

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jamie Elliott	:	
	:	
v.	:	C-2016-2554899
	:	
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 that he was entitled to a payment arrangement. The Complainant is not entitled to a Commission issued payment arrangement for his outstanding balance under Section 1405(c) of the Public Utility Code.

HISTORY OF THE PROCEEDING

On July 5, 2016, Jamie Elliott (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 contends that the Company was threatening to or had shut off his utility service, and requests a payment arrangement. The Complainant also alleges that there are incorrect charges on his bills and that he is having a safety and reliability issue with his service.¹

¹ The Complainant indicated in his formal Complaint that he had a Protection from Abuse Order. However, at the hearing the Complainant did not present a copy of the Order and stated that the Order had expired. Tr. 5.

This matter is an appeal of a final determination on May 20, 2016 from the Bureau of Consumer Services (BCS) at Case Number 3419694 which indicated that the Complainant was aware of the Customer Responsibility Program (CRP) arrears.

On August 8, 2016, Respondent filed an Answer denying the material allegations of the Complaint. PGW also alleges that Complainant is not entitled to a payment arrangement because his balance is comprised entirely of CRP arrears.

By Hearing Notice dated August 11, 2016, an initial hearing was scheduled for September 23, 2016 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on August 12, 2016. 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.

On September 22, 2016, PGW filed a Certificate of Satisfaction in the matter.² Based on this information, the hearing scheduled for September 23, 2016 was cancelled. However, on the same date, the Complainant contacted my office to indicate that he objected to the Certificate of Satisfaction and requested that the matter be scheduled for a hearing.

On September 29, 2016, a Hearing Cancellation/Reschedule Notice was issued indicating a new initial telephonic hearing scheduled on November 7, 2016 at 10:00 a.m.

On or about October 6, 2016, the Complainant submitted a request for Summary Judgment.³ I forwarded a copy of the request to counsel for PGW.

² A Hearing Cancellation Notice was issued on September 26, 2016.

³ The Complainant did not properly serve the request for Summary Judgment on PGW until October 24, 2016.

On October 28, 2016, PGW filed Preliminary Objections and a Motion to Strike.

On October 28, 2016, PGW also filed a Response to the Complainant's request for Summary Judgment.

On November 4, 2016, I issued an Order denying the Complainant's request for Summary Judgment and granting, in part, PGW's Preliminary Objections and Motion to Strike.

The hearing convened as scheduled on November 7, 2016.⁴ Complainant participated *pro se* and testified. Respondent appeared and was represented by Brandon Pierce, Esq., who presented the testimony of Marie Charles, a Customer Review Officer. Respondent offered five exhibits which were all admitted into evidence at the hearing.

The hearing resulted in a 22-page transcript. The record closed on December 15, 2016, when I received the hearing transcript.

FINDINGS OF FACT

1. The Complainant in this case is Jamie Elliott who resides at 2064 McKean Street, First Floor Rear, Philadelphia, Pennsylvania 19145 (Service Address). Tr. 7.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant rents the Service Address. Tr. 8.
4. The Complainant resides alone. Tr. 11.
5. The Complainant receives Social Security Disability benefits in the amount of \$659.70 per month. Tr. 10-11.

⁴ The hearing was converted to a telephonic hearing at the Complainant's request. PGW had no objection.

6. The Complainant has no other sources of income. Tr. 11.
7. The Complainant's current household income of \$659.70 with one household member places the household at 66% of the Federal Poverty guidelines.⁵
8. The Complainant is currently on an active CRP agreement. Tr. 15-16; PGW Exh. 3.
9. The CRP agreement is \$65.56 per month which represents \$60.56 for current service and \$5.00 toward arrears. Tr. 16; PGW Exh. 3.
10. The Complainant also gets arrears forgiveness for any bills that are paid on time and in full. Tr. 16.
11. The Complainant has been on the CRP agreement since August 10, 2011. Tr. 17; PGW Exh. 3.
12. A regular payment arrangement with PGW would require a down payment of 20 percent of arrears (\$326.00) and a monthly payment of \$139.00 which would be subject to change based on rate and usage. Tr. 16.
13. On May 31, 2015, PGW sent the Complainant a shut off notice. Tr. 15.
14. The shut off notice was cancelled because the Complainant was on an active CRP agreement. Tr. 15.
15. As of October 26, 2016, the total balance on the Complainant's account was \$19.36 and entirely CRP arrears. PGW Exh. 2.

⁵ *Federal Register*, Vol. 82, No. 19, January 31, 2017, pp. 8831-8832. Also see <http://aspe.hhs.gov/poverty>.

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, the 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, 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. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 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 on the party seeking

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

Shut Off Notice

The Complainant argues that PGW issued a shut off notice for his service. While PGW acknowledged that it did send a shut off notice on May 31, 2015, Ms. Charles testified that the shut off notice was cancelled and there was no active shut off notice on the Complainant's account. Tr. 15. As such, this matter is moot.

Incorrect Charges

The Complainant alleges that there were incorrect charges on his bills from PGW. Specifically, the Complainant contends that PGW was not properly crediting payments to his account. However, the Complainant was not able to present any documentation to support his contention that PGW was not crediting his account with payments or that he had made additional payments to PGW. "Mere bald assertions ... do not constitute evidence." *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000); see also, *Steffy's Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, R-00994808, (Opinion and Order entered March 3, 2000). Therefore, the Complainant is unable to meet his burden of proving that there are incorrect charges on his PGW bills.

Safety and Reliability Issues

The Complainant also contends that he is having safety and reliability issues with his utility service. Specifically, the Complainant expressed concerns that if his service is shut off, he will not be able to cook, wash or have heat. However, the Complainant's service has not been shut off. As was noted above, Ms. Charles testified that the shut off notice dated May 31, 2015, was cancelled and there was no active shut off notice for the Complainant. While I understand the Complainant's concerns, there is no shut off notice that is active for his account

and he currently has service. Hence, the Complainant has not met his burden of proving that he is actually experiencing a safety or reliability issue with his gas service.

Request for Payment Arrangement

The Complainant also requests a payment arrangement in this matter. PGW contends that the CRP agreement that the Complainant is currently on is the most advantageous payment arrangement for the Complainant.

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).

It is undisputed that the Complainant resides at the Service Address alone. Tr. 11. The Complainant receives Social Security Disability benefits in the amount of \$659.70 per month. Tr. 10-11. The Complainant has no other sources of income. Tr. 11. The Complainant's current household income of \$659.70 with one household member places the

household at 66% of the Federal Poverty guidelines.⁶ This would make the Complainant a Level 1 customer. *See* 66 Pa.C.S. § 1405(b)(1).

However, in this instance, the Complainant's balance as of October 26, 2016, was \$19.36 and was entirely CRP arrears. PGW Exh. 2. The Complainant is currently on an active CRP agreement. Tr. 15-16; PGW Exh. 3. The CRP agreement is \$65.56 per month which represents \$60.56 for current service and \$5.00 toward arrears. Tr. 16; PGW Exh. 3. The Complainant also gets arrears forgiveness for any bills that are paid on time and in full. Tr. 16. The Complainant has been on the CRP agreement since August 10, 2011. Tr. 17; PGW Exh. 3. In this matter, since the entire balance is comprised of CRP arrears, and the Complainant is already on an active CRP agreement, a Commission-issued payment arrangement is not allowable. *See* 66 Pa.C.S. § 1405(c). Therefore, the Complainant's request for a payment arrangement is denied and the Complaint is dismissed.

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 (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. "Mere bald assertions ... do not constitute evidence." *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power*

⁶ *Federal Register*, Vol. 82, No. 19, January 31, 2017, pp. 8831-8832. Also see <http://aspe.hhs.gov/poverty>.

Supply Association of Pennsylvania v. Pa. Pub. Util. Comm'n, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000); see also, *Steffy's Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, R-00994808, (Opinion and Order entered March 3, 2000).

5. 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.

6. 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Jamie Elliott against Philadelphia Gas Works at Docket No. C-2016-2554899 is denied and dismissed;

2. That the record at Docket No. C-2016-2554899 be marked closed.

Date: November 15, 2017

_____/s/
Marta Guhl
Administrative Law Judge