

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Armah Q. Fahnbulleh	:	
	:	
v.	:	F-2017-2619829
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision grants Armah Q. Fahnbulleh’s formal Complaint against Philadelphia Gas Works and establishes a payment arrangement on his behalf. In addition, this Initial Decision directs Philadelphia Gas Works to refund Mr. Fahnbulleh \$580.90 in late payment charges.

HISTORY OF THE PROCEEDING

On August 16, 2017, Armah Q. Fahnbulleh (Mr. Fahnbulleh or Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (Respondent or PGW) with the Pennsylvania Public Utility Commission (Commission) alleging that the utility has shut off his gas service and that he is unable to pay his gas bills to PGW. As relief, Mr. Fahnbulleh requested that the Commission establish an affordable payment arrangement for him.

The Complaint was filed as a timely appeal of the Commission’s Bureau of Consumer Services (BCS) decision, at BCS Case # 3540940.

On September 7, 2017, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated September 21, 2017, notified the parties that an initial hearing was scheduled in this matter for Thursday, November 30, 2017, at 9:30 a.m.

A Prehearing Order was issued on October 30, 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 November 30, 2017. The Complainant appeared *pro se*, testified in support of the Complaint, and sponsored one exhibit which was admitted into the record. Laureto Farinas, Esq., represented the Respondent, and presented the testimony of Jocelyn Moore, who is a Customer Review Officer for PGW in charge of investigating formal and informal customer complaints filed with the Commission against PGW. The Respondent sponsored four exhibits, which were admitted into the record.

The record closed on December 29, 2017, upon receipt of my copy of the hearing transcript.

FINDINGS OF FACT

1. The Complainant is Armah Q. Fahnbulleh, who resides at 221 S. 62nd Street, Philadelphia, PA 19139 (Service Address). Tr. 7.
2. The Respondent is Philadelphia Gas Works.
3. Mr. Fahnbulleh resides at the Service Address with his wife and his two minor children. Tr. 9.

4. Mr. Fahnbulleh's gross household income consists of \$2,362.43 per month in disability benefits, plus \$133.57 a month from the Department of Veterans' Affairs. Tr. 7, 10.

5. Mr. Fahnbulleh's wife is unemployed. Tr. 10.

6. Mr. Fahnbulleh was diagnosed with cancer in 2014. Tr. 12.

7. The Complainant left his employment to undergo medical treatment in February of 2015. Tr. 12.

8. Mr. Fahnbulleh's household income has decreased significantly since February of 2015. Tr. 12.

9. As of the day of the hearing, Mr. Fahnbulleh had received and defaulted on 10 payment arrangements with the Respondent. Tr. 19, PGW Exhibit 4.

10. As of the day of the hearing, Mr. Fahnbulleh had received and defaulted on two Commission-issued payment arrangements concerning his gas bills to PGW. *Id.*

11. The last Commission-issued payment arrangement was issued on December 10, 2010, at BCS Case # 2775662. Tr. 33-34, PGW Exhibit 4.

12. In December of 2010, BCS found the Complainant to be a level 1 income customer based on a reported household income of \$3,076.02 for a household of six individuals. Tr. 34-35.

13. From August 2014 to November 2014, Mr. Fahnbulleh made three payments of \$248.77, \$245.65, and \$250.00, respectively, lowering his outstanding balance with PGW from \$1,224.71 on August 21, 2014, to \$586.45 on November 13, 2014. PGW Exhibit 3.

14. From December 2014 until July 2016, Mr. Fahnbulleh made only one payment of \$108.94 on his account with PGW. PGW Exhibit 3.

15. From August 31, 2016, to November 2017, Mr. Fahnbulleh made the following payments towards his account with PGW:

Date	Payment	Outstanding Balance
8/31/2016	\$500.00	\$4,602.39
9/30/2016	\$500.00	\$4,131.51
10/31/2016	\$500.00	\$3,700.55
12/2/2016	\$500.00	\$3,386.03
2/1/2017	\$500.00	\$3,634.07
5/23/2017	\$317.00	\$4,356.14
6/30/2017	\$500.00	\$3,913.92

PGW Exhibit 3.

16. On June 29, 2017, the Complainant's gas service was terminated for nonpayment. Tr. 25.

17. On July 25, 2017, a security deposit in the amount of \$183.00 was returned to Complainant's account, along with \$1.28 in accrued interest. PGW Exhibit 3.

18. As of the day of the hearing, the outstanding balance in Mr. Fahnbulleh's account with PGW was \$3,797.67. PGW Exhibit 3.

19. During the period from February 2015 to November 2017, PGW assessed \$580.90 in late payment charges against the Complainant's account. PGW Exhibit 3.

DISCUSSION

In this formal Complaint, Mr. Fahnbulleh alleged that the utility has shut off his gas service and that he is unable to pay his gas bills to PGW. As relief, Mr. Fahnbulleh requested that the Commission establish an affordable payment arrangement for him.

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. § 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 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).

Mr. Fahnbulleh resides at the Service Address with his wife and his two minor children. Tr. 9. His gross household income consists of \$2,362.43 per month in disability benefits, plus \$133.57 a month from the Department of Veterans' Affairs. Tr. 7, 10. Mr. Fahnbulleh's wife is unemployed. Tr. 10.

Mr. Fahnbulleh was diagnosed with cancer in 2014. Tr. 12. In February of 2015, he left his employment to undergo medical treatment for his condition. Tr. 12. Mr. Fahnbulleh's household income has decreased significantly since February of 2015. Tr. 12.

As of the day of the hearing, Mr. Fahnbulleh had received and defaulted on two Commission-issued payment arrangements concerning his gas bills to PGW. Tr. 19, PGW Exhibit 4. The last Commission-issued payment arrangement was issued on December 10, 2010, at BCS Case # 2775662. Tr. 33-34, PGW Exhibit 4. In December of 2010, BCS found the Complainant to be a level 1 income customer based on a reported household income of \$3,076.02 for a household of six individuals. Tr. 34-35. In addition to the two Commission-issued payment arrangements, Mr. Fahnbulleh had received and defaulted on 10 payment arrangements with the Respondent. Tr. 19, PGW Exhibit 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. This law provides strict guidelines that the

Commission must follow in handling customer complaints. Section 1405 of the Public Utility Code regarding payment arrangements reads in pertinent part:

(d) Number of payment arrangements.-- Absent *a change in income*, the Commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

66 Pa.C.S. § 1405(d). (Emphasis added). Furthermore, Section 1403 of the Public Utility Code defines “change in income” as a decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or 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.

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. *Crawford v. National Fuel Gas Distribution Corp.*, C-20066348 (Opinion and Order entered December 6, 2007), *see also Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013), *Dorsey v. Philadelphia Gas Works*, Docket No. F-2012-2313679 (Opinion and Order entered Nov. 22, 2013).

In the present case, Mr. Fahnbulleh has received and defaulted on two prior Commission-issued payment arrangements. His gross household income of \$2,496.00¹ per month falls below 200% of the federal poverty level, and he has experienced an 18.8%² decrease in income which satisfies the requirements of 66 Pa.C.S. § 1403.

¹ \$2,362.43 + \$133.57 = \$2,496.00

² (\$3,076.02 - \$2,496.00) / \$3,076.02 = 0.1885

In addition, from August 2014 to November 2014, Mr. Fahnbulleh made three payments of \$248.77, \$245.65, and \$250.00 respectively, lowering his outstanding balance with PGW from \$1,224.71 on August 21, 2014, to \$586.45 on November 13, 2014. PGW Exhibit 3.

The impact of his medical diagnosis on Mr. Fahnbulleh’s payment history to PGW is noticeable. From December 2014 until July 2016, Mr. Fahnbulleh made only one payment of \$108.94 on his account with PGW. PGW Exhibit 3. However, from August 31, 2016, to November 2017, Mr. Fahnbulleh made the following payments towards his account with PGW:

Date	Payment	Outstanding Balance
8/31/2016	\$500.00	\$4,602.39
9/30/2016	\$500.00	\$4,131.51
10/31/2016	\$500.00	\$3,700.55
12/2/2016	\$500.00	\$3,386.03
2/1/2017	\$500.00	\$3,634.07
5/23/2017	\$317.00	\$4,356.14
6/30/2017	\$500.00	\$3,913.92

Upon careful consideration of the evidence collected in this matter, I find that the Commission is authorized by law to establish a payment arrangement on behalf of Mr. Fahnbulleh, and that it is appropriate to do so in the present case. See *Santee v. PECO Energy Company*, Docket No. C-2017-2586450 (Opinion and Order entered March 28, 2018). It is undisputed that Mr. Fahnbulleh has defaulted on numerous payment arrangements; however, the record in this matter indicates that from August 2016, to June 2017 Mr. Fahnbulleh made several payments that exceeded significantly his usage of gas service. This fact evidences at least some good faith effort on Mr. Fahnbulleh’s part to pay his gas bills monthly and to reduce his outstanding balance. These efforts were affected by the Complainant’s medical condition – a situation over which he had no control.

Section 1405 of the Public Utility Code regarding payment arrangements reads in pertinent part:

(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.

(b) Length of payment arrangements.--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(a) and (b). In addition, "Household income" is defined in section 1403 as, "[t]he combined gross income of all adults in a residential household who benefit from the public service." 66 Pa.C.S. § 1403 (Definition of "Household income").

The Complainant's monthly household income is \$2,496.00 for a household of four. Mr. Fahnbulleh's household income falls below 150% of the Federal poverty level. As a

level 1 income customer, Mr. Fahnbulleh is required to retire his balance with PGW within five years, or 60 months. See 66 Pa.C.S. § 1405(b)(1).

Finally, I note that the Pennsylvania Public Utility Code (Code) and the Commission's regulations allow the Commission to "order a waiver of any late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level." 66 Pa.C.S. § 1409, 52 Pa.Code § 56.22(d). Mr. Fahnbulleh was a level 1 income customer in 2010. He was also a level 1 income customer on September 1, 2016 as well as on the day of the hearing. See PGW Exhibit 4, page 4 of 6. Additionally, Mr. Fahnbulleh experienced a significant decrease in income after he left his employment in February of 2015 to receive treatment for his medical condition. The preponderance of the evidence collected in this case indicates that Mr. Fahnbulleh's household income was below 150% of the federal poverty level during the period from February 2015 to November 2017. During the same period, PGW assessed \$580.90 in late payment charges against the Complainant's account. PGW Exhibit 3. Therefore, any late payment charges assessed against his outstanding balance during the period from February 2015 to November 2017 can be waived by the Commission pursuant to the provisions of 66 Pa.C.S. § 1409 and 52 Pa.Code § 56.22. See *Bartell v. PECO Energy Company*, Docket No. C-2016-2542213 (Final Order entered June 9, 2017).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The Complainant had the burden of proof. 66 Pa.C.S. § 332(a).
3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, applies to this proceeding.

4. The Commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established in Chapter 14 of the Pennsylvania Public Utility Code. 66 Pa.C.S. § 1405.

5. It is Commission policy to exercise its discretion to issue payment arrangements 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. *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 at 15-16 (Opinion and Order entered December 6, 2007), *see also Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013).

6. "Household income" is defined as, "[t]he combined gross income of all adults in a residential household who benefit from the public service." 66 Pa.C.S. § 1403.

7. Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. 66 Pa.C.S. § 1405(d).

8. Change in income is defined as a decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or 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.

9. The Pennsylvania Public Utility Code (Code) and the Commission's regulations allow the Commission to order a waiver of any late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level. 66 Pa.C.S. § 1409, 52 Pa.Code § 56.22(d).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Armah Q. Fahnbulleh against Philadelphia Gas Works at Docket No. F-2017-2619829, is granted.
2. That Philadelphia Gas Works shall credit Armah Q. Fahnbulleh's account in the amount of \$580.90.
3. That Armah Q. Fahnbulleh shall make monthly payments consisting of his budget bill plus one sixtieth (1/60th) of the balance accrued on his account.
4. That as long as Armah Q. Fahnbulleh keeps the payment schedule stated in this order, Philadelphia Gas Works shall not suspend or terminate his utility service except for valid safety or emergency reasons or assess late payments or finance charges against his account.
5. That, if Armah Q. Fahnbulleh does not keep the payment schedule stated in this order, Philadelphia Gas Works is authorized to suspend or terminate his utility service in accordance with the Commission's statute and regulations.
6. That the Secretary mark this docket closed.

Date: April 3, 2018

_____/s/_____
Eranda Vero
Administrative Law Judge