

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rodney Hardy	:	
	:	
v.	:	C-2017-2634823
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies Rodney Hardy’s formal Complaint against Philadelphia Gas Works at Docket No. C-2017-2634823, because he failed to carry the burden of proving that he qualifies for a subsequent Commission-issued payment arrangement.

**HISTORY OF THE PROCEEDING**

On November 20, 2017, Rodney Hardy (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) alleging that the utility is threatening to shut off his gas service. In addition, Mr. Hardy averred that he is unable to pay his gas bills and requested a payment arrangement.

On December 11, 2017, PGW filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

A Hearing Notice dated January 8, 2018, notified the parties that an initial hearing was scheduled as part of the morning session of a call of the docket hearing on Thursday, February 15, 2018, at 9:30 a.m.

A Prehearing Order was issued on January 16, 2018, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on February 15, 2018. The Complainant appeared *pro se* and testified in support of the Complaint. Graciela Christlieb, Esq., represented the Respondent, and presented the testimony of Patricia Bernard, 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 was closed upon receipt of my copy of the transcript on March 22, 2018.

#### FINDINGS OF FACT

1. The Complainant in this proceeding is Rodney Hardy, whose mailing address is 7200 Devon Street, 2<sup>nd</sup> Floor, Philadelphia, PA 19119 (Service Address). Tr. 6-7.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. On June 20, 2016, Mr. Hardy filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3451387, alleging his inability to pay his gas bills and requesting a payment arrangement. PGW Exhibit 3.
4. At the time of the filing of BCS Case No. 3451387, Mr. Hardy reported to BCS that his household consisted of six individuals and that his gross household income was \$1,055.00 per month. Tr. 23, PGW Exhibit 3.

5. On June 23, 2016, BCS established a payment arrangement on behalf of Mr. Hardy upon determining that he was a Level 1 income customer. Tr. 23, PGW Exhibit 3.

6. The payment arrangement established by BCS on June 23, 2016, required Mr. Hardy to make monthly payments of \$213.00, consisting of a regular budget bill amount of \$187.00 per month, plus \$26.00 per month towards arrearages. *Id.*

7. On August 23, 2016, Mr. Hardy defaulted on the payment arrangement issued by the Commission's BCS. Tr. 23, PGW Exhibits 2 and 3.

8. On November 8, 2016, PGW established a payment arrangement on behalf of Mr. Hardy. Tr. 27-28, PGW Exhibit 2.

9. The Company-issued payment arrangement required Mr. Hardy to make a lump sum payment of \$369.40, then monthly payments of \$165.00 towards his account with PGW. Tr.28, 33, PGW Exhibit 4.

10. Mr. Hardy never made the lump sum payment and defaulted on the payment arrangement issued by the Respondent. Tr. 33, PGW Exhibit 2.

11. As of the time of the hearing, Mr. Hardy resides at the Service Address with his wife, his five-month old daughter, and his two stepchildren who are 15 and 18 years old. Tr. 12-13.

12. Mr. Hardy is the sole income provider in his household. Tr. 13-14.

13. Mr. Hardy works between 20 and 25 hours per week as a Behavioral Specialist at a pay rate of \$35.00 per hour. Tr. 13-14.

14. From June 24, 2015 to January 30, 2018, Mr. Hardy made the following payments towards his account with PGW:

Date	Amount
11/28/2015	\$81.00
9/17/2017	\$34.50
10/24/2017	\$36.00
Total	\$151.50

PGW Exhibit 1.

15. As of the day of the hearing, the Complainant's outstanding balance with PGW was \$5,093.74. Tr. 20, PGW Exhibit 1.

#### DISCUSSION

In his formal Complaint, Mr. Hardy alleged that PGW is threatening to shut off his gas service and that he is unable to pay his gas bills to the Respondent. As relief, he requested a payment arrangement.

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.A. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980), 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*, 666 A.2d 744 (Pa. Cmwlth. 1995) (vacated on other grounds). 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 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.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).

On June 20, 2016, Mr. Hardy filed an informal complaint with the Commission's BCS at BCS Case No. 3451387, alleging his inability to pay his gas bills and requesting a payment arrangement. PGW Exhibit 3. At the time, Mr. Hardy reported to BCS that his household consisted of six individuals and that his gross household income was \$1,055.00 per month. PGW Exhibit 3. On June 23, 2016, BCS established a payment arrangement on behalf of Mr. Hardy upon determining that he was a Level 1 income customer. PGW Exhibit 3. The payment arrangement required Mr. Hardy to make monthly payments of \$213.00, consisting of a regular budget bill amount of \$187.00 per month, plus \$26.00 per month towards arrearages. *Id.* Mr. Hardy defaulted on the payment arrangement issued by the Commission's BCS. Tr., PGW Exhibits 2 and 3.

On November 8, 2016, Mr. Hardy visited PGW's office in Germantown requesting a payment arrangement while reporting a gross household income of \$2,000.00 per month for a household of four individuals. Tr. 28, 33, PGW Exhibit 2. On the same day, PGW issued a payment arrangement on behalf of Mr. Hardy, which required him to make a lump sum payment of \$369.40 then monthly payments of \$165.00 towards his account with PGW. Tr. 33, PGW Exhibit 4. Mr. Hardy never made the lump sum payment and defaulted on the payment arrangement issued by the Respondent. Tr., PGW Exhibit 2.

Mr. Hardy resides at the Service Address with his wife, his five-month old daughter, and his two stepchildren who are 15 and 18 years old. Tr. 12-13. He is the sole income provider in his household, working between 20 and 25 hours per week as a Behavioral Specialist at a pay rate of \$35.00 per hour. Tr. 13-14.

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:

**(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.

\* \* \*

(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(a), (b) and (d) (emphasis added).

In addition, "household income" is defined in section 1403 the Public Utility Code as "[t]he combined gross income of all adults in a residential household who benefit from the public service." 66 Pa.C.S. § 1403. Furthermore, section 1403 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.

The evidence collected in this matter reveals that Mr. Hardy has already received and defaulted on one Commission-issued payment arrangement. Mr. Hardy's gross household income of \$3,412.50<sup>1</sup> per month represents an increase, instead of a decrease, from the income he reported to BCS in June of 2016. The number of the household members has decreased from six, reported to BCS in June of 2016, to five reported on the day of the hearing.

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<sup>1</sup>  $(20+25)/2$  avg. hrs. per week x \$35.00 per hr. x 52 weeks per year ÷ 12 months per year = \$3,412.50 per month.

In addition, Mr. Hardy has a poor payment history with PGW, having made only three payments of \$81.00, \$34.50, and \$36.00 during the 30-month period from June 2015 to January 2018. He made no payments the entire year of 2016 despite entering into two payment arrangements with the Commission and the Respondent. As of the day of the hearing, the Complainant's outstanding balance was \$5,093.74. Tr. 20, PGW Exhibit 1.

After carefully reviewing the record in this matter, I find that the Complainant has failed to carry his burden of proving that he has experienced a decrease in income that satisfies the definition of a "change in income" pursuant to 66 Pa.C.S. §§ 1403 and 1405(d). Aside from experiencing an increase in income, Mr. Hardy has also failed to show a good faith effort to pay the bills for the gas that he and his family consumes. See *Crawford v. National Fuel Gas Distribution Corp.*, C-20066348 (Opinion and Order entered December 6, 2007). Consequently, the Commission lacks the authority to issue a subsequent payment arrangement for the Complainant.

For the reasons stated above, Mr. Hardy's present Complaint against PGW is dismissed in its entirety.

#### 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. 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).

