

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Rich	:	
	:	
v.	:	C-2017-2599266
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Complaint of James Rich because he failed to meet his burden of demonstrating that he is entitled to a second Commission-issued payment arrangement, and also failed to sustain his burden of establishing that PGW improperly issued him a service termination notice.

**HISTORY OF THE PROCEEDING**

On April 13, 2017, James Rich (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 the boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service,” and “I would like a payment agreement.”

On May 8, 2017, Respondent filed an Answer to the Complaint admitting that it issued a termination notice for the service at 1144 E. Mt. Airy Avenue, 2, Philadelphia, PA. Respondent

further indicated that the Complainant owes a total of \$3,203.10, which is comprised of balances from two prior addresses. Respondent further indicated that the Complainant has received and defaulted on a Commission-issued payment agreement.

By Hearing Notice dated May 24, 2017, a hearing was scheduled for June 20, 2017 at 1:00 p.m., and the matter was assigned to me.

I issued a Prehearing Order on May 24, 2017. The Prehearing Order directed the parties to comply with various procedural requirements and 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 June 20, 2017. Complainant appeared *pro se* and testified. Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Patricia Bernard, a Customer Review Officer. Respondent offered three exhibits (PGW Exhs. 1, 2, and 3) which were all admitted into evidence.

The record in this case consists of a 31-page transcript and three exhibits. The record closed on July 28, 2017, when I received the transcript of the hearing.

#### FINDINGS OF FACT

1. The Complainant in this case is James Rich.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. Complainant currently resides at 1144 East Mount Airy Avenue, Apartment 2f, Philadelphia, PA (service address). Tr. 6.
4. Complainant previously lived at 7331 Limekiln Pike, Apartment 2 Front, Philadelphia, PA. Tr. 11, 23; PGW Exh. 2.

5. On August 13, 2014, the Commission's Bureau of Consumer Services (BCS) granted the Complainant a payment arrangement on a balance that accrued while he lived at the Limekiln Pike address. Tr. 14-15; PGW Exhs. 2 & 3.

6. The Complainant subsequently defaulted on this Commission-issued payment arrangement. Tr. 26; PGW Exh. 3.

7. Complainant moved into the service address in January 2015. Tr. 14.

8. The Complainant has had service at the service address since January 17, 2015. Tr. 20, 22; PGW Exhs. 1 & 2.

9. On September 18, 2015, the Commission's BCS granted the Complainant a second payment arrangement on his outstanding balance, pursuant to which he was required to make monthly payments of \$118.00. Tr. 26-27; PGW Exh. 3.

10. At the time of the September 18, 2015, Commission-issued payment agreement, the Complainant's household was a one-person household with gross monthly income of \$1,600.00. Tr. 7-8, 27; PGW Exh. 3.

11. On December 23, 2015, the Complainant defaulted on the second Commission-issued payment arrangement. Tr. 7.

12. Complainant lives alone at the service address. Tr. 7.

13. Complainant currently has gross weekly income of \$1,040.50, or gross monthly income of \$4,162.00 (4 weeks x \$1,040.50). Tr. 9-10.

14. On an undisclosed date, PGW issued a termination notice to the Complainant for non-payment. Tr. 10-11.

15. The notice advised the Complainant that PGW intended to terminate his service for non-payment, and also informed him of steps he could follow to avoid termination. Tr. 11.

16. PGW never terminated the Complainant's service. Tr. 6, 10.

17. The Complainant's balance as of the date of the hearing totaled \$3,215.27. Tr. 25; PGW Exh. 2.

### 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).

In the present case, the Complainant indicated that he wants an affordable payment agreement. The Complainant also challenged PGW's decision to send him a notice threatening to terminate his gas service.

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.

Regarding the number of payment arrangements the Commission will issue, the Act 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 agreement if a customer has defaulted on a previous payment agreement.” 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.

Additionally, Section 1405(e) of the Act allows for an extension by six months of a payment arrangement in default if there is a significant change in circumstance. 66 Pa.C.S.A. § 1405(e). "Significant change in circumstance" is defined as any of the following circumstances which are experienced by customers with household income less than 300% of the Federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income.
- (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household.
- (3) Loss of the customer's residence.
- (4) Increase in the customer's number of dependents in the household.

66 Pa.C.S.A. § 1403.

In the present case, the Complainant is not eligible for another Commission-issued payment arrangement pursuant to 66 Pa.C.S.A. § 1405(d). The record demonstrates that he has not had a change in income as defined by the Act that would allow the Commission to issue him another payment arrangement. On the contrary, the Complainant's gross monthly income has increased from \$1,600.00 to \$4,162.00 since the Commission last issued him a payment arrangement on September 18, 2015. Tr. 8, 9-10, 27; PGW Exh. 3.

Moreover, the Complainant is not eligible for an extension of his September 18, 2015 Commission-issued payment arrangement pursuant to 66 Pa.C.S.A. § 1405(e). The Complainant's gross monthly household income for his one-person household at the time of the hearing was \$4,162.00, placing him well over the 300% Federal poverty level limit set out in Section 1403, making him ineligible for an extension of his September 18, 2015 Commission-issued payment arrangement.<sup>1</sup>

Accordingly, the Complainant's request for a Commission-issued payment arrangement must be denied.

The Complainant also indicated in his Complaint and during the hearing that PGW issued him a termination notice approximately 4 or 5 months before the hearing. Tr. 10-11. The Complainant indicated that the notice advised that PGW intended to terminate his service for non-payment and also advised of steps that he could follow to avoid termination. Tr. 11. The Complainant did not provide a copy of the notice for my consideration. The Complainant indicated that he is only seeking to avoid termination of his service. He acknowledged that, to date, PGW has not terminated his service. Tr. 6, 10. While I understand the Complainant's desire to prevent his gas service from being terminated, he did not meet his burden of demonstrating that PGW improperly issued him this termination notice, or that the contents of the notice failed to meet the notice requirements set out in 52 Pa.Code § 56.91.

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<sup>1</sup> The 2017 Federal Poverty Guidelines provide that a one-person household with gross monthly household income of \$3,015 is at 300% of the Federal poverty level.

Accordingly, 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.
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. Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. 66 Pa.C.S.A. § 1405(d).
5. 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.
6. Complainant is not entitled to a second Commission-issued payment arrangement.
7. The Commission may extend by six months a payment arrangement in default if there is a significant change in circumstance. 66 Pa.C.S.A. § 1405(e).

8. A “significant change in circumstance” is defined as any of the following circumstances which are experienced by customers with household income less than 300% of the Federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income.
- (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household.
- (3) Loss of the customer's residence.
- (4) Increase in the customer's number of dependents in the household.

66 Pa.C.S.A.. § 1403.

9. Complainant is not entitled to an extension of his September 18, 2015, Commission-issued payment agreement.

10. The Complainant failed to sustain his burden of establishing that Respondent improperly issued him a service termination notice, and also failed to demonstrate that Respondent’s termination notice did not adhere to the regulations regarding the contents of termination notices at 52 Pa.Code § 56.91.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of James Rich against Philadelphia Gas Works at Docket No. C-2017-2599266 is denied; and
2. That the record at Docket No. C-2017-2599266 be marked closed.

Date: October 13, 2017

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Christopher P. Pell  
Deputy Chief Administrative Law Judge