

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jason Brooks	:	
	:	
v.	:	C-2018-3005106
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Gail M. Chiodo  
Special Agent

**INTRODUCTION**

This Initial Decision dismisses the complaint of an applicant against a utility because the applicant failed to sustain his burden of proof that he is eligible for a payment arrangement in order to pay off his outstanding balance and have service restored.

**HISTORY OF THE PROCEEDING**

On October 1, 2018, Jason Brooks (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent). In his Complaint, Mr. Brooks requests that his service be restored and that he be given a payment arrangement in order to pay off his outstanding balance.

On October 22, 2018, PGW filed an Answer in which it admitted that, after providing proper notice, it terminated Complainant's service on July 12, 2017 for nonpayment. Respondent also attached to its Answer the decision of the Bureau of Consumer Services (BCS) at BCS Case No. 3635971, which reveals that Complainant filed an informal complaint on

July 24, 2018 requesting that his service be restored and that he be given a payment arrangement. The BCS decision, dated August 2, 2018, denies the informal complaint.<sup>1</sup>

The Answer also avers that Mr. Brooks has broken multiple payment arrangements; therefore, in order to restore service to Complainant, PGW seeks full payment of the outstanding balance, a reconnection fee, and one-half of the security deposit. Respondent requests that the complaint be dismissed.

On November 1, 2018, the Commission issued a hearing notice setting an initial telephonic hearing for December 19, 2018 at 10:00 a.m. The case was assigned to me pursuant to 52 Pa. Code § 56.174.<sup>2</sup> On November 21, 2018, a prehearing order was issued which advised the parties of the procedures applicable to this proceeding.

The hearing convened as scheduled on December 19, 2018. Mr. Brooks appeared *pro se* and testified on his own behalf. Mr. Brooks did not offer any exhibits. Mr. Laureto Farinas, Esquire, appeared on behalf of PGW and presented the testimony of one witness, Patricia Bernard, a customer review officer for PGW. Ms. Bernard sponsored the following five (5) exhibits, which were admitted into the record:

- PGW Exhibit 1 – Negotiated Payment Arrangements (1 page)
- PGW Exhibit 2 – Shut Off Notice (2 pages)
- PGW Exhibit 3 – Customer Contact (1 pages)
- PGW Exhibit 4 – Statement of Account (2 pages)
- PGW Exhibit 5 – BCS Informal Complaint Decision (2 pages)

The record closed following the conclusion of the hearing.<sup>3</sup>

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<sup>1</sup> Complainant's formal complaint is an untimely appeal of this BCS decision.

<sup>2</sup> 52 Pa. Code § 56.174 (providing for review by a special agent of decisions of the BCS and any other case in which the issue is solely the ability to pay).

<sup>3</sup> Pursuant to 52 Pa. Code § 56.174(3), the hearing was tape recorded. No court reporter was present.

## FINDINGS OF FACT

1. Complainant is Jason Brooks, who resides at 460 E. Mechanics Street, Philadelphia, Pennsylvania (service address).
2. Respondent is Philadelphia Gas Works, which had provided service to Complainant at the service address.
3. On November 28, 2014, Complainant established residential gas service at the service address.
4. The Complainant entered into four payment arrangements with PGW on the following dates: January 29, 2015; March 17, 2015; August 31, 2015; and November 18, 2016; all of these payment arrangements were broken. (PGW Exhibit 4).
5. During 2016, Complainant made one payment on November 18, 2016 in the amount of \$170.09. (PGW Exhibit 4).
6. During 2017, Complainant made three payments on the following dates and in the following amounts: on January 29, 2017 for \$130.00; on February 11, 2017 for \$124.00; and on March 27, 2017 for \$130.00. (PGW Exhibit 4).
7. On June 2, 2017, Complainant contacted PGW about his account balance and was advised how to apply to Respondent's Customer Responsibility Program; Complainant has never applied.
8. On June 19, 2017, PGW issued a 10-day termination notice. (PGW Exhibit 2).
9. On July 12, 2017, PGW terminated service at the service address. (PGW Exhibit 3).

10. On November 17, 2017, PGW wrote off Complainant's outstanding balance of \$2,320.14. (PGW Exhibit 4).

11. On July 24, 2018, Complainant contacted PGW for restoration of his service and was advised that he needed to pay a total of \$2,596.37, which consists of his outstanding balance of \$2,320.14, a reconnection fee of \$123.23 and one-half of a security deposit in the amount of \$153.

12. On July 24, 2018, Mr. Brooks filed an informal complaint with BCS at Case No. 3635971 seeking restoration of his service and a payment arrangement on his outstanding balance of \$2,320.14. (PGW Exhibit 5).

13. By decision dated August 2, 2018, BCS denied the informal complaint at Case No. 3635971. (PGW Exhibit 5).

14. On October 1, 2018, Mr. Brooks filed the instant formal complaint.

15. Complainant's current gross monthly household income is \$3,000 per month which he receives from his full-time employment.

16. Complainant's current household size is two individuals, consisting of himself and his minor son.

17. Complainant's outstanding balance as of the date of the initial hearing is \$2,320.14. (PGW Exhibit 4).

#### 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). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v.*

*Margulies*, 364 Pa. 54, 70 A.2d 854 (1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990). 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*, 413 A.2d 1037 (Pa.Cmwlth. 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 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).

In his complaint, Mr. Brooks requests that his service be restored and that he be given a payment arrangement in order to pay off his outstanding balance. Therefore, as the party seeking relief, Mr. Brooks bears the burden of proof. Further, since Mr. Brooks is seeking to restore service more than thirty (30) days after service was terminated, he is an “applicant” within the definition of the Public Utility Code.<sup>4</sup> See, 66 Pa.C.S. § 1403 (providing that an “applicant” is a person who, after thirty (30) days of termination or discontinuance of service, seeks to have service reconnected at the same location).

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<sup>4</sup> Mr. Brooks' service was terminated on July 12, 2017 and over one year later, on July 24, 2018, he contacted PGW about restoring his service.

In order to restore service to Complainant, PGW seeks a total of \$2,596.37, which consists of Complainant's full balance of \$2,320.14, a reconnection fee of \$123.23 and one-half of a security deposit in the amount of \$153. Pursuant to Section 1407 of the Public Utility Code, PGW may require full payment of the outstanding balance and a reconnection fee if the applicant has defaulted on two more payment arrangements, as in the instant case. In relevant part, this section provides:

**(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 . . . applicant prior to reconnection of service if the . . . applicant has defaulted on two more payment arrangements.

\* \* \*

66 Pa.C.S. § 1407(c)(2)(i).

Complainant does not dispute that he defaulted on four company-issued payment arrangements. Therefore, Respondent is permitted to require that Complainant pay his full outstanding balance and a reconnection fee to have his service reconnected. Further, Section 56.41 of the Commission's Regulations, 52 Pa. Code § 56.41, provides that a public utility may require a deposit as a condition to reconnection of service following a termination. Therefore, Respondent is also permitted to require a deposit to have service restored.

Notwithstanding the above, the Commission may establish a payment arrangement between a public utility and an applicant within the limits established by the Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418 (Act). *See*, 66 Pa.C.S. § 1405(a), which provides that, "[t]he commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers."

Regarding the length of payment arrangements, the Act provides, in relevant part, 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:

\* \* \*

(2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

\* \* \*

66 Pa.C.S. § 1405(b)(2).

However, in cases where the Commission is authorized by law to establish a payment arrangement between a customer or applicant 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 those who have demonstrated some evidence of a good faith effort to pay their utility bills or who have experienced a significant change of circumstances beyond their control. *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 two-person household with a gross monthly household income of \$3,000 is between 150% and 250% of the Federal poverty level.<sup>5</sup> Pursuant to the Act, the Complainant's household income would make him eligible for a three-year payment arrangement to extinguish his outstanding balance. 66 Pa.C.S. § 1405(b)(2).

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<sup>5</sup> See, *Federal Register*, Vol. 83, No. 12, pp. 2642-2644 (January 18, 2018), also available at <http://aspe.hhs.gov/poverty> (providing that for a household of two, a gross monthly income greater than \$2,057.51 is more than 150% of the Federal poverty level and a gross monthly income less than \$3,429.18 is below 250% of the Federal poverty level).

However, in order to determine the Complainant's eligibility for a Commission-issued payment arrangement, in addition to considering the Complainant's household income, Complainant's payment history with PGW must also be considered. *Crawford, supra. Also see, Dorsey v. Philadelphia Gas Works*, Docket No. F-2012-2313679 (Opinion and Order entered November 22, 2013) wherein the Commission declined to issue a payment arrangement because of the complainant's poor payment history and an inability to keep prior payment arrangements with PGW.

By law, a public utility is entitled to receive payment for the service it provides and the Complainant must pay the Respondent for the service he consumes. *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). The Respondent has the right to bill and receive payment for the utility service actually supplied. *Neal v. Philadelphia Gas Works*, Docket No. Z-00971874 (Final Order entered January 4, 2002). 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 if 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).

The record demonstrates that over a 32-month period from when service was established on November 28, 2014 to when service was terminated on July 12, 2017, the Complainant defaulted on four company-issued payment arrangements, and his outstanding balance has accumulated to \$2,320.14. The record further demonstrates that over a 20-month period, from December 12, 2015 through July 12, 2017, the Complainant made only four payments towards his account balance totaling \$554.09.

Based on the Complainant's poor payment history, as well as the Complainant's inability to keep the terms of four separate company-issued payment arrangements, I am constrained to conclude that the Complainant has not demonstrated a good faith effort to pay his bills.

Accordingly, the Complainant's request for a Commission-issued payment arrangement is denied.

### CONCLUSIONS OF LAW

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

2. 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).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

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 an applicant. 66 Pa.C.S. § 1405(a).

6. In cases where the Commission is authorized by law to establish a payment arrangement between an applicant and a utility, the Commission will exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of a good faith effort to pay their utility bills or who have experienced a significant change of circumstances beyond their control. *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007).

7. The Commission may decline to issue a payment arrangement because of a complainant's poor payment history and an inability to keep prior payment arrangements with the utility. *Dorsey v. Philadelphia Gas Works*, Docket No. F-2012-2313679 (Opinion and Order entered November 22, 2013).

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Jason Brooks against Philadelphia Gas Works at Docket No. C-2018-3005106 is denied.

2. That the docket at Docket No. C-2018-3005106 be marked closed

Date: January 14, 2019

\_\_\_\_\_/s/  
Gail M. Chiodo  
Special Agent