

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael McLean	:	
	:	
v.	:	C-2015-2497655
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complainant’s formal Complaint because he failed to sustain his burden of proof to establish that Philadelphia Gas Works violated any Commission orders or regulations. The Complainant did not meet his burden of proof to demonstrate that a Commission issued payment arrangement for his outstanding balance under Section 1405(c) of the Public Utility Code. The Complainant has mixed arrears and has not established that he has made a good faith effort to make payments on his account. Further, the Complainant has not established that the Company violated the Public Utility Code, Commission regulations or Commission order with respect to the termination of his utility service.

HISTORY OF THE PROCEEDING

On August 3, 2015, Michael McLean (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 indicated that the Company

was threatening to shut off or had shut off his utility service and that he wanted a payment arrangement.

This matter is an appeal of a decision issued on June 30, 2015 from the Bureau of Consumer Services (BCS) at Case Number 3360105 which dismissed the informal complaint of the Complainant.

On September 1, 2015, Respondent filed an Answer indicating that it terminated gas utility service at the Service Address on April 27, 2015. PGW further indicated that Complainant is not entitled to a payment arrangement because he has broken two Company issued payment arrangements.

By Hearing Notice dated September 11, 2015, an initial telephonic hearing was scheduled for November 12, 2015 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on September 24, 2015. The Prehearing Order directed the parties to comply with various procedural requirements and also explained that the complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on November 12, 2015. Complainant appeared *pro se* and testified. Respondent appeared and was represented by Laureto Farinas, Esq., who presented the testimony of one witness. Respondent offered four exhibits, which were all admitted into evidence.

The hearing resulted in a 36-page transcript. The record closed on December 14, 2015, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Michael McLean who resides at 5903 Chester Avenue, First Floor Apartment, Philadelphia, Pennsylvania 19143 (Service Address).
Tr. 7.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant resides alone. Tr. 10.
4. The Complainant is disabled and not currently employed. Tr. 10.
5. The Complainant receives \$733.00 per month in Social Security disability benefits. Tr. 11.
6. The Complainant has no other sources of income. Tr. 11.
7. The Complainant's current household income of \$733.00 with one household member places the household at 74% of the Federal Poverty guidelines.¹
8. The Complainant established utility service with PGW at the Service Address on July 7, 2010. Tr. 24; PGW Exh. 1.
9. On February 11, 2011, the Complainant enrolled in PGW's Customer Responsibility Program (CRP). Tr. 24; PGW Exh. 1.
10. The Complainant was removed from CRP on January 3, 2014, for failure to recertify his income eligibility. Tr. 30; PGW Exh. 2, 3.

¹ *Federal Register*, Vol. 81, No. 15, January 25, 2016, pp. 4036-4037. Also, see <http://aspe.hhs.gov/poverty>.

11. The Complainant defaulted on two Company-issued payment arrangements on February 1, 2014, and on June 6, 2014. Tr. 33; PGW Exh. 3.
12. The Complainant made zero payments to his account in 2011; payments were made under an LI agreement in 2012²; four payments in 2013; zero payments in 2014; and one payment in 2015. Tr. 30; PGW Exh. 2.
13. The Complainant does not make payments on his account in full or on time. PGW Exh. 2.
14. The Complainant has had three medical certifications issued on June 24, 2013, November 1, 2013 and April 17, 2014. Tr. 19, 24-25; PGW Exh. 1.
15. A ten-day shut off notice was issued to the Complainant on March 21, 2015. Tr. 19.
16. On March 27, 2015, PGW conducted a field visit and a shut off notice was left at the Service Address. Tr. 19; PGW Exh. 1.
17. On April 27, 2015, the gas utility service at the Service Address was terminated by a technician at the curb due to nonpayment. Tr. 20, 25; PGW Exh. 1.
18. The total balance on the Complainant's account is \$2,606.46. Tr. 30-31; PGW Exh. 2.
19. The Complainant's CRP arrears are \$1,389.64. Tr. 26-27; PGW Exh. 1.
20. The Complainant's non-CRP arrears are \$1,216.82. PGW Exh. 1, 2.

² Ms. Crawford, PGW's witness, indicated that an LI agreement meant that the Complainant did not have to make any initial payments. According to PGW records, no payments were made on the Complainant's account in 2012. Tr. 30; PGW Exh. 2.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 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. § 332(a).

To establish a sufficient case and satisfy the burden of proof, the 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*, 461 A.2d 1234 (Pa. 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 with the party seeking

affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

Termination of Service

The Complainant indicated in his testimony that PGW failed to provide him with notice that his service would be terminated. PGW responded that it provided all relevant notices required by the Public Utility Code prior to the termination.

Under the Public Utility Code, a public utility may notify a customer and terminate service provided to a customer for nonpayment of an undisputed delinquent account and/or failure to comply with the terms of a payment arrangement. 66 Pa.C.S. § 1406(a). Prior to terminating service, a public utility must provide proper notice to the customer which includes written notice of the termination at least ten days prior to the termination, an attempt to contact the customer at least three days prior to the termination in person, by telephone or electronic notification, and attempt to make personal contact with the customer at the time service is terminated. 66 Pa.C.S. § 1406(b).

The record demonstrates that the Complainant has defaulted on two Company-issued payment arrangement on February 1, 2014 and on June 6, 2014. Tr. 33; PGW Exh. 3. Additionally, PGW's witness testified that the Complainant made zero payments to his account in 2011; payments were made under an LI agreement in 2012³; four payments in 2013; zero payments in 2014; and one payment in 2015. Tr. 30; PGW Exh. 2. The Complainant's account statement demonstrates that when the Complainant does pay, he does not make payments on his account in full or on time. PGW Exh. 2. The total balance on the Complainant's account is \$2,606.46. Tr. 30-31; PGW Exh. 2.

³ Ms. Crawford, PGW's witness, indicated that an LI agreement meant that the Complainant did not have to make any initial payments. Tr. 30.

Moreover, PGW witness Crawford testified that a ten-day shut off notice was issued to the Complainant on March 21, 2015, and also that PGW conducted a field visit on March 27, 2015, at which time a shut off notice was left at the Service Address. Tr. 19; PGW Exh. 1. On April 27, 2015, the gas utility service at the Service Address was terminated by a technician at the curb due to nonpayment. Tr. 20, 25; PGW Exh. 1. Clearly, PGW provided proper notice to the Complainant regarding termination of his service. The evidence supports that PGW complied with Commission regulations for service termination procedures. 66 Pa.C.S. § 1406, *supra*.

Moreover, the Complainant is not entitled to any further medical certifications. The Complainant has had three medical certifications issued by PGW on June 24, 2013, November 1, 2013 and April 17, 2014. Tr. 19, 24-25; PGW Exh. 1. Under Section 56.114 of the Commission's regulations, a customer is limited to two medical certifications for the same set of arrears and the public utility is not required to honor a third medical certification until the customer eliminates the arrears. 52 Pa.Code § 56.114(2). As such, the Respondent has complied with the Commission regulations in denying further medical certificates. As the Complainant has not shown that the Respondent violated any Commission statute, regulation or case law regarding the termination of his utility service, the Complaint must be dismissed in this regard.

Request for Payment Arrangement

The Complainant also requests a payment arrangement in this matter. PGW contends that the Complainant is not entitled to a payment arrangement due to his poor payment history and asserts that the Complainant has defaulted on multiple Company-issued payment arrangements. No one disputes that the Complainant has not received a Commission-issued payment arrangement.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 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. Section 1405(a) of the Public Utility Code reads as follows:

§ 1405. Payment arrangements

(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.

66 Pa.C.S. § 1405(a).

Section 1405(c) of the Public Utility Code prohibits the Commission from establishing a payment arrangement on any outstanding Customer Assistance Program arrears. 66 Pa.C.S. § 1405(c). Of the Complainant's current outstanding balance, \$1,389.64 is comprised of CRP arrears. As such, the Commission cannot grant the Complainant a payment arrangement on this amount.

The remaining amount of non-CAP arrears is \$1,216.82, for which the Commission can issue a payment arrangement. However, 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. 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 circumstance beyond their control. *George Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007).

It is undisputed that the Complainant resides at the Service Address alone. The Complainant is disabled and is not currently employed. Mr. McLean receives \$733 per month in Social Security disability benefits. The Complainant's current household income with one

household member places the household at 74% of the Federal Poverty guidelines.⁴ This would make the Complainant a Level 1 customer. *See* 66 Pa.C.S. § 1405(b)(1).

Based on the Complainant's income and composition of his household, he would normally qualify for a payment arrangement of five years on his balance of \$1,216.82. However, in this instance, the Complainant has defaulted on two Company-issued payment arrangements. The Complainant made only five payments over the period from 2011 to 2015 to his current account. Tr. 30; PGW Exh. 2. When the Complainant does make a payment it is neither timely nor the full amount. PGW Exh. 2.

The evidence of record shows that the Complainant has a poor payment history and has defaulted on two Company-issued payment arrangements. While the Complainant has not had a prior Commission payment arrangement, in this instance, I do not believe that the Complainant has demonstrated a good faith effort to pay his utility bills. *See George Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007). Further, the Commission is constrained to grant only one payment arrangement to the Complainant, absent a change in income. *See* 66 Pa.C.S. § 1405(d). As such, the Complainant's request for a payment arrangement must be denied.

CONCLUSIONS OF LAW

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

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

⁴ *Federal Register*, Vol. 81, No. 15, January 25, 2016, pp. 4036-4037. Also, see <http://aspe.hhs.gov/poverty>.

(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. Under the Public Utility Code, a public utility may notify a customer and terminate service provided to a customer for nonpayment of an undisputed delinquent account and/or failure to comply with the terms of a payment arrangement. 66 Pa.C.S. § 1406(a).

5. Prior to terminating service, a public utility must provide proper notice to the customer which includes written notice of the termination at least ten days prior to the termination, an attempt to contact the customer at least three days prior to the termination in person, by telephone or electronic notification, and attempt to make personal contact with the customer at the time service is terminated. 66 Pa.C.S. § 1406(b).

6. A customer is limited to two medical certifications for the same set of arrears and the public utility is not required to honor a third medical certification until the customer eliminates the arrears. 52 Pa.Code § 56.114(2).

7. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401, *et seq.* (the Act or Chapter 14) applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement.

8. Section 1405(c) of the Public Utility Code prohibits the Commission from establishing a payment arrangement on any outstanding Customer Assistance Program arrears. 66 Pa.C.S. § 1405(c).

9. 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.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007).

