

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Patrick Black	:	
	:	
v.	:	F-2015-2515349
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

The customer filed a complaint against his electric utility requesting that the Pennsylvania Public Utility Commission (Commission) order a payment arrangement for the unpaid balance on the customer's natural gas utility account. This decision denies the customer's request for a payment arrangement because a portion of the customer's arrearage accumulated while the customer was enrolled in the utility's customer assistance program (CAP) and because the customer has a poor payment history.

HISTORY OF THE PROCEEDING

On November 24, 2015, Patrick Black (Complainant) filed a complaint with the Commission against Philadelphia Gas Works (Respondent). The complaint is a timely appeal of the Commission's Bureau of Consumer Services' (BCS') October 19, 2015 decision at BCS No. 3393346 dismissing the Complainant's informal complaint. The complaint requests that the Commission provide the Complainant with a payment arrangement.

The Respondent filed an answer on December 21, 2015. The answer admits that the Respondent provides natural gas service to the Complainant at the address shown on the complaint. The answer also admits that the Complainant is seeking a payment arrangement. The answer requests that the Commission dismiss the complaint.

By hearing notice dated December 28, 2015, the Commission scheduled a telephonic hearing for this matter on February 9, 2016 at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated January 6, 2016, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I conducted a telephonic hearing on February 9, 2016. Patrick Black appeared pro se and presented testimony in support of his complaint. Graciela Christlieb, Esquire represented the Respondent, which presented two witnesses who sponsored four exhibits that I admitted into the record.

The initial hearing resulted in a transcript of 38 pages. The record closed on March 16, 2016, the date the transcript was filed with the Secretary's Bureau. For the reasons set forth below, I will deny the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Patrick Black. N.T. 4.
2. The Respondent in this case is Philadelphia Gas Works. N.T. 4.
3. The Complainant currently resides at 3407 Vista Street, Philadelphia.
N.T. 6-7.
4. The Complainant has resided at 3407 Vista Street since 2001. N.T. 7.

5. The residence is a row home. N.T. 7.
6. The Complainant owns the residence. N.T. 7.
7. The gas service account for 3407 Vista Street is in the Complainant's name. N.T. 7.
8. The Complainant's gas service is currently on. N.T. 7.
9. The Complainant resides at 3407 Vista Street with his wife, 22 year old daughter and two year old grandson. N.T. 8, 10.
10. The Complainant and his wife are employed full time. N.T. 8.
11. The Complainant and his wife obtained full time employment in December 2015. N.T. 9.
12. Prior to December 2015, the Complainant was employed part time due to having three surgeries. N.T. 10.
13. The Complainant's daughter has lived at 3407 Vista Street since 2001. N.T. 10.
14. The Complainant's grandson has lived at 3407 Vista Street since he was born. N.T. 10.
15. The Complainant's daughter is in school and not employed. N.T. 9.
16. The Complainant currently earns \$750.00 biweekly. N.T. 8.
17. The Complainant's wife currently earns \$625.00 biweekly. N.T. 9.

18. The Complainant filed an informal complaint with the Commission at BCS No. 3393346 on October 15, 2015. N.T. 20, PGW Ex. 1.

19. On October 16, 2015, the Respondent sent a response to the Complainant's informal complaint to BCS. N.T. 21, PGW Ex. 1.

20. The Complainant had previously been enrolled in the Respondent's CAP and had been removed from the CAP. N.T. 21-22, PGW Ex. 1.

21. At the time the Complainant was removed from the CAP, there was a CAP balance of \$4,553.71 on his account. N.T. 21-22, PGW Ex. 1.

22. On October 19, 2015, BCS issued a decision dismissing the Complainant's informal complaint because the Complainant had failed to comply with a previous BCS payment arrangement at BCS No. 2411314 issued on February 12, 2009. N.T. 22-23, PGW Ex. 1 and Ex. 4.

23. The Commission had dismissed the Complainant's formal complaints at C-2013-2379053 on January 22, 2014 and at C-2014-2415665 on November 18, 2014. N.T. 23, PGW Ex. 1.

24. The Respondent terminated the Complainant's service on April 28, 2015. N.T. 22-23, PGW Ex. 1.

25. The Complainant contacted the Respondent on November 19, 2015 and inquired how quickly his service could be restored if his account balance was paid in full. N.T. 24, PGW Ex. 1.

26. The Complainant was informed that the service would be restored at the next available appointment within a couple days. N.T. 24-27, PGW Ex. 1.

26. The Complainant made a payment of \$15,785.83 via the Respondent's automated system on November 25, 2015, the day after he filed this formal complaint. N.T. 24-25, PGW Ex. 1.

27. On December 1, 2015, the Respondent restored natural gas service to the Complainant. N.T. 26, PGW Ex. 1.

28. The Complainant's payment of \$15,785.83 made on November 25, 2015 was returned for insufficient funds. N.T. 29, PGW Ex. 2.

29. A payment of \$15,352.93 made on March 31, 2015 was returned for insufficient funds. N.T. 29, PGW Ex. 2.

30. The Complainant made no other payments in 2015. N.T. 29.

31. The Complainant's unpaid account balance at the time of the hearing was \$15,785.83. N.T. 23, PGW Ex. 2.

32. A payment of \$12,840.00 made on April 6, 2014 was returned for insufficient funds. N.T. 30, PGW Ex. 2.

33. The Complainant made no other payments in 2014. N.T. 30.

34. The Complainant has broken all of the payment arrangements offered to him. N.T. 32, PGW Ex. 3.

DISCUSSION

The Complainant in this proceeding has the burden of proof to show that the Respondent 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). The Complainant must establish his case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). To meet his burden of proof, the Complainant must present evidence more convincing, by even the smallest amount, than that presented by the Respondent. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). Here the Complainant requests that the Commission provide him with a payment arrangement. Before addressing this request, I will provide a brief summary of the evidence provided by the parties.

The Complainant currently resides at 3407 Vista Street Philadelphia. N.T. 6-7. The Complainant has resided here since 2001. N.T. 7. The residence is a row home. N.T. 7. The Complainant owns the residence. N.T. 7.

The gas service account for 3407 Vista Street is in the Complainant's name. N.T. 7. The Complainant's gas service is currently on. N.T. 7.

The Complainant resides at 3407 Vista Street with his wife, 22 year old daughter and two year old grandson. N.T. 8, 10. The Complainant and his wife are employed full time. N.T. 8. The Complainant and his wife obtained full time employment in December 2015. N.T. 9. Prior to December 2015, the Complainant was employed part time due to having three surgeries. N.T. 10.

The Complainant's daughter has lived at 3407 Vista Street since 2001. N.T. 10. The Complainant's grandson has lived at 3407 Vista Street since he was born. N.T. 10. The Complainant's daughter is in school and not employed. N.T. 9.

The Complainant currently earns \$750.00 biweekly. N.T. 8. The Complainant's wife currently earns \$625.00 biweekly. N.T. 9.

In response to the Complainant's evidence, the Respondent presented the testimony of Jessica Glace, a customer review officer. N.T. 16. Ms. Glace reviewed the contact log for the Complainant's account. N.T. 19, PGW Ex. 1. The Respondent's contact log

indicated dates of events that differed somewhat from the time frames recalled by the Complainant. Where the evidence differs as to when certain events occurred, I will give more weight to the Respondent's records since the Complainant could only testify to approximately when certain events occurred.

The contact log indicates that the Complainant filed an informal complaint at BCS No. 3393346 on October 15, 2015. N.T. 20, PGW Ex. 1. On October 16, 2015, the Respondent sent a response to the Complainant's informal complaint at BCS No. 3393346. N.T. 21, PGW Ex. 1. The Respondent's position indicated in the response was that it had properly terminated the Complainant's service on April 28, 2015. N.T. 21. The response also indicated that the Complainant had broken at least two payment arrangements and had previously been enrolled in the Respondent's CAP and had been removed from the CAP. N.T. 21-22, PGW Ex. 1. At the time the Complainant was removed from the CAP, there was a CAP balance of \$4,553.71 on his account. N.T. 21-22, PGW Ex. 1.

On October 19, 2015, BCS issued a decision dismissing the Complainant's informal complaint because the Complainant had failed to comply with a previous BCS payment arrangement at BCS No. 2411314 issued on February 12, 2009. N.T. 22-23, PGW Ex. 1 and Ex. 4. The BCS decision at BCS No. 3393346 also stated that the Commission had dismissed the Complainant's formal complaints at C-2013-2379053 on January 22, 2014 and at C-2014-2415665 on November 18, 2014. N.T. 23, PGW Ex. 1. The BCS decision noted that the Respondent terminated the Complainant's service on April 28, 2015. N.T. 22-23, PGW Ex. 1.

The Respondent's records indicate that the Complainant contacted the Respondent on November 19, 2015 and inquired how quickly his service could be restored if his account balance was paid in full. N.T. 24, PGW Ex. 1. The Respondent's records indicate that the Complainant was informed that the service would be restored at the next available appointment, within a couple days. N.T. 24-25, PGW Ex. 1.

The Complainant made a payment of \$15,785.83 via the Respondent's automated system on November 25, 2015, the day after he filed this formal complaint. N.T. 24-27, PGW

Ex. 1. On December 1, 2015, the Respondent restored natural gas service to the Complainant. N.T. 26, PGW Ex. 1.

Ms. Glace also reviewed the account statement for the Complainant's account for the period from February 9, 2012 to January 12, 2016. N.T. 27, PGW Ex. 2. The Complainant's account statement indicates that the Complainant has not consistently paid his natural gas bills in full and on time every month. The Complainant's account balance at the time of the hearing was \$15,785.83. N.T. 23, PGW Ex. 2.

The Respondent's records indicate that the Complainant's payment of \$15,785.83, made on November 25, 2015, was returned for insufficient funds. N.T. 29, PGW Ex. 2. Similarly, a payment of \$15,352.93 made on March 31, 2015 was returned for insufficient funds. N.T. 29, PGW Ex. 2. The Complainant made no other payments in 2015. N.T. 29.

The Respondent's records indicate that a payment of \$12,840.00 made on April 6, 2014 was returned for insufficient funds. N.T. 30, PGW Ex. 2. The Complainant made no other payments in 2014. N.T. 30.

Ms. Glace reviewed the Complainant's payment arrangement history from 2007 to the present. N.T. 31, PGW Ex. 3. The payment arrangement history indicates that the Complainant was offered more than a dozen payment arrangements since 2007, including one Commission-ordered payment arrangement in 2009. PGW Ex. 3. The Complainant has broken all of the payment arrangements offered to him. N.T. 32, PGW Ex. 3.

Having provided a brief summary of the evidence presented by the parties, I will now address the Complainant's request that the Commission order a payment arrangement for him. However he manages his household budget, the Complainant will have to pay the Respondent for the service he consumes.

By law, a public utility is entitled to receive payment for the service it provides. Scaccia v. West Penn Power Co., 55 Pa. PUC 637 (1982); Kea v. Peoples Natural Gas Co., 60 Pa.

PUC 215 (1985); Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa.Cmwlt. 1982). The Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303. Neal v. Philadelphia Gas Works, Docket No. Z-00871874, (Final Order entered January 4, 2002); Angie's Bar v. Duquesne Light Co., 72 Pa. PUC 213 (1990).

All customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. Bolt v. Duquesne Light Co., Docket No. Z-8712758 (Opinion and Order entered April 8, 1988). A payment arrangement, which prevents service termination as long as the Complainant complies with it, is a privilege, not a right. Mandell v. Duquesne Light Co., Docket No. C-20030234, (Opinion and Order entered March 17, 2004).

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418 applies to this proceeding. On December 22, 2014, Act 155 of 2014, reenacting the Responsible Utility Customer Protection Act, became effective. Act 155 modified some provisions of the Responsible Utility Customer Protection Act. I will incorporate those modifications in the discussion that follows.

The Commission has the authority to establish a payment arrangement pursuant to 66 Pa.C.S. § 1405(a) which states:

- (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.

The Commission has the authority to establish payment arrangements, pursuant to 66 Pa.C.S. § 1405(a), within the strict guidelines set forth in 66 Pa.C.S. § 1405(b) which reads as follows:

(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.

(2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

(3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

The Commission may establish a payment arrangement between a public utility and a customer only within the limits established by 66 Pa.C.S. §§ 1401-1418. In order to be eligible for a payment arrangement, the Complainant must be a “customer” or “applicant” as defined by 66 Pa.C.S. § 1403. If the Complainant is not a “customer” or “applicant”, the Commission is not authorized to establish a payment arrangement between him and the Respondent. The statute at 66 Pa.C.S. § 1403 defines a customer as follows:

“Customer.” A natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested. The term includes a person who, within 30 days after service termination or discontinuance of service, seeks to have service reconnected at the same location or transferred to another location within the service territory of the public utility.

In this case, the Complainant is a customer since he is a natural person in whose name a residential service account is listed.

While the Complainant is a customer, pursuant to 66 Pa.C.S. § 1403, the Complainant may not be entitled to a new payment arrangement because the Commission has no authority to establish a payment arrangement where a customer has CAP arrearages. The provision at 66 Pa.C.S. § 1405(c) states as follows:

(c) Customer Assistance Programs. – Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.

Section 1403 of the Public Utility Code, 66 Pa.C.S. § 1403, defines a CAP as follows:

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by Section 2202 (relating to definitions) or Section 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

Here a portion of the Complainant's arrearage in the amount of \$4,553.71 is subject to CAP rates. The Commission cannot order a payment arrangement on this amount. However, a portion of the Complainant's arrearage was accrued after the Complainant was removed from the Respondent's CAP and is not subject to CAP rates. The Commission can order a payment arrangement on the non-CAP amount. The Commission has previously addressed its authority to order a payment arrangement where the customer has a mixed arrearage consisting of both CAP and non-CAP arrearages.

In Hewitt v. PECO Energy Co., Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013) (Hewitt), the Commission held that it retained authority to issue a payment arrangement for the non-CAP portion of a mixed arrearage. The Commission emphasized that the issuance of a payment arrangement was a matter within the Commission's discretion. In Hewitt, the Commission determined that the complainant, a former CAP customer,

was not entitled to a payment arrangement for her non-CAP arrearages because of her poor payment history and her inability to keep prior payment agreements.

The Commission explained in Hewitt that bifurcating an arrearage and establishing a payment arrangement would require a utility to place the CAP portion of the arrearage on hold. As long as the customer complied with the payment arrangement for the non-CAP portion of the arrearage, the utility would be prohibited from terminating service for non-payment of the CAP arrearage. The Commission concluded that this would not be in the public interest or in the customer's best interest because it would allow a customer to utilize payment arrangements for non-CAP arrearages to avoid payment of CAP bills which are already discounted rates. The Commission has subsequently cited this reasoning as the basis for refusing to order a payment arrangement for the non-CAP portion of a mixed arrearage. Michail v. PECO Energy Company, Docket No. F-2014-2404586 (Opinion and Order entered January 16, 2015) (Michail); Pickett v. Philadelphia Gas Works, Docket No. C-2014-2444967 (Opinion and Order entered October 1, 2015) (Pickett)

In this case, when the Respondent removed the Complainant from the CAP the Respondent's records indicate that the Complainant had a CAP arrearage of \$4,553.71. The Commission has no authority, pursuant to 66 Pa.C.S. § 1405(c), to order a payment arrangement on the CAP arrearage. At the time of the hearing, the Complainant had accumulated an additional non-CAP arrearage. Therefore, pursuant to Hewitt, the Commission may, at its discretion, issue a payment arrangement for the non-CAP portion of the Complainant's arrearage.

I conclude that the Commission should not exercise that discretion in this case. I do so for several reasons.

First, like the complainants in Hewitt, Michail, Pickett the Complainant in this case has a poor payment history, making no payments on his account during 2014 and 2015.

Second, my prehearing order, dated January 6, 2016, at paragraph 16 stated that the Complainant was responsible for payment of current bills pending resolution of this complaint. As of the date of the hearing, the Complainant had failed to comply with this directive.

Third, the Complainant has shown an inability to keep prior agreed to payment arrangements with the Respondent by defaulting on numerous payment arrangements, including one Commission ordered payment arrangement.

Finally, as noted earlier, the Complainant has an outstanding balance in excess of \$15,000.00. As of the date of the hearing, the Complainant's outstanding account balance was \$15,785.83.

From these facts, I conclude that the Complainant has not made reasonable efforts to pay his bills in a timely fashion and is not entitled to a Commission-ordered payment arrangement. In similar circumstances, the Commission denied a request for a payment arrangement on a mixed CAP-non-CAP arrearage. Turner v Philadelphia Gas Works, Docket No. C-2013-2388319 (Opinion and Order entered June 19, 2014).

Instead of making reasonable efforts to pay his bills in a timely fashion, the Complainant has issued checks with insufficient funds in order to have his service restored or to avoid termination of his service. The Complainant has also used the Commission's administrative processes to avoid paying for his utility service. The Complainant has filed several informal complaints with BCS, as well as several formal complaints, in order stay termination of his service and avoid paying for his utility service.

Using the Commission's processes to avoid termination and avoid paying for utility service is an abuse of the Commission's administrative processes and will not be countenanced. The Commission has previously barred consumer complainants from filing further complaints with the Commission in order to protect the interests of other ratepayers. Seidenstricker v. Metropolitan Edison Co., Docket No. F-2008-2019388 (Opinion and Order

entered July 28, 2009), Thomas v The Peoples Natural Gas Co., Docket No. C-2009-2102194 (Opinion and Order entered June 17, 2010), Mazza v. PECO Energy Co., Docket No. C-2012-2318472 (Opinion and Order entered April 23, 2014). The Complainant is warned to refrain from further misuse of the Commission's processes or face the possibility of being barred from filing further complaints.

In summary, I conclude that the Complainant has failed to establish by a preponderance of the evidence that the Commission should order a payment arrangement for his non-CAP arrearage. For the foregoing reasons, I will deny the complaint and enter the following order.

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 Complainant has not met his burden of proving that he is entitled to relief. 66 Pa.C.S. § 332(a).
4. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418, applies to this proceeding.
5. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).
6. The Complainant has not met his burden of proving that he is entitled to a payment arrangement. 66 Pa.C.S. § 1405(a), Hewitt v. PECO Energy Co., Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Patrick Black against Philadelphia Gas Works at Docket No. F-2015-2515349 is denied.
2. That the proceeding at Docket No. F-2015-2515349 is marked closed.

Date: March 18, 2016

/s/

David A. Salapa
Administrative Law Judge