

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Howard T. Richardson	:	
	:	
v.	:	F-2017-2587689
	:	
Philadelphia Gas Works	:	

**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 of a natural gas distribution company seeking a payment arrangement for his outstanding amount owed and arguing that there are incorrect charges on his bill. The customer demonstrated that he is entitled to a payment arrangement of five years to pay the amount owed. The customer, however, failed to demonstrate that there are incorrect charges on his bill. Therefore, the customer’s request for a payment arrangement for his outstanding amount owed will be granted but the portion of his complaint averring incorrect charges on his bill will be denied.

**HISTORY OF THE PROCEEDING**

On January 9, 2017, Howard T. Richardson filed a formal complaint with the Pennsylvania Public Utility Commission against Philadelphia Gas Works (PGW or the company), Docket Number F-2017-2587689. The complaint was a timely appeal of a decision of the Commission’s Bureau of Consumer Services, case number 2469544. In his complaint,

Mr. Richardson averred that PGW is threatening to shut off his utility service or has already shut off his service, that he would like a payment arrangement and that there are incorrect charges on his bill. For relief, Mr. Richardson stated that he would like to make his monthly payment lower because he cannot afford high gas or electric bills.

The formal complaint was served on PGW electronically by the Commission's Secretary.<sup>1</sup>

On February 27, 2017, PGW filed an answer to Mr. Richardson's complaint admitting or denying the various averments made in the complaint. In particular, PGW admitted that it recently issued a termination notice for service at the service address and that Mr. Richardson seeks a payment arrangement for service received there. PGW denied, however, that there are incorrect charges on Mr. Richardson's bill. PGW explained that service was established at the service address as of March 9, 2015 and that Mr. Richardson enrolled in PGW's customer responsibility program (CRP) on April 6, 2015. PGW added that Mr. Richardson was removed from CRP at his request on July 6, 2015 and entered into a payment arrangement with PGW on July 29, 2015. PGW stated that Mr. Richardson did not keep the payment arrangement and accumulated a balance of \$2,909.98 at which time he received a payment arrangement from BCS for a budget balance of \$194 plus \$49 towards arrears for a total of \$243 per month. Mr. Richardson then timely appealed that BCS arrangement.

On March 8, 2017, a telephonic hearing notice was issued establishing an initial telephonic hearing for Thursday, April 6, 2017 and assigning me as the presiding officer. A prehearing order dated March 13, 2017 was issued setting forth various procedural rules that would govern the hearing.

---

<sup>1</sup> PGW has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702, and has agreed to electronic service instead under the Commission's Waiver of 702 program. Service is listed in the Audit History of the Commission's docketing system for this case as having been effected on February 7, 2017.

The initial telephonic hearing convened on April 6, 2017, as scheduled. Mr. Richardson appeared *pro se* and presented oral testimony. Laureto Farinas, Esquire appeared on behalf of PGW and presented one witness who sponsored three exhibits that were entered into the record. A transcript of 30 pages was created. The record in this case closed on April 25, 2017 when the transcript was submitted to the Commission.

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

### FINDINGS OF FACT

1. The Complainant in this case is Howard T. Richardson.
2. The Respondent in this case is Philadelphia Gas Works.
3. The service address is 2447 West Elkhart Street, Apt. 2F, Philadelphia, PA.
4. Two people reside in the home at the service address. Tr. 10.
5. The total gross household monthly income at the home is \$919 a month from social security disability. Tr. 10.
6. Tiffany Jones is a Senior Customer Review Officer for PGW, has been employed by PGW for ten years and is responsible to investigate informal and formal complaints that customers file against PGW at the Commission. Tr. 12-13.
7. PGW Exhibit Number 1 is a Statement of Account for Mr. Richardson at the service address showing details regarding the amount of usage, charges and payments each month. PGW Exh. No. 1; Tr. 13.

8. PGW Exhibit Number 2 is the payment arrangement history for Mr. Richardson detailing one payment arrangement Mr. Richardson was given by the Company and one payment arrangement Mr. Richardson was given by the Commission. PGW Exh. No. 2; Tr. 13-14.

9. PGW Exhibit Number 3 is the decision of the Commission's Bureau of Consumer Services in response to Mr. Richardson's informal complaint. PGW Exhibit number 3; Tr. 14.

10. On April 6, 2015, Mr. Richardson enrolled in PGW's CRP program at which time his balance of \$115.37 was frozen so that he could participate in the program going forward. PGW Exh. No. 1; Tr. 17.

11. From April 6, 2015 through July 6, 2015, Mr. Richardson made two payments and reduced his outstanding balance from \$115.27 to \$102.17. PGW Exh. No. 1; Tr. 18.

12. On July 6, 2015, Mr. Richardson visited a PGW office and requested that he be removed from the CRP program. PGW Exh. No. 1; Tr. 8, 18, 23.

13. As a result of leaving the CRP program, the outstanding balance of \$102.17 immediately became due on Mr. Richardson's account. Tr. 18.

14. After leaving the CRP program on July 6, 2015, Mr. Richardson only made two more payments on his account and two payments were received from LIHEAP. PGW Exh. No. 1; Tr. 18-19.

15. As of March 1, 2017, the outstanding balance on the account is \$3,453.19. PGW Exh. No. 1; Tr. 19.

16. Mr. Richardson accrued \$102.17 of gas service while on CRP. PGW Exh. No. 1.

17. In order to return to the CRP program, Mr. Richardson would need to make a one-time catch-up payment of \$1,313.51 and then pay \$87.71 a month for one year. Tr. 20.

18. PGW gave Mr. Richardson a payment arrangement on July 29, 2015 that he did not keep. PGW Exh. No. 2; Tr. 20.

19. Mr. Richardson received a payment arrangement from the BCS on November 22, 2016 for \$243 month for sixty months based on monthly household income of \$919. PGW Exh. Nos. 2 and 3; Tr. 20-21, 23-24.

20. The payment arrangement given to Mr. Richardson by BCS was comprised of monthly payments of \$194 for budget billing and \$49 towards arrearages. PGW Exh. Nos. 2 and 3; Tr. 21-24.

21. The CRP payment PGW determined for Mr. Richardson was based on 9 percent of his income. Tr. 22.

## DISCUSSION

### Legal standard

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. Richardson requested that he be

given a payment arrangement with lower monthly payments. Mr. Richardson, 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).

In addition, 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). Furthermore, review of BCS informal complaint decisions will be heard de novo by an administrative law judge or special agent. 52 Pa.Code § 56.173(a); *see also*, 52 Pa.Code § 56.403(a).

In this case, Mr. Richardson averred in his complaint that there are incorrect charges on his bill and that he would like a lower payment arrangement. During the hearing, Mr. Richardson testified that he enrolled in PGW's customer responsibility program (CRP) and was paying \$80 a month but that he asked to be removed from that program during the summer when he believed he was not using \$80 worth of gas each month. Mr. Richardson testified that PGW penalized him as a result. In response to Mr. Richardson's complaint, PGW presented the testimony of Tiffany Jones, a Senior Customer Review Officer, who discussed various details regarding Mr. Richardson's account, including the Statement of Account for Mr. Richardson's

service, as well as the history of payment arrangements given to Mr. Richardson and the decision issued by BCS.

Substantial record evidence demonstrates that Mr. Richardson has satisfied his burden to demonstrate that he is entitled to a Commission-ordered payment arrangement. However, Mr. Richardson has failed to satisfy his burden to demonstrate that there are incorrect charges on his bill. Mr. Richardson's complaint will, therefore, be granted in part and denied in part.

**The averments of incorrect charges on the bill will be denied**

With regard to his argument that there are incorrect charges on his bill, during the hearing, Mr. Richardson testified that he removed himself from PGW's CRP program because he was not using the \$80 a month of gas that he was being charged. Tr. 8. Mr. Richardson then testified that "and so then I started getting these high bills that penalize me." Tr. 8. In response, PGW witness Jones provided extensive detail regarding Mr. Richardson's account. In particular, Ms. Jones testified regarding the amount of gas each month Mr. Richardson consumed at the service address, how much he was charged for that consumption and how much he paid for that consumption. PGW Exh. No. 1; Tr. 15-20. Ms. Jones provided this information for each month beginning with Mr. Richardson's enrollment in March, 2015 through March, 2017 in support of the Company's position that Mr. Richardson has been billed correctly at all times.

A close review of PGW Exhibit Number 1 reveals that Mr. Richardson's balance was \$115.37 when it was frozen at the time he enrolled in CRP. PGW Exh. No. 1; Tr. 17. Mr. Richardson then made two payments on CRP of \$82.71 each. PGW Exh. No. 1; Tr. 17. When he removed himself from CRP, \$102.17 was placed back on Mr. Richardson's account representing the remaining balance on the CRP portion of the account. PGW Exh. No. 1.; Tr. 18. Mr. Richardson subsequently made one payment on August 3, 2015 and another payment on October 5, 2015 but made no other payments on his account after that time. PGW Exh. No. 1; Tr. 18-19. Other than two credits of \$100 and \$200 from the Low-Income Home Energy Assistance Program that were credited to Mr. Richardson's account on January 25, 2017, there were no other payments or credits on Mr. Richardson's account. PGW Exh. No. 1. The lack of

payments for approximately 18 months, as well as his continued consumption, caused Mr. Richardson's balance to increase from \$243.84 on October 27, 2015 to \$3,543.19 on March 1, 2017. PGW Exh. No. 1.

As noted above, if PGW rebuts Mr. Richardson's evidence, the burden of going forward with the evidence shifts back to Mr. Richardson, who must rebut PGW's evidence by a preponderance of the evidence. *Milkie, supra*. 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. *Id.* Mr. Richardson has failed to satisfy his burden of proof that there are incorrect charges on his bill. Substantial record evidence demonstrates that Mr. Richardson's account balance dramatically increased due to his failure to make monthly payments on his account – not as a result of incorrect charges. PGW has demonstrated that there are no incorrect charges and that Mr. Richardson has at all times been correctly billed. The penalty Mr. Richardson claims he received when he removed himself from CRP was, in fact, the balance of his account that was frozen when he was placed on CRP being returned to his account. This is not a penalty but how the CRP program works – if a customer does not complete his or her obligation while on CRP, the amount remaining of what was frozen when enrollment in CRP occurred is returned to the account. As a result, Mr. Richardson's argument that he was incorrectly billed will be denied.

**The request for a payment arrangement will be granted**

With regard to Mr. Richardson's request for a payment arrangement to pay his outstanding balance, this 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). The Commission may establish a payment arrangement for 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 establish 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).

In this case, record evidence demonstrates that two people live in the home at the service address and that the total gross monthly income at the home is \$919 a month from social security disability. Tr. 10. For homes with two people, such as Mr. Richardson's, 100% of the federal poverty level is \$1,353. Therefore, Mr. Richardson is at 68% of the federal poverty level ( $919 / 1353 = 67.9$ ). As a result, PGW will be directed to give Mr. Richardson a payment arrangement that enables him to pay his outstanding amount owed to PGW over 60 months because the household income is less than 150% of the federal poverty level. 66 Pa.C.S. § 1405(b)(1). Chapter 14, however, prohibits arrearages accrued while on a customer assistance program to be recovered through a payment arrangement. 66 Pa.C.S. § 1405(c). Therefore, the \$102.17 amount accrued by Mr. Richardson from April 6, 2015 to July 6, 2015 cannot be recovered through the payment arrangement. *See*, PGW Exh. No. 1.

It is noted, however, that Mr. Richardson may instead want to consider re-enrolling in PGW's CRP. As Ms. Jones testified, Mr. Richardson could pay a catch-up amount of his last CRP agreement of \$1,313.51 and then continue to pay \$87.71 a month. Tr. 20. Re-enrolling in PGW's CRP will not be directed as part of this decision but is, nonetheless, a consideration for Mr. Richardson.

In either regard, Mr. Richardson must pay for the utility service he uses. Record evidence demonstrates that he did not make any payments on this account for 18 months and, therefore, a high balance accrued. In addition, Mr. Richardson removed himself from PGW's CRP program at a time when his monthly payment was more than his monthly usage failing to realize that the program offers a stable rate throughout the year so that he pays more than he uses in the summer but less than he uses in the winter in an effort to make his overall utility payments more manageable.

### **Conclusion**

In conclusion, Mr. Richardson has satisfied his burden to demonstrate that he is entitled to a payment arrangement to pay his outstanding balance owed to PGW. Mr. Richardson will be given five years to pay his outstanding balance, minus the portion accrued while on CRP,

because his household income is below 150% of the federal poverty level. Mr. Richardson, however, has failed to satisfy his burden to demonstrate that there are incorrect charges on his bill. Mr. Richardson's complaint will, therefore, be granted in part and denied in part.

### 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.Cmwlt 23, 480 A.2d 382 (1984).

9. Review of BCS informal complaint decisions will be heard de novo by an administrative law judge or special agent. 52 Pa.Code § 56.173(a).

10. 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).

11. 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).

12. Chapter 14 prohibits arrearages accrued while on a customer assistance program to be recovered through a payment arrangement. 66 Pa.C.S. § 1405(c).

13. Mr. Richardson has satisfied his burden to demonstrate that he should be given five years to pay the outstanding balance accrued on his account with PGW, minus the portion accrued while on CRP. 66 Pa.C.S. § 1405(d).

14. Mr. Richardson has failed to satisfy his burden to demonstrate that there are incorrect charges on his bill.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Howard T. Richardson on January 9, 2017 against Philadelphia Gas Works, docket number F-2017-2587689, is hereby granted in part and denied in part.

2. That the portion of Mr. Richardson's complaint requesting a payment arrangement to pay his outstanding amount owed to Philadelphia Gas Works is granted.

3. That the portion of Mr. Richardson's complaint averring that there are in correct charges on his bill is 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 Mr. Richardson for the unpaid balance of his gas bill, minus the amount accrued while enrolled in the customer assistance program, along with the monthly amount accrued representing billing for services rendered on a going forward basis.

5. That Mr. Richardson shall pay Philadelphia Gas Works the regular monthly bill amounts 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 his account has been paid in full.

6. That, as long as Mr. Richardson 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 Mr. Richardson 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: May 9, 2017

\_\_\_\_\_/s/\_\_\_\_\_  
Joel H. Cheskis  
Administrative Law Judge