

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jason Cofer	:	
	:	
v.	:	C-2016-2562266
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Benjamin J. Myers  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses a complaint filed by a customer against the utility alleging that the utility improperly required him to pay the full amount of his outstanding balance before reconnecting service to his current residence. The customer requested a payment arrangement in lieu of a single payment for the total outstanding balance and that his service be reconnected.

**HISTORY OF THE PROCEEDING**

On August 18, 2016 Jason Cofer (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent). The complaint alleges that the Respondent has improperly required the Complainant to pay his entire outstanding balance amount in order to reconnect his gas utility service. The complaint requests a payment arrangement be made available to him for this outstanding balance and that his service be reconnected.

The Respondent filed an answer on September 7, 2016. The answer generally admits all of the averments contained in the complaint. The answer admits that Respondent

provided natural gas service to the Complainant at the residence with the address set forth in the complaint, 6514 N. 21<sup>st</sup> Street, Unit B, Philadelphia, Pennsylvania. The answer further admits that gas service to the residence was terminated on May 10, 2016 for non-payment. The answer further indicated that the complaint was an appeal by the Complainant of a Bureau of Consumer Services (BCS) decision dismissing the Complainant's initial informal complaint.

By hearing notice dated October 4, 2016, the Commission scheduled an initial hearing for this matter on November 28, 2016, at 10:00 a.m. and assigned the case to Administrative Law Judge (ALJ) Cynthia W. Fordham. A prehearing order was issued on October 26, 2016, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

The initial hearing was conducted as scheduled on November 28, 2016. The Complainant appeared *pro se* and testified. Laureto A. Farinas, Esquire represented the Respondent which presented one witness who sponsored four exhibits which were admitted into the record. The initial hearing resulted in a transcript of 38 pages. The record closed on December 13, 2016, the date the transcript was filed with the Secretary's Bureau. On February 17, 2017, ALJ Fordham retired from state service. On February 27, 2017 this matter was assigned to the undersigned for disposition. After a review of the entire evidentiary record and for the reasons set forth below, the complaint will be denied.

#### FINDINGS OF FACT

1. The Complainant is Jason Cofer. N.T. 4.
2. The Respondent is Philadelphia Gas Works. N.T. 4.
3. The Complainant's service address is 6514 North 21<sup>st</sup> Street, Philadelphia, Pennsylvania. N.T. 6.

4. Prior to July 16, 2014 the Complainant had an account with the Respondent at 6810 Vandyke Street, Philadelphia with an outstanding balance of \$1,401.12. N.T. 24.

5. On July 16, 2014 the Complainant established service at 537 Magee Avenue, Philadelphia. N.T. 23.

6. In July of 2014 the Complainant had an initial payment agreement with the Respondent which he subsequently defaulted on. N.T. 12.

7. On May 28, 2015 the Complainant's account at Magee Avenue had an outstanding balance of \$1,705.06. N.T. 23.

8. On May 28, 2015 Complainant entered into a second payment agreement with the Respondent. N.T. 28.

9. The first payment under this agreement was due on July 22, 2015. N.T. 29.

10. In June of 2015 the Complainant cancelled his service at Magee Avenue and moved to live with his sister. N.T. 34, 35.

11. The Complainant made no payments towards his outstanding balance under the May 2015 payment agreement after relocating. N.T. 35.

12. In September of 2015 the Complainant moved to 6514 North 21<sup>st</sup> Street, Philadelphia. N.T. 32, 33.

13. The Complainant established service at this new address. N.T. 32.

14. The Complainant has accrued an outstanding account balance of \$1,600 for service at this new address. N.T. 16.

15. The Complainant's service was subsequently terminated for nonpayment. N.T. 8.

16. Between the first payment agreement in July 2014 and the date of hearing on November 28, 2016, the Complainant made two payments on his account; one on September 26, 2014 and a second on May 20, 2015. N.T. 25.

17. The Complainant's total outstanding account balance at the time of hearing was \$5,187.50. N.T. 26.

18. The Complainant does not dispute the accuracy of this outstanding balance. N.T. 8.

19. To reconnect the Complainant's service, the Respondent has requested a payment for the entire outstanding balance plus a \$123.23 reconnection fee. N.T. 26.

### DISCUSSION

In this case, the Complainant's service was terminated by the Respondent for nonpayment of his outstanding account balance. To restore the service, the Respondent has required the Complainant to pay his total outstanding account balance plus a reconnection fee. The Complainant has filed a formal complaint with the Commission seeking the restoration of his service and a payment arrangement for this outstanding balance rather than the lump sum payment that the Respondent has demanded.

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 Pennsylvania, 72 Pa. P.U.C. 196 (1990), Feinstein v. Philadelphia Suburban Water Co., 50 Pa. P.U.C. 300 (1976). The Complainant must establish his case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n, 578 A.2d 600 (Pa. Cmwlth. 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).

The relief requested by the Complainant that he be afforded a payment agreement for his outstanding account balance and the reconnection of his service is governed by §1407 of the Public Utility Code. It provides in part,

§ 1407. **Reconnection of service.** -

(a) **Fee.** - A public utility may require a reconnection fee based upon the public utility's cost as approved by the commission prior to reconnection of service following lawful termination of the service.

...

(c) **Payment to restore service.** -

...

(2) A public utility may require:

(i) **Full payment of any outstanding balance incurred together with any reconnection fees** by the customer or applicant prior to reconnection of service if the customer or applicant has an income exceeding 300% of the Federal poverty level **or has defaulted on two or more payment agreements.**

...

66 Pa.C.S. § 1407. (Emphasis added).

Here, the Complainant does not dispute the total amount of his outstanding balance. N.T. 8. In addition, the Complainant acknowledges that he had an initial payment agreement with the Respondent in July 2014 which he defaulted on. N.T. 12. The Complainant also acknowledges that he was given a second payment agreement by the Respondent in May 2015. N.T. 11. However, the Complainant has argued that because he subsequently cancelled his service at his residence and moved in June of 2015, his failure to make payments thereafter should not be considered a default of the second payment agreement. N.T. 31. This argument is not credible.

A “payment arrangement” is defined by the Public Utility Code as “an agreement whereby a customer who admits liability for billed service is permitted to amortize or **pay the unpaid balance of the account in one or more payments.**” 66 Pa.C.S. § 1403. (Emphasis added). The second payment arrangement or agreement the Complainant reached with the Respondent on May 28, 2015 was for the entire outstanding balance of the Complainant’s account as well as current usage for his service address. The mere fact that the Complainant subsequently cancelled his service at the Magee Avenue service location in June of 2015 does not relieve the Complainant from paying the balance of his outstanding account. The Complainant may have cancelled his service in June 2015, but he subsequently defaulted on the second payment agreement when he failed or refused to make any additional payments towards his account balance. The Complainant’s argument that he defaulted on the first payment agreement with the Respondent but “cancelled” the second agreement is not credible.

Under § 1407, the Respondent is able to require the full payment of the Complainant’s outstanding balance, plus a reconnection fee, prior to the reconnection of service when the Complainant has defaulted on two or more payment agreements. That is the case here. As such, the Complainant has failed to satisfy his burden of proof in this matter and the Complainant’s complaint requesting a payment agreement and reconnection of service will be denied.

It is noted that the Commission has held that while 66 Pa.C.S. § 1407 sets out the terms that a utility may impose on a customer requesting reconnection of service, it does not divest the Commission of its authority to order a payment arrangement, pursuant to 66 Pa.C.S. § 1405, for a customer who was lawfully disconnected for nonpayment. Crawford v. National Fuel Gas Distribution Corporation, Docket No. C-20066348 (Opinion and Order entered December 6, 2007) (Crawford); Rogito v. UGI Utilities, Inc., Docket No. F-02263457 (Opinion and Order entered December 3, 2008). The Commission has stated that it will exercise its authority to establish a payment arrangement in these circumstances judiciously.

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.Cmwlth. 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).

In Crawford, the Commission noted that while it has the authority to grant payment arrangements to customers or applicants such as Complainant<sup>1</sup>, it also has a responsibility to exercise that authority very judiciously when a utility has lawfully terminated a customer for nonpayment. Specifically, the Commission held that it should only exercise its discretion on the behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills, or who have experienced a significant change of circumstances outside of their control.

Here, the evidence indicates that between the first company payment agreement the Complainant received in July 2014 and the date of hearing on November 28, 2016, the Complainant made two payments on his account; one on September 26, 2014 and a second on May 20, 2015. The Complainant acknowledged that his outstanding balance with the Respondent is in excess of \$5,000, yet despite asserting at the time of hearing he was prepared to pay a sum of \$800 to \$900 to have his service restored, he has only made two payments towards his account in over two years. This does not demonstrate evidence of good faith on the behalf of the Complainant to pay his utility bills as required under Crawford. Likewise, the Complainant presented no evidence to show any significant change in circumstances outside of his control. To the contrary, the Complainant testified at length regarding the improvement in his circumstances since first defaulting on his payment arrangements. The Complainant has not

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<sup>1</sup> 66 Pa.C.S. § 1403 defines "applicant". There is no dispute between the parties that for the purposes of this matter the Complainant is an applicant as it relates to the reconnection of service.

demonstrated that he should be afforded a payment arrangement under § 1407 to establish reconnection of his service.

### CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa. C.S. §332(a), the burden of proof in this proceeding is on the Complainant.

3. The Complainant must establish his case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

4. The Complainant has not met his burden of proving that he is entitled to relief. 66 Pa. C.S. §332(a).

5. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401, *et seq.*, applies to this proceeding.

6. The Respondent may require the full payment of any outstanding balance incurred together with any reconnection fees by the customer or applicant prior to reconnection of service if the customer or applicant has defaulted on two or more payment agreements. 66 Pa.C.S. § 1407(c)(2)(i).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Jason Cofer against Philadelphia Gas Works, at Docket No. C-2016-2562266 is hereby denied.
2. That the docket at Docket No. C-2016-2562266 is marked closed.

Date: March 13, 2017

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/s/  
Benjamin J. Myers  
Administrative Law Judge