

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nidza Negron	:	
	:	
v.	:	C-2017-2637116
	:	
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 proving that Philadelphia Gas Works provided her with inadequate or unreasonable service or that she is entitled to receive a Commission-issued payment arrangement.

**HISTORY OF THE PROCEEDING**

On December 17, 2017, Nidza Negron (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,” “I am having a reliability, safety or quality problem with my utility service,” and “[o]ther.” Under the “[r]equested relief” section, the Complainant alleged that PGW informed her that she would have to pay \$489.23 to have her service restored, and

then informed her that service would not be restored if she paid that amount. Complainant wants PGW to honor the statement that it would restore service if she paid \$489.23.

On December 28, 2017, Respondent filed an Answer admitting that it terminated the service at 6302 Marsden Street, Philadelphia, PA (service address), and that the Complainant seeks a payment arrangement. Respondent denied that there is a reliability, quality, or utility problem with the service at the service address. Respondent indicated that the Complainant established service at the service address as of December 31, 2016, that PGW terminated the Complainant's service on September 13, 2017 for non-payment, and that at the time of termination, the Complainant's account balance totaled \$15,252.64. Respondent further indicated that the Complainant was informed on September 15, 2017, September 19, 2017, September 22, 2017, October 2, 2017, and October 17, 2017 that she would have to pay her full balance before PGW would restore her service. Respondent admitted that, following a second contact from the Complainant on October 17, 2017, the Complainant was incorrectly informed that she could have her service restored with a payment of \$489.23. Lastly, Respondent indicated that, although Complainant made two separate payments totaling \$489.23 in October 2017, her October 27, 2017, payment of \$389.23 was declined by the bank for insufficient funds.

By Hearing Notice dated January 25, 2018, a hearing was scheduled for March 15, 2018, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on January 26, 2018. 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 March 15, 2018. Complainant appeared *pro se* and testified. Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Tiffany Jones, a Senior Customer Review Officer. Respondent offered eight exhibits which were all admitted into the record.

The record in this case consists of a 63-page transcript and eight exhibits. The record closed on March 26, 2018, when I received the transcript of the March 15, 2018, hearing.

### FINDINGS OF FACT

1. The Complainant in this case is Nidza Negron.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. The Complainant resides at 6302 Marsden Street, Philadelphia, PA (service address). Tr. 7.
4. Between January 2017 and August 2017, the Complainant made only one payment towards her account for service at the service address. PGW Exh. 2.
5. On August 8, 2017, PGW issued the Complainant a termination notice. Tr. 8, 48; PGW Exh. 4.
6. PGW's termination notice informed the Complainant that her service may be terminated for non-payment on or after 8:00 a.m. on September 11, 2017. Tr. 8, 48; PGW Exh. 4.
7. On September 13, 2017, PGW terminated the Complainant's gas service for non-payment. Tr. 8, 21, 26-27, 48; PGW Exh. 1.
8. On September 15, 2017, the Complainant contacted PGW seeking restoration terms. Tr. 27; PGW Exh. 1.
9. PGW informed the Complainant that she would have to pay her full outstanding balance plus a reconnection fee of \$123.23 to have service restored. Tr. 27; PGW Exh. 1.

10. On September 19, 2017, the Complainant contacted PGW seeking restoration terms. Tr. 28-29; PGW Exh. 1.

11. PGW informed the Complainant that she would have to pay her full outstanding balance plus a reconnection fee of \$123.23 to have service restored. Tr. 29; PGW Exh. 1.

12. On September 22, 2017, PGW issued the Complainant a credit denial letter informing the Complainant that she would have to pay her full outstanding balance plus a reconnection fee of \$123.23 to have service restored. Tr. 49; PGW Exh. 5.

13. On October 17, 2017, the Complainant contacted PGW seeking restoration terms. Tr. 30; PGW Exh. 1.

14. PGW informed the Complainant that she would have to pay her full outstanding balance plus a reconnection fee of \$123.23 to have service restored. Tr. 30; PGW Exh. 1.

15. Complainant contacted PGW a second time on October 17, 2017 seeking restoration terms. Tr. 32; PGW Exh. 1.

16. Following this second call on October 17, 2017, a PGW representative informed the Complainant that her service would be restored if she paid \$489.23. Tr. 9, 32; PGW Exh. 1.

17. On October 19, 2017, the Complainant made a payment of \$100.00 to PGW. Tr. 11, 33.

18. On October 19, 2017, a PGW representative informed the Complainant that, although she was quoted incorrect terms for service restoration, PGW would honor those terms if she completed the payment. Tr. 34; PGW Exh. 1.

19. On October 27, 2017, the Complainant made a payment of \$389.23 to PGW. Tr. 11, 34.
20. The Complainant's October 27, 2017 payment of \$389.23 was subsequently declined for insufficient funds. Tr. 11, 34.
21. The Complainant did not submit another payment of \$389.23 after it was declined. Tr. 19-20.
22. The Complainant has not made any additional payments to PGW. Tr. 20.
23. On October 30, 2017, a PGW representative informed the Complainant that the restoration terms requiring her to pay \$489.23 for restoration of service were incorrect, and that she would have to pay her full balance before service would be restored. Tr. 35, 38; PGW Exh. 1.
24. The Complainant previously participated in PGW's Customer Responsibility Program (CRP). Tr. 13; PGW Exh. 3.
25. The Complainant entered into payment arrangements with PGW on March 26, 2010, March 30, 2011, and November 5, 2015. Tr. 46-47; PGW Exh. 3.
26. The Complainant defaulted on each payment arrangement. Tr. 46; PGW Exh. 3.
27. The Complainant has never received a Commission-issued payment arrangement. Tr. 14; 47.
28. The Complainant's household is a three-person household. Tr. 14.

29. Complainant has gross monthly income of approximately \$3,000.00 from her employment with Verizon. Tr. 14-15.

30. The Complainant's income from her employment is her household's only source of income. Tr. 15.

31. As of the date of the hearing, the Complainant's service was still off. Tr. 9.

32. The Complainant's balance totals \$14,285.31. Tr. 11-12; 41.

### 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.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).

#### Inadequate Service

During the hearing, the Complainant indicated that following termination of her gas service for non-payment, PGW failed to honor restoration terms provided to her by a customer service representative. The Complainant believes that PGW should honor these restoration terms. The Complainant has raised a claim of inadequate service.

PGW is required by law to provide its customers with adequate, safe and reasonable service with respect to its service. As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa.C.S. § 1501 requires public utilities to provide reasonable and adequate, not perfect service. The statute at 66 Pa.C.S. § 1501, provides, in relevant part:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and

improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

Interpreting this provision in *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984), the Commonwealth Court stated:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.

*Id.* at 949 (footnote omitted).

The statutory definition of "service" is to be broadly construed.<sup>1</sup> *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995). In applying the facts to the law, the issue becomes whether PGW's actions as described in the Complaint rise to the level of inadequate service that constitutes a violation of the Public Utility Code.

Additionally, regarding payment to restore service, Commission regulations provide in pertinent part:

A public utility may require the payment of any outstanding balance or portion of an outstanding balance if the applicant or customer resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant or customer resided there, not exceeding 4 years prior to the date of requesting that service be restored.

52 Pa.Code § 56.191(d).

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<sup>1</sup> "Service." Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . . 66 Pa.C.S. § 102.

The Complainant did not dispute the balance PGW says she owes. Instead, the Complainant maintained that PGW provided her with inadequate service because the Company failed to honor restoration terms provided to her by a customer service representative. The Complainant referred to a conversation she had with a customer service representative on October 17, 2017, during which the representative informed her that her service would be restored if she paid \$489.23. Tr. 9, 32; PGW Exh. 1. The Complainant maintained that, although she made the required payments, PGW failed to honor these terms and restore her service.

PGW acknowledged that a customer service representative provided erroneous restoration terms to the Complainant during the October 17, 2017, contact. Tr. 34; PGW Exh. 1. PGW further acknowledged that a PGW customer service representative informed the Complainant on October 19, 2017, that, although she was quoted incorrect terms for restoration of service, PGW would honor those terms if she completed the payment. *Id.* Additionally, PGW acknowledged that a PGW representative informed the Complainant on October 30, 2017, that the restoration terms provided to her requiring her to pay \$489.23 to have her service restored were incorrect, and that she would have to pay her full balance before service would be restored. Tr. 35, 38; PGW Exh. 1. PGW maintained that the reduced restoration terms communicated to the Complainant were an error, and that prior to October 17, 2017, PGW informed the Complainant multiple times that she would have to pay her full outstanding balance to have her service restored.

As previously noted, PGW is required to provide adequate, safe and reasonable service; it is not required to provide constantly flawless service. Clearly, PGW misinformed the Complainant regarding restoration terms. However, this was after multiple calls made by the Complainant to PGW during which PGW informed her that she would have to pay her full balance before her service would be restored. Moreover, PGW subsequently informed the Complainant that she had been provided with erroneous restoration terms and once again informed her that full payment would be required for restoration. Pursuant to Commission regulations, PGW is permitted to require full payment of the Complainant's outstanding balance

before restoring her service.<sup>2</sup> In light of the fact that PGW informed the Complainant on multiple occasions that she would have to pay her full balance to have her service restored, I cannot conclude that PGW's error constituted inadequate or unreasonable service.

It is also important to note that, although the Complainant wants PGW to abide by the erroneous terms and restore her service, the \$389.23 payment she made pursuant to these terms to restore service was declined for insufficient funds. Moreover, as of the date of the hearing, the Complainant acknowledged that she had not made any additional payments towards her account.

Accordingly, the Complainant failed to sustain her burden of proving that PGW provided her with inadequate or unreasonable service.

#### Payment Arrangement

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:

#### **§ 1405 Payment arrangements**

(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.

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<sup>2</sup> 52 Pa.Code § 56.191(d).

(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). Although testimony was offered indicating that the Complainant previously participated in PGW's CRP program, there is nothing in the record to indicate that the Complainant's outstanding balance includes CRP arrears. Accordingly, Section 1405(c) does not bar the Commission from granting the Complainant 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 2018 Federal Poverty Guidelines provide that a three-person household with gross monthly household income of \$3,000.00 is between 150% and 200% of the Federal poverty level.<sup>3</sup> Pursuant to Chapter 14, the Complainant's household income makes her eligible for a three-year payment arrangement to extinguish her outstanding balance. However, in order to determine the Complainant's eligibility for a Commission-issued payment arrangement, in

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<sup>3</sup> *Federal Register*, Vol. 83, No. 12, January 18, 2018, pp. 2642-2644. Also see <http://aspe.hhs.gov/poverty>.

addition to considering the Complainant's household income, I must also consider her payment history with PGW.

The record demonstrates that between January 2017 and August 2017 the Complainant made only one payment towards her account for service at the service address. Additionally, the record demonstrates that following the termination of her service, the Complainant submitted a \$389.23 payment to PGW that was declined due to insufficient funds and that she has not made any additional payments to PGW. The record further demonstrates that the Complainant has already defaulted on three company-issued payment arrangements. Based on the Complainant's poor payment history, as well as the Complainant's failure to keep the terms of three separate company issued payment arrangements, it is unlikely that she would keep the terms of a three-year payment arrangement where she would be required to pay \$396.81 per month ( $\$14,285.31 \text{ balance} / 36 \text{ months} = \$396.81$ ) in addition to her regular monthly payments.

Accordingly, the Complainant's request for a Commission-issued payment arrangement 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. 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. PGW is required by law to provide its customers with adequate, safe and reasonable service with respect to its service. 66 Pa.C.S. § 1501.

5. A public utility may require the payment of any outstanding balance or portion of an outstanding balance if the applicant or customer resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant or customer resided there, not exceeding 4 years prior to the date of requesting that service be restored. 52 Pa.Code § 56.191(d).

6. The Complainant failed to sustain her burden of demonstrating that PGW provided her with inadequate or unreasonable service.

7. 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).

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

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Nidza Negron against Philadelphia Gas Works at Docket No. C-2017-2637116 is denied; and

