Exhibit R-3 shows that in BCS No. 3827227, the BCS awarded Ms. Hunter a Level 2 payment arrangement⁵ and directed Ms. Hunter to pay a total of \$132 per month, consisting of \$71 for her current budget bill, plus \$61 towards her arrearage of \$2,165.74, to be effective on the May 2022 billing due date. (Exhibit R-3).

9. Amy Wynn is a Senior Compliance Representative for UGI, who testified that at the time Ms. Hunter submitted her informal complaint at BCS No. 3827227, Ms. Hunter reported to the Commission a household size of two individuals, and a monthly gross household income of \$2,500. (Tr. 22).

10. Ms. Hunter’s current household size is two individuals, consisting of herself and a minor child. (Tr. 8-9).

11. Ms. Hunter’s current annual gross household income is \$38,000, which equals \$3,166.67 per month, which she derives from her employer. (Tr. 9).

12. Ms. Hunter has worked for the same employer for approximately the last five years; however, she did not work from January 3, 2023, to the end of March 2023, due to a medical injury. (Tr. 8-9).

⁵ 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 three years. 66 Pa.C.S. § 1405(b)(2).

13. Ms. Hunter testified that she did not timely file an appeal from the determination of the BCS at BCS No. 3827227 because she did not timely receive the formal complaint forms. (Tr. 14, 16).

14. Ms. Hunter testified that when she did not receive the formal complaint form for some time, she called customer service at the BCS, and was informed that the form had been previously emailed to her, and when she replied she did not receive it or could not locate it in her emails, BCS instructed her to download the complaint form from the Commission's website and place her BCS number on it, which Ms. Hunter did on all six pages of the Complaint. (Tr. 16; Formal Complaint).

15. Exhibit R-1 is Ms. Hunter's Statement of Account from September 18, 2020, to February 21, 2023, which includes, *inter alia*, the monthly billings and meter readings. (Tr. 19; Exhibit R-1).

16. Subsequent to when Exhibit R-1 (Statement of Account) was prepared by the Company, an additional bill was generated in the amount of \$161.59, with a due date of April 13, 2023. (Tr. 19).

17. At the time of the hearing, the Complainant's total amount owing was \$3,358.14. (Tr. 15; Exhibit R-1).

DISCUSSION

Burden of Proof

As the party seeking affirmative relief from the Commission, a complainant has the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than that presented by the opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

Upon the presentation by the complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the customer shifts to the Company. If the evidence presented by the Company is of co-equal value or “weight,” the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the Company. *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982). While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

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); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

A presiding officer's review of a BCS decision is *de novo*, meaning anew. Therefore, the decision in the instant matter will be based upon the record developed at the evidentiary hearing. 52 Pa. Code § 56.173(a); *Stammel v. PG Energy*, Docket No. C-20027994 (Opinion and Order entered May 21, 2003).

In the instant case, Ms. Hunter, as the party seeking relief in the form of a Commission payment arrangement, bears the burden of proof in this proceeding.

Timeliness of Appeal from BCS

Before addressing Ms. Hunter's eligibility for a Commission payment arrangement under the Public Utility Code (“Code”), it is necessary to address whether her Complaint is a timely appeal from the decision of the BCS. This initial determination is necessary because, as discussed further below, the Commission is statutorily limited as to the

number of payment arrangements it has the authority to issue, with limited exceptions, none of which are applicable here. In the instant case, Ms. Hunter’s eligibility for a payment arrangement under Chapter 14 of the Code, the Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 (“Chapter 14”), will turn on whether her Complaint is deemed to be a timely appeal from the BCS decision, which granted Ms. Hunter her first Commission payment arrangement.

The Commission has explained that appeals from informal BCS decisions “follow a complex but clearly designated path.” *Ruskey v. Pa. Elec. Co.*, Docket No. C-2018-3003153, at 13 (Opinion and order entered Mar. 13, 2019) (“*Ruskey*”). In *Ruskey*, the Commission explained the Commission’s appeal process including the different steps and timeline required of the BCS, the complainant, and the Secretary’s Bureau:

Section 56.172(a) of our regulations . . . specifies that “[a] request for review of the decision of the Bureau of Consumer Services (BCS) shall be *initiated* in writing within 20 days of issuance.” [Emphasis added]. A Request for Review form is not a complaint form. It is the form that is served with the BCS decision to the informal complainant with directions that it be returned to the Commission's Secretary within twenty days if the complainant chooses to pursue a formal review of the BCS decision. When the Secretary receives that Request for Review form, a Formal Complaint form is sent to the complainant. *See* 52 Pa. Code § 56.172(b). The Formal Complaint form will be marked with the BCS case identification number and a due date, which will be thirty days from the mailing of the Formal Complaint form.

Ruskey at 13 (footnote omitted) (emphasis in original).

The Commission has also explained that, in practice, the Request for Review form referred to in Section 56.172(a) above is a form entitled “Notification of Intent to Appeal.” Further, in practice, the Secretary’s Bureau will designate the filing of a formal complaint to be timely if a complainant uses the form provided by the Secretary’s Bureau, and then docket the complaint with an "F" rather than a "C" docket number. However, the designation of a “C”

docket number does not necessarily mean that a formal complaint is an untimely BCS appeal. In this regard, the Commission explained:

The "C" dockets are used for complaints which are either not appeals from the BCS determinations, or are untimely appeals, in which case the filing office marks the complaint "untimely" at the top of the form. *However, there is also the possibility that the Complainant printed a formal Complaint form from the Commission's website and mailed that one instead of the one supplied by the Secretary's Bureau.*

Vena v. Phila. Gas Works, Docket No. C-2014-2444963, I.D. at 8 (Final Order entered May 29, 2015) ("*Vena*") (emphasis added) (finding a timely appeal from a BCS decision, despite the "C" docket designation).

The Commission explained that its appeal process gives the Commission the ability to internally track whether a complaint is an appeal from a BCS informal complaint decision or is a "free-standing independent complaint." *Ruskey* at 14. Internal tracking is thus possible through the information placed on the forms (BCS number and deadlines) provided by the Commission to the informal complainant. However, the informal complainant's choice to forgo using the forms provided is not dispositive of whether the appeal is timely.⁶ *Id.* Rather, foregoing the Section 56.172 process "does not hamper the Commission's ability to determine later whether the filing is timely or late, as the information is available once the complaint is docketed and assigned to an ALJ [administrative law judge]." *Ruskey* at 14.

For example, the following cases are illustrative of when the Commission found timely appeals despite the designation of a "C" docket number. In *Ruskey*, the Commission found a timely appeal where the customer filed a formal complaint 21 days after the date of the BCS decision, reasoning that it was filed "well-within the fifty-day minimum period that would have been provided if the Complainant would have returned the Request for Review." *Id.* at 14.

⁶ See, 52 Pa. Code § 56.172(e), stating that: "The failure to request review of the BCS decision by filing a formal complaint within the 30-day period does not foreclose a party from filing a formal complaint at a later time except as otherwise may be provided in 66 Pa.C.S. (relating to Public Utility Code)."

Next, in *Smith v. PPL Electric Utilities Corp.*, Docket No. C-2015-2499601 (Final Order entered Jan. 21, 2016), a complaint was deemed timely filed where the presiding officer found that the formal complaint form sent to the customer had the incorrect date that it must be returned. The date noted on the formal complaint was 20 days from the date the complaint form was sent to the customer, instead of 30 days pursuant to Section 56.172. Therefore, because the customer's complaint was received within the 30-day time frame (but after the 20-day time frame noted on the formal complaint), the appeal was deemed timely.

Also see, Mayo v. Peoples Natural Gas Co. LLC, Docket No. C-2019-3011288 (Final Order entered Dec. 31, 2019), finding a timely appeal where the complaint was filed 37 days after the BCS decision was sent because it was within the 50-day minimum period that would have been provided to her had she returned the request for review form. *Also confer, Wooley v. Metropolitan Edison Co.*, Docket No. C-2018-3005263 (Final Order entered Mar. 8, 2019), where although the record was devoid of when that customer received the formal complaint form and the complaint was filed 55 days after the BCS decision, an appeal was deemed timely where Met-Ed admitted in its answer that it was a BCS appeal and stated at the hearing it did not object to the Commission treating the complaint as timely. *Id.* at 6, n.4.

My research revealed only one case where the ALJ was not able to determine whether the complaint filing was timely or untimely, because there was no documentation submitted in the record to support either finding. In *Vena*, the ALJ noted that the outcome of the case, as in the instant case, depended on whether that customer's BCS appeal was timely. In *Vena*, the BCS decision, which granted that customer a payment arrangement, was dated July 24, 2014 and the formal complaint was filed 52 days later—*i.e.*, on September 14, 2014.

After reviewing the appeal process in Section 56.172, the ALJ in *Vena* noted that although it was documented that the BCS decision was dated (and most likely sent by BCS) on July 24, 2014, there was no other document, form, or testimony offered during the hearing, which would support any determination of timeliness. The ALJ concluded that, “[w]ithout the forms or any record of the issuances, there is no way to determine whether this Complaint was timely . . . Therefore, I cannot conclude that the PAR [payment arrangement] which had been

granted by the BCS was not timely appealed, nor can I conclude that it was broken.” *Vena* I.D. at 8. Finally, the ALJ concluded that, “[w]ith no evidence presented to support a finding of [an] untimely [appeal], due process requires that I give the Complainant the benefit of the doubt.” *Id.*

Finally, my research also revealed one instance where the Commission waived the strict application of Section 56.172, finding good cause existed to do so. In *Foley v. Paupack Water Co.*, Docket No. 00993024 (Opinion and Order entered Mar. 31, 2000), the ALJ dismissed the utility’s appeal from the BCS as untimely since the utility did not initiate a notice of intent to appeal within 20 days as required by Section 56.172, the complaint was filed 79 days after the issuance of the BCS decision, and counsel for the utility did not file a petition for leave to file the appeal *nunc pro tunc*. However, the Commission reversed the ALJ’s decision, and found that good cause existed to waive the strict application of Section 56.172. The Commission found that counsel for the utility made a good faith attempt to initiate and preserve an appeal by means of its correspondence in the form of a written letter to the BCS investigator within 20 days, which the Commission deemed an intent to appeal, and the chain of events that followed led to the 79 days between the BCS decision and the filing of the appeal.

After an exhaustive review of the record before me, I find that the interests of due process are better served by granting Ms. Hunter’s appeal from the BCS decision *nunc pro tunc*. As explained by the Commission, the “appeal process from a BCS Informal Complaint decision is not a simple one, but it is important that it is properly understood in order to assure that the due process rights of the parties are protected.” *Ruskey* at 14.

First, I find that the facts of the instant case are similar to those in *Vena* in that, like *Vena*, there was no document, BCS letter, form, or record of the issuances of the BCS and/or Secretary’s Bureau presented to support any finding of a timely or untimely appeal. However, unlike *Vena*, there was some testimony presented that goes to this issue. Ms. Hunter testified that she did file an informal complaint requesting a payment arrangement. Further, Ms. Hunter testified that when she did not receive the “formal complaint papers” for some time, she called customer service at the BCS. Thus, it appears that Ms. Hunter is referring not to the Notice of Intent Form, which accompanies the BCS decision, but to the actual formal complaint form

provided by the Secretary's Bureau, albeit this is unclear from the testimony. Ms. Hunter further testified that, she was informed that the "form" had been previously emailed to her.⁷ Next, Ms. Hunter testified that when she replied she did not receive it or could not locate it in her email, the BCS instructed her to download the formal complaint form from the Commission's website and place her BCS number on her formal complaint, which she did. (Tr. 16). (*See*, Formal Complaint, with the BCS Case Number written on top of all six pages of the Complaint and sent via Priority Mail to the Secretary's Bureau).

Second, I find that Ms. Hunter's actions are consistent with an intent to pursue an appeal. After waiting for some time to receive the formal complaint form and she did not, Ms. Hunter contacted the BCS. After being informed that the formal complaint was already emailed to her, Ms. Hunter could not locate such in her emails. Ms. Hunter then followed the instructions she said were given to her – namely, she downloaded the form from the Commission's website and put the corresponding BCS case number on every page. Further, Ms. Hunter appeared for every scheduled hearing and conference in this matter, including the combined hearings, which proceedings were later bifurcated.

Third, the only other document concerning the BCS decision is Exhibit R-3. This exhibit is a one-page document entitled "PUC Complaint Processing System," which is an internal Company document that shows the date the BCS opened and closed Complainant's informal complaint submitted and the BCS's resolution. (Tr. at 21; Exhibit R-3). However, this Exhibit is not dispositive of the timeliness of the instant complaint.

Further, I also note that Exhibit R-3 indicates that the payment arrangement was to be effective on the May 2022 billing due date. However, it is not clear from Exhibit R-1, Complainant's Statement of Account, whether Complainant was billed pursuant to the Commission payment arrangement, either on the May 2022 billing date, or the months following thereafter, including up until when the Complaint was filed on August 24, 2022. The BCS-PAR directed a total payment of \$132 per month, consisting of \$71 for the current budget bill, plus

⁷ I note that in practice, since the Covid-19 pandemic, these forms can be emailed to informal complainants, which prior to Covid-19 and the cases cited herein, were ordinarily mailed through the postal service.

\$61 towards the arrearage. Exhibit R-1 shows that on May 13, 2022, the Complainant owed the billed amount of \$86.74; on June 13, 2022, she owed \$46.85; on July 13, 2022, she owed \$40.26; and on August 12, 2022, she owed \$39.83. None of these billings are consistent with the BCS-PAR. However, I recognize that it may be that Ms. Hunter's final bill she received did reflect the BCS-PAR, or there is some other legitimate reason for the billing, but there is no evidence on this record to conclude this. Therefore, without conclusive evidence that Ms. Hunter received the benefit of the BCS-PAR, I find that due process also favors giving Ms. Hunter the benefit of the doubt, as in *Vena*.

Accordingly, for all the reasons discussed above, Ms. Hunter's Complaint will be deemed a timely appeal from the BCS decision *nunc pro tunc*.

Payment Arrangement

Ms. Hunter seeks a Commission payment arrangement. Thus, Chapter 14 applies to this proceeding. However, Chapter 14 provides strict guidelines that the Commission must follow, including which account balances cannot be subject to payment arrangements, and the number and length of payment arrangements it is authorized to issue. 66 Pa.C.S. § 1405(b)-(d).

Regarding which account balances cannot be subject to payment arrangements, Section 1405(c) prohibits the Commission from issuing payment arrangements on customer assistant program (CAP) rates. 66 Pa.C.S. § 1405(c). In the instant case, there is no evidence that Ms. Hunter's arrearage consists of any CAP rates. Therefore, the Complainant is not precluded from a receiving a payment arrangement on this basis.

Regarding the number of payment arrangements the Commission may issue, Chapter 14 makes explicit that the Commission generally has the authority to establish at least

one payment arrangement per customer subject to limited exceptions. 66 Pa.C.S. § 1405(a).⁸ In an ability to pay proceeding involving a timely appeal from the BCS decision, the informal decision is automatically stayed and the customer cannot be in default until the formal complaint on appeal is fully adjudicated and a final order is entered. *Harnett v. PPL Elec. Utils. Corp.*, Docket No. F-2012-2329578 (Opinion and Order entered Nov. 14, 2013). In the instant case, since this Decision grants the Complainant an appeal *nunc pro tunc*, and there is no other evidence that Ms. Hunter has been previously awarded a Commission payment arrangement, she is eligible for a payment arrangement on this basis.

Regarding the length of a payment arrangement that the Commission may issue, Chapter 14 provides for a maximum allowable repayment term of three years for a Level 2 customer—*i.e.*, a customer with gross monthly household income level exceeding 150% of the Federal poverty level and not more than 250% of the Federal poverty level. 66 Pa.C.S. § 1405(b)(2). In the instant case, Ms. Hunter’s gross household monthly income of \$3,166.67 with a household size of two individuals, places her within this range—*i.e.*, a Level 2 customer.⁹ Therefore, pursuant to Chapter 14, Ms. Hunter’s household income makes her eligible for a three-year payment arrangement to extinguish her outstanding balance. Although Ms. Hunter seeks a lower monthly payment amount, the Commission is not authorized to do so under Chapter 14.

Further, consistent with recent Commission decisions, the instant case does not require an examination into whether Ms. Hunter has demonstrated some evidence of a good faith

⁸ One of the exceptions allows for a discretionary second or subsequent Commission payment arrangement if the customer demonstrates a change in income, as defined by Chapter 14. 66 Pa.C.S. § 1405(d). A change of income requires some decrease in income since being awarded the prior Commission payment arrangement. The extent of the decrease depends on where the customer falls on the Federal poverty level. *See*, 66 Pa.C.S. § 1403 (definition, “change in income”).

I note that in the instant case, in the alternative, if this Decision is reversed so that the appeal is deemed untimely, then Ms. Hunter would not be eligible for a second payment arrangement on the basis of a change in income. The record evidence shows that Ms. Hunter’s income increased from \$2,500 per month at the time of her BCS-PAR to \$3,166.67 per month at the time of the hearing.

⁹ Pursuant to the 2023 Federal poverty guidelines, for a household size of two, a gross household monthly income of \$2,465 is 150% of the Federal poverty level and a monthly income of \$4,108 is 250% of the Federal poverty level. HHS Poverty Guidelines for 2023, 88 Fed. Reg. 12, 3424 (Jan. 19, 2023); *also available at* <http://aspe.hhs.gov/poverty>.

effort to pay her utility bills, or whether she is likely to default due to an inability to pay her utility bills, before she may be awarded a payment arrangement. *See, Reddinger v. Pa. Elec. Co.*, Docket No. F-2022-3032104 (Opinion and Order entered Feb. 28, 2023), *West v. Phila. Gas Works*, Docket No. F-2022-3034727 (Opinion and Order entered May 23, 2023), and *Bongiorni v. West Penn Power Co.*, Docket No. F-2022-3035093 (Opinion and Order entered June 5, 2023).

Accordingly, Ms. Hunter's Formal Complaint will be granted since she is eligible under Chapter 14 of the Code. Hence, Ms. Hunter will be awarded a three-year payment arrangement to extinguish her outstanding balance.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a).
3. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).
4. The Responsible Utility Customer Protection Act, 66 Pa. C.S. §§ 1401-1419, applies to this proceeding.
5. The Responsible Utility Customer Protection Act permits the Commission to grant one payment agreement and dictates its terms. 66 Pa.C.S. § 1405(a).
6. The Complainant has met her burden of proof that she is eligible for a three-year payment arrangement. 66 Pa.C.S. § 1405(a), (b)(2).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Kimberly Hunter against UGI Utilities, Inc. at Docket No. C-2022-3034799 is granted as an appeal *nunc pro tunc* from the decision of the Commission's Bureau of Consumer Services at BCS No. 3827227.
2. That the Formal Complaint filed by Kimberly Hunter at Docket No. C-2022-3034799 is sustained.
3. That Kimberly Hunter shall make monthly payments consisting of her current bill plus one-thirty-sixth (1/36th) of the balance accrued on her account, beginning with the first billing date following the entry of a final Commission Order in this case.
4. That as long as Kimberly Hunter keeps the payment schedule stated in this Order, UGI Utilities, Inc. shall not suspend or terminate her utility service except for valid safety or emergency reasons or assess late payments or finance charges against his account.
5. That if Kimberly Hunter does not keep the payment schedule stated in this Order, UGI Utilities, Inc. is authorized to suspend or terminate her utility service in accordance with the Commission's statutes and regulations.
6. That the docket at Docket No. C-2022-3034799 be marked closed.

Dated: July 28, 2023

/s/
Gail M. Chiodo
Administrative Law Judge