

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Titus Wright	:	
	:	
v.	:	F-2017-2585472
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

This Initial Decision dismisses the complaint of Titus Wright, filed with the Pennsylvania Public Utility Commission against Philadelphia Gas Works, for failure of Complainant to meet the burden of proof concerning his timely appeal of a decision by the Bureau of Consumer Services that he pay \$129 per month on a payment arrangement.

HISTORY OF THE PROCEEDING

On January 12, 2017, Titus Wright (Mr. Wright or Complainant) filed a complaint with the Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) in which he alleged he could not afford the payment arrangement with PGW, as established by the Commission's Bureau of Consumer Services (BCS). Complainant requested the Commission order PGW to accept \$100 per month year-round. On February 15, 2017, PGW filed an answer in which it admitted Complainant seeks a payment arrangement but PGW contended Complainant's payment arrangement, which he received from the Commission's Bureau of Consumer Services (BCS) on December 21, 2016, was reasonable.

On March 16, 2017, the Office of Administrative Law Judge scheduled an initial hearing in this matter for Thursday, April 20, 2017 at 10:00 a.m. in the Commission's hearing room located at 801 Market Street, Philadelphia, Pennsylvania. On March 28, 2017, Administrative Law Judge Eranda Vero (ALJ Vero) issued a Prehearing Order which informed the parties about various procedural matters.

On April 20, 2017, ALJ Vero convened the initial hearing as scheduled, at which Complainant appeared *pro se*, and Respondent appeared represented by Graciela Christlieb, Esquire. Complainant testified on his own behalf, in addition to sponsoring four exhibits for admission into the hearing record, which were marked as Complainant Exhibits 1 through 4 and admitted into evidence. Attorney Christlieb presented the testimony of one witness and sponsored three exhibits, which were marked as PGW Exhibits 1 through 3 and admitted into evidence. Complainant and Respondent issued final statements on the hearing record in lieu of filing briefs.

On November 28, 2017, the Office of Administrative Law Judge issued a Notice of Judge Change, transferring jurisdiction over the instant proceeding to ALJ Katrina L. Dunderdale. Having received the transcript containing 68 pages, and there being no need for additional proceedings or hearings, the presiding officer issued the Interim Order Closing the Record on November 29, 2017. The record consists of a 68-page transcript of the testimony from the April 20, 2017 hearing and seven exhibits offered by the parties.

FINDINGS OF FACT

1. Complainant, Titus Wright, resides with his wife at 907 Bridge Street, Philadelphia, Pennsylvania 19124 (service address). (Tr. 8, 11).

2. Respondent, PGW, provides residential natural gas service at the service address. (Tr. 8; PGW Exhibit 1).

3. Complainant's household annual income totals \$14,000 from Mr. Wright's work as a part-time adjunct professor and two pensions. (Tr. 8-14, 41-45, 54; Complainant Exhibits 1, 2, 3 & 4).

4. Complainant's wife is unable to work due to her status as a non-United States citizen. (Tr. 8,9, 13).

5. Complainant's total household monthly income for two adults is \$1,167 approximately. (Tr. 8-14, 23, 41-45, 54; PGW Exhibit 2; Complainant Exhibits 1, 2, 3 & 4).

6. Complainant's mortgage payment is \$638 per month. (Tr. 9).

7. Complainant's current budget payment for natural gas service is \$78 monthly. (Tr. 25).

8. On December 21, 2016, the Commission set up a Level One payment arrangement for Complainant with PGW at BCS No. 3494395 in response to an informal complaint filed by Complainant. (Tr. 23, 26; PGW Exhibit 2).

9. Under the payment arrangement at BCS No. 3494395, Complainant was required to pay a catch-up amount totaling \$337.00 and then make monthly budget payments plus \$55 in payment on the arrears, starting in January 2017. (Tr. 23, 26, 27; PGW Exhibits 2 & 3).

10. Previously, the Commission granted Complainant a payment arrangement on December 31, 2012 at BCS No. 2987726. (Tr. 30, 31, 33).

11. Complainant's household income for two adults was reported to be \$948 in the payment arrangement established at BCS No. 3494395. (Tr. 23; PGW Exhibit 2).

12. On April 20, 2017, the unpaid balance on Complainant's natural gas service account with PGW totaled \$3,501.81. (Tr. 22; PGW Exhibit 1).

13. During the twelve-month period from April 2016 to March 2017, Complainant made six payments totaling \$360.00 on fourteen billing statements totaling \$858.28. (PGW Exhibit 1).

DISCUSSION

Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof. Mr. Wright is the party seeking affirmative relief from the Commission, and, therefore, has the burden of proof. Mr. Wright has the duty to establish a fact by a preponderance of the evidence, and must show that PGW is responsible or accountable for the problem described in the complaint.¹ Additionally, care must be exercised to ensure the Commission's decision is supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.²

In the complaint, Mr. Wright alleges he is unable to afford the payment arrangement established by BCS and he would not be able to make the required payments. Complainant asked the Commission to permit him to pay \$100 every month, even during the summer, regardless of his budget payment amount, which is currently \$78 monthly.

Respondent's witness testified PGW determined Complainant is eligible for the lowest payment arrangement available as a Level 1 household. PGW's witness testified Complainant had received a previous payment arrangement from the Commission in 2012 but

¹ Se-Ling Hosiery, Inc. v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950); Feinstein v. Philadelphia Suburban Water Company, 50 Pa. PUC 300 (1976).

² See, e.g., Section 704 of the Administrative Agency Law, 2 Pa.C.S.A. § 704; Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa.Super. Ct. 278, 166 A.2d 96 (1961); and Murphy v. Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlt 1984).

could provide no details about when or how the 2012 payment arrangement was considered to be in default because more than four years had elapsed. However, PGW did not contest that Complainant was eligible to receive a payment arrangement now from the Commission which would include paying the budget amount plus \$55 monthly. Accordingly, PGW pointed out that BCS' arrangement is the best option for Complainant and he cannot receive a lower payment arrangement.

Payment Arrangement

By law, a public utility is entitled to receive payment for the service it provides.³ Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay.⁴ No public utility may receive a greater or lesser rate than the one set forth in its tariff on file with this Commission.⁵ Neither may a public utility unreasonably discriminate for or against a particular customer by establishing a special rate for them.⁶

Any decision in this proceeding must be consistent with the provisions of the *Responsible Utility Customer Protection Act* (Act 201)⁷, which directs how the Commission must establish any payment arrangement. "Payment Arrangement" is defined as:

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.⁸

³ Scaccia v. West Penn Power Company, 55 Pa. PUC 637 (1982).

⁴ Bolt v. Duquesne Light Company, Docket No. Z-8712758 (Order entered April 8, 1988).

⁵ See 66 Pa.C.S.A. § 1303.

⁶ See 66 Pa.C.S.A. § 1304.

⁷ The Responsible Utility Customer Protection Act ("Act 201") became effective on December 14, 2004, and enacted Chapter 14 of the Public Utility Code, 66 Pa.C.S. §§ 1401, et seq. Per P.L. 2545, No. 155, § 8, Act 201 became effective to December 31, 2024.

⁸ See 66 Pa.C.S.A. § 1403.

Act 201 also defines a “customer” as a “natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested.”⁹

Section 1405(a) in Title 66 of Pennsylvania Statutes Annotated¹⁰ authorizes the Commission to investigate complaints regarding payment disputes between a public utility (such as PGW) and its customers (such as Complainant). This statute authorizes the Commission to establish payment arrangements between a public utility and its customers.¹¹ In addition, the Public Utility Code permits the Commission to grant one payment arrangement and dictates its terms.¹² Absent a change in income, the Commission cannot grant a second or subsequent payment arrangement, if the customer defaults on the first payment arrangement.¹³

Conclusion

Complainant bears the burden of proving he is entitled to a lower payment arrangement than the one established by BCS. He has not met that burden. However, Complainant’s concern is not with paying back the arrears. Complainant admits he needs to pay off the arrears and he wants to pay off the arrears. The concern for Complainant (and the reason why he timely appealed BCS’s decision to give a payment arrangement) is that he cannot afford to pay the budget billing amount plus \$55 to pay down the arrears, as required by BCS.

⁹ See 66 Pa.C.S.A. § 1403.

¹⁰ As part of the Responsible Utility Customer Protection Act, 66 Pa.C.S.A. § 1401, et seq., this section [66 Pa.C.S.A. § 1405(a)] became effective on December 14, 2004.

¹¹ 66 Pa.C.S.A. § 1405(a).

¹² 66 Pa.C.S.A. § 1405(b).

¹³ 66 Pa.C.S.A. § 1405(d).

Complainant easily qualifies as a Level 1 customer who can have the payment of his arrears amortized over five years, or 60 months. Complainant owes \$3,501.81 in arrears, as of the date of the hearing. If the arrears are amortized over 60 months, Complainant would have to pay \$58 monthly in addition to paying the budgeted amount. BCS established a payment arrangement that required Complainant to pay \$55 plus the budgeted amount. That payment arrangement is the best plan available to Complainant. As explained to Mr. Wright at the hearing, the best thing Mr. Wright can do is to pay as much as he can during the summer months when his budget bills are lower, and reduce the arrears as soon as he can.

Accordingly, the formal complaint is dismissed in the ordering paragraphs to follow for failure to meet the burden of proof that Complainant is entitled to a new lower payment arrangement than the payment arrangement established at BCS No. 3494395.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S.A. § 701.
2. Complainant had the burden of proving Respondent is not providing reasonable and adequate service in its refusal to give him a lower payment arrangement. 66 Pa.C.S.A. § 332(a).
3. The Responsible Utility Customer Protection Act, 66 Pa.C.S.A. §§ 1401, et seq., applies to this proceeding.
4. The Public Utility Code permits the Commission to grant one payment arrangement, up to sixty (60) months in length, and to dictate its terms. 66 Pa.C.S.A. § 1405(b).
5. Complainant carries the burden of proving he was entitled to a lower payment arrangement. 66 Pa.C.S.A. § 1405.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Titus Wright against Philadelphia Gas Works at Docket No. F-2017-2585472, is dismissed.

2. That the Secretary shall mark the complaint of Titus Wright versus Philadelphia Gas Works at Docket No. F-2017-2585472 as closed.

Date: December 1, 2017

_____/s/_____
Katrina L. Dunderdale
Administrative Law Judge