

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Farlow	:	
	:	
v.	:	F-2018-3005353
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Gail M. Chiodo
Special Agent

The decision sustains the complaint of a gas service customer seeking his first payment arrangement under Chapter 14 of the Public Utility Code.

HISTORY OF THE PROCEEDING

On October 1, 2018, William Farlow (Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent).

The Complaint is a timely appeal of a Bureau of Consumer Services (BCS) informal decision dated September 10, 2018 at BCS Case No. 3647674. The BCS found that Mr. Farlow was eligible for a Commission-issued payment arrangement as a level two customer.¹ The BCS decision directed Mr. Farlow to pay a total of \$202 per month, consisting of \$170 for his current budget bill, plus \$32 towards his arrearage of \$1,119.13, beginning with his

¹ A level two customer is defined as a customer having a household with a gross monthly income exceeding 150% and not more than 250% of the Federal poverty level and is provided with a repayment period of not more than 36 months. 66 Pa.C.S. § 1405(b)(2).

October 2018 billing due date. In his Complaint, Mr. Farlow seeks more favorable payment terms.

On November 5, 2018, PGW filed an Answer to the Complaint admitting that the Complaint is a timely appeal from the decision at BCS Case No. 3647674 but denying that Complainant has not received the most advantageous Commission-issued payment agreement available. PGW asked that the Complaint be dismissed.

By hearing notice issued on November 7, 2018, the Commission scheduled a telephonic hearing for January 11, 2019. The case was assigned to me pursuant to 52 Pa. Code § 56.174.² A prehearing order was issued on November 26, 2018, addressing various procedures applicable to this proceeding.

On January 11, 2019, a telephonic hearing was held as scheduled. Complainant appeared *pro se* and presented testimony in support of his Complaint but did not offer any exhibits. Ms. Graciela Christlieb, Esquire, represented the Respondent and presented one witness, Jessica Glace, Senior Service Customer Review Officer, who sponsored the following three exhibits that were admitted into the record:

- PGW Exhibit 1 – Statement of Account (6 pages)
- PGW Exhibit 2 – Payment Arrangement History (3 pages)
- PGW Exhibit 3 – BCS No. 3647674 Complaint and Decision (3 pages)

The record closed following the conclusion of the hearing.³

FINDINGS OF FACT

1. The Complainant is William Farlow, who resides at 3131 North Patton Street, Philadelphia, Pennsylvania (the service address).

² 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).

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

2. The Respondent is Philadelphia Gas Works.

3. On February 6, 2018, Complainant entered into a payment agreement with Respondent; Complainant defaulted on this payment agreement. (PGW Exhibit 2).

4. On August 30, 2018, Complainant filed an informal complaint with BCS at BCS Case No. 3647674 seeking a Commission-issued payment arrangement. (PGW Exhibit 3).

5. By decision dated September 10, 2018, in BCS Case No. 3647674, BCS found that Mr. Farlow was eligible for a level two Commission-issued payment arrangement. (Exhibit No. 2, p. 4).

6. The informal decision at BCS Case No. 3647674 directed Mr. Farlow to pay a total of \$202 per month, beginning with his October 2018 bill, for his current budget bill amount of \$170, plus \$32 on his arrearage of \$1,119.13

7. On October 1, 2018, Mr. Farlow timely filed the instant formal Complaint seeking a more favorable payment arrangement.

8. Mr. Farlow's current gross monthly household income is \$1,532 which he receives from Social Security Disability.

9. Mr. Farlow resides alone in his household.

10. At the time of the hearing, Mr. Farlow had an outstanding balance of \$1,107.85.

DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof pursuant to Section 332(a) of the Public Utility Code. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). To satisfy the burden of proof against a utility, a complainant must show that the utility is responsible or accountable for the problem described in the complaint, *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976), or that the utility has violated either its duty under the Public Utility Code (Code) or the orders or regulations of the Commission. 66 Pa.C.S. § 701.

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. Pa. Dept. of Public Welfare*, 480 A.2d 382 (Pa.Cmwlth. 1984).

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 ("Act"), applies to complaints alleging inability to pay and requests for Commission-issued payment arrangements. This Act provides strict guidelines that the Commission must follow in addressing customer complaints. The Act, *inter alia*, permits the Commission to grant one payment arrangement and dictates its terms. 66 Pa.C.S. § 1405.

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

(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

* * *

66 Pa.C.S. § 1405(b)(1)-(2).

As a timely appeal from the decision at BCS Case No. 3647674, this is a *de novo* review of the BCS determination of an appropriate payment plan for Mr. Farlow’s account. 52 Pa. Code § 56.403(a). The term “*de novo*” simply means “anew” or “over again.” *See, Harnett v. PPL Electric Utilities Corp.*, Docket No. F-2012-2329578 (Opinion and Order entered November 14, 2013) (providing in ability to pay proceedings involving a timely appeal from the BCS decision, the informal decision is automatically stayed and the customer cannot be in default until the formal complaint on appeal is fully adjudicated and a final order is entered).

Complainant testified about his household income and size, which are not in dispute. Mr. Farlow’s current gross monthly household income is \$1,532 which he receives from Social Security Disability. Mr. Farlow resides alone in his household.

Next, it must be determined whether the 2018 or 2019 Federal Poverty Guidelines are applicable since applying each one results in different repayment terms. According to the 2018 guidelines, Mr. Farlow’s gross monthly household income of \$1,532 for a household of one falls between 150% and 250% of the Federal poverty level. *See, Federal Register*, Vol. 83, No. 12, p. 2643 (January 18, 2018) (providing that a gross monthly income of more than \$1,517.50 and less than \$3,429.17 for a household of one is between 150% and 250%

of the Federal poverty level). Consequently, this would make Mr. Farlow a level two customer with a repayment period of three years. 66 Pa.C.S. § 1405(b)(2).

However, the Federal Poverty Guidelines were adjusted in 2019 and became effective on January 11, 2019, the date of the initial hearing in the instant case. If the 2019 guidelines are applied in this proceeding, the Complainant would fall below 150% of the Federal poverty level. The 2019 guidelines provide that a gross monthly income of \$1,561 for a household of one is 150% of the Federal poverty level.⁴ Consequently, with a gross monthly income of \$1,532 for a household of one, Mr. Farlow would be a level one customer with a repayment period of five years. 66 Pa.C.S. § 1405(b)(1).

Some guidance by the Commission as to determining the appropriate Federal poverty guidelines to apply can be found in *Wooden v. Philadelphia Gas Works*, Docket No. C-2016-2548462 (Opinion and Order entered October 5, 2017). In *Wooden*, the complainant, Ms. Wooden, filed a complaint on May 25, 2016; an initial hearing was held on August 22, 2016; an Initial Decision was issued on September 27, 2016; Exceptions were filed on October 13, 2016; Replies to Exceptions were filed on October 27, 2016; and the Opinion and Order of the Commission was issued on October 5, 2017.

However, the Commission noted in its Opinion and Order that applying the 2016 or 2017 guidelines would result in different repayment periods under the Act. The Commission noted that the Special Agent, in her Initial Decision, applied the 2016 Federal Poverty Guidelines and found Ms. Wooden to be a level three customer with a one-year repayment period; however, if the 2017 guidelines were applied, Ms. Wooden would be deemed a level two customer with a three-year repayment period. *Id.* at 7, n.4. Even though applying the 2017 guidelines would grant Ms. Wooden a longer repayment period, the Commission found that, “[g]iven that the Complaint was filed in 2016 and the evidentiary hearing occurred in 2016, the 2016 Federal Poverty Guidelines appear to be the appropriate standard to apply in this proceeding.” *Id.*

⁴ See, *Federal Register*, Vol. 84, No. 22 at 1168 (February 1, 2019), also available at: <https://aspe.hhs.gov/poverty-guidelines>.

In the instant case, I find that the 2019 Federal poverty level guidelines are the appropriate standard to apply in this proceeding for several reasons. First, the *Wooden* case is distinguishable. In *Wooden*, the Commission explained that the evidentiary hearing occurred in 2016 in finding that the 2016 guidelines were the appropriate guidelines to apply. In contrast, in the instant case, the evidentiary hearing occurred in 2019, in fact on the same date that the 2019 guidelines became effective.

Second, I find some support in other Commission decisions that have held that it is not the date of the filing of an application that controls whether to apply amended regulations but that it is the date of the Commission's Order. See, e.g., *Application of The Connections Group, Inc. for the right to transport, as a common carrier, by motor vehicle, persons in paratransit service, from points in the counties of Bucks, Chester, Delaware, Montgomery and Philadelphia*, Docket No. A-2016-2551126 (Opinion and Order entered November 8, 2018), wherein the Commission stated that although its amended applicable regulations for applicants seeking motor common carrier authority were not in effect as of the filing date of the Amended Application and the date of the evidentiary hearing, such amended requirements were in effect as of the entry date of the Commission's Order and thus would be applicable.

Third, I find further support in other Commission decisions which have noted that its analysis of a complaint pursues the applicable law most favorable to the complainant. For example, see, *Trocki v. UGI Penn Natural Gas, Inc.*, Docket No. F-2016-2574307 (Opinion and Order entered July 12, 2018), in which the complainants requested restoration of their service and a payment arrangement to pay their outstanding arrearage. In *Trocki*, the Commission noted that its analysis pursued the applicable law most favorable to the complainants by applying 52 Pa. Code § 56.191(c)(2)(iii), which requires full payment of any reconnection fees and repayment over 12 months of any outstanding balance incurred by the applicant to restore service, rather than applying the less favorable applicable section, 52 Pa. Code § 56.191(c)(2)(i), which requires not only full payment of any reconnection fee but also full payment of any outstanding balance where complainants have defaulted on at least two payment arrangements. *Id.* at 19, n.4. Also, see, e.g., *Lamar v. Philadelphia Gas Works*, Docket No. C-2017-2629985

(Final Order entered November 6, 2018) (adopting the decision of the administrative law judge which granted the complainant the most beneficial repayment terms applicable).

Therefore, in light of all of the above, I find that applying the 2019 Federal poverty guidelines is appropriate in the instant proceeding and discretion is warranted to grant Mr. Farlow his first Commission-issued payment arrangement on his outstanding balance. As a level one customer, Complainant can be given the maximum amount of time available under the Act to repay the arrearage, which is five years, or sixty (60) months. 66 Pa.C.S. § 1405(b)(1).

Consequently, Complainant is required to resolve his unpaid balance within sixty (60) months, pursuant to Section 1405(b)(1) of the Act. 66 Pa.C.S. § 1405(b)(1). Complainant is required to make monthly payments on his account consisting of his current budget bill plus one-sixtieth (1/60th) of the balance accrued on his account beginning with the first billing date following the entry of a final Commission Order in this case.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a).
3. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).
4. The Responsible Utility Customer Protection Act, 66 Pa. C.S. §§ 1401-1418, applies to this proceeding.

5. The Responsibility Utility Customer Protection Act permits the Commission to grant one payment agreement and dictates its terms. 66 Pa.C.S. § 1405(a).

6. The Complainant has met his burden of proof that he is eligible for a payment arrangement. *Id.*

7. Complainant can be given the maximum amount of time available under the Responsibility Utility Customer Protection Act, which is five years, to repay the arrearage. 66 Pa.C.S. § 1405(b).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by William Farlow at Docket No. F-2018-3005353 is granted.

2. That William Farlow shall make monthly payments consisting of his current bill plus one-sixtieth (1/60th) of the balance accrued on his account, beginning with the first billing date following the entry of a final Commission Order in this case.

3. That as long as William Farlow keeps the payment schedule stated in this Order, Philadelphia Gas Works shall not suspend or terminate his utility service except for valid safety or emergency reasons or assess late payments or finance charges against his account.

4. That, if William Farlow does not keep the payment schedule stated in this Order, Philadelphia Gas Works is authorized to suspend or terminate his utility service in accordance with the Commission's statutes and regulations.

