

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kevin T. Lofton, Jr.

v.

Philadelphia Gas Works

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C-2016-2539283

**INITIAL DECISION**

Before  
Joel H. Cheskis  
Administrative Law Judge

**INTRODUCTION**

This decision grants in part and denies in part a formal complaint filed by a customer against a natural gas distribution company alleging that there are incorrect charges on the customer's bill and seeking a payment arrangement for the outstanding amount owed. The customer demonstrated that he is entitled to a payment arrangement of sixty months to pay the outstanding amount owed because he has experienced a change in income since receiving his last payment arrangement but has failed to demonstrate that there are incorrect charges on his bill. As a result, the complaint will be granted in part and denied in part.

**HISTORY OF THE PROCEEDING**

On April 11, 2016, Kevin T. Lofton, Jr. filed with the Pennsylvania Public Utility Commission (Commission) a formal complaint against Philadelphia Gas Works (PGW or the Company), Docket Number C-2016-2539283. In his complaint, Mr. Lofton averred that PGW was threatening to shut off his gas service or has already shut off his gas service, he would like a

payment arrangement and there are incorrect charges on his bill. Mr. Lofton requested a better payment arrangement and that certain charges be removed from his bill, among other things.

On May 2, 2016, PGW filed an answer and new matter in response to Mr. Lofton's complaint. In its answer, PGW admitted or denied the various averments Mr. Lofton made in his complaint. In particular, PGW admitted that it issued a termination notice to Mr. Lofton and that Mr. Lofton seeks a payment arrangement. PGW denied that there are incorrect charges on Mr. Lofton's bill and provided a history of the various complaints filed by Mr. Lofton and payment arrangements he has received. In its new matter, which was accompanied by a notice to plead, PGW reiterated the history of complaints filed by Mr. Lofton and the payment arrangements he has received. PGW then averred that Mr. Lofton's complaint should be dismissed because he is "abusing the system by using its provisions to prevent termination of service over the course of years, all the while receiving gas service from PGW and accruing a large outstanding balance." PGW requested that Mr. Lofton's complaint be dismissed and attached various documents in support of its position.

Also on May 2, 2016, PGW filed a motion for summary judgment. In its motion, which was also accompanied by a notice to plead, PGW again reiterated the history of various complaints filed by Mr. Lofton and the payment arrangements he has received. In addition, PGW again averred that this history shows that Mr. Lofton has been abusing the system to prevent termination of service over the course of years, all the while receiving gas service from PGW and accruing a large outstanding balance. PGW cited to case law in support of its position that Mr. Lofton's complaint should be dismissed and attached various documents in support of its position.

On June 15, 2016, Mr. Lofton filed an answer to PGW's motion requesting that the motion be denied. In his answer, Mr. Lofton argued that the complaints filed were not frivolous or unjust and that PGW's motion fails to acknowledge his efforts to resolve the matter. Mr. Lofton also explained the various discrepancies in his bill and his efforts to get more information from PGW about how his bill is calculated. Mr. Lofton concluded that he would like a hearing to explain his position.

On July 20, 2016, a Telephonic Hearing Notice was issued scheduling an Initial Telephonic Hearing for Tuesday, August 30, 2016 at 10:00 a.m. and assigning me as the Presiding Officer. A Prehearing Order dated July 25, 2016 was issued setting forth various procedural rules that would govern the hearing.

On August 3, 2016, an order denying the motion for summary judgment was issued. The order concluded that, when viewing the record in the case in the light most favorable to Mr. Lofton, as is required when addressing the motion for summary judgment, it is not clear that there are no genuine issues as to a material fact or that PGW is entitled to judgment as a matter of law. Rather, the order held that Mr. Lofton has averred issues in his complaint that should be heard during a hearing.

The hearing convened on August 30, 2016, as scheduled. Graciela Christlieb, Esquire appeared on behalf of the company. Mr. Lofton did not appear. Michele DeSilva, Mr. Lofton's mother, who is not an attorney, also appeared. Ms. DeSilva stated that Mr. Lofton believed that the hearing was scheduled for the next day and that he planned to take off from work and was prepared for the hearing for the next day. Ms. DeSilva requested that the hearing be continued so that Mr. Lofton could participate. Counsel for the company objected to Ms. DeSilva, who also resides at the service address, from acting on behalf of her son for the hearing or for a continuation of the hearing. Nonetheless, in light of Ms. DeSilva's assertions, the request to continue the hearing was granted. On August 31, 2016, a Telephonic Hearing Notice was issued scheduling a Further Telephonic Hearing for Thursday, October 20, 2016 at 10:00 a.m. Prehearing Order Number 2 was issued on September 2, 2016 formally granting the request for a continuance.

The further telephonic hearing convened on October 20, 2016, as scheduled. Mr. Lofton appeared *pro se*. Ms. Christlieb again appeared on behalf of the company. Ms. Christlieb presented one witness who sponsored four exhibits that were admitted into the record. A transcript of 81 pages was created. The record in this proceeding closed on November 18, 2016 when the transcript was submitted to the Commission.

Mr. Lofton's complaint is ready for disposition. For the reasons discussed below, the complaint will be sustained in part and denied in part.

#### FINDINGS OF FACT

1. The Complainant in this case is Kevin T. Lofton Jr.
2. The Respondent in this case is Philadelphia Gas Works.
3. The service address is 1961 Ashley Street, Philadelphia, PA.
4. Five people live at the service address: Mr. Lofton, his brother, his mother and his two daughters. Tr. 34.
5. The gross monthly household income at the service address is approximately \$2,080. Tr. 37.
6. Adrian Crawford is a customer review officer for PGW. Tr. 43.
7. Ms. Crawford has been a customer review officer for six years and her duties entail investigating customer complaints. Tr. 43.
8. PGW Exhibit Number 1 is a Statement of Accounts for Mr. Lofton at the service address and indicates the billing and payments made on the account from September, 2012 to August, 2016. Tr. 45; PGW Exh. No. 1.
9. In the 48 months from September, 2012 to August, 2016, there are 26 credits to Mr. Lofton's account either via check, cash, credit card or debit card. PGW Exh. No. 1.

10. Three credits to Mr. Lofton's account from September, 2012 to August, 2016, include LIHEAP payments made on January 27, 2016 for \$70, one on the same day for \$100 and another of \$65 was made on July 6, 2016. Tr. 46; PGW Exh. No. 1.

11. None of Mr. Lofton's payments covered the full amount owed on the account. PGW Exh. No. 1.

12. PGW Exhibit Number 2 is information regarding the payment arrangements provided to Mr. Lofton by PGW and the Commission. Tr. 47; PGW Exh. No. 2.

13. Mr. Lofton has received eight payment arrangements from PGW and one from the Commission. Tr. 48; PGW Exh. No. 2.

14. The payment arrangement given to Mr. Lofton by the Commission was given on August 29, 2013 and was broken. Tr. 48-49; PGW Exh. No. 2.

15. Mr. Lofton has broken all of the payment arrangements that PGW has provided him due to lack of payment. Tr. 49-50; PGW Exh. No. 2.

16. Mr. Lofton's status in PGW's customer responsibility program (CRP) is inactive due to the missed payments. Tr. 50; PGW Exh. No. 2.

17. PGW Exhibit Number 3 is a copy of the complaint filed by Mr. Lofton with the Commission against PGW on March 25, 2015. Tr. 50-51; PGW Exh. No. 3.

18. The complaint Mr. Lofton filed with the Commission against PGW on March 25, 2015 was settled. Tr. 51-53; PGW Exh. No. 3.

19. As of August 27, 2015, the balance on Mr. Lofton's account was \$7,480.35. Tr. 53; PGW Exh. No. 3.

20. PGW Exhibit Number 4 is a copy of the decision of the BCS regarding an informal complaint filed by Mr. Lofton indicating that the Commission previously provided Mr. Lofton a payment arrangement on August 28, 2013 and that no change in income has been established that warrants a second Commission ordered payment arrangement. Tr. 56-57; PGW Exh. No. 4.

21. When BCS dismissed his informal complaint, his monthly household income was \$2,336.53. PGW Exh. No. 4.

22. When PGW gave Mr. Lofton a payment arrangement on March 18, 2014, the monthly household income was \$2,316. Tr. 56; PGW Exh. No. 4.

23. Mr. Lofton enrolled in PGW's CRP on May 18, 2009 and was removed from the program on June 14, 2012. Tr. 68; PGW Exh. No. 2.

### DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). The offense 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. In this proceeding, Mr. Lofton would like charges he believes are incorrect to be removed from his bill and that he be allowed to repay the remaining charges through a payment arrangement. Mr. Lofton, therefore, has the burden of proof in this proceeding.

If a complainant establishes 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. 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) (Milkie); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth 1982).

The decision of the Commission must be supported by substantial evidence. 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 & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth.1984).

In this case, Mr. Lofton stated in his complaint that, despite consistent payments, PGW threatened to terminate his service. Mr. Lofton added, among other things, that prior forgiven charges were incorrectly added to his bill. Mr. Lofton also testified regarding specific charges he believed were incorrect on his bill. Tr. 26-28. In response, PGW presented the testimony of Adrian Crawford, a customer review officer at PGW, who sponsored four exhibits that were admitted into the record. Ms. Crawford testified regarding the details of Mr. Lofton's account, including the negotiated payment arrangements and previous complaints filed by Mr. Lofton with the Commission. Ms. Crawford supported PGW's position that the company at all times acted consistent with its statutory and regulatory obligations with regard to the service provided to Mr. Lofton and that Mr. Lofton's complaint should be dismissed.

Substantial record evidence demonstrates that Mr. Lofton has satisfied his burden to demonstrate that his income has changed sufficiently to warrant the Commission ordering

PGW to allow him to pay his outstanding balance through a second payment arrangement but has failed to satisfy his burden to demonstrate that there are incorrect charges on his bill.

With regard to Mr. Lofton's claims that there are incorrect charges on his bill, these claims will be denied. Mr. Lofton averred in his complaint that PGW has added prior, forgiven charges to his bill despite payments made. During the hearing, for example, Mr. Lofton testified that there was a charge for \$600 on his April, 2016 bill. Tr. 26. Mr. Lofton also testified that PGW's records show that he only made two payments during a particular twelve month time frame which he believes is incorrect. Tr. 27. In response, PGW witness Crawford testified regarding Mr. Lofton's Statement of Account which details the billing payments made on the account from September, 2012 to August, 2016. Tr. 45; PGW Exh. No. 1. This exhibit shows for each month the amount of gas used at the service address, the number of days in the billing cycle, the amount owed for usage in that billing cycle, the type of payment and the current balance, among other things. PGW Exh. No. 1. More specifically, Ms. Crawford testified regarding Mr. Lofton's poor payment history. This includes credits to the account for only 26 out of 48 months from September, 2012 to August, 2016, some of which were credits from the Low Income Home Energy Assistance Program (LIHEAP) and no payments that covered the full amount owed on the account. Tr. 45-46; PGW Exh. No. 1. In total, the Statement of Account shows an increasing account balance after numerous missed or partial payments but no evidence of incorrect charges.

As a result, Mr. Lofton has failed to present substantial record evidence demonstrating that there are incorrect charges on his bill. In contrast, PGW witness Crawford testified that Mr. Lofton has several missed payments and that none of the payments he has made covered the full amount owed on the account. Mr. Lofton recognized that he has failed to make several payments. *See, e.g.*, Tr. 29 (noting that he did not make any payments from March, 2014 to February, 2015). Missed and incomplete payments cause account balances to grow. Therefore, Mr. Lofton has failed to demonstrate that there are any incorrect charges on his account or that PGW otherwise violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff with regard to the charges on his account.



With regard to Mr. Lofton's request for a payment arrangement, disposition of this issue is governed by Chapter 14 of the Public Utility Code. Chapter 14 grants the Commission the authority to establish a payment arrangement for customers with outstanding bills pursuant to certain guidelines related to total household income and household size. 66 Pa.C.S. § 1405(b). For example, the Commission may order a company to allow a customer whose gross monthly household income does not exceed 150% of the federal poverty level a payment arrangement over a period of up to five years. 66 Pa.C.S. § 1405(b)(1). Furthermore, the Commission's ability to order a utility to provide a payment arrangement is limited to requiring a utility to provide only one payment arrangement to a customer, absent a change in income or a significant change in circumstance. 66 Pa.C.S. § 1405(d). Chapter 14 defines a "change in income" 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 than the federal poverty level. 66 Pa.C.S. § 1403.

In this case, record evidence demonstrates that there are currently five people living at the service address and that the gross household monthly income is \$2,080. Tr. 34, 37. For homes with five people, 100% of the federal poverty level is \$2,370. 81 Fed. Reg. 4036 (Jan. 25, 2016). Therefore, Mr. Lofton is at 87% of the federal poverty level ( $2,080 / 2,370 = 87.7$ ). Record evidence further demonstrates that, the Commission directed PGW to give Mr. Lofton a payment arrangement based on monthly income of \$2,336.53 on August 28, 2013. Tr. 56; PGW Exh. No. 4. PGW also gave Mr. Lofton a payment arrangement on March 18, 2014 based on a monthly income of \$2,316. *Id.* Even accepting the lower of the two reported monthly incomes for purposes of determining the percentage change in income, \$2,316, the Commission can order PGW to provide Mr. Lofton a second payment arrangement because he has experienced a sufficient change in income because the household income is less than 200% of the federal poverty level and the household income decreased by more than 10% since the last payment arrangement was provided ( $((2,316 - 2,080) / 2,316 = 10.1)$ ).<sup>1</sup>

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<sup>1</sup> It is noted, however, that any arrears accrued will on PGW's customer assistance program (CAP) cannot be paid through a payment agreement. *See*, 66 Pa.C.S. § 1405(c).

As a result, Mr. Lofton has satisfied his burden to demonstrate that he is entitled to a second payment arrangement ordered by the Commission. Mr. Lofton will be given five years to pay his outstanding balance owed to PGW because his monthly household income does not exceed 150% of the federal poverty level. 66 Pa.C.S. § 1405(b)(1).

Finally, as noted above, PGW argued in its new matter and motion for summary judgment that Mr. Lofton's complaint should be dismissed because he has abused the Commission's processes by repeatedly filing complaints and avoiding termination all while receiving gas service from PGW and accruing a large outstanding balance. In response to these arguments, PGW's motion for summary judgment was denied but Mr. Lofton was put on notice that, if the number of informal and formal complaints, termination notices and overall balances on his account continues to escalate, he may be prohibited from filing any further complaints with the Commission regarding arrearages on his account until such arrearages are paid in full. Since Mr. Lofton has satisfied his burden to demonstrate that he is entitled to a second payment arrangement, no abuse of process is established. It is not clear that Mr. Lofton has been abusing the system to prevent termination of service over the course of years, all the while receiving gas service from PGW and accruing a large outstanding balance, as the company argued. Certainly, the balance on Mr. Lofton's account is very high. To the extent that Mr. Lofton fails to satisfy this payment arrangement, the Company may proceed with termination.

In conclusion, Mr. Lofton has satisfied his burden to demonstrate that he is entitled to a payment arrangement to pay his outstanding balance owed to PGW because he has realized a sufficient change in income. Mr. Lofton will be given five years to pay his outstanding balance because his household income is below 150% of the federal poverty level. Mr. Lofton has failed to provide substantial record evidence to demonstrate, however, that there are incorrect charges on his bill. PGW has effectively rebutted each of the arguments made by Mr. Lofton in both his complaint and in the hearing. As noted above, if a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. Milkie, *supra*. 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. Id. In this case, Mr. Lofton has failed to rebut PGW's evidence with regard to any incorrect charges on his bill. As such, this argument will be dismissed.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

4. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

5. The offense 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.

6. If a complainant establishes 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. 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).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "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 & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa.Superior 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwlth 23, 480 A.2d 382 (1984).

9. The Commission may establish a payment arrangement for customers with outstanding bills pursuant to certain guidelines related to total household income and household size. 66 Pa.C.S. § 1405(b).

10. The Commission may order a company to allow a customer whose gross monthly household income does not exceed 150% of the federal poverty level a payment arrangement over a period of up to five years. 66 Pa.C.S. § 1405(b)(1).

11. The Commission's ability to order a utility to provide a payment arrangement is limited to requiring a utility to provide only one payment arrangement to a customer, absent a change in income or a significant change in circumstance. 66 Pa.C.S. § 1405(d).

12. A "change in income" is 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 than the federal poverty level. 66 Pa.C.S. § 1403.

13. For homes with five people, 100% of the federal poverty level is \$2,370. 81 Fed. Reg. 4036 (Jan. 25, 2016).

14. Mr. Lofton has satisfied his burden to demonstrate that he should be given five years to pay the outstanding balance accrued on his account with PGW because he has experienced a change in income since he was given his last payment arrangement. 66 Pa.C.S. § 1405(d).

15. Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the Commission. 66 Pa.C.S. § 1405(c).

16. Mr. Lofton has failed to satisfy his burden of proof to demonstrate that there are incorrect charges on his bill. 66 Pa.C.S. § 332(a).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Kevin T. Lofton, Jr. on April 11, 2016 against Philadelphia Gas Works, docket number C-2016-2539283, is hereby granted in part and denied in part.

2. That the portion of the formal complaint filed by Kevin T. Lofton, Jr. seeking a payment arrangement to pay the outstanding balance owed to Philadelphia Gas Works is hereby sustained.

3. That the portion of the formal complaint filed by Kevin T. Lofton, Jr. arguing that there are incorrect charges on the bill is hereby denied.

4. That within 30 days of the date the Commission enters its Order in this case, Philadelphia Gas Works shall tender a bill to Kevin T. Lofton, Jr. for the unpaid balance of his gas bill along with the monthly amount accrued representing payment for services rendered on a going forward basis.

5. That Kevin T. Lofton, Jr. shall pay Philadelphia Gas Works the regular monthly bill amount accrued as they come due, plus 1/60<sup>th</sup> of the arrearage owed on his account identified in ordering paragraph number 4, commencing with the first monthly bill received after entry of the Commission's Order in this case and continuing thereafter on the due date for the payment of each regular monthly bill, until the arrearage on this account has been paid in full.

6. That, as long as Kevin T. Lofton, Jr. complies with the terms of this Order, Philadelphia Gas Works shall not suspend or terminate his utility service except for valid safety or emergency reasons.

7. That, if Kevin T. Lofton, Jr. fails to comply with the terms of this Order, Philadelphia Gas Works is authorized to suspend or terminate his utility service in compliance with all applicable tariff and regulatory requirements, and to take other action permitted by law.

8. That this matter be marked closed.

Date: December 14, 2016

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/s/  
Joel H. Cheskis  
Administrative Law Judge