

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eddie Howard	:	
	:	
v.	:	C-2017-2613069
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Complainant’s formal Complaint as the Complainant is entitled to a Commission issued payment arrangement for his outstanding balance under Section 1405(d) and Section 1403 of the Public Utility Code because he was able to establish a change in his income since the prior Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On July 6, 2017, Eddie Howard (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 or had shut off his utility service and requests a payment arrangement.

This matter is an appeal of a decision issued on June 16, 2017 from the Bureau of Consumer Services (BCS) at Case No. 3524742 which dismissed the informal complaint of the

Complainant under Section 1405(d) of the Public Utility Code, because he had a prior Commission-issued payment arrangement. *See* 66 Pa.C.S. § 1405(d).

On July 27, 2017, Respondent filed an Answer alleging that the Complainant is not entitled to a payment arrangement because he defaulted on a prior Commission-issued payment arrangement.

By Hearing Notice dated August 8, 2017, an initial hearing was scheduled for Wednesday, September 27, 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 he is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on September 27, 2017. Complainant participated *pro se* and testified. Complainant presented one exhibit which was 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 three exhibits which were all admitted into evidence.

The hearing resulted in a 36-page transcript. The record closed on October 25, 2017, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Eddie Howard who resides at 1603 Mohican Street, Philadelphia, Pennsylvania 19138 (Service Address). Tr. 5.
2. The Respondent is Philadelphia Gas Works.

3. The Complainant resides alone at the Service Address. Tr. 8.
4. The Complainant is not currently employed. Tr. 6.
5. The Complainant became unemployed on June 30, 2017. Tr. 8.
6. The Complainant receives \$237.00 per week in unemployment compensation benefits. Tr. 6; Complainant Exh. 1.
7. The Complainant has no other sources of income. Tr. 7.
8. The Complainant's current household income of \$1,027.00¹ per month with one household member places the household at 102 % of the Federal Poverty guidelines.²
9. Since May 2015, the Complainant has made four payments to his account. Tr. 21; PGW Exh. 1.
10. Since May 2015, there are have also been three grant payments to the Complainant's account. Tr. 21; PGW Exh. 1.
11. The Complainant defaulted on two Company-issued payment arrangements. Tr. 21-22; PGW Exh. 2.
12. The Complainant had a Commission-issued payment arrangement starting on April 13, 2016 and defaulting on July 14, 2016. Tr. 22; PGW Exh. 2.
13. The Commission-issued payment arrangement was the result of an informal complaint filed with BCS at Case No. 3425290 where the Complainant reported an income of \$1,408.33 for a one adult household. Tr. 23; PGW Exh. 2.

¹ Monthly income is calculated as follows: \$237.00 per week x 52 weeks = \$12,324 per year / 12 months = \$1,027.00 per month.

² *Federal Register*, Vol. 82, No. 19, January 31, 2017, pp. 8831-8832. Also see <http://aspe.hhs.gov/poverty>.

14. The total balance on the Complainant's account is \$793.38. Tr. 20; PGW Exh. 1.

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).

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 because he defaulted on a prior Commission-issued payment arrangement.

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).

However, Section 1405(d) of the Public Utility Code prohibits the Commission from establishing a second or subsequent payment arrangement if the customer has defaulted on a Commission-issued payment arrangement, absent a change in income. 66 Pa.C.S. § 1405(d). Under Section 1403, a “change in income” is defined as 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. § 1403.

The Complainant resides alone at the Service Address. Tr. 8. The Complainant is not currently employed. Tr. 6. The Complainant receives \$237.00 per week in unemployment compensation benefits. Tr. 6; Complainant Exh. 1. The Complainant has no other sources of income. Tr. 7. The Complainant's current household income of \$1,027.00 per month with one household member places the household at 102% of the Federal Poverty guidelines.³ This would make the Complainant a Level 1 customer. *See* 66 Pa.C.S. § 1405(b)(1).

However, in this instance, the Complainant has had a prior Commission-issued payment arrangement starting on April 13, 2016 and defaulting on July 14, 2016. Tr. 22; PGW Exh. 2. The Commission-issued payment arrangement was the result of an informal complaint filed with BCS at Case No. 3425290 where the Complainant reported an income of \$1,408.33 for a one adult household. Tr. 23; PGW Exh. 2. The Complainant's change in income since the prior payment arrangement is a 27% decrease in income from \$1,408.33 to \$1,027.00. The Complainant meets the "change of income" criteria set out in Section 1403 of the Public Utility Code as the household, which is below 200% of the Federal Poverty Level at 102% of the Federal Poverty Level, experienced a decrease in income that is greater than 10% since his last Commission-issued payment arrangement. *See* 66 Pa.C.S. § 1403.

Accordingly, the Commission has the authority to establish a second payment agreement of five (5) years for the Complainant because the complainant is below 150% of the federal poverty level. 66 Pa.C.S. § 1405(b)(1). Beginning with the first bill following the Commission's Final Order in this case, Complainant is required to pay his current charges plus an amount equal to one sixtieth ($1/60^{\text{th}}$) of the balance accrued on his account. If Mr. Howard fails to keep this payment schedule, PGW is authorized to suspend or terminate his service consistent with the Commission's statute and regulations.

³ *Federal Register*, Vol. 82, No. 19, January 31, 2017, pp. 8831-8832. Also see <http://aspe.hhs.gov/poverty>.

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. 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.

5. The Commission has the authority to establish a payment arrangement of five years for a customer if the customer is below 150% of the federal poverty level. 66 Pa.C.S. § 1405(b)(1).

6. Section 1405(d) of the Public Utility Code prohibits the Commission from establishing more than one payment arrangement unless there is a change in income. 66 Pa.C.S. § 1405(d).

7. Under Section 1403, a "change in income" is defined as 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. § 1403.

8. The Complainant met his burden of demonstrating that he was allowed another Commission-issued payment arrangement.

