

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sheree Milteer

v.

Philadelphia Gas Works

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F-2016-2547754

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

The customer filed this Complaint to request an affordable payment arrangement. This decision grants the request and establishes a payment arrangement.

**HISTORY OF THE PROCEEDING**

On May 26, 2016, Sheree Milteer (Ms. Milteer or Complainant) filed a Complaint against Philadelphia Gas Works (PGW, Respondent, or Company) alleging that PGW is threatening to shut off her gas service or has already shut off her service. She also averred that she is unable to pay her gas bills and requested a payment arrangement.

The Complaint is a timely appeal of the Commission's Bureau of Consumer Services (BCS) decision dated May 4, 2016, at BCS No. 3434215, which denied the Complainant's informal complaint.

On June 16, 2016, PGW filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated July 21, 2016, notified the parties that an initial hearing was scheduled for Monday, August 29, 2016, at 10:00 a.m.

A Prehearing Order was issued on August 8, 2016, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on August 29, 2016. Ms. Milteer appeared *pro se* and testified in support of the Complaint. Graciela C. Christlieb, Esq. represented the Respondent, and presented the testimony of Joyshalyn Moore, who is a customer review officer with PGW in charge of reviewing and investigating formal complaints filed with the Commission. The Respondent sponsored three exhibits, all of which were admitted into the record.

The record closed on September 28, 2016.

#### FINDINGS OF FACT

1. Complainant is Sheree Milteer, who resides at 2237 North Woodstock Street, Philadelphia, PA 19132 (Service Address). Tr. 6.
2. Respondent is Philadelphia Gas Works.
3. Ms. Milteer resides at the Service Address with her two children, who are 11 and 10 years old, respectively. Tr. 10.
4. In June of 2008, Ms. Milteer was in an accident which rendered her temporarily unable to work.
5. Ms. Milteer received disability benefits from June 2008 to December 2010. Tr. 27-28.

6. Ms. Milteer returned to work in January of 2011. Tr. 28.
7. Ms. Milteer was terminated from her employment in August of 2012. Tr. 28.
8. Ms. Milteer received unemployment benefits from September 2012 to November 2015. Tr. 29.
9. In 2014, Complainant filed an informal complaint with BCS at Case # 3224457 reporting a household income of \$3,293.00 per month for a household of three individuals. PGW Exhibits 2 and 3.
10. On October 29, 2014, BCS established a payment arrangement for Complainant at BCS Case # 3224457. Id.
11. On January 24, 2015, Ms. Milteer defaulted on the Commission-issued payment arrangement. Id.
12. Ms. Milteer obtained her current employment with DaVita Dialysis in November of 2015. Tr. 29.
13. Ms. Milteer currently works between 32 and 40 hours per week at a pay rate of \$19.00 per hour. Tr. 10-11.
14. On April 22, 2016, Ms. Milteer's gas service was terminated for non-payment. Tr. 26-27, PGW Exhibit 1.
15. Ms. Milteer has defaulted on two or more Company-issued payment arrangements. Tr. 18, PGW Exhibit 3.

16. Based on Ms. Milteer's average usage at the Service Address, her current budget billing amount is \$73.00 per month. Tr. 17.

17. Ms. Milteer has made only one payment of \$91.85 in the last 24 months. Tr. 16, PGW Exhibit 1.

18. Ms. Milteer's outstanding balance with PGW is \$5,244.17. Tr. 16, PGW Exhibit 1.

### DISCUSSION

In her formal Complaint, Ms. Milteer alleged that PGW is threatening to shut off her gas service or has already shut off her service. She also averred that she is unable to pay her gas bills and requested a payment arrangement.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95 (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *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). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might

accept as adequate to support a conclusion. A mere “trace of evidence or a suspicion of the existence of a fact” is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980).

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 complainant shifts to the respondent. If the evidence presented by the respondent is of co-equal weight, the complainant has not satisfied her burden of proof. The complainant would be required to provide additional evidence to rebut the evidence of the respondent. *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion 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).

At the hearing Ms. Milteer testified that she resides at the Service Address with her two children, who are 11 and 10 years old, respectively. Ms. Milteer explained that in June of 2008 she was in a vehicle accident, which rendered her temporarily unable to work. Ms. Milteer received disability benefits from June 2008 to December 2010. She returned to work in January of 2011, but was terminated from her employment in August of 2012. Ms. Milteer testified that she received unemployment benefits from September 2012 to November 2015. In November of 2015, Ms. Milteer obtained employment with DaVita Dialysis where she currently works between 32 and 40 hours per week at a pay rate of \$19.00 per hour.

In response to Ms. Milteer’s testimony, PGW’s witness Joyshalyn Moore testified that in 2014, Ms. Milteer filed an informal complaint with BCS at Case # 3224457, reporting a household income of \$3,293.00 per month for a household of three individuals. On October 29, 2014, BCS established a payment arrangement for Complainant at BCS Case # 3224457. Ms. Moore explained that the Complainant defaulted on the Commission-issued payment

arrangement on January 24, 2015. In addition to the Commission-issued payment arrangement, Ms. Milteer has defaulted on two or more Company-issued payment arrangements.

Ms. Moore testified that Ms. Milteer's gas service was terminated for non-payment on April 22, 2016. Ms. Milteer has made only one payment of \$91.85 in the last 24 months. Ms. Milteer's outstanding balance with PGW is \$5,244.17.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401, *et seq* (Chapter 14) applies to complaints alleging inability to pay and requests for Commission-issued payment arrangements. This law authorizes the Commission to establish payment arrangements between a public utility and its customers, as well as applicants for service, within prescribed limits that the Commission must follow. 66 Pa.C.S. § 1405(a). In cases where the Commission is authorized by law to establish a payment arrangement between a customer and a utility, it has the responsibility to exercise its authority very judiciously where a utility has lawfully terminated a customer for nonpayment. Specifically, the Commission should exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of good faith effort to pay their utility bills or who have experienced a significant change of circumstances beyond their control. *George Crawford v. National Fuel Gas Distribution Corp.*, C-20066348 (Opinion and Order entered December 6, 2007).

A review of Ms. Milteer's payment history reveals that she made only one payment of \$91.85 in the 24 month prior to the hearing. The record contains no evidence of what her payment history was before August 23, 2014. PGW Exhibit 1. However, the record does show that during the last 24 months Ms. Milteer made considerable efforts to keep her gas usage low as evidenced by her budget bill amount of \$73.00 per month. The record also shows that Ms. Milteer's employment is the only source of income in her household, and that beginning in 2008 that source of income has been sporadic for reasons outside of Ms. Milteer's control, like her vehicle accident and her termination from prior employment.

For the reasons stated above, I find that a payment arrangement is appropriate in this case. Section 1405 of the Public Utility Code regarding payment arrangements reads in pertinent part:

**(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.

(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.

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**(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(a), (b) and (d). In addition, "Household income" is defined in section 1403 as "[t]he combined gross income of all adults in a residential household who benefit from the public service," whereas "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.

Ms. Milteer has already received and defaulted on one Commission-issued payment arrangement, which she received after reporting a gross household income of \$3,293.00 per month for a household of three. The Complainant's current monthly household income is \$2,964.00<sup>1</sup> for a household of three. Ms. Milteer's household income falls between 150% and 200% of the Federal poverty level. Ms. Milteer's household income has decreased by 10%<sup>2</sup> since October 29, 2014, when she received her prior Commission-issued payment arrangement. She has experienced a change in income as the term is defined in section 1403 and is, therefore, eligible for a subsequent payment arrangement. As a level 2 income customer, Ms. Milteer is required to retire her balance with PGW within three years, or 36 months. See 66 Pa.C.S. § 1405(b)(2).

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The Complainant had the burden of proof. 66 Pa.C.S. § 332(a).
3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401, *et seq.*, applies to this proceeding.

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<sup>1</sup> Ms. Milteer works an average of  $(32 + 40) / 2 = 36$  hours per week at a pay rate of \$19.00/hour. Her monthly gross income is  $36 \text{ hr/week} \times \$19.00/\text{hr} \times 52 \text{ weeks/yr} \div 12 \text{ months/yr} = \$2,964.00/\text{month}$ .

<sup>2</sup>  $(\$3,293.00 - \$2,964.00) \div \$3,293.00 = 0.099908 \sim 10\%$ .

4. The Commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established in Chapter 14 of the Pennsylvania Public Utility Code. 66 Pa.C.S. § 1405.

5. It is Commission policy to exercise its discretion to issue payment arrangements when customers have demonstrated some evidence of a good-faith effort in paying utility bills or when customers have experienced a change of circumstances outside of their control. *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 at 15-16 (Order entered December 6, 2007).

6. 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. 66 Pa.C.S. § 1405 (d).

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

8. "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.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Sheree Milteer against Philadelphia Gas Works at Docket No. F-2016-2547754 is granted.

2. That Sheree Milteer shall make monthly payments consisting of her current charges or budget bill plus one thirty-sixth ( $1/36^{\text{th}}$ ) of the balance accrued on her account, beginning with the first billing due date following the entry of a final Commission Order in this case.

3. That as long as Sheree Milteer 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 Sheree Milteer 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 Secretary mark this docket closed.

Date: October 21, 2016

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/s/  
Eranda Vero  
Administrative Law Judge