

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eugene A. Haygood	:	
	:	
v.	:	C-2017-2614769
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Complainant’s Complaint because he failed to sustain his burden of showing that he is entitled to receive a Commission-issued payment arrangement, that the Respondent improperly issued him a service termination notice, and that Respondent’s termination notice did not adhere to the regulations regarding the contents of termination notices at 52 Pa.Code § 56.91.

**HISTORY OF THE PROCEEDING**

On July 18, 2017, Eugene A. Haygood (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 placed checkmarks in the boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service,” “I would like a payment agreement,” and “[o]ther.” Under the “requested relief” section of the Complaint, the Complainant wrote in only “come to an agreement.”

On August 7, 2017, Respondent filed an Answer admitting that it issued a shut off notice for service at 5333 Malcolm Street, Philadelphia, PA (service address) but denying that there are incorrect charges on the bill for service at the service address. Respondent further answered: that the Complainant and Jacqueline Brantley have been the owners of the service address since April 6, 2005; that Jacqueline Brantley had service in her name from March 24, 2003, to July 15, 2014; that the Complainant had service in his name as of July 15, 2014; that when Complainant had service placed in his name, a balance of \$2,271.02 was transferred to his name from Jacqueline Brantley's account; that Jacqueline Brantley had service placed in her name as of September 22, 2016, at which time a balance of \$1,851.63 was transferred from the Complainant's account to her account; that on April 17, 2017, the Complainant placed service back in his name, at which time a balance of \$6,711.12 was transferred from Jacqueline Brantley's account to his account; and that the balance of \$6,949.31 is an accumulated balance between the Complainant and Jacqueline Brantley's accounts.

By Hearing Notice dated August 15, 2017, a hearing was scheduled for October 19, 2017, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on August 17, 2017. The Prehearing Order directed the parties to comply with various procedural requirements and 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 October 19, 2017. Complainant appeared *pro se* and testified. Respondent appeared and was represented by Laureto Farinas, Esq., who presented the testimony of Marie Charles, a Customer Review Officer. Respondent offered six exhibits which were all admitted into the record.

The record in this case consists of a 52-page transcript and six exhibits. The record closed on November 6, 2017, when I received the transcript of the September 26, 2017 hearing.

## FINDINGS OF FACT

1. The Complainant in this case is Eugene A. Haygood.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. Complainant resides at 5333 Malcolm Street, Philadelphia, PA. Tr. 7-8.
4. Complainant has resided at the service address for approximately 20 years.  
Tr. 24.
5. Complainant's household is a 2-person household, consisting of the Complainant and Jacqueline Brantley. Tr. 8, 13, 17.
6. Complainant and Ms. Brantley jointly own the service address. Tr. 20-21; PGW Exh. 5.
7. Complainant accepts responsibility for his outstanding balance and is only seeking a payment arrangement. Tr. 9, 11.
8. Complainant participated in PGW's Customer Responsibility Program (CRP). Tr. 9.
9. Complainant receives \$733.00 per month in Supplemental Security Income (SSI). Tr. 13.
10. Ms. Brantley also receives \$733.00 per month in SSI. Tr. 13.
11. On an undisclosed date, PGW issued the Complainant a notice advising that it was going to terminate his service for non-payment. Tr. 14-15.

12. The notice advised the Complainant of steps he could follow to avoid termination. Tr. 15-16.

13. PGW has not terminated the Complainant's service since issuing this notice. Tr. 15.

14. Complainant and Ms. Brantley have alternated as the service account holder for the service address several times. Tr. 18, 32-35, 47; PGW Exhs. 1 and 4.

15. The Complainant has not made a payment for service at the service address since April 8, 2015, when he made a \$100.00 payment. Tr. 31, 36.

16. The last payment made by Ms. Brantley for any bill for service at the service address was in October of 2016. Tr. 44.

17. PGW previously entered into a payment agreement with the Complainant on August 31, 2015, pursuant to which a \$561.05 down-payment was required with a monthly payment of \$227.00. Tr. 36-37; PGW Exh. 3.

18. The Complainant defaulted on the August 31, 2015 payment agreement. Tr. 37-38; PGW Exh. 3.

19. The Complainant's outstanding balance, as of the date of the hearing, totaled \$7,011.03, including CRP arrears of \$618.70. Tr. 42-43.

### 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*, 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 the present case, the Complainant has indicated that he is seeking a Commission-issued payment arrangement. The Complainant's balance totaled \$7,011.03, including CRP arrears of \$618.70, as of the date of the hearing. The Complainant also indicated that, although his gas service is currently on, PGW previously issued him a termination notice for non-payment.

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.

Regarding the length of payment arrangements, the Public Utility Code provides the following:

The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

(1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.

(2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

(3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

66 Pa.C.S. 1405(b).

Additionally, 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, \$618.70 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 \$6,392.33, on which the Commission may 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 will 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).

The 2017 Federal Poverty Guidelines provide that a two-person household with gross monthly household income of \$2,030.00 is at 150% of the Federal poverty level.<sup>1</sup> The Complainant's gross monthly household income for his two-person household at the time of the hearing was \$1,466.00, placing him below 150% of the Federal poverty level. Pursuant to Chapter 14, the Complainant's household income makes him eligible for a five-year payment arrangement to extinguish his outstanding balance. However, in order to determine the Complainant's eligibility for a Commission-issued payment arrangement, in addition to considering the Complainant's household income, I must also consider the Complainant's payment history with PGW.

The record demonstrates that for the 2½-year period prior to the hearing, the Complainant and Jacqueline Brantley, with whom the Complainant alternated service agreements for the service address, made only two payments towards the gas service account. The record further demonstrates that the Complainant has already defaulted on a company issued payment arrangement. The Complainant's repeated failure to make payments, either in full or in part, demonstrates a lack of good faith on his part to pay his gas bills. Based on the Complainant's poor payment history, it is unlikely that he would keep the terms of a five-year payment arrangement where he would be required to pay \$106.54 per month (\$6,392.33 non-CRP balance / 60 months = \$106.54) in addition to his regular monthly payments.

Accordingly, the Complainant's request for a Commission-issued payment arrangement is denied.

The Complainant also indicated that PGW issued him a termination notice. Although the Complainant did not present a termination notice for my consideration, he did testify

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<sup>1</sup> *Federal Register*, Vol. 82, No. 19, January 31, 2017, pp. 8831-8832. Also see <http://aspe.hhs.gov/poverty>.

that the notice he received advised that the threatened termination was due to non-payment, and also advised him of steps he could follow to avoid termination. The Complainant did not offer any additional testimony regarding PGW's termination notice. Based on the limited testimony provided by the Complainant, the Complainant did not meet his burden of demonstrating that PGW improperly issued him a termination notice, or that the content of the notice issued failed to meet the notice requirements set out in 52 Pa.Code § 56.91.

As such, the Complainant's Complaint is denied in its entirety.

### 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. 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).
5. In cases where the Commission is authorized by law to establish a payment arrangement between a customer and a utility, the Commission will 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).

6. Complainant failed to sustain his burden of demonstrating that he should receive a Commission-issued payment arrangement.

7. Complainant failed to sustain his burden of establishing that the Respondent improperly issued him a service termination notice and also failed to demonstrate that Respondent's termination notice did not adhere to the regulations regarding the contents of termination notices at 52 Pa.Code § 56.91.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Eugene A. Haygood against Philadelphia Gas Works at Docket No. C-2017-2614769 is denied; and
2. That the record at Docket No. C-2017-2614769 be marked closed.

Date: February 6, 2018

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/s/  
Christopher P. Pell  
Deputy Chief Administrative Law Judge