

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|------------------------|---|----------------|
| Mossette Mason | : | |
| | : | |
| v. | : | C-2017-2613650 |
| | : | |
| Philadelphia Gas Works | : | |

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s formal Complaint as the Complainant failed to meet her burden of proof of establishing that Philadelphia Gas Works violated the Public Utility Code, Commission regulations or a Commission order in terminating her service. Further, the Complainant did not demonstrate that Philadelphia Gas Works erred in transferring her balance from a prior account to her current account. Lastly, the Complainant did not meet her burden of proof to establish that she was entitled to a Commission issued payment arrangement.

HISTORY OF THE PROCEEDING

On July 10, 2017, Mossette Mason (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant contends that the Company was threatening or had shut off her utility service and requests a

payment arrangement. The Complainant also contends there are incorrect charges on her bill and that she is having safety and reliability issues.

This matter is an appeal of a decision issued on May 8, 2017 from the Bureau of Consumer Services (BCS) at Case No. 3523530 which dismissed the informal complaint of the Complainant.

On August 1, 2017, Respondent filed an Answer denying the material allegations of the Complaint.

By Hearing Notice dated August 10, 2017, an initial hearing was scheduled for Tuesday, October 10, 2017, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on September 8, 2017. 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 she is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on October 10, 2017. Complainant participated *pro se* and testified. Complainant presented two exhibits which were entered into the record. Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Marie Charles, a Customer Review Officer. Respondent offered four exhibits which were all admitted into evidence.

The hearing resulted in a 61-page transcript. The record closed on November 9, 2017, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Mossette Mason who resides at 5914 Spruce Street, Second Floor, Philadelphia, Pennsylvania 19139 (Service Address). Tr. 8.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant does not have a protection from abuse order. Tr. 9.
4. The Complainant previously had gas service with PGW in her name at 5625 Angora Terrace, Philadelphia, Pennsylvania from May 9, 2012 to June 2, 2015. Tr. 34; PGW Exh. 1.
5. The Complainant's final balance for the Angora Terrace account was \$3,317.65. PGW Exh. 2.
6. The Complainant established gas service in her name with PGW at the Service Address on June 2, 2015. Tr. 34; PGW Exh. 1.
7. The Complainant contacted PGW to have her account transferred from Angora Terrace to the Service Address. Tr. 35.
8. The Complainant's balance from the Angora Terrace account transferred to the Service Address account on June 9, 2015. PGW Exh. 2.
9. The Complainant's gas service at the Service Address was terminated on May 1, 2017 due to nonpayment. Tr. 35-36; PGW Exh. 1.
10. The Complainant resides at the Service Address with her daughter who is 23 years old. Tr. 17.

11. The Complainant is not currently employed. Tr. 15.
12. The Complainant receives \$86.00 per month in Supplemental Nutrition Assistance Program (SNAP) benefits and \$6.00 per month in cash welfare benefits. Tr. 15.
13. The Complainant receives \$760.00 per month in Social Security Disability benefits. Tr. 16.
14. The Complainant's daughter receives \$733.00 per month in Supplemental Security Income (SSI) benefits. Tr. 16.
15. The Complainant's current household income of \$1,585.00¹ per month with two household members places the household at 116 % of the Federal Poverty guidelines.²
16. The last payment the Complainant made to her account was on September 20, 2013. Tr. 38; PGW Exh. 2.
17. The Complainant defaulted on one Company-issued payment arrangement. Tr. 39; PGW Exh. 3.
18. The Complainant has not had a Commission-issued payment arrangement.
19. The Complainant enrolled in the Customer Responsibility Program (CRP) on June 18, 2013. Tr. 40; PGW Exh. 3.
20. On December 29, 2015, the Complainant defaulted on CRP due to nonpayment. Tr. 40; PGW Exh. 3.

¹ Monthly income calculated as follows: $\$86 + \$6 + \$760 + \$733 = \$1,585.00$ per month.

² *Federal Register*, Vol. 83, No. 12, January 18, 2018, pp. 2642-2644. Also see <http://aspe.hhs.gov/poverty>.

21. The Complainant's CRP status was suspended due to failure to recertify. Tr. 40; PGW Exh. 3.

22. The total balance on the Complainant's account is \$11,296.46. Tr. 37; PGW Exh. 2.

23. The Complainant's balance contains \$4,124.21 in CRP arrears. Tr. 41; PGW Exh. 3.

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, 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).

Termination of Service

The Complainant argues that PGW should not have terminated her service because she was trying to get a payment arrangement from the Company. She also contends that she has a sick child with medical conditions and cannot be without service. The Complainant does not dispute that she received notice of the termination.

Under the Public Utility Code, a public utility may notify a customer and terminate service provided to a customer for nonpayment of an undisputed delinquent account and/or failure to comply with the terms of a payment arrangement. 66 Pa.C.S. § 1406(a).

The Complainant previously had gas service with PGW in her name at 5625 Angora Terrace, Philadelphia, Pennsylvania from May 9, 2012 to June 2, 2015. Tr. 34; PGW Exh. 1. The Complainant's final balance for the Angora Terrace account was \$3,317.65. PGW Exh. 2. The Complainant established gas service in her name with PGW at the Service Address on June 2, 2015. Tr. 34; PGW Exh. 1. The Complainant's balance from the Angora Terrace account transferred to the Service Address account on June 9, 2015. PGW Exh. 2. The Complainant contacted PGW to have her account transferred from Angora Terrace to the Service

Address. Tr. 35. The Complainant's gas service at the Service Address was terminated on May 1, 2017 due to nonpayment. Tr. 35-36; PGW Exh. 1.

The Complainant does not dispute that she resided at 5625 Angora Terrace. PGW presented evidence that the Complainant had a balance of \$3,317.65 on her account which transferred to her account at the Service Address. PGW Exh. 2. The Complainant also did not dispute that she has failed to make a payment on her account with PGW since September 2013. Tr. 38; PGW Exh. 2. PGW's witness, Ms. Marie Charles, also presented evidence that the Complainant defaulted on one Company-issued payment arrangement. Tr. 39; PGW Exh. 3. Based on the above, it is clear that the Complainant was not making payments on her account at the Service Address or her prior address. As such, PGW was entitled to terminate service due to nonpayment under Section 1406(a) of the Public Utility Code. 66 Pa.C.S. § 1406(a). Therefore, the Complainant's Complaint is denied with respect to the termination of her gas service.

Account Balance

The Complainant also questioned her account balance. Specifically, she questioned the amount of balance transferred from her prior address at Angora Terrace, indicating that she was evicted from that address before the gas service was transferred to the Service Address.

Section 1403 of the Public Utility Code 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.

66 Pa.C.S. § 1403. Further, the Commission's regulations indicate that a public utility may require the payment of any outstanding balance or portion of an outstanding balance if the customer resided at the property for which service is requested during the time the outstanding balance accrued and the customer resided at the service address. 52 Pa.Code § 56.191(d).

Lastly, in the event of termination of service at a residence, a public utility may transfer an unpaid balance to a new residential service account of the same customer. 52 Pa.Code § 56.16(b).

The Complainant contends that she was evicted from the Angora Terrace address before June 2, 2015 when her account was transferred to the Service Address. However, the Complainant was not able to present any documentation regarding her eviction from the Angora Terrace address. It is well settled, “[m]ere bald assertions ... do not constitute evidence.” *Mid-Atlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000)(citing *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); see also, *Steffy’s Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000). The Complainant previously had gas service with PGW in her name at 5625 Angora Terrace, Philadelphia, Pennsylvania from May 9, 2012 to June 2, 2015. Tr. 34; PGW Exh. 1. As noted above, the Complainant did not dispute that she resided at that address. Further, PGW’s witness presented evidence that the Complainant contacted PGW to have her account transferred from Angora Terrace to the Service Address. Tr. 35. The Complainant established gas service in her name with PGW at the Service Address on June 2, 2015. Tr. 34; PGW Exh. 1.

The Complainant’s final balance for the Angora Terrace account was \$3,317.65. PGW Exh. 2. The Complainant’s balance from the Angora Terrace account transferred to the Service Address account on June 9, 2015. PGW Exh. 2.

The Complainant has failed to meet her burden of proof of demonstrating that PGW erred in transferring the balance from the Angora Terrace address to the Service Address account. The Complainant did not present any evidence to establish when she was evicted from the Angora Terrace address. Further, she did not dispute that she did reside there. As such, PGW can transfer the unpaid balance from Angora Terrace to the new account for the Service Address in the Complainant’s name. *See* 52 Pa.Code § 56.16(b). Therefore, the Complaint must be denied in this regard.

Request for Payment Arrangement

The Complainant requests a payment arrangement in this matter. PGW contends that the Complainant is not entitled to a payment arrangement due to her poor payment history and the fact that a portion of her unpaid balance is comprised of CRP arrears.

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). Of the Complainant's current outstanding balance, \$4,124.21 is composed of CRP arrears. As such, the Commission cannot grant the Complainant a payment arrangement on this amount.

The remaining amount of non-CRP arrears is \$7,172.25, on which the Commission can issue a payment arrangement. However, in cases where the Commission is authorized by law to establish a payment arrangement between a customer and a utility, it has the responsibility to exercise its authority very judiciously. Specifically, the Commission should

exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of good faith effort to pay their utility bills or who have experienced a significant change of circumstances beyond their control. *George Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007) (*Crawford*).

It is undisputed that the Complainant resides with her 23-year old daughter. Tr. 17. The Complainant is not currently employed. Tr. 15. The Complainant receives \$86.00 per month in Supplemental Nutrition Assistance Program (SNAP) benefits and \$6.00 per month in cash welfare benefits. Tr. 15. The Complainant receives \$760.00 per month in Social Security Disability benefits. Tr. 16. The Complainant's daughter receives \$733.00 per month in Supplemental Security Income (SSI) benefits. Tr. 16. The Complainant's current household income of \$1,585.00³ per month with two household members places the household at 116 % of the Federal Poverty guidelines. This would make the Complainant a Level 1 customer. *See* 66 Pa.C.S. § 1405(b)(1).

Under the circumstances, the Complainant would normally qualify for a payment arrangement of five years on her balance of \$7,172.25. However, in this instance, the Complainant has defaulted on one Company-issued payment arrangement. Moreover, the Complainant has not made any payments on her account since September 2013.

In this matter, the Complainant has a poor payment history and has defaulted on one Company-issued payment arrangement. While the Complainant has not had a prior Commission payment arrangement, in this instance, I do not believe that the Complainant has demonstrated a good faith effort to pay her utility bills.

The issuance of a payment agreement for the non-CRP portion of the arrearage is a matter within the Commission's discretion. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (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

³ Monthly income calculated as follows: \$86 + \$6 + \$760 + \$733 = \$1,585.00 per month.

customers have experienced a change of circumstance outside of their control. *See Crawford*. Complainant's payment history and capability to keep prior payment agreements are determinative of whether the Commission exercises its authority to issue a payment agreement for the non-CRP portion of the arrearage. *Id.* at 10; see also *Columbia Gas v. Byerts*, Docket No. F-2011-2237934 (Order entered October 17, 2013); and *Dorsey v. Philadelphia Gas Works*, Docket No. F-2012-2313679 (Opinion and Order entered November 22, 2013). Further, the Commission is constrained to grant only one payment arrangement to the Complainant, absent a change in income. *See* 66 Pa.C.S. § 1405(d). As such, the Complainant's request for a payment arrangement must be denied.

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. Under the Public Utility Code, a public utility may notify a customer and terminate service provided to a customer for nonpayment of an undisputed delinquent account and/or failure to comply with the terms of a payment arrangement. 66 Pa.C.S. § 1406(a).
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. Mere bald assertions do not constitute evidence. *MidAtlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000)(citing *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12, 14 (Pa. 1987)); see also, *Steffy's Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000).

7. A public utility may require the payment of any outstanding balance or portion of an outstanding balance if the customer resided at the property for which service is requested during the time the outstanding balance accrued and the customer resided at the service address. 52 Pa.Code § 56.191(d).

8. In the event of termination of service at a residence, a public utility may transfer an unpaid balance to a new residential service account of the same customer. 52 Pa.Code § 56.16(b).

9. 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).

10. The Commission should exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of good faith effort to pay their utility bills or who have experienced a significant change of circumstances beyond their control. *George Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007).

11. Complainant's payment history and capability to keep prior payment agreements are determinative of whether the Commission exercises its authority to issue a payment agreement for the non-CRP portion of the arrearage. *George Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007); see also *Columbia Gas v. Byerts*, Docket No. F-2011-2237934 (Order entered October 17,

