

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tamera Sykes	:	
	:	
v.	:	C-2017-2585443
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complaint of Tamera Sykes because she failed to meet her burden of demonstrating that PGW improperly determined her ineligible for the Customer Responsibility Program, that she should be eligible to receive a second Commission-issued payment arrangement, or that Philadelphia Gas Works improperly issued her termination notices.

HISTORY OF THE PROCEEDING

On January 20, 2017, Tamera Sykes (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed checkmarks in boxes indicating “[t]he utility is threatening to shut off or has already shut off my service” and “I would like a payment agreement.” Under the “requested relief” section, the Complainant indicated that she wants PGW to reinstate her in the Customer Responsibility Program (CRP) without requiring a cure amount.

On February 14, 2017, Respondent filed an Answer admitting that it terminated the service to 5431 Springfield Avenue, Philadelphia, PA (service address). Respondent further indicated that the Complainant enrolled in PGW's CRP on September 28, 2012, and that she was suspended from the program on January 3, 2014 because she failed to recertify income eligibility for the program. Respondent requested that the Commission dismiss the Complaint.

By Hearing Notice dated March 21, 2017, a hearing was scheduled for April 26, 2017, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on March 22, 2017. The Prehearing Order directed the parties to comply with various procedural requirements. It also explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

On April 7, 2017, I received a letter from the Complainant in which she requested a continuance of the April 26, 2017, hearing. Graciela Christlieb, Esq., counsel for PGW, subsequently notified me that she had no objection to the Complainant's continuance request.

By Order dated April 11, 2017, I granted the Complainant's continuance request.

By Hearing Cancellation/Reschedule Notice dated April 12, 2017, the hearing was rescheduled for June 2, 2017, at 10:00 a.m.

On May 24, 2017, Laureto Farinas, Esq. entered an appearance on behalf of PGW.

The hearing convened as scheduled on June 2, 2017. Complainant appeared *pro se* and testified. Complainant offered one exhibit which was admitted into the record. Respondent appeared and was represented by Laureto Farinas, Esq., who presented the testimony of Joyshalyn

Moore, a Customer Review Officer. Respondent offered three exhibits which were all admitted into the record.

The record in this case consists of a 55-page transcript and four exhibits. The record closed on July 14, 2017, when I received the transcript of the June 2, 2017 hearing.

FINDINGS OF FACT

1. The Complainant in this case is Tamera Sykes.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. Complainant resides at 5431 Springfield Avenue, Philadelphia, PA 19143 (service address). Tr. 5.
4. Complainant initiated service at the service address on October 1, 2012. Tr. 31.
5. PGW's Customer Responsibility Program (CRP) is a low-income program that is based on household size and total gross monthly household income. Tr. 31.
6. Upon enrollment in CRP, a customer's existing balance is set aside for possible forgiveness. Tr. 32.
7. If a customer on CRP makes monthly payments on time, 1/36th of their set aside balance is forgiven each month. Tr. 32.
8. Customers participating in CRP pay a monthly amount based on their income, household size and gas usage. CRP customers do not pay for their actual monthly usage. Tr. 32.

9. Complainant enrolled in PGW's CRP on September 28, 2012. Tr. 31, 36; PGW Exh. 2.

10. Pursuant to PGW's CRP program, the Complainant was required to pay \$113 per month. Tr. 31.

11. Complainant failed to recertify for CRP in January 2014. Tr. 41.

12. On January 3, 2014, PGW removed the Complainant from CRP and placed her set-aside balance of \$3,565.67 back in her account. Tr. 32-33, 41.

13. In June 2014, the Complainant tried to recertify for CRP but was determined to be income ineligible for the program based upon a W-2 tax form she supplied. Tr. 43-44.

14. Following the June 2014 determination, the Complainant attempted to recertify for CRP on several occasions without supplying pay-stubs or other acceptable proof of income. Tr. 45-47.

15. Since PGW removed the Complainant from the CRP program, PGW has billed the Complainant for her actual gas usage at the property instead of the \$113 CRP amount. Tr. 36-37; PGW Exh. 1.

16. On an unspecified date, PGW issued a ten-day termination notice to the Complainant. Tr. 6.

17. The ten-day termination notice informed the Complainant that PGW intended to terminate her gas service for non-payment, and of steps she could follow to avoid termination. Tr. 8-9.

18. On May 3, 2016, PGW terminated the Complainant's gas service for non-payment. Tr. 19, 27; PGW Exh. 1.

19. On May 4, 2016, PGW entered into a payment agreement with the Complainant, pursuant to which she was required to pay \$387 per month (\$292 towards arrears + \$95 budget amount = \$387). Tr. 9-10, 27-28, 35.

20. On May 5, 2016, PGW reconnected the Complainant's gas service. Tr. 27.

21. On July 23, 2016, the Complainant defaulted on her company-issued payment arrangement. Tr. 28.

22. On July 25, 2016, PGW issued the Complainant a ten-day termination notice. Tr. 29.

23. PGW did not terminate the Complainant's gas service. Tr. 29.

24. PGW received a \$200 LIHEAP grant for the Complainant on January 18, 2017. Tr. 30, 50. PGW Exh. 1.

25. Aside from the LIHEAP Grant, the Complainant has only made five payments towards her PGW bills since January 2015, for total payments of \$660.61. PGW Exh. 1.

26. The Complainant has not made a payment to PGW since her August 23, 2016 payment of \$28.27. Tr. 30; PGW Exh. 1.

27. On April 8, 2015, the Commission's Bureau of Consumer Services (BCS) issued the Complainant a payment arrangement pursuant to which she was required to pay \$279 per month (\$101 arrears + \$178 budget amount). Tr. 34.

28. The Complainant's Commission-issued payment arrangement was based on a one-person household with gross monthly income of \$1,200. Tr. 51.

29. On June 24, 2015, the Complainant defaulted on her Commission-issued payment arrangement. Tr. 34; PGW Exh. 2.

30. The Complainant's current gross-monthly household income is \$1,052. Tr. 21; C-1.

31. The Complainant's household consists of the Complainant and her 17-year-old son. Tr. 13, 52.

32. The Complainant's son has been part of her household the entire time that she has been at the service address. Tr. 52-53.

33. The Complainant's outstanding balance as of the time of the hearing was \$8,091.10, none of which accumulated under PGW's CRP program. Tr. 10, 42.

DISCUSSION

The Public Utility Code, 66 Pa.C.S.A. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

To establish a sufficient case and satisfy the burden of proof, complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa.P.U.C. 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more

convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

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).

In the present case, the Complainant has indicated that she wants to be placed back on PGW's CRP program, and that she is seeking a Commission-issued payment arrangement. The Complainant's balance totaled \$8,091.10 as of the date of the hearing. The Complainant also indicated that, although her gas service is currently on, PGW previously issued her a termination notice for non-payment.

Regarding the Complainant's request to participate in PGW's CRP program, the Complainant testified only that she should be reenrolled in PGW's CRP program because PGW has

continued to charge her the CRP amount \$113 per month since her removal from the program.

In response, PGW's witness testified and demonstrated that once the Complainant was removed from the CRP program, PGW billed the Complainant for her actual monthly usage. PGW did not continue to bill the Complainant the \$113 CRP amount as Complainant alleged. Tr. 36-37; PGW Exh. 1. PGW's witness further testified that, separate from one occasion in June 2014 when the Complainant supplied income verification establishing her income ineligibility to participate in CRP, the Complainant has routinely failed to supply the required proof of her income as part of her application for CRP. Tr. 43-47.

The Complainant has regularly failed to provide proof of her household income to PGW when she has tried to reenroll in CRP. PGW cannot determine the Complainant's eligibility to participate in CRP without proof of her household income. Since the Complainant has regularly failed to provide this required information to PGW, I cannot conclude that PGW improperly determined her ineligible to participate in CRP.

Regarding the Complainant's request for a Commission-issued payment arrangement, the Responsible Utility Customer Protection Act, 66 Pa.C.S.A. § 1401, et seq. (the Act or Chapter 14) applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow in handling customer complaints. 66 Pa.C.S.A. § 1403 defines "Payment Arrangement" as follows:

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.

The Public Utility Code further provides that "[a]bsent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision." 66 Pa.C.S.A. § 1405(d). A change in income is defined as:

A decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level.”

66 Pa.C.S.A. § 1403.

Although the Complainant did not offer any testimony regarding the circumstances surrounding her April 8, 2015 Commission-issued payment arrangement, PGW's witness explained that the Complainant's Commission-issued payment arrangement was based on a one-person household with gross monthly income of \$1,200.00. The Complainant testified that her son was living with her at the time the Commission's BCS issued her a payment arrangement and that her current gross-monthly household income is \$1,052.00.

The 2017 Federal Poverty Guidelines provide that a two-person household with gross monthly household income of \$2,707.00 is at 200% of the Federal poverty level. The Complainant's gross monthly household income for her two-person household at the time of the hearing was \$1,052.00, placing her below 100% of the Federal poverty level.¹ The Complainant has experienced a 12.3% decrease in income since the April 8, 2015 Commission-issued payment arrangement ($\$1,200.00 - \$1,052.00 = \$148.00$; $\$148.00/\$1,200.00 = .123$, or 12.3%).

To determine the Complainant's eligibility for another Commission-issued payment arrangement, in addition to considering the changes in the Complainant's household income, I must also consider the Complainant's payment history with PGW. The record demonstrates that for the 2½-year period prior to the hearing, the Complainant made only 5 payments towards her gas service account, for total payments of \$660.61. PGW Exh. 1. The record further demonstrates that the Complainant has already defaulted on a Commission-issued payment arrangement as well as a company-issued payment arrangement. Tr. 28, 34; PGW Exh. 2. The Complainant's repeated failure to make payments, either in full or in part, demonstrates a lack of good faith on her part to pay her gas bills. Based on the Complainant's poor payment

¹ The 2017 Federal Poverty Guidelines provides that a two-person household with gross monthly household income of \$1,353 is at 100% of the Federal poverty level.

history, it is unlikely that she would keep the terms of a five-year payment arrangement where she would be required to pay \$134.85 per month ($\$8,091.10 \text{ balance} / 60 \text{ months} = \134.85) in addition to her regular monthly payments.²

The Commission has previously held that it may refuse to order a payment arrangement for customers who do not make good faith efforts to pay their bills. See, e.g., *Stephen Getz v. Metropolitan Edison Company*, Docket No. C-20142459964 (Final Order entered May 28, 2015); *Susan Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013). In both of these cases, the Commission refused to exercise its discretion to order a payment arrangement for a customer where the customer had a poor payment history and/or demonstrated an inability or unwillingness to comply with payment arrangements established by the utility.

Accordingly, based on the Complainant's poor payment history and lack of good faith in meeting her payment obligations, the Complainant's request for a second Commission-issued payment arrangement is denied.

The Complainant also indicated that PGW has issued her a termination notice. Although the Complainant did not present a termination notice for my consideration, she did

² Regarding length of payment arrangements, 66 Pa.C.S.A. § 1405(b)(1) provides that the Commission may grant a customer with gross household income not exceeding 150% of the Federal poverty level a five-year payment arrangement to resolve an unpaid balance.

testify that the notice she received advised that the threatened termination was due to non-payment, and also advised her of steps she could follow to avoid termination. The Complainant did not offer any additional testimony regarding PGW's termination notice. Based on the limited testimony provided by the Complainant, the Complainant did not meet her burden of demonstrating that PGW improperly issued her a termination notice, or that the content of the notice issued failed to meet the notice requirements set out in 52 Pa.Code § 56.91.

As such, the Complainant's Complaint is denied in its entirety.

CONCLUSIONS OF LAW

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

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

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

4. Complainant failed to sustain her burden of demonstrating that PGW improperly determined her ineligible for the Customer Responsibility Program.

5. In cases where the Commission is authorized by law to establish a payment arrangement between a customer and a utility, the Commission will 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.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007).

