

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ifedoo Enigwe	:	
	:	
v.	:	F-2016-2551964
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Andrew M. Calvelli  
Administrative Law Judge

**INTRODUCTION**

This Decision grants in part and denies in part a formal Complaint filed by a customer of a gas utility company seeking a credit to his account along with a lower monthly payment to pay off his outstanding balance. The Complainant will be given 36 months to pay his outstanding balance owed to the utility which results in the lowest monthly payment allowed by law. The Complainant has otherwise failed to demonstrate that he is entitled to an account credit or that the utility has violated the Public Utility Code or a Commission Order or Regulation in connection with the account credit issue. Therefore, the Complaint will be granted in part and denied in part.

**HISTORY OF THE PROCEEDING**

On June 20, 2016, Ifedoo Enigwe filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW) at Docket Number F-2016-2551964. The Complaint was a timely appeal of a Decision of the Commission's Bureau of Consumer Services (BCS) at BCS Case Number 3432723. In his Complaint, Mr. Enigwe averred that he would like a payment arrangement, and that PGW was

responsible for his loss of a \$1,500 grant because PGW rescinded his shut off notice which then made him ineligible for a grant from the Utility Emergency Services Fund (UESF). Mr. Enigwe stated that he has inconsistent income through his employment with Uber, and that he should be granted an affordable payment arrangement as a result. Mr. Enigwe further requested that the Commission remove \$1,500 from his account balance due to PGW's actions regarding the removal of the shut off notice which caused Mr. Enigwe to become ineligible for the grant money. The Complaint was e-served upon PGW by the Commission's Secretary's Bureau on June 20, 2016.

On July 11, 2016, PGW filed an Answer to Mr. Enigwe's Complaint. In its Answer, PGW admitted or denied the various averments in the Complaint. In particular, PGW noted that the BCS had ordered a payment arrangement for Mr. Enigwe in the amount of \$107 per month for current billing and \$94 per month towards the arrears, and that the payment arrangement was based upon Mr. Enigwe's self-reported income to the BCS in the combined gross monthly amount of \$4,246.67. PGW also denied that it was responsible for Mr. Enigwe's loss of the \$1,500 grant money.

On August 5, 2016, the Commission issued an in-person Call of the Docket Hearing Notice and served that Notice upon the parties. The Hearing was rescheduled several times and ultimately took place in the Philadelphia Office of Administrative Law Judge before Judge Fordham on November 28, 2016. Mr. Enigwe appeared *pro se* and PGW was represented by Laureto Farinas, Esquire, who presented one witness who sponsored five exhibits that were entered into the record.

A Hearing Transcript of 55 pages was generated, and the record in this proceeding was closed on December 20, 2016 when the Transcript was received by the Commission. Judge Fordham subsequently retired, and the matter was reassigned to me as the Presiding Officer for the purpose of reviewing the evidence and issuing a Decision in this proceeding. The matter was reassigned to my office effective February 27, 2017.

The record is closed and I am in receipt of the file materials (including the Hearing Transcript) in this matter. For the reasons mentioned below, the Complaint will be granted in part and denied in part.

#### FINDINGS OF FACT

1. The Complainant in this case is Ifedoo Enigwe.
2. The Respondent in this case is Philadelphia Gas Works.
3. The service address is 7710 Gilbert Street, Philadelphia, PA 19150.
4. Mr. Enigwe established service at the service address on March 13, 2015.

Tr. 43.

5. Mr. Enigwe had previously received service from PGW at 1443 70<sup>th</sup> Avenue, Apartment 1C-3, Philadelphia, PA. Tr. 37.

6. When Mr. Enigwe established service at the service address, he had an accumulated balance of \$832.85 from 1443 70<sup>th</sup> Avenue which was transferred to the service address account balance. Tr. 38, 39.

7. As of November 22, 2016, Mr. Enigwe's total account balance at the service address was \$3,683.93, consisting of the service address balance of \$2,770.01, the current month's charge of \$81.07, and the transferred balance of \$832.85 from Mr. Enigwe's previous service address of 1443 70<sup>th</sup> Avenue. Tr. 38, 39.

8. On or about April 7, 2015, PGW issued a shut off notice to Mr. Enigwe due to the account balance at the service address. PGW Ex. 1, page 4 of 8.

9. On April 7, 2015 Mr. Enigwe attempted to get grant money from the Utility Emergency Services Fund (UESF) to help pay his bill. PGW Ex. 1, page 4 of 8.

10. Mr. Enigwe that he had to apply for LIHEAP and CRISIS grants before he could apply for UESF funds. Tr. 7, 13, 14.

11. Mr. Enigwe applied for and received a grant in the amount of \$100 from the Low Income Home Energy Assistance Program (LIHEAP), which was applied to Mr. Enigwe's PGW account on March 25, 2015. PGW Ex. 5.

12. Mr. Enigwe applied for and received a CRISIS grant in the amount of \$500, which was applied to Mr. Enigwe's PGW account on May 6, 2015. PGW Ex. 5.

13. On April 7, 2015, a UESF representative named Eileen from the Germantown Crisis Center contacted PGW to obtain Mr. Enigwe's account balance, and was told that the current balance was \$2,190.59. Tr. 29, PGW Ex. 1, page 3 of 8.

14. UESF never called PGW back after April 7, 2015 to discuss Mr. Enigwe's account. Tr. 29.

15. Ms. Pearson works with PGW's Universal Services Department on a daily basis. Tr. 50.

16. PGW's Universal Services Department coordinates grant benefits with the various grant agencies including UESF. Tr. 50.

17. UESF would normally place a call back to PGW's Universal Services Department if there was any issue with a PGW customer's eligibility for a UESF grant. Tr. 50, 51.

18. On April 9, the CRISIS program advised PGW that Mr. Enigwe was eligible for the CRISIS grant. PGW Ex. 1, page 3 of 8.

19. PGW's standard procedure is to put a 30 day hold on a customer's account when PGW is advised that the customer will receive a CRISIS grant. Tr. 28.

20. The purpose of the hold is to allow the CRISIS money to be credited to the customer account. Tr. 28.

21. PGW also cancels any customer shut off notice when PGW is advised that the customer will receive a CRISIS grant, because PGW does not consider the account to be in jeopardy at that point. Tr. 28.

22. When the CRISIS program notified PGW that Mr. Enigwe was eligible for the CRISIS grant, PGW placed a 30 day hold on the account and canceled the shut off notice. Tr. 28.

23. UESF determined that Mr. Enigwe was not eligible for the UESF grant because one of the requirements for the grant was that Mr. Enigwe had to have an active shut off notice on his account at the time he applied for the grant. Tr. 7, 8.

24. On April 27, 2015, Mr. Enigwe contacted PGW to state that UESF was not providing the grant because he did not have an active shut off notice at that time. PGW Ex. 1, page 3 of 8.

25. During the April 27, 2015 phone call, PGW advised Mr. Enigwe that the shut off hold was for 30 days, and that Mr. Enigwe had the option of waiting until May 8, 2015 for the shut off hold to be removed, following which the account would go back into collections, and that Mr. Enigwe could go back to UESF to reapply for the grant. PGW Ex. 1, page 3 of 8.

26. Mr. Enigwe filed a Complaint with the Commission's Bureau of Consumer Services on April 26, 2015 at BCS Case Number 3432723. Tr. 30, 31.

27. Mr. Enigwe was seeking a payment arrangement through the BCS in his BCS Complaint. Tr. 30, 31, PGW Ex. 3, 4.

28. Mr. Enigwe certified to the BCS that there were four occupants in the home with a combined gross monthly income of \$4,246.74. Tr. 31, PGW Ex. 1, page 1 of 8, PGW Ex. 3, PGW Ex. 4.

29. Based on the certified income and occupants, the BCS ordered a payment arrangement of \$201 per month, consisting of \$107 per month for the then current budget amount and \$94 per month towards the arrearages. Tr. 31, PGW Ex. 4.

30. Mr. Enigwe did not provide any evidence of a change in income or a significant change in circumstance at the hearing.

31. Mr. Enigwe currently has four occupants in his home with a combined gross monthly income of \$4,246.74. Tr. 31, PGW Ex. 1, page 1 of 8, PGW Ex. 3, PGW Ex. 4.

### 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). "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). In this proceeding, Mr. Enigwe seeks a payment arrangement that provides him with a lower monthly payment. Mr. Enigwe, 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. Replogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980), and Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980).

Any 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, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984).

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); *see also*, Kea v. Peoples Natural Gas Co., 60 Pa. PUC 215 (1985); Mill v. Pa. Public Utility Comm'n, 447 A.2d 1100 (Pa. Cmwlth. 1982). PGW 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-00971874 (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 (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 (Order entered March 17, 2004).

In this case, Mr. Enigwe stated that he would like a payment arrangement, and that PGW was responsible for his loss of the \$1,500 UESF grant because PGW rescinded his shut off notice which then made him ineligible for the grant. Mr. Enigwe stated that he has inconsistent income through his employment with Uber, and that he should be granted an affordable payment arrangement as a result. Mr. Enigwe further requested that the Commission

remove \$1,500 from his account balance due to PGW's actions regarding the removal of the shut off notice which caused Mr. Enigwe to become ineligible for the UESF grant money.

1) Mr. Enigwe's claim regarding the \$1,500 UESF grant

Regarding Mr. Enigwe's argument that PGW is legally responsible for the loss of the \$1,500 UESF grant, Mr. Enigwe has not pointed to any section of the Public Utility Code or the Commission's Regulations which supports his argument. My review of the relevant Code sections and Regulations also reveals no legal support for Mr. Enigwe's argument.

In addition to the above, PGW witness Pearson testified that UESF never followed up with PGW after Mr. Enigwe received the CRISIS grant, and that it would have been UESF's normal procedure to follow up if there was some type of issue with the UESF grant money. Tr. 28, 29, 30, 45. Ms. Pearson further testified that on the one occasion that UESF did call to obtain Mr. Enigwe's account balance (April 7, 2015), PGW provided the requested information to assist Mr. Enigwe in obtaining the grant money. Tr. 29, PGW Ex. 1, page 3 of 8.

It should also be noted that PGW Exhibit 1 demonstrates that, during the April 27, 2015 phone call between Mr. Enigwe and PGW, PGW advised Mr. Enigwe that the shut off hold was for a period of 30 days, and that Mr. Enigwe had the option of waiting until May 8, 2015 for the shut off hold to be removed. PGW Ex. 1, page 3 of 8. After that time, the account would go back into collections, and then Mr. Enigwe could go back to UESF to reapply for the grant. PGW Ex. 1, page 3 of 8.

In sum, Mr. Enigwe has failed to prove through competent record evidence that PGW was legally required to work with UESF in order to secure UESF grant money on behalf of Mr. Enigwe. Perhaps just as importantly, even if such a legal requirement existed, Mr. Enigwe has produced no competent record evidence to suggest that PGW failed to comply with any such requirement. Indeed, the competent record evidence shows that PGW fully cooperated with UESF when contacted by the agency, and that PGW offered Mr. Enigwe a full explanation of how he could wait for the shut off hold to be lifted so that he could then reapply with UESF for the grant

money. Since Mr. Enigwe has failed to show that PGW's actions with regard to UESF grant money violated the Public Utility Code or a Commission Order or Regulation, his claim in that regard will be denied. Since Mr. Enigwe's claim that PGW's actions caused him to lose the grant money is denied, his request that the Commission credit his PGW account in the amount of \$1,500 (the amount of the grant) is also denied.

2) Mr. Enigwe's request for a more favorable payment arrangement

In his Complaint, Mr. Enigwe has also requested a more favorable payment arrangement, stating that he cannot meet the terms of the payment arrangement ordered by the BCS in Case Number 3432723. In that proceeding, the BCS had ordered that PGW allow Mr. Enigwe 36 months to pay his outstanding balance. This resulted in a payment arrangement for Mr. Enigwe in the amount of \$107 per month for current billing and \$94 per month towards the arrears, based upon Mr. Enigwe's self-reported income to the BCS in the combined gross monthly amount of \$4,246.67. The BCS determined that the reported income was 207% of the federal poverty level of \$2,050 gross monthly income for a household of four people, entitling Mr. Enigwe to a 36 month payment plan since the reported income was between 150% and 250% of the federal poverty guidelines.

Pursuant to 52 Pa.Code § 56.173(a), review of the BCS decision is de novo, meaning that the review is based on the evidentiary record created at the hearing. I will therefore make an independent evaluation of the record in determining to what length of repayment period the Complainant is entitled, based on the evidence gathered at the hearing.

Disposition of the payment arrangement portion of the Complaint 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). Chapter 14 limits the length of time the Commission can order a company to allow a customer to resolve an unpaid balance on an account that is subject to a payment arrangement based on the gross monthly household income in relation to the federal poverty level. For example, the

Commission may order a company to allow a customer whose gross monthly household income is between 150% and 250% of the federal poverty level a payment arrangement over a period of up to 36 months. 66 Pa.C.S. § 1405(b)(2). 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).

During the Hearing, Mr. Enigwe did not offer any competent evidence to show that his household income was any different than the \$4,246.67 gross monthly income that he reported to the BCS when he filed his BCS Complaint at Case Number 3432723. When questioned by counsel for PGW, Mr. Enigwe could not even recall his gross income from the month prior to the hearing, stating that he would have to check but that he made less than \$4,000 but may have earned more than \$3,000. Tr. 20. Neither statement constitutes competent evidence of income, as the numbers were admittedly dependent upon checking records of which Mr. Enigwe had no current recollection. Additionally, Mr. Enigwe testified that he couldn't remember the last time he provided income information to PGW. Tr. 20. Finally, Mr. Enigwe did not offer any testimony to show that he did not have four household members, as he originally reported to the BCS.

Given that Mr. Enigwe provided no competent evidence to show a household income or number of occupants that differed from the numbers that he reported to the BCS, I conclude that the figures provided by Mr. Enigwe to the BCS represent the only competent evidence of household income and occupants in the record before me. I conclude that Mr. Enigwe has a gross monthly household income of \$4,246.67. I further conclude that Mr. Enigwe has four members living in his household.

In sum, the portion of Mr. Enigwe's Complaint seeking a more favorable payment arrangement will be denied, although his request for a payment arrangement is granted. When applying the relevant statutory law to the record evidence in this case, Mr. Enigwe is entitled to a payment arrangement of no more than 36 months to pay his outstanding balance that has accrued while he was receiving utility service from PGW. Mr. Enigwe's self-reported income to the

BCS is 207% of the federal poverty guidelines, which falls between 150% and 250% under 66 Pa.C.S. § 1405(b)(2) and therefore entitles him to a maximum 36 month payment arrangement for a household of four people. Mr. Enigwe has otherwise failed to demonstrate that PGW has violated the Public Utility Code or a Commission Order or Regulation with regard to payment arrangements.

### CONCLUSIONS OF LAW

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

2. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). "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).

3. 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. Replogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980), and Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980).

4. Any 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, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and

Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984).

5. Mr. Enigwe has failed to satisfy his burden of proof to show that PGW was legally responsible for his loss of the \$1,500 UESF grant, or that PGW has otherwise violated the Public Utility Code or any Commission Order or Regulation regarding the UESF grant.

6. PGW 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-00971874 (Order entered January 4, 2002); Angie's Bar v. Duquesne Light Co., 72 Pa. PUC 213 (1990).

7. 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 (Order entered April 8, 1988).

8. 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 (Order entered March 17, 2004).

9. Chapter 14 of the Public Utility Code 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).

10. The Commission may order a company to allow a customer whose gross monthly household income is between 150% and 250% of the federal poverty level a payment arrangement over a period of up to 36 months. 66 Pa.C.S. § 1405(b)(2).

11. Mr. Enigwe's self-reported gross monthly income of \$4,246.67 for a household of four is between 150% and 250% of the federal poverty level.

12. 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).

13. Mr. Enigwe has failed to satisfy his burden to demonstrate that he is entitled to a payment arrangement longer than 36 months, or that PGW has otherwise violated the Public Utility Code or any Commission Order or Regulation regarding payment arrangements.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Ifedoo Enigwe on June 20, 2016 with the Pennsylvania Public Utility Commission against Philadelphia Gas Works at Docket Number F-2016-2551964 is hereby denied insofar as it seeks a credit in the amount of \$1,500 in connection with the UESF grant.

2. That the formal Complaint filed by Ifedoo Enigwe on June 20, 2016 with the Pennsylvania Public Utility Commission against Philadelphia Gas Works at Docket Number F-2016-2551964 is hereby granted insofar as it seeks a Commission ordered payment arrangement, the terms of which follow herein below in this Order.

3. That within 30 days of the date the Commission enters its Order in this case, Philadelphia Gas Works shall tender a bill to Ifedoo Enigwe for the unpaid balance of his gas bill.

4. That within 30 days of the date that Philadelphia Gas Works tenders the bill described in Paragraph 2, Ifedoo Enigwe shall pay Philadelphia Gas Works the regular amount of

