

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ike Roberts, Jr.	:	
	:	
v.	:	C-2018-3002089
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal Complaint of Ike Roberts, Jr. against Philadelphia Gas Works because he failed to sustain his burden of proof that he was eligible for a second payment arrangement.

HISTORY OF THE PROCEEDING

On May 18, 2018, Ike Roberts, Jr. (Complainant or Mr. Roberts) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, under “reason for Complaint,” the Complainant placed check marks next to the statements: “The utility is threatening to shut off my service or has already shut off my service,” and “I would like a payment agreement.”

This matter is the appeal of a decision from the Bureau of Consumer Services (BCS) dated May 3, 2018, at Case No. 3594045, which dismissed the informal complaint of the Complainant.

On June 12, 2018, PGW filed an Answer to the Complainant's Complaint. In its Answer, PGW admits that it issued a shut-off notice to the Complainant and that the Complainant seeks a payment agreement.

By Hearing Notice dated June 14, 2018, an Initial In-Person Hearing was scheduled for August 3, 2018.

A Prehearing Order was issued on June 22, 2018, advising the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

The hearing convened as scheduled on August 3, 2018. The Complainant appeared *pro se* and testified on his own behalf. The Complainant offered no exhibits.

The Respondent appeared and was represented by Graciela Christlieb, Esquire, who presented the testimony of Jessica Glace, a Senior Customer Review Officer at PGW. During the hearing, the Respondent offered the following three exhibits, all of which were entered into the record:

- PGW 1: Statement of Account (2 pages)
- PGW 2: Payment Arrangement History (3 pages)
- PGW 3: BCS Case No. 3594045 (3 pages)

The record in this case consists of a 36-page transcript and three exhibits. The record closed on September 4, 2018, when I received a copy of the transcript.

FINDINGS OF FACT

1. The Complainant is Ike Roberts, Jr.
2. The Respondent is Philadelphia Gas Works.

3. The Complainant resides alone at 5345 West Berks Street, Philadelphia, PA 19131 (Service Address). Tr. 6.

4. Prior to residing at the Service Address, the Complainant resided at 1936 North 61st St., Philadelphia, PA 19131 for approximately seventeen years. Tr. 7-8.

5. The Complainant received gas utility service from PGW at the 1936 North 61st address. Tr. 7.

6. The Complainant received a Commission-issued payment arrangement while residing at the 1936 North 61st address on November 22, 2013. Tr. 9; PGW Exh. 2.

7. The November 22, 2013 payment arrangement was based on a gross monthly income of \$1,430.00 and a household size of one. PGW Exh. 2.

8. On May 13, 2014, the Complainant defaulted on the November 22, 2013, payment arrangement. PGW Exh. 2.

9. In approximately September of 2016, the Complainant terminated his service with PGW at the 1936 North 61st address. Tr. 8.

10. At the time of the termination, the Complainant had accumulated an outstanding balance of \$4,907.96 at the 1936 North 61st address. Tr. 7-9, 21; PGW Exh. 1.

11. On or around May 1, 2017, the Complainant moved into the current Service Address. Tr. 20.

12. When the Complainant moved into the Service Address, there was another person residing there who was receiving service from PGW. Tr. 6.

13. The person who was already residing at the Service Address passed away in July of 2017. Tr. 6.

14. On December 6, 2017, the Complainant contacted PGW and requested service be transferred into his name. Tr. 19-20.

15. PGW transferred service at the Service Address into the Complainant's name and prorated the account back to May 1, 2017, which is when the Complainant began residing at the Service Address.

16. The Complainant has not made a single payment since having service at the Service Address transferred into his name. Tr. 20.

17. The Complainant has accumulated an outstanding balance of \$1,149.37 since having service at the Service Address transferred into his name. Tr. 20; PGW Exh. 1.

18. PGW transferred the outstanding balance of \$4,907.96 accumulated at the 1936 North 61st address to the Complainant's account at the Service Address. Tr. 20-21; PGW Exh. 1.

19. As of the date of the hearing, the Complainant's total outstanding balance is \$6,057.33¹. Tr. 22.

20. The Complainant's current gross monthly income is between \$2,048.00 and \$2,640.00.² Tr. 13-14, 33-34.

¹ \$1,149.37 + \$4,907.96 = \$6,057.33.

² The Complainant did not have pay stubs available at the hearing, however, he testified that he works approximately 32 to 40 hours per week at an hourly rate of between \$16.00 and \$16.50. Thus, I calculated his pay range between the lowest number of hours (32/week) at the lowest pay rate (\$16/hr) and the highest number of hours (40/week) at the highest pay rate (\$16.50/hr).

21. The Complainant's current lowest household income of \$2,048.00 per month with one household member places the household at 202% of the Federal Poverty guidelines.³

22. Since 2004, the Complainant has defaulted on fifteen (15) payment agreements with PGW. Tr. 22-24; PGW Exh. 2.

DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving that he is entitled to the requested relief. 66 Pa.C.S. § 332(a). This must be shown by a 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. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 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*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. 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.*

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

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).

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). Consequently, the Respondent has the right 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).

Additionally, 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).

Payment Arrangement

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued and the length of the payment arrangement.

Section 1405(d) 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 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)(emphasis added). "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(emphasis added). Thus, the Commission may only order a subsequent payment arrangement if the Complainant demonstrates a decrease in income.

In this case, the Complainant was already the beneficiary of a Commission-issued payment arrangement on November 22, 2013, which was based on a gross monthly income of \$1,430.00 and a household size of one. The Complainant defaulted on this Commission-issued payment arrangement on May 13, 2014. During the hearing, the Complainant confirmed that he has not experienced a decrease in household income since the Commission-issued payment arrangement, but rather, an increase in income from \$1,430.00 to at least \$2,048.00 per month. Therefore, pursuant to 66 Pa.C.S. § 1405(d), the Commission cannot establish or order PGW to issue another payment arrangement.

It should also be noted that the Complainant is not entitled to a reinstatement and extension of the November 22, 2013 Commission-issued payment arrangement under 66 Pa.C.S. § 1405(e)⁴, due to the statute of limitations imposed by 66 Pa.C.S. § 3314(a), which states:

66 Pa.C.S. § 3314. Limitation of actions and cumulation of remedies.

(a) General rule. – No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part.

Here, the Complainant defaulted on the Commission-issued payment arrangement on May 13, 2014, therefore, pursuant to §3314(a), he had until May 13, 2017, to file a claim for reinstatement and extension of the payment arrangement under §1405(e). However, the Complainant filed the instant Complaint on May 18, 2018, which exceeds the statute of limitations by an entire year.

Based on the foregoing, I find that the Complainant has failed to carry his burden of proving that he is eligible for a second or subsequent Commission-issued payment arrangement or to an extension of the previous payment arrangement. Accordingly, the Complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.

⁴ **66 Pa.C.S. § 1405(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.

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

4. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418, applies to this proceeding.

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 defaulted on a previous payment arrangement established by a commission order or decision. 66 Pa.C.S. § 1405(d).

7. 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 household income level is 200% or less of the Federal poverty level." 66 Pa.C.S. § 1403.

8. The Complainant has failed to carry his burden of proving that he is eligible for a second or subsequent Commission-issued payment arrangement. 66 Pa.C.S. §§ 1405(d).

9. No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part. 66 Pa.C.S. § 3314(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Ike Roberts, Jr. against Philadelphia Gas Works at Docket No. C-2018-3002089 is dismissed; and
2. That Docket No. C-2018-3002089 be marked closed.

Date: October 25, 2018

_____/s/_____
F. Joseph Brady
Administrative Law Judge