

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kyle D. Mitchell	:	
	:	
v.	:	F-2016-2578811
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

The customer filed this Complaint to request an affordable payment arrangement. This decision grants the request and establishes a payment arrangement.

HISTORY OF THE PROCEEDING

On November 28, 2016, Kyle D. Mitchell (Complainant or Mr. Mitchell) filed a formal Complaint against Philadelphia Gas Works (Respondent or PGW), at Docket No. F-2016-2578811. In his Complaint, Mr. Mitchell alleged that he was financially unable to comply with the terms of his current payment arrangement. As relief, Mr. Mitchell requested that the payment of \$851.00 be cut in half.

The Complaint is a timely appeal of the Commission's Bureau of Consumer Services (BCS) decision at BCS No. 3485992, which established a payment arrangement on behalf of the Complainant.

On December 27, 2016, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated December 30, 2016, notified the parties that an initial hearing was scheduled for Wednesday, February 15, 2017, at 9:30 a.m.

A Prehearing Order was issued on January 20, 2017, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on February 15, 2017. Mr. Mitchell appeared *pro se* and testified in support of the Complaint. Graciela Christlieb, Esq. represented the Respondent, and presented the testimony of Joyshalyn Moore. The Respondent sponsored three exhibits which were admitted into the record.

The record in this matter closed on March 17, 2017.

FINDINGS OF FACT

1. The Complainant is Kyle D. Mitchell, who resides at 9817 Bonner Street, Philadelphia, PA 19115 (Service Address). Tr. 6.
2. The Respondent is Philadelphia Gas Works.
3. Mr. Mitchell resides at the Service Address with his wife and their three children, who are 16, 14, and nine years old. Tr. 14.
4. Mr. Mitchell moved to the Service Address soon after he got married in August of 2016. Tr. 11.
5. Prior to August 2016, Mr. Mitchell resided at 23 South Redfield Street, Philadelphia, PA, where he accumulated an outstanding balance of \$4,391.71. Tr. 8-9, PGW Exhibit 2.

6. On August 1, 2016, Mr. Mitchell established service in his name at the Service Address. PGW Exhibit 1.

7. On August 22, 2016, PGW transferred Mr. Mitchell's outstanding balance for the 23 South Redfield Street address to his current account. Tr. 9, PGW Exhibit 1.

8. Mr. Mitchell works full-time for the City of Philadelphia. Tr. 10.

9. Mr. Mitchell receives a gross income of \$54,000 per year from his employment with the City of Philadelphia. Tr. 13.

10. Mr. Mitchell's wife works full-time and receives a gross income of \$66,000 per year. Tr. 13-14.

11. The Mitchells have no other sources of income beside their employment. Tr. 14.

12. Mr. Mitchell has made only one payment of \$316.81 towards his account with PGW during the period February 2015 to February 2017. Tr. 19.

13. Mr. Mitchell's current outstanding balance with PGW is \$5,577.45. Tr. 18, 23.

DISCUSSION

In the present formal Complaint, Mr. Mitchell alleged that he was financially unable to comply with the terms of his current payment arrangement. As relief, Mr. Mitchell requested that the payment of \$851.00 be cut in half.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A.

§ 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S.A. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95 (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the complainant shifts to the respondent. If the evidence presented by the respondent is of co-equal weight, the complainant has not satisfied his burden of proof. The complainant would be required to provide additional evidence to rebut the evidence of the respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

At the hearing, Mr. Mitchell testified that he resided at 23 South Redfield Street, Philadelphia, PA, until August 2016 when he moved with Mrs. Mitchell to the Service Address. According to Mr. Mitchell, unpaying roommates and uncooperative relatives caused him to accumulate an outstanding balance of \$4,391.71 during his residence at the 23 South Redfield address. Tr. 8. He explained that he first entered into a payment arrangement with PGW but defaulted on it because he did not have the money to make the required payments. Tr. 9-10. After he finished school in 2014, he was able to find a higher paying job and entered into another payment arrangement with PGW. Tr. 10. However, unexpected car-related expenses caused him to delay his monthly payment to PGW and default on his payment arrangement. Tr. 10-11. He currently resides at the Service Address with his wife and their three children, who are 16, 14, and nine years old. Tr. 14. Mr. Mitchell explained that PGW transferred his outstanding balance from the 23 South Redfield Street address to his current account with PGW once he established service in his new name at his current address.

Mr. Mitchell testified that he currently works for the City of Philadelphia and being current with his payments to PGW, or at least being in a payment arrangement with the Responded, is one of the terms he must fulfill in order to keep his job. Tr. 10-11. Mr. Mitchell's gross income from his employment with the City of Philadelphia is \$54,000 per year. Mr. Mitchell's wife works full-time and receives a gross income of \$66,000 per year. The Mitchells have no other sources of income beside their employment.

In response to Mr. Mitchell's testimony, PECO's witness, Ms. Moore, confirmed Mr. Mitchell had accumulated an outstanding balance of \$4,391.71 at his 23 South Redfield Street address. On August 1, 2016, Mr. Mitchell established service in his name at the Service Address. On August 22, 2016, PGW transferred Mr. Mitchell's outstanding balance for the 23 South Redfield Street address to his current account. In the two years prior to the hearing, Mr. Mitchell made only one payment of \$316.81 towards his account with PGW. His outstanding balance with PGW is \$5,577.45.

Ms. Moore also confirmed that Complainant had entered and defaulted on two Company-issued payment arrangements: one on November 15, 2013, and another on

February 25, 2015. Tr. 19-20, PGW Exhibit 2. In addition, she testified that on October 25, 2016, Mr. Mitchell was issued another payment arrangement by the Commission's BCS, at BCS Case # 3485992. Tr. 20-22, PGW Exhibit 3. The present Complaint is a timely appeal of that BCS decision.

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 arrangements. This law authorizes the Commission to establish payment arrangements between a public utility and its customers, as well as applicants for service, within prescribed limits that the Commission must follow. 66 Pa.C.S. § 1405(a). In cases where the Commission is authorized by law to establish a payment arrangement between a customer and a utility, it has the responsibility to exercise its authority very judiciously where a utility has lawfully terminated a customer for nonpayment. Specifically, the Commission should exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of good faith effort to pay their utility bills or who have experienced a significant change of circumstances beyond their control. *George Crawford v. National Fuel Gas Distribution Corp.*, C-20066348 (Opinion and Order entered December 6, 2007).

A review of Mr. Mitchell's payment history reveals that he made only one payment of \$316.81 in the 24 month prior to the hearing. The record contains no evidence of what his payment history was before February of 2015. PGW Exhibit 1. However, the record does show that Mr. Mitchell has not received a prior Commission-issued payment arrangement beyond the one issued by BCS at BCS Case # 3485992, and due to a unique set of circumstances he is in danger of losing not only his gas service but also his employment if he fails to satisfy PGW's terms of service.

For the reasons stated above, I find that a payment arrangement is appropriate in this case. Section 1405 of the Public Utility Code regarding payment arrangements reads in pertinent part:

(a) General rule. --

The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. the commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

(b) Length of payment arrangements. --

The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

(1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.

(2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

(3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

66 Pa.C.S. § 1405(a) and (b). In addition, "Household income" is defined in section 1403 as "[t]he combined gross income of all adults in a residential household who benefit from the public service." 66 Pa.C.S. § 1403.

The Complainant's current monthly household income is \$10,000¹ for a household of five. Mr. Mitchell's household income exceeds 300% of the Federal poverty level. As a level 4 income customer, Mr. Mitchell is required to retire his balance with PGW within six months. See 66 Pa.C.S. § 1405(b)(4).

¹ \$54,000 (Mr. Mitchell's annual gross income) + \$66,000 (Mrs. Mitchell's annual gross income) = \$120,000 annual gross income for the Mitchells' household ÷ 12 month per year = \$10,000 monthly gross income for the Mitchells' household.

CONCLUSIONS OF LAW

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

2. The Complainant had the burden of proof. 66 Pa.C.S. § 332(a).

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

4. The Commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established in Chapter 14 of the Pennsylvania Public Utility Code. 66 Pa.C.S. § 1405.

5. It is Commission policy to exercise its discretion to issue payment arrangements when customers have demonstrated some evidence of a good-faith effort in paying utility bills or when customers have experienced a change of circumstances outside of their control. *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 at 15-16 (Order entered December 6, 2007).

6. "Household income" is defined as "[t]he combined gross income of all adults in a residential household who benefit from the public service" 66 Pa.C.S. § 1403.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Kyle D. Mitchell against Philadelphia Gas Works at Docket No. F-2016-2578811 is granted.

2. That Kyle D. Mitchell shall make monthly payments consisting of his current charges or budget bill plus one sixth (1/6th) 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.

3. That as long as Kyle D. Mitchell 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.

4. That, if Kyle D. Mitchell 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.

5. That the Secretary mark this docket closed.

Date: August 29, 2017

/s/
Eranda Vero
Administrative Law Judge