

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stephanie Maxwell	:	
	:	
v.	:	C-2017-2607397
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

In this Initial Decision, the Complaint requesting a payment arrangement is denied in its entirety upon finding that a portion of Ms. Maxwell’s outstanding balance with Philadelphia Gas Works consists of arrearages accumulated during her participation in PGW’s customer assistance program, and upon concluding that Ms. Maxwell has failed to carry her burden of proving that she qualifies for a payment arrangement on the non-CAP portion of her outstanding balance with PGW.

HISTORY OF THE PROCEEDING

On May 30, 2017, Stephanie Maxwell (Ms. Maxwell or Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (Respondent or PGW) with the Pennsylvania Public Utility Commission (Commission) alleging that she is unable to pay her gas bills to PGW and that she has a reliability, safety, or quality problem with her gas service. As relief, Ms. Maxwell requested an affordable payment arrangement.

On June 23, 2017, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated July 13, 2017, notified the parties that an initial hearing was scheduled in this matter for Wednesday, September 13, 2017, at 10:00 a.m.

A Prehearing Order was issued on August 9, 2017, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

The hearing convened as scheduled on September 13, 2017. Ms. Maxwell appeared *pro se* and testified in support of the Complaint. Graciela Christlieb, Esq. represented the Respondent, and presented the testimony of Patricia Bernard, 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.

The record was closed on October 17, 2017, upon receipt of my copy of the hearing transcript.

FINDINGS OF FACT

1. The Complainant is Stephanie Maxwell, whose mailing address is 2845 S. 65th Street, Philadelphia, PA 19142 (Service Address). Tr. 10.
2. The Respondent is Philadelphia Gas Works.
3. Ms. Maxwell's household consists of six individuals: three adults and three children. Tr. 17-18.
4. Ms. Maxwell's son receives \$755.00 per month in Supplemental Security Income. Tr. 18.

5. Ms. Maxwell receives financial assistance in the amount of \$102.50 biweekly from the Department of Human Services. Tr. 18.

6. From June 20, 2014, to September 13, 2017, one Crisis Assistance (CRISIS) grant and four Low Income Home Energy Assistance Program (LIHEAP) grants were deposited in Ms. Maxwell's account with PGW: one CRISIS grant on June 20, 2014, one LIHEAP grant on December 17, 2014, two LIHEAP grants on December 16, 2015, and one LIHEAP grant on July 6, 2016. Tr. 27-28, PGW Exhibit 1.

7. From June 20, 2014 to September 13, 2017, Ms. Maxwell submitted five payments to PGW, which were all cancelled or returned due to insufficient funds: two on July 17, 2014, one on November 5, 2015 and two on May 16, 2016. Tr. 27, 29, PGW Exhibit 1.

8. The last actual payment made by Ms. Maxwell towards her PGW account was made on October 1, 2008. Tr. 29-30.

9. From 2002 to September 13, 2017, Complainant filed 17 informal complaints with the Commission's Bureau of Consumer Services (BCS). Tr. 31.

10. From 2002 to 2017, Complainant filed three formal Complaints against PGW at Docket Nos. F-2015-2486874, C-2016-2575653, and C-2017-2607397. Tr. 31, PGW Exhibit 2.

11. Ms. Maxwell's formal Complaints against PGW at Docket Nos. F-2015-2486874 and C-2016-2575653 were resolved through settlement agreements involving payment arrangements with the Company. Tr. 31.

12. Ms. Maxwell failed to honor the terms of the settlement agreements reached under Docket Nos. F-2015-2486874 and C-2016-2575653. Tr. 31, 33.

13. From 2002 to 2017, Complainant entered into and defaulted on five Company issued payment arrangements. Tr. 49-50, PGW Exhibit 2.

14. On March 9, 2005, the Commission issued a payment arrangement on Ms. Maxwell's behalf. Tr. 32, PGW Exhibit 2.

15. Ms. Maxwell defaulted on the Commission-issued payment arrangement. Tr. 32, 40.

16. As of the day of the hearing, Ms. Maxwell's outstanding balance with PGW is \$10,059.30. Tr. 26, PGW Exhibit 1.

17. Complainant participated in PGW's Customer Responsibility Program (CRP) from August 13, 2013 through April 16, 2016. Tr. 35.

18. \$4,484.64 of the Complainant's outstanding balance with PGW consists of arrearages accumulated during Ms. Maxwell's participation in PGW's CRP Program. Tr. 37.

DISCUSSION

In the present formal Complaint, Ms. Maxwell alleged her inability to pay her gas bills to PGW¹. As relief, she 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

¹ At the hearing, PGW moved to dismiss the portion of Ms. Maxwell's Complaint alleging a reliability, safety, or quality problem with her gas service due to the running of the statute of limitations. Tr. 8-9. The motion was granted. Tr. 9-10.

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.Cmwlth. 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).

Ms. Maxwell's household consists of six individuals: three adults and three children. Tr. 17-18. Ms. Maxwell's son receives \$755.00 per month in Supplemental Security

Income, while Ms. Maxwell receives financial assistance in the amount of \$102.50 biweekly from the Department of Human Services. Tr. 18.

The last actual payment made by Ms. Maxwell towards her PGW account was made on October 1, 2008. Tr. 29-30. The rest of the payments in her account consist of grant payments or returned checks due to insufficient funds. In particular, during the period of June 20, 2014 to September 13, 2017, one CRISIS and four LIHEAP grants were deposited in Ms. Maxwell's account with PGW. Tr. 27-28, PGW Exhibit 1. During the same period, Ms. Maxwell submitted five payments to PGW, which were all cancelled or returned due to insufficient funds. Tr. 27, 29, PGW Exhibit 1.

According to PGW, despite her poor payment history, Ms. Maxwell has managed to evade PGW's collection activities by filing numerous informal and formal Complaints with the Commission. Tr. 30. From 2002 to September 13, 2017, Complainant filed 17 informal complaints with the Commission's Bureau of Consumer Services (BCS). Tr. 31. In addition, the Complainant filed three formal Complaints against PGW at Docket Nos. F-2015-2486874, C-2016-2575653, and C-2017-2607397. Tr. 31, PGW Exhibit 2. Ms. Maxwell's formal Complaints against PGW at Docket Nos. F-2015-2486874 and C-2016-2575653 were resolved through settlement agreements involving payment arrangements with the Company. Tr. 31. Ms. Maxwell failed to honor the terms of the settlement agreements reached under Docket Nos. F-2015-2486874 and C-2016-2575653. Tr. 31, 33.

From 2002 to 2017, Complainant entered into and defaulted on five Company issued payment arrangements. Tr. 49-50, PGW Exhibit 2. In addition, the Complainant has already received one Commission-issued payment arrangement. In particular, on March 9, 2005, the Commission issued a payment arrangement on Ms. Maxwell's behalf. Tr. 32, PGW Exhibit 2. Ms. Maxwell defaulted on the Commission-issued payment arrangement. Tr. 32, 40.

As of the day of the hearing, Ms. Maxwell's outstanding balance with PGW is \$10,059.30. Tr. 26, PGW Exhibit 1. \$4,484.64 of the Complainant's outstanding balance

consists of arrearages accumulated during Ms. Maxwell's participation in PGW's CRP Program from August 13, 2013 through April 16, 2016. Tr. 35, 37.

Customer Assistance Program Balance

The Commission has no authority to establish a payment arrangement on amounts subject to customer assistance program (CAP) rates. Section 1403 of the Public Utility Code defines a CAP program as follows:

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by Section 2202 (relating to definitions) or Section 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

66 Pa.C.S. § 1403 (Definition of "Customer Assistance Program").

The provision at 66 Pa.C.S. § 1405(c) states as follows:

(c) Customer Assistance Programs. – Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.

PGW's CRP program meets the requirements of 66 Pa.C.S. § 1403, and therefore, the Commission lacks the authority to establish a payment arrangement on that portion of Ms. Maxwell's outstanding balance which consists of CRP arrears. The amount of \$4,484.64 must be timely paid, pursuant to 66 Pa.C.S. § 1405(c).

The Complaint is denied as to the Complainant's request for a payment arrangement on the \$4,484.64 portion of her balance that is subject to Customer Assistance Program rates. See *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Order entered September 12, 2013).

Non-Customer Assistance Program Balance

The issuance of a payment arrangement is a matter within the Commission's discretion. *Susan Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 at 11 (Order entered September 12, 2013). It is Commission policy to exercise its discretion when customers have demonstrated some evidence of a good-faith effort in paying utility bills or when customers have experienced a change of circumstances outside of their control. *George Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 at 15-16 (Order entered December 6, 2007).

With regard to Complainant's request for a payment arrangement for the non-CRP portion of the arrearage, Section 1405 of the Public Utility Code authorizes the Commission to investigate payment disputes and to establish payment arrangements between a public utility, customers and applicants within the limits established by Chapter 14. 66 Pa. C.S.A. § 1405(a). Complainants who claim inability to pay their utility bills are not entitled to receive subsequent Commission-issued payment arrangements. It is up to the discretion of the Commission to determine, on a case by case basis, whether both parties, the customer complainant and the utility company, will benefit from the issuance of a payment arrangement pursuant to the guidelines of Chapter 14.

In *George Crawford v. National Fuel Gas Distribution Corporation*, Docket Number C-20066348, (Final Order entered December 6, 2007), the Commission vacated a payment arrangement issued to Mr. Crawford by the BCS, in part because the record demonstrated a lack of good faith effort on the part of Mr. Crawford to pay his utility bills. The evidence in the present case more than warrants a similar result.

The fact that the last good payment that PGW received from Ms. Maxwell was made on October 1, 2008 is disturbing. Beyond applying for various grants, for the last ten years, Ms. Maxwell has exercised little good faith effort to pay for her gas service. Instead she has evaded PGW's collection activities by filing numerous informal and formal Complaints,

entering into payment arrangements and settlement agreements without an intention of honoring them, and by submitting a series of bad checks to the Respondent in lieu of payments.

However she manages her household budget, Complainant will have to pay the Respondent for the gas she consumed. By law a public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Company*, 55 Pa. PUC 637 (1982). Otherwise, customers' unpaid bills are included in the utility's uncollectible expenses and ultimately paid by the remaining ratepayers. Cf., *Bolt v. Duquesne Light Co.*, 66 Pa. PUC 463 (1988); *Thomas P. O'Toole v. The Bell Telephone Co. of Pennsylvania*, Docket Number C-923964 (Final Order entered August 20, 1992). It must be remembered that many of the paying customers are struggling themselves to pay their families' living expenses, including public utility bills. All customers, regardless of financial means, have an obligation to pay for utility service.

In view of the above, I find that Ms. Maxwell has failed to carry her burden of proving by a preponderance of the evidence that she qualifies for a subsequent payment arrangement. Consequently, the portion of Ms. Maxwell's Complaint requesting a payment arrangement on the non-CAP portion of her outstanding balance with PGW is denied.

Ms. Maxwell's formal Complaint against PGW is denied in its entirety with prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The party filing the Complaint bears the burden of proving that he is entitled to relief from the Commission. 66 Pa.C.S. § 332(a).

3. The Commission has no authority to establish a payment arrangement on amounts subject to customer assistance program rates. 66 Pa.C.S. § 1405(c).

4. A customer assistance program is defined as a plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program. 66 Pa.C.S. § 1403.

5. Section 1405 of the Public Utility Code authorizes the Commission to investigate payment disputes and to establish payment arrangements between a public utility, customers and applicants within the limits established by Chapter 14. 66 Pa.C.S. § 1405(a).

6. The Commission will not issue a payment arrangement to a complainant when the record demonstrates a lack of good faith effort on the part of the customer to pay the utility bills. *George Crawford v. National Fuel Gas Distribution Corporation*, Docket Number C-20066348 (Final Order entered December 6, 2007).

7. The Complainant has failed to carry her burden of proving that she has exercised a good faith effort to pay her gas bills.

8. By law a public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Company*, 55 Pa. PUC 637 (1982).

