

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Leana Miguel	:	
	:	
v.	:	C-2017-2629349
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s Complaint because she failed to sustain her burden of showing that she is entitled to receive a second Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On October 5, 2017, Leana Miguel (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 a checkmark in the box indicating, “I would like a payment agreement.”

On November 6, 2017, Respondent filed an Answer indicating that the Complainant has had two payment arrangements that have not been satisfied. Respondent further answered that the Commission’s Bureau of Consumer Services (BCS) issued a decision on August 17, 2017, at BCS No.

3546766 granting the Complainant a 60-month payment arrangement requiring her to pay \$312.00 per month (\$226.00 budget plus \$86.00 towards arrears) to settle her outstanding balance.

By Hearing Notice dated December 1, 2017, a hearing was scheduled for January 12, 2018, at 1:00 p.m., and the matter was assigned to me.

I issued a Prehearing Order on December 6, 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 she is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on January 12, 2018. Complainant appeared *pro se* and testified. Respondent appeared and was represented by Laureto Farinas, Esq., who presented the testimony of Adrian Pinkney, a Customer Review Officer for PGW. Respondent offered four exhibits which were all admitted into the record.

The record in this case consists of a 38-page transcript and four exhibits. The record closed on January 25, 2018, when I received the transcript of the January 12, 2018 hearing.

FINDINGS OF FACT

1. The Complainant in this case is Leana Miguel.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. The Complainant resides at 5910 Cottage Street, Philadelphia, PA 19135 (service address). Tr. 7.
4. On August 15, 2017, the BCS granted the Complainant a payment arrangement on her then outstanding balance of \$5,145.55, requiring her to pay \$312.00 per month

(\$226.00 budget + \$86.00 arrears) over a period of 60 months to extinguish her balance. Tr. 8, 29-30; PGW Exh. 4.

5. At the time BCS granted the Complainant's request for a payment arrangement, the Complainant was receiving \$784.25 per month in Supplemental Security Income (SSI). Tr. 9, 30; PGW Exh. 3.

6. The Complainant did not make any payments towards her Commission-issued payment arrangement. Tr. 9.

7. The Complainant's payment arrangement defaulted on November 11, 2017. Tr. 30; PGW Exh. 3.

8. The Complainant lives alone at the service address. Tr. 8-9; PGW Exh. 3.

9. The Complainant currently receives \$801.50 per month in SSI. Tr. 9.

10. As of the date of the hearing, the Complainant's outstanding balance totaled \$5,872.55. Tr. 22-23; PGW Exh. 2.

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, the 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, the 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.Cmwlt. 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.Cmwlt. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlt. 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. Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlt. 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 her 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.Cmwlt. 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.Cmwlt. 2001).

In the present case, the Complainant has indicated that she is seeking a more affordable Commission-issued payment arrangement. The Complainant maintained that she cannot afford the payment arrangement terms granted to her by the Commission's BCS in August 2017.

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:

(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(b).

Additionally, Section 1405(d) provides that “[a]bsent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision.” 66 Pa.C.S. § 1405(d). A 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 income level is 200% or less of the Federal poverty level.” 66 Pa.C.S. § 1403.

The record reveals that on August 15, 2017, the Commission’s BCS granted the Complainant a payment arrangement to assist in extinguishing her then outstanding balance of \$5,145.55, requiring her to pay \$312.00 per month (\$226.00 budget + \$86.00 arrears) over a period of 60 months. Tr. 8, 29-30; PGW Exh. 4. The record further reveals that the Complainant did not make any payments towards her Commission-issued payment arrangement, resulting in default on

November 11, 2017. Tr. 9, 30; PGW Exh. 3. Lastly, the record reveals that the Complainant's gross monthly income from SSI has actually increased from \$784.25 at the time BCS granted her the payment arrangement to \$801.50 at the time of the hearing. Tr. 9, 30; PGW Exh. 3.

Since the Complainant's gross monthly income has actually increased since she received and defaulted on the Commission-issued payment arrangement, pursuant to the Public Utility Code, the Commission cannot order another payment arrangement on her behalf. Even if the Commission could grant a second payment arrangement to the Complainant, the terms of that payment arrangement would be no more favorable than the terms granted to her in August of 2017. As previously noted, the longest payment arrangement term the Commission can grant to extinguish a debt is 60 months.¹ The Commission's BCS already gave the Complainant a 60-month payment arrangement to settle her debt with PGW. Even if the Commission could grant the Complainant a second payment arrangement, she would receive the same 60-month term pursuant to 66 Pa.C.S. § 1405(b)(1) based on her current gross monthly income.²

Accordingly, the Complainant's Complaint is 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. 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).

¹ 66 Pa.C.S. § 1405(b)(1).

² A one-person household with gross monthly income of \$1,365.75 is at 135% of the federal poverty level. Complainant's income is below 135% of the federal poverty level.

1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

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

5. A 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 income level is 200% or less of the Federal poverty level.” 66 Pa.C.S. § 1403.

6. Complainant failed to sustain her burden of demonstrating that she should receive a second Commission-issued payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Leana Miguel against Philadelphia Gas Works at Docket No. C-2017-2629349 is denied; and
2. That the record at Docket No. C-2017-2629349 be marked closed.

Date: April 17, 2018

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