

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andre R Seay	:	
	:	
v.	:	C-2017-2630357
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Andrew M. Calvelli
Administrative Law Judge

INTRODUCTION

This Decision dismisses a formal Complaint filed by a customer of an electric distribution company seeking a second Commission-ordered payment arrangement following the termination of the customer’s utility service due to nonpayment. The Complaint is denied because the Complainant has failed to meet his burden of proof to demonstrate that he is entitled to the requested relief and has also failed to meet his burden of proof to demonstrate that the utility has violated the Public Utility Code or a Commission order or regulation with regard to the service provided.

HISTORY OF THE PROCEEDING

On October 13, 2017, Andre Seay filed a formal Complaint against Philadelphia Gas Works (PGW) at Pennsylvania Public Utility Commission Docket Number C-2017-2630357. In his Complaint, Mr. Seay is seeking a second Commission-ordered payment arrangement that he can afford.

The Complaint was served on PGW electronically by the Commission's Secretary on October 23, 2017.¹

On November 13, 2017, PGW filed an Answer to Mr. Seay's Complaint. In its Answer, PGW admitted or denied the various averments made by Mr. Seay. In particular, PGW asserted that it had lawfully terminated Mr. Seay's gas service due to nonpayment and requested that the Complaint be denied.

By Telephonic Hearing Notices dated December 22, 2017 and December 26, 2017, the parties were advised that an Initial Telephonic Hearing was scheduled for Tuesday, January 9, 2018 and that I was assigned as the Presiding Officer. A Prehearing Order was issued on December 26, 2017 setting forth various rules that would govern the hearing.

The hearing convened on January 9, 2018 as scheduled. Mr. Seay appeared *pro se*. Graciela Christlieb, Esquire appeared on behalf of PGW. Mr. Seay testified and did not sponsor any exhibits. Ms. Christlieb presented one witness who sponsored four exhibits which were admitted into the record. A transcript of the hearing totaling 44 pages was made. The record in this proceeding closed on January 31, 2018 when the transcript was submitted to the Commission.

Mr. Seay's Complaint is ready for disposition. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant in this case is Andre Seay.
2. The Respondent in this case is Philadelphia Gas Works.

¹ PGW has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702, and has agreed to electronic service instead under the Commission's Waiver of 702 program.

3. The service address is 31 South Fallon Street, Philadelphia, PA 19139.
4. Mr. Seay lives with his wife and two daughters at the service address. Tr. 10, 11.
5. Mr. Seay is the only working member of the household. Tr. 11.
6. Mr. Seay currently works full time at an annual salary of \$44,000.00. Tr. 19.
7. On September 11, 2014, the Commission's Bureau of Consumer Services (BCS) ordered a payment arrangement for Mr. Seay in BCS case number 3277912. Tr. 29, 30; PGW Exhibit 2.
8. The payment arrangement in BCS case number 3277912 required Mr. Seay to pay his then monthly budget bill amount of \$255.00, plus \$216.00 towards his then arrearage of \$5,179.65. PGW Exhibit 2.
9. At the time of the BCS-ordered payment arrangement, Mr. Seay had certified his total gross monthly household income as being \$3,250.00. PGW Exhibit 2.
10. Mr. Seay defaulted on the BCS payment arrangement Tr. 29, 30; PGW Exhibit 2.
11. Mr. Seay's outstanding arrearage grew from \$5,179.65 on September 11, 2014 to \$7,499.83 on October 9, 2015. PGW Exhibit 1.
12. Mr. Seay was placed on PGW's Customer Responsibility Program on October 9, 2015 and PGW deferred his then current arrearage of \$7,499.83. Tr. 30; PGW Exhibit 1.

13. Mr. Seay was removed from PGW's Customer Responsibility Program on October 19, 2016 and his then deferred arrearage amount of \$5,778.27 was placed back on Mr. Seay's account. PGW Exhibit 1.

14. Mr. Seay was hospitalized in the summer of 2017 due to a kidney transplant. Tr. 12.

15. Mr. Seay spoke to PGW about providing a medical certification but was advised that he had already used up his three medical certifications. Tr. 13; PGW Exhibit 3.

16. PGW agreed to a new payment arrangement with Mr. Seay on June 13, 2017, whereby Mr. Seay would pay a budget bill of \$212.00 per month along with an additional monthly payment of \$332.00 towards the arrearage. PGW Exhibit 2.

17. Mr. Seay reported disability payments in the amount of \$1,848.00 per month at the time of his new payment arrangement with PGW on June 13, 2017. PGW Exhibit 2.

18. Mr. Seay defaulted on the June 13, 2017 payment arrangement with PGW. PGW Exhibit 2.

19. PGW terminated Mr. Seay's service after he defaulted on the June 13, 2017 payment arrangement with PGW. Tr. 15; PGW Exhibit 3.

20. Mr. Seay defaulted on three other payment arrangements with PGW which were entered into by the parties on March 16, 2011, September 28, 2010, and October 29, 2004, respectively. PGW Exhibit 2.

21. Mr. Seay is not currently eligible for PGW's Customer Responsibility Program given his current income. Tr. 30; PGW Exhibit 3.

22. Mr. Seay's account balance with PGW was \$8,158.48 as of the date of the hearing in this case. Tr. 26; PGW Exhibit 1.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Mr. Seay filed a Complaint against PGW seeking legal relief in the form of a second Commission ordered payment arrangement. Mr. Seay, therefore, has the burden of proof in this proceeding.

By law, a public utility is entitled to receive payment for the service it provides. Scaccia v. Met Ed Co., 55 Pa. PUC 637 (1982); *see also*, Kea v. Peoples Natural Gas Co., 60 Pa. PUC 215 (1985); Mill v. Pa. Public Utility Comm'n, 447 A.2d 1100 (Pa.Cmwlt. 1982). Public utilities are entitled to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303; Neal v. Philadelphia Gas Works, Docket No. Z-00971874 (Order entered January 4, 2002); Angie's Bar v. Duquesne Light Co., 72 Pa. PUC 213 (1990). 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-8712758 (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 (Order entered March 17, 2004).

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418, applies to this proceeding. The Commission may establish a payment arrangement between a

public utility and a customer only within the limits established by 66 Pa.C.S. §§ 1401-1418. In cases such as this where a public utility has lawfully terminated service, Section 1407 of the Act is generally applicable. Section 1407 of the statute provides in relevant part as follows:

§ 1407. Reconnection of service.

(a) **Fee.**-A public utility may require a reconnection fee based upon the public utility's cost as approved by the commission prior to reconnection of service following lawful termination of the service.

...

(c) **Payment to restore service.--**

(1) A public utility shall provide for and inform the applicant or customer of a location where the customer can make payment to restore service.

(2) A public utility may require:

...

(i) Full payment of any outstanding balance incurred together with any reconnection fees by the customer or applicant prior to reconnection of service if the customer or applicant has an income exceeding 300% of the Federal poverty level or has defaulted on two or more payment arrangements . . .

In George Crawford v. National Fuel Gas Distribution Corp., C-20066348 (Order entered 12/6/07), the Commission considered whether Section 1407 of the Act precluded the Commission from ordering a new payment arrangement under Section 1405 of the Act. The Commission concluded that while Section 1407(c) delineates the terms a utility may impose upon a customer/applicant seeking restoration of service, Section 1407(c) in no way divests the Commission of its duty to act as the final arbiter of a utility consumer's rights with respect to payment disputes. If a consumer petitions the Commission for further relief, Section 1405(b) delineates the payment arrangement terms the Commission may then impose.

The Commission also concluded that it has a responsibility to exercise its authority very judiciously when a utility has lawfully terminated a customer for nonpayment.

Specifically, the Commission recognized that it should exercise its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills, or who have experienced a significant change of circumstances outside their control. Crawford at 15, 16. While the Commission has the authority to establish a payment arrangement in cases such as this, the customer is not entitled as a matter of right to the award of a Commission issued payment arrangement. Id.

In this case, PGW is acting under the provisions of Section 1407(c)(2)(i) of the Act, by requiring payment in full from Mr. Seay because he has defaulted on two or more payment arrangements. Mr. Seay has, in fact, defaulted on four payment arrangements, one of which was ordered by the Commission in 2014. PGW Exhibit 2. Mr. Seay's payment history is sporadic and generally does not include payment in full even for current billings. PGW Exhibit 1. Mr. Seay allowed his account balance to increase by over \$2,000.00 in the year following the Commission ordered payment arrangement. PGW Exhibit 1. The only time that Mr. Seay was close to paying his then current charges was the October 2015 through October 2016 period when Mr. Seay was placed on PGW's Customer Responsibility Program and had a large arrearage deferred. However, Mr. Seay was removed from the program and is no longer eligible based on the information that he provided to PGW. Tr. 30; PGW Exhibit 1; PGW Exhibit 3.

After Mr. Seay was removed from PGW's Customer Assistance Program in October 2016, he again allowed his arrearage to increase by over \$2,000.00 until PGW finally terminated service in August 2017. PGW Exhibit 1; PGW Exhibit 3. Moreover, although Mr. Seay was hospitalized in the summer of 2017, he communicated this fact to PGW and PGW approved yet another payment arrangement based on Mr. Seay's medical circumstances and temporary income reduction. PGW Exhibit 2. Mr. Seay then defaulted on this payment arrangement as well. PGW Exhibit 2.

Given Mr. Seay's poor payment history, combined with his current annual salary of \$44,000.00, I am not inclined to provide yet a fifth payment arrangement to Mr. Seay. I conclude that such an arrangement would likely lead to another default, placing Mr. Seay's account even further in arrears if service is restored pursuant to a Section 1405 payment

arrangement. Only by requiring payment in full pursuant to Section 1407 can the Commission ensure that Mr. Seay's account balance is satisfied.² Full payment as a precondition to service restoration would also indicate the importance of making good faith payment efforts on the account going forward, which may help to keep the account balance issues from recurring.

In sum, Mr. Seay has failed to demonstrate by a preponderance of the evidence that he is entitled to a new Commission ordered payment arrangement. Accordingly, payment in full shall be required as a precondition to restoration of service, pursuant to 66 Pa.C.S. § 1407(c). An appropriate order follows below.

CONCLUSIONS OF LAW

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

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

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

4. PGW 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-00971874 (Order entered January 4, 2002); Angie's Bar v. Duquesne Light Co., 72 Pa. PUC 213 (1990).

² Since I have concluded that Mr. Seay is required to make full payment under Section 1407(c) in order to have service restored, it is not necessary to discuss whether he would otherwise be eligible for a payment arrangement under Section 1405.

5. 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-8712758 (Order entered April 8, 1988).

6. 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 (Order entered March 17, 2004).

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

8. The Commission is authorized to establish a payment arrangement between a public utility and a customer under certain conditions as set forth in 66 Pa.C.S. § 1405.

9. The Complainant has not met his burden of proving that he is entitled to a second Commission ordered payment arrangement under 66 Pa.C.S. § 1405.

10. PGW is entitled to receive payment in full, along with any reconnection fees, as a precondition to restoring service to the Complainant. 66 Pa.C.S. § 1407.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Andre Seay against Philadelphia Gas Works on October 13, 2017 at Public Utility Commission Docket Number C-2017-2630357 is hereby dismissed.

