

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Weaver	:	
	:	
v.	:	C-2016-2573170
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies William Weaver’s formal Complaint against Philadelphia Gas Works at Docket No. C-2016-2573170 because he failed to carry his burden of proving that he qualifies for a subsequent Commission-issued payment arrangement.

**HISTORY OF THE PROCEEDING**

On October 25, 2016, William Weaver (Complainant or Mr. Weaver) filed a formal Complaint against Philadelphia Gas Works (Respondent or PGW), which was docketed at C-2016-2573170. In his Complaint, Mr. Weaver alleged his inability to pay his gas bills. As relief, Mr. Weaver requested a payment arrangement.

On November 30, 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. Weaver appeared *pro se* and testified in support of the Complaint. He sponsored one exhibit which was admitted into the record. Graciela Christlieb, Esq. represented the Respondent, and presented the testimony of Marie Charles, who is a customer review officer in charge of investigating formal and informal complaints filed against PGW. The Respondent sponsored three exhibits which were admitted into the record.

At the hearing, Mr. Weaver alleged that he did not receive a written decision on his informal complaint at BCS Case # 3314916. PGW's attorney volunteered to provide a copy of the written decision that PGW had received in August of 2015. The proffered documents were received on February 21, 2017, and were marked for identification as PGW late-filed Exhibits 4 and 5.

The Complainant did not object to the admission of these exhibits into the record. Consequently, PGW late-filed Exhibits 4 and 5 are admitted into the record in this matter.

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

#### FINDINGS OF FACT

1. The Complainant is William Weaver, who resides at 20 North 54<sup>th</sup> Street, Philadelphia, PA 19139 (Service Address). Tr. 6.
2. The Respondent is Philadelphia Gas Works.

3. Mr. Weaver resides at the Service Address with his wife and their son.  
Tr. 15.

4. Mr. Weaver is currently employed by Emcor Services as an engineer, at a pay rate of \$1,162 per week. Tr. 14.

5. Mr. Weaver's employment is the sole source of income in the household.  
Tr. 15.

6. From August 2009 to September 2014, Mr. Weaver entered and defaulted on seven Company-issued payment arrangements. Tr. 21-23, PGW Exhibit 2.

7. From February 8, 2014 to February 15, 2017, Mr. Weaver made only eight payments towards his gas account with PGW. PGW Exhibit 1, see also Tr. 21.

8. On August 3, 2015, Mr. Weaver filed an informal complaint with the Commission's Bureau of Consumer Service at BCS Case # 3314916, alleging his inability to pay his gas bills to PGW and requesting a payment arrangement. PGW late-filed Exhibit 4.

9. On August 5, 2015, BCS issued a written decision on Mr. Weaver's informal complaint at BCS Case #3314916 based on Mr. Weaver's reported household income of \$4,551.75 per month for three individuals. Tr. 23-24, PGW Exhibit 2, and PGW late-filed Exhibit 5.

10. In its decision on BCS Case # 3314916, BCS found that Mr. Weaver was a level 3 income customer and established a payment arrangement consisting of budget billing amount of \$120.00 per month, plus \$254.00 per month towards the arrearages. PGW late-filed Exhibits 4 and 5.

11. On December 5, 2015, Mr. Weaver defaulted on the Commission-issued payment arrangement. Tr. 24, PGW Exhibit 2.

12. As of the day of the day of the hearing, Mr. Weaver had an outstanding balance of \$4,587.60 in his account with PGW. Tr. 20, PGW Exhibit 1.

### DISCUSSION

In the present formal Complaint, Mr. Weaver alleged his inability to pay his gas bills to PGW. As relief, he requested a payment arrangement.

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.Cmwlt. 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. Weaver testified that he resides at the Service Address with his wife and their son. He testified that his wife and his son do not work and that he has been the sole income earner in his household since 2012. Tr. 8. He explained that he is a building engineer by profession, but that he lost his employment twice in the last 4 years. Tr. 7, 9. Mr. Weaver admitted that during this period he entered into and defaulted on several payment arrangements issued by the Company. Tr. 8-11. He also admitted that he had already received and defaulted on a payment arrangement established on his behalf by the Commission. Tr. 11-12. According to Mr. Weaver, he did not realize at first that he had received a Commission-issued payment arrangement because the process had been very easy. Tr. 27. It was conducted over the telephone and had not required him to make a lump sum payment. Tr. 11-12. Mr. Weaver later made two payments – one on October 16, 2015 and one on May 11, 2016 – in the amount of special budget billing of \$374.00 per month established by the payment arrangement. Tr. 32-33, PGW Exhibit 1.

Mr. Weaver testified that he is currently employed by Emcor Services as an engineer, at a pay rate of \$1,162 per week. He admitted that his income has increased since the time he received the first Commission-issued payment arrangement. Tr. 31-32.

In response to Mr. Weaver's testimony, PGW's witness, Ms. Charles testified that Mr. Weaver has a poor payment history with PGW, having made only eight payments towards his gas account with PGW during the three-year period from February 8, 2014 to February 15,

2017. Tr. 21. She further explained that from August 2009 to September 2014, Mr. Weaver entered and defaulted on seven Company-issued payment arrangements.

Ms. Charles testified that on August 3, 2015, Mr. Weaver filed an informal complaint with the Commission's BCS at BCS Case # 3314916, alleging his inability to pay his gas bills to PGW and requesting a payment arrangement. On August 5, 2015, BCS issued a written decision on Mr. Weaver's informal complaint based on Mr. Weaver's reported household income of \$4,551.75 per month for three individuals<sup>1</sup>. In its decision, BCS found that Mr. Weaver was a level 3 income customer and established a payment arrangement requesting the Complainant to pay a special budget billing of \$374.00 per month, consisting of regular budget billing amount of \$120.00 per month, plus \$254.00 per month towards the arrearages. Mr. Weaver defaulted on this payment arrangement on December 5, 2015, having made only one payment of \$370.00 on October 16, 2015. See PGW Exhibit 1. As of the day of the hearing, Mr. Weaver had an outstanding balance of \$4,587.60 in his account with PGW.

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 of the Public Utility Code regarding payment arrangements reads in pertinent part:

(d) NUMBER OF PAYMENT ARRANGEMENTS – 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. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

---

<sup>1</sup> With a gross household income of \$4,551.75 per month or \$54,621 per year, Mr. Weaver was found to be a level 3 income customer, which means that pursuant to 66 Pa.C.S.A. § 1405(b)(3) his household income fell between 250% and 300% of the federal poverty level for 2015. See PGW Exhibit 2, and PGW late-filed Exhibits 4 and 5. The calculations were based on a family of three individuals. See <https://aspe.hhs.gov/2015-poverty-guidelines>.

66 Pa.C.S. § 1405(d). (Emphasis added). Furthermore, Section 1403 of the Public Utility Code defines “change in income” 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. § 1403.

The evidence collected in this matter reveals that Mr. Weaver has already received and defaulted on one Commission-issued payment arrangement. In addition, he admitted that his current household income is higher than what it was at the time of the first payment arrangement issued by the Commission at BCS Case # 3314916. At the hearing, Mr. Weaver reported a gross household income of \$5,035.33<sup>2</sup> per month, which represents an increase from the \$4,551.75 per month he reported to BCS in August of 2015. The number of the household members has remained unchanged.

After carefully reviewing the record in this matter, I find that the Complainant has failed to carry his burden of proving that he has experienced a decrease in income that satisfies the definition of a “change in income” pursuant to 66 Pa.C.S. §§ 1403 and 1405(d). Consequently, the Commission lacks the authority to issue a subsequent payment arrangement for the Complainant.

For the reasons stated above, Mr. Weaver’s present Complaint against PGW is dismissed in its entirety.

#### 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).

---

<sup>2</sup> Mr. Weaver’s income from his employment with Emcor Services is \$1,162.00 per week x 52 weeks per year ÷ 12 months per year = \$5,035.33 per month.

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

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. § 1405(d).

5. 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. § 1403.

ORDER

THEREFORE,

IT IS ORDERED:

1. That PGW late-filed Exhibits 4 and 5 are admitted into the record in this matter.
2. That the Formal Complaint filed by William Weaver against Philadelphia Gas Works at Docket No. C-2016-2573170 is dismissed in its entirety.
3. That the Secretary mark this docket closed.

Date: October 6, 2017

\_\_\_\_\_/s/  
Eranda Vero  
Administrative Law Judge