

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kenneth A. Polk

v.

Philadelphia Gas Works

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F-2017-2602667

INITIAL DECISION

Before
Rebecca Waldemar
Special Agent

INTRODUCTION

The Complainant filed a formal Complaint requesting an affordable payment arrangement. This decision grants the request and sets a payment arrangement requiring the balance to be repaid over a period of 36 months.

HISTORY OF THE PROCEEDING

On May 4, 2017, Kenneth A. Polk (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission against Philadelphia Gas Works (PGW or Respondent) requesting a payment arrangement. In his Complaint, he averred that PGW has threatened to terminate his service, or had already terminated his service, and that PGW had broken a payment agreement because the company made a mistake. He requested a payment arrangement he could afford. On May 26, 2017, PGW filed an Answer to the Complaint. In its Answer, PGW admitted that it had issued a termination notice to the Complainant.

A Telephone Hearing Notice dated June 7, 2017, advised the parties that an initial telephonic hearing was scheduled for Wednesday July 12, 2017, at 10:00 a.m. The case was

assigned to me, pursuant to 52 Pa. Code § 56.174. A Prehearing Order dated June 21, 2017 advised the parties of the date and time of the scheduled hearing and informed them of the procedures applicable to this proceeding. In accordance with the provisions of the Prehearing Order, the Respondent submitted proposed exhibits.

The initial telephonic hearing convened as scheduled.¹ Mr. Polk appeared *pro se* and testified on his own behalf. Graciela Christlieb, Esq., counsel for Respondent, presented the testimony of one witness, Jessica Glace, a customer review officer for PGW, who sponsored three exhibits which were admitted into the record. At the conclusion of Ms. Glace's testimony, it became clear that the Complainant had dropped off the line. I kept the record open until the next day to give Mr. Polk time to call my office. He did not call and the record closed on July 13, 2017.

FINDINGS OF FACT

1. The Complainant is Kenneth A. Polk, who receives natural gas utility service from the Respondent at 5101 Pulaski Ave., Philadelphia, Pennsylvania.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant's household consists of himself and a minor child.
4. The Complainant receives \$1077.34 every other week from Worker's Compensation for a total of \$2334.24 per month ($1077.34 \times 26 \div 12$). There is no other household income.
5. As of the date of the hearing, the Complainant's past due account balance was \$1032.99.

¹ A tape recording of the hearing was made, no court reporter being present.

6. The Complainant has broken four payment arrangements given by the Respondent.

7. The Commission's Bureau of Consumer Services issued a payment arrangement to Mr. Polk on April 18, 2017.² He has made all payments accordingly.

8. Mr. Polk was removed from PGW's customer assistance program on February 17, 2017 because his income was above the eligibility threshold.³

DISCUSSION

At the hearing, Mr. Polk requested a payment arrangement and objected to being removed from PGW's customer assistance program. He stated that he could not afford the payment arrangement issued by the Commission's Bureau of Consumer Services. The Respondent did not object to a payment arrangement.

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving by substantial evidence that he is entitled to the requested relief. 66 Pa. C.S. § 332(a). To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm.*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Public Utility Comm.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Public Utility Comm.*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa. C.S.A. § 704. More is required than a mere trace of evidence or a

² The instant Complaint is a timely appeal of that decision at Bureau of Consumer Services case number 350151.

³ PGW's tariff provides that a customer's annual gross income must be at or below 150% of the federal poverty level to participate in the customer assistance program.

suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Public Utility Comm.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlt. 1984).

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 agreements. This law authorizes the Commission to establish payment arrangements between a public utility and its customers within prescribed limits that the Commission must follow. 66 Pa.C.S. § 1405(a).

The maximum length of time to resolve an unpaid balance that the Commission is authorized to allow depends upon the Complainant's gross monthly household income as follows: (1) Five years for customers with an income not exceeding 150% of the federal poverty level; (2) three years for customers with an income exceeding 150% of the federal poverty level but not by more than 250%; (3) one year for customers with an income exceeding 250% of the federal poverty level but not by more than 300%; and (4) six months for customers with an income exceeding 300% of the federal poverty level. 66 Pa.C.S. § 1405(b).

The record does not reflect that the Complainant has defaulted on any payment arrangement established by the Commission. I find that Mr. Polk is a level two customer consistent with Chapter 14 and will set a payment arrangement accordingly. Mr. Polk testified that his household consists of himself and a minor child. His monthly gross household income is \$2334.24 per month. For a household of two, his monthly household income falls between 150 and 200% of the federal poverty level which makes him a level two income customer under Chapter 14. Consequently, he may be given a payment arrangement allowing 36 months to reconcile his past due balance. 66 Pa.C.S. § 1405(b)(1).

Regarding Mr. Polk's participation in Respondent's customer assistance program; although the Complainant objected to being removed from the program, he did not present any testimony or other evidence that he was wrongfully excluded. Conversely, PGW presented

evidence that the Complainant did not meet the income criteria for inclusion in the program. This complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S.A. § 701.
2. The Complainant had the burden of proof. 66 Pa. C.S.A. § 332(a).
3. The Responsible Utility Customer Protection Act, 66 Pa. C.S.A. §§ 1401, *et seq.*, applies to this proceeding.
4. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa. C.S. § 1405(a).
5. The Complainant has met his burden of proving that the Commission may grant him a payment arrangement allowing him 36 months to pay his past due balance.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Kenneth Polk against Philadelphia Gas Works at Docket No. F-2017-260667 is sustained in part and dismissed in part.
2. That Kenneth A. Polk's complaint of being removed from Philadelphia Gas Works' customer assistance program is dismissed.

3. That Kenneth A. Polk's request for a payment arrangement is granted.

4. That Kenneth A. Polk shall make monthly payments consisting of his current charges plus one 1/36th of the balance accrued on his account, beginning with the first billing due date following the entry of a final Commission Order in this case.

5. That as long as Kenneth A. Polk keeps the payment schedule stated in this Order, Philadelphia Gas Works shall not suspend or terminate his utility service except for valid safety or emergency reasons or assess late payments or finance charges against his account.

6. That if Kenneth A. Polk does not keep the payment schedule stated in this Order, Philadelphia Gas Works is authorized to suspend or terminate his utility service in accordance with the Commission's statute and regulations.

7. That the Secretary mark this docket closed.

Date: August 2, 2017

_____/s/
Rebecca Waldemar
Special Agent