

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rakia Paul	:	
	:	
v.	:	F-2017-2586003
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Presided over by
Marta Guhl, Administrative Law Judge

Adjudicated by
F. Joseph Brady, Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Rakia Paul against Philadelphia Gas Works because she failed to carry her burden of proving that she is entitled to a new or subsequent Commission-issued payment arrangement on her unpaid balance in order to have her service reconnected.

HISTORY OF THE PROCEEDING

On January 27, 2017, Rakia Paul (Complainant) filed a formal Complaint against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant contends that PGW shut off her utility service and requests a payment arrangement.

The Complaint is a timely appeal of the decision issued by the Commission's Bureau of Consumer Services (BCS) on January 6, 2017 at BCS Case No. 3498295. BCS denied the Complainant's request for a payment arrangement and upheld PGW's terms for restoration of service.

The Respondent filed an Answer on February 16, 2017. The Respondent admits that it provided service to the Complainant at the address shown on the Complaint and that it terminated the service on November 14, 2016 for non-payment. The Respondent alleges the Complainant is not eligible for a payment arrangement and requests that the Complaint be dismissed.

A Hearing Notice dated March 9, 2017, notified the parties that an initial hearing was scheduled for April 10, 2017 at 10:00 a.m.

A Prehearing Order was issued on March 13, 2017, advising 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 hearing convened as scheduled on March 9, 2017 and was presided over by ALJ Guhl. The Complainant appeared *pro se*, testified in support of the Complaint, and sponsored five exhibits, which were all admitted into the record. Laureto Farinas, Esquire represented the Respondent, and presented the testimony of Adrian Crawford, who is a Customer Review Officer at PGW. The Respondent sponsored five exhibits, which were all admitted into the record.

The record closed on May 4, 2017 when the transcript was received.

On November 17, 2017, Chief ALJ Charles Rainey reassigned this case to the undersigned ALJ for adjudication.

FINDINGS OF FACT

1. The Complainant is Rakia Paul, who resides at 6719 Sylvester Street, Philadelphia, PA 19149 (Service Address). N.T. p. 7.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant's household consists of two people – herself and her fifteen years-old son. N.T. pp. 29, 30.
4. The Complainant has been a PGW customer since at least 2005. PGW Exh. 3.
5. On June 1, 2015, PGW transferred the Complainant's gas service to the current Service Address. N.T. p. 39; PGW Exh. 1.
6. On April 24, 2016, the Complainant started a new full-time job at Pennrose Management Company. N.T. pp. 12, 19.
7. On May 18, 2016, the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at Case No. 003441296 seeking a payment arrangement. N.T. pp. 9, 41; PGW Exh. 1.
8. At that time, the Complainant reported her gross household income was \$1,755.00 per month. N.T. p. 41; PGW Exh. 1.
9. On May 23, 2016, the BCS established a payment arrangement on behalf of the Complainant at BCS Case No. 003441296, upon finding she was a Level 1 income customer. N.T. pp. 9, 41; PGW Exh. 1.
10. The Complainant failed to make payments and defaulted on the May 23, 2016 payment arrangement on August 31, 2016. N.T. p. 51.

11. On October 27, 2016, the Respondent sent a 10-Day Shut Off Notice to the Complainant. PGW Exh. 5.

12. On November 14, 2016, the Complainant's gas service was terminated for non-payment and defaulting on her payment arrangement. N.T. p. 41; PGW Exh. 1.

13. The Complainant's total bill to restore service is \$4,373.41 (\$4,211.18 outstanding charges + \$123.23 reconnection fee + \$39.00 half of security deposit = \$44,373.41). N.T. p. 43; PGW Exhs. 1, 4.

14. As of the date of the hearing, the Complainant's service was still off. N.T. p. 8.

15. The Complainant received an average gross pay of \$3,031.00 per month for the time period of December 2016 through March 2017. Complainant Exh. 3.

16. Since 2011, the Complainant has defaulted on at least six payment arrangements, including the May 23, 2016 Commission-issued payment arrangement. N.T. pp. 49-51; PGW Exh. 3.

DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving by substantial evidence that she is entitled to the requested relief. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must show that the named 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). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d

854 (Pa. 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*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. 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 her 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).

In this case, the Complainant admits that she failed to make payments and defaulted on her most recent payment arrangement. N.T. pp. 10, 18, 23. Therefore, she is not alleging that there was an improper termination of her gas service. The Respondent has indicated that it will reconnect the Complainant's service if the Complainant pays the outstanding balance of \$4,211.18 plus a reconnection fee. The Complainant did not raise any issues with the outstanding balance at the hearing. The only relief the Complainant has requested is to receive a new payment arrangement on this unpaid balance in order to have her service restored.

The Statute at 66 Pa.C.S. § 1407 and the Regulation at 52 Pa.Code § 56.191 govern reconnection of utility service. These laws authorize a utility to require payment of the entire account balance and payment of a reconnection fee prior to restoring service when a customer has defaulted on two or more payment agreements. In this case, the Complainant has defaulted on at least six payment arrangements since 2011. PGW Exh. 3. Therefore, the Respondent is entitled to request that the Complainant pay her entire account balance and reconnection fee prior to the Respondent reconnecting service.

Nevertheless, the Commission has held that while 66 Pa.C.S. § 1407 sets out the terms that a utility may impose on a customer requesting reconnection of service, it does not divest the Commission of its authority to order a payment arrangement, pursuant to 66 Pa.C.S. § 1405, for a customer who was lawfully disconnected for nonpayment. *Crawford v. National Fuel Gas Distribution Corporation*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007); *Rogito v. UGI Utilities, Inc.*, Docket No. F-02263457 (Opinion and Order entered December 3, 2008). The Commission has stated that it will exercise its authority to establish a payment arrangement in these circumstances judiciously.

By law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Co.*, 55 Pa. PUC 637 (1982); *Kea v. Peoples Natural Gas Co.*, 60 Pa. PUC 215 (1985); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982). Consequently, the Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303; *Neal v. Philadelphia Gas Works*, Docket No. Z-00871874, (Final Order entered January 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa. PUC 213 (1990).

Additionally, all customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. *Bolt v. Duquesne Light Co.*, Docket No. Z-8721758 (Opinion and Order entered April 8, 1988). A payment arrangement, which prevents service termination as long as the Complainant complies with it, is a privilege, not a right. *Mandell v. Duquesne Light Co.*, Docket No. C-20030234, (Opinion and Order entered March 17, 2004).

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued and the length of the payment arrangement.

Section 1405(d) 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 arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

66 Pa.C.S. § 1405(d)(emphasis added). "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. § 1405(emphasis added). Thus, the Commission may only order a second payment arrangement if the Complainant demonstrates a decrease in income.

Here, the Complainant reported her gross household income was \$1,755.00 per month when she received the Commission-issued payment arrangement on May 23, 2016. Since that time, the Complainant's gross income has *increased* to an average of \$3,031.00 per month. Since the Complainant did not experience a "change in income" as defined by the Act, the Commission cannot order a second or subsequent payment arrangement. *See* 66 Pa.C.S. § 1405(d).

Additionally, Section 1405(e) of the Public Utility Code regarding payment arrangements reads in pertinent part:

(e) Extension of payment arrangements.

If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

66 Pa.C.S. § 1405(e)(emphasis added). “Significant change in circumstance” is defined as:

Any of the following criteria when verified by the public utility and 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. § 1403.

In this case, the Complainant did not claim she experienced any of the foregoing criteria, therefore, the Commission may not reinstate the payment arrangement issued on May 23, 2016, and extend the remaining term.

Based on the foregoing, I find that the Complainant has failed to carry her burden of proving that she is entitled to a second or subsequent Commission-issued payment

arrangement or to an extension of the previous payment arrangement. Accordingly, Ms. Paul's Complaint against PGW is dismissed.

CONCLUSIONS OF LAW

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

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. Sections 1401-1418, applies to this proceeding.

4. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).

5. Absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. 66 Pa.C.S. § 1405(d).

6. If a customer defaults on a payment arrangement established by the Commission under subsections 1405(a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown. 66 Pa.C.S. § 1405(e).

7. "Significant change in circumstance" is defined as: "Any of the following criteria when verified by the public utility and 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. § 1403.

8. The Complainant has failed to carry her burden of proving that she is entitled to a second or subsequent Commission-issued payment arrangement or to an extension of the previous payment arrangement. 66 Pa.C.S. §§ 1405(d), 1405(e).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Rakia Paul against Philadelphia Gas Works at Docket No. F-2017-2586003 is dismissed; and
2. That the case at Docket No. F-2017-2586003 be marked closed.

Date: December 11, 2017

_____/s/
F. Joseph Brady
Administrative Law Judge