

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Patrick Black	:	
	:	
v.	:	C-2018-3000864
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision dismisses the Complaint because the Complainant failed to carry his burden of proving that he is eligible for a subsequent Commission-issued payment arrangement, or to an extension of his last payment arrangement.

HISTORY OF THE PROCEEDING

On March 28, 2018, Patrick Black (Complainant or Mr. Black) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW). In his Complaint, Mr. Black stated that PGW was threatening to shut off or has shut off his service and requested a payment arrangement.

On April 23, 2018, the Respondent filed an Answer to the Complaint. The Respondent admitted to issuing a termination notice for the service at the service address due to Mr. Black's nonpayment of his gas bills. The Respondent requested that the Commission find against the Complainant and dismiss the Complaint.

By Hearing Notice served upon the parties on May 1, 2018, the Commission scheduled this matter for a call-in telephonic hearing on Wednesday, May 30, 2018, at 10:00 a.m., and assigned the case to me.

I issued a Prehearing Order, served upon the parties on May 1, 2018, addressing, inter alia, the method by which the parties could call-in to participate in the hearing, the procedures applicable to the hearing, and the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them.

By letter sent through the U.S. mail, Mr. Black made a request for a continuance of the May 30, 2018, hearing. The letter was received by the Office of Administrative Law Judge (OALJ) on May 24, 2018. PGW objected to the request for continuance, alleging that Mr. Black has abused, and continues to abuse, the Commission's administrative processes to avoid termination of his gas service.

The request for continuance was granted by Order Granting Continuance issued May 30, 2018.

By Hearing Notice, served upon the parties on May 30, 2018, the May 30, 2018 hearing was cancelled and rescheduled to June 19, 2018, at 10:00 a.m.

A Second Prehearing Order was served upon the parties on June 1, 2018.

On the day of the June 19, 2018 hearing, the OALJ received a call from Mr. Black at approximately 8:46 a.m., stating that he could not make the hearing. This communication to the OALJ was treated as Mr. Black's second request for a continuance in this matter. I placed a phone call to Mr. Black using the phone number he provided in his Complaint. Mr. Black did not answer my phone call. I left a voicemail, stating that the hearing would proceed as scheduled, and for Mr. Black to provide, to myself and to PGW, any documentation that he had evidencing the circumstances that prevented him from attending the hearing.

I conducted the June 19, 2018, telephonic hearing as scheduled. The start of the hearing was delayed until approximately 10:19 a.m. to give the parties time to call-in to participate. The Complainant did not call-in to the hearing to participate. Attorney Graciela Christlieb was present at the hearing on behalf of the Respondent. No witnesses were presented, and no exhibits were introduced for the record. PGW made two Motions at the hearing, the first for the Complaint to be dismissed with prejudice for lack of prosecution, and the second for the Complainant to be precluded from filing further Informal or Formal Complaints on his arrearages until his balance owed to PGW was resolved. PGW was informed that both Motions would be taken under advisement. A record¹ was made of the June 19, 2018, telephonic hearing.

Following the hearing, an Interim Order, dated June 19, 2018, was issued to the parties. The Interim Order ordered for the record in this matter to remain open and directed Mr. Black to submit to the OALJ any documentation that he had evidencing the circumstances that prevented him from attending the June 19, 2018 hearing. Mr. Black was directed to submit this documentation by 10:00 a.m. on June 29, 2018. Mr. Black did in fact submit the requested documentation on June 28, 2018. Mr. Black submitted that his absence at the June 19, 2018 hearing was due to attending the funeral of a “close friend.”

By Order Granting Second Continuance Request, issued June 29, 2018, the Complainant’s second request for a continuance was granted. Thus, the two Motions made at the June 19, 2018, hearing by PGW were denied.

A Further Call-In Hearing Notice was served upon the parties on June 29, 2018, scheduling a further hearing for this matter for Friday, July 13, 2018, at 10:00 a.m.

I conducted the further telephonic hearing as scheduled on July 13, 2018. The Complainant appeared pro se and testified on his own behalf. The Complainant presented no exhibits for the record.

¹ The telephonic hearing was recorded by means of a tape recorder. No Court Reporter was present.

The Respondent was represented by Graciela Christlieb, Esquire, who presented the testimony of Tiffany Jones, Senior Customer Review Officer. The following exhibits were also presented, all of which were admitted into the record:

- PGW Exhibit 1 – Statement of Account (2 pages)
- PGW Exhibit 2 – Payment Arrangement History (9 pages)
- PGW Exhibit 3 – CRP (1 page)
- PGW Exhibit 4 – BCS Complaint and Decision (3 pages)
- PGW Exhibit 5 – Initial Decision (15 pages)
- PGW Exhibit 6 – Final Order (1 page)

The record² closed on July 13, 2018, following the conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Patrick Black.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant received service from PGW at 3407 Vista Street, Philadelphia Pennsylvania (service address). (PGW Exhibit 1, pg. 1).
4. Mr. Black has received, and has defaulted on, two Commission-issued payment arrangements. (PGW Exhibit 2, pg. 1).
5. The most recent Commission-issued payment arrangement was issued to Mr. Black by the Bureau of Consumer Services (BCS) at Case No. 3534966 on June 14, 2017. (PGW Exhibit 4, pg. 3).

² The telephonic hearing was recorded by means of a tape recorder. No Court Reporter was present.

6. At BCS No. 3534966, a level 1 payment arrangement was established for Mr. Black, under which he was to pay \$370 (\$91 budget amount plus \$279 towards arrears) per month beginning with the August 2017 billing date. (PGW Exhibit 4, pg. 3).

7. The BCS payment arrangement was based on a reported household income of \$3,160 per month for a five-person household. (PGW Exhibit 2, pg. 6).

8. Mr. Black defaulted on the BCS payment arrangement at BCS No. 3534966 on September 8, 2017. (PGW Exhibit 2, pg. 6).

9. Mr. Black currently has a five-person household, consisting of four adults (himself, wife, daughter, and son) and a minor grandchild.

10. Mr. Black's monthly gross income is approximately \$1,905.³ Mr. Black's income comes from his employment and he derives no income from any other sources.

11. Mr. Black's wife has a monthly gross income of approximately \$866.⁴ She derives no income from any other sources.

12. Mr. Black's son receives unemployment in the amount of approximately \$736.10 per month.⁵ He derives no income from any other sources.

13. Mr. Black's daughter is unemployed. She derives no income from any source.

³ At the hearing, Mr. Black stated that he made \$11 an hour, and worked 40 hours per week. $(52 \text{ (weeks)} / 12 \text{ (months)} = 4.33)$. $(\$11 * 40 \text{ hrs} = \$440)$. $(4.33 * \$440 = \$1905)$.

⁴ Mr. Black stated at the hearing that his wife made \$400 every two weeks. $(4.33 / 2 = 2.165)$. $(2.165 * \$400 = \$866)$.

⁵ At the hearing, Mr. Black stated that his son receives \$340 every two weeks for unemployment. $(4.33 / 2 = 2.165)$. $(2.165 * \$340 = \$736.10)$.

14. In total, Mr. Black has a household income in the amount of approximately \$3,507.10 per month.⁶

15. Mr. Black was placed on PGW's Customer Assistance Program, called the Customer Responsibility Program (CRP), on June 29, 2009. (PGW Exhibit 3).

16. Mr. Black defaulted on the CRP because of nonpayment and was removed from the CRP on June 6, 2011. (PGW Exhibit 3).

17. In total, Mr. Black has defaulted on fifteen Company-issued payment arrangements. (PGW Exhibit 2, pg.1).

18. Mr. Black's total past due balance as of May 23, 2018, is \$17,855.39. (PGW Exhibit 1, pg. 1-2).

19. None of Mr. Black's current arrearages are made up of CRP arrearages.

20. From November 1, 2016, to May 23, 2018, Mr. Black has made no payments towards his gas bill.

21. PGW requires full payment of the outstanding balance for restoration of Mr. Black's gas service.

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). To satisfy this burden, the Complainant must show that the named 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). This must be shown by a

⁶ \$1,905 + \$866 + \$736.10.

preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980).

In this proceeding, Mr. Black filed a Complaint against PGW seeking legal relief in the form of a payment arrangement. As a result, the burden of proof is on Mr. Black to show that he is eligible for a payment arrangement.

If the Complainant presents 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.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 order for the Complainant to have his service restored, PGW seeks full payment of the outstanding balance under Section 1407(c) of the Public Utility Code, which governs reconnection of service.

(c) 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.

66 Pa.C.S. § 1407(c).

Mr. Black has defaulted on more than two payment arrangements. (Findings of Fact # 17). Therefore, PGW properly required that Mr. Black pay his full outstanding balance to have his service reconnected.

As stated, Mr. Black is seeking a payment arrangement on his balance. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418, applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement.

The Commission's ability to resolve inability to pay disputes is not affected by the termination of his service. Section 1407(c) does not "divest the Commission of its duty to act as the final arbiter of a utility consumer's rights with respect to payment disputes." Crawford v. National Fuel Gas Dist. Corp., Docket No. C-20066348 (Order entered December 6, 2007); 66 Pa.C.S. § 1407(c). The Commission retains "the authority under Section 1405 of the [Public Utility] Code to establish a payment agreement for a customer who was lawfully disconnected for nonpayment." Rogito v. UGI Utilities, Inc., Docket No. F-02263457 (Order entered December 3, 2008). Section 1405 of the Public Utility Code provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued and the length of the payment arrangement.

(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)-(b).

Mr. Black has received two prior Commission-issued payment arrangements. Mr. Black's most recent Commission-issued payment arrangement is found at BCS No. 3534966, by which he was given a payment arrangement under 66 Pa.C.S. § 1405(a) and 66 Pa.C.S. § 1405(b)(1) on June 14, 2017. This decision became a formal Commission-issued payment arrangement because this decision was not appealed by Mr. Black. 52 Pa. Code § 56.172(d). Mr. Black defaulted upon this payment arrangement on September 8, 2017. Section 1405(d) limits the circumstances by which the Commission can establish a subsequent payment arrangement if a customer has defaulted on a previous Commission issued payment arrangement.

(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 arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

66 Pa.C.S. § 1405(d). “Change of income” is defined as the following:

“Change in income.” 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. Additionally, “Household income” is defined as the following:

“Household income.” The combined gross income of all adults in a residential household who benefit from the public utility service.

66 Pa.C.S. § 1403.

To summarize, Mr. Black is not eligible for a subsequent Commission-issued payment arrangement unless he has suffered a decrease in household income of 10% or more since his last payment arrangement. At the time of the hearing for this proceeding, Mr. Black reported a household income of \$3,507.10 per month for a household of five people. At the time of the filing of BCS No. 3534966, Mr. Black reported a household income of \$3,160 a month for a household of five people. Mr. Black has not suffered a decrease in household income since his previous Commission-issued payment arrangement, instead he has experienced an increase in household income since his previous Commission-issued payment arrangement. Therefore, Mr. Black has not suffered a change in income that would entitle him to a subsequent payment arrangement.

The Responsible Utility Customer Protection Act provides the Commission with another method to assist customers who have defaulted on a previous Commission-issued payment arrangement. The Act authorizes the Commission to reinstate and extend a Commission issued-payment arrangement on which a customer has defaulted. Section 1405(e) provides:

(e) Extension of payment arrangements.--If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement

and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

66 Pa.C.S. § 1405(e). “Significant change in circumstance” is defined as the following:

“Significant change in circumstance.” Any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income.
- (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household.
- (3) Loss of the customer's residence.
- (4) Increase in the customer's number of dependents in the household.

66 Pa.C.S. § 1403.

To summarize, as Mr. Black has a household income of less than 300% of the Federal poverty level, he is eligible for a reinstatement and extension of his payment arrangement at BCS No. 3534966 if he defaulted on said arrangement as a result of a significant change in circumstance. I find that he did not default on his last Commission-issued payment arrangement as a result of a significant change in circumstance.

From the outset, a review of Mr. Black’s statement of account provided in this case reveals that Mr. Black has not made a payment towards his gas bill since November 1, 2016. (PGW Exhibit 1, pg. 1). A review of Mr. Black’s last Formal Complaint proceeding before Administrative Law Judge (ALJ) Salapa at Patrick Black v. Philadelphia Gas Works, Docket No. F-2015-2515349 (Final Order entered May 11, 2016) reveals that Mr. Black has not made a payment since before 2014. (PGW Exhibit 5). As Mr. Black has not made a single valid payment towards his gas bill since before 2014, his default on September 8, 2017 of the Commission-issued payment arrangement, issued to him on July 14, 2017, was due to this

history of non-payment, not because of any significant change in circumstance that occurred following the issuance of that arrangement.

Nonetheless, when asked during the hearing if he experienced anything within the past year that negatively affected his ability to pay his bills, Mr. Black mentioned that he now has to take care of his grandson because his adult daughter is unemployed. Mr. Black stated at the hearing that his adult children, and his grandson, come and go out of his household. Mr. Black provided at the hearing that his adult daughter, adult son, and grandson were currently residing in his household along with himself and his wife. Certainly, the grandson is a dependent for whom Mr. Black is responsible. The Decision at BCS No. 3534966 indicates that at the time of the Decision, Mr. Black had a household of five and was responsible for one child, age four. (PGW Exhibit 4, pg.1). Therefore, the number of dependents in Mr. Black's household has not changed since the last Commission-issued payment arrangement. There has not been an increase in the customer's number of dependents in the household.

Mr. Black alleged no other facts at the hearing that would lead to a finding that he experienced a significant change in circumstance that caused the default on his payment arrangement at BCS No. 3534966 on September 8, 2017. Mr. Black has not suffered a significant change in circumstance, thus he is not eligible for reinstatement and extension of his last Commission-issued payment arrangement.

Lastly, I find it necessary to address Mr. Black's lack of good faith in making payments towards his gas bill. By law, a public utility is entitled to receive payment for the service it provides. Scaccia v. West Penn Power Co., 55 Pa. PUC 637 (1982); Kea v. Peoples Natural Gas Co., 60 Pa. PUC 215 (1985); Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa.Cmwlth. 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-00871874, (Final 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-8721758 (Opinion and 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 (Opinion and Order entered March 17, 2004).

With respect to how a customer's good faith can factor into whether the Commission awards the customer with a payment arrangement, while the Commission has the authority to establish a payment agreement when a utility has lawfully terminated a customer for nonpayment, the Commission exercises this authority very judiciously. The Commission has stated that it will not issue a payment agreement to a customer when the record demonstrates a lack of good faith effort on the part of the customer to pay his utility bills and there was no evidence that the customer experienced a significant change in circumstances which were outside of the customer's control. Crawford v. National Fuel Gas Dist. Corp., Docket No. C-20066348 (Order entered December 6, 2007). The Complainant's payment history and good faith effort in meeting payment obligations should be considered, including the customer's inability or unwillingness to comply with payment arrangements established by the utility. See Getz v. Metropolitan Edison Company, Docket No. C-2014-2459964 (Final Order entered May 28, 2015), and Hewitt v. PECO Energy Company, Docket No. F-2011-2273271 (Order entered September 12, 2013).

As stated, a review of Mr. Black's statement of account provided in this case reveals that Mr. Black has not made a payment towards his gas bill since before November 1, 2016. (PGW Exhibit 1, pg. 1), and a review of Patrick Black v. Philadelphia Gas Works, Docket No. F-2015-2515349 (Final Order entered May 11, 2016), reveals that Mr. Black has not made a payment since before 2014. (PGW Exhibit 5). In addition, ALJ Salapa found that Mr. Black has used the Commission's administrative processes to avoid paying for his utility service. Id. ALJ Salapa found that Mr. Black has been using several tactics to avoid paying for his gas bills, including filing Informal and Formal Complaints to delay termination on his account and submitting bad checks to PGW. Furthermore, the evidence presented in this case reveals that Mr. Black has defaulted on at least fifteen Company-issued payment arrangements, in addition to two Commission-issued payment arrangements. As awarding a customer with a payment arrangement is a privilege, not a right, I would not have used my authority to award Mr. Black

with a payment arrangement, even if I had found that Mr. Black was eligible for one, due to his poor payment history.

In view of all of the above, I find that the Complainant has not met his burden of proving by a preponderance of the evidence that he is eligible for a subsequent Commission-issued payment arrangement or to a reinstatement and an extension of the last Commission-issued payment arrangement. Since I have concluded that I lack the authority to order a payment arrangement in this case, or the authority to reinstate and extend the last Commission-issued payment arrangement, the Complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).
3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418, applies to this proceeding.
4. A public utility may require full payment of any outstanding balance incurred together with any reconnection fees by the customer prior to reconnection of service if the customer has defaulted on two or more payment agreements. 66 Pa.C.S. § 1407(c)(2)(i).
5. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).
6. 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

