

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Brenda and Herb Rohrbach	:	
	:	
v.	:	F-2018-3006723
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Alphonso Arnold III  
Special Agent

**INTRODUCTION**

This Initial Decision grants the Complaint because the Complainants met their burden of proof to show that they are eligible for a Commission-issued payment arrangement.

**HISTORY OF THE PROCEEDING**

On December 19, 2018, Brenda and Herb Rohrbach<sup>1</sup> (Complainants) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW). The Complainants claim in their Complaint that they have had problems making payments on their gas bills due to medical expenses. For relief, the Complainants seek a payment arrangement. The Complaint is a timely appeal of a decision of the Commission's Bureau of Consumer Services (BCS) at BCS No. 3662201, which denied the Informal Complaint requesting a payment arrangement.

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<sup>1</sup> The Complaint filed in this proceeding only included Brenda Rohrbach as Complainant. The Complaint was orally amended at the hearing to include Herb Rohrbach as a Complainant. PGW did not object to adding Herb Rohrbach as a Complainant in this proceeding.

The Respondent filed an Answer on January 10, 2019 denying the material allegations of fact in the Complaint and requesting that the Commission deny the Complaint.

By Hearing Notice issued January 25, 2019 the Commission scheduled this matter for a telephonic hearing on February 26, 2019, at 10:00 a.m., and assigned the case to me.

I issued a Prehearing Order on January 30, 2019, addressing, inter alia, the procedures applicable to the hearing.

I conducted the February 26, 2019, telephonic hearing as scheduled. Both Brenda Rohrbach and Herb Rohrbach were present. Herb Rohrbach testified in support of the Complaint. No exhibits were presented by the Complainants. Attorney Graciela Christlieb was present at the hearing on behalf of the Respondent and presented the testimony of Tiffany Jones, a Senior Customer Review Officer for PGW. PGW presented the following four exhibits, all of which were admitted into the record:

- PGW Exhibit 1 – Statement of Account
- PGW Exhibit 2 – Payment Arrangement History
- PGW Exhibit 3 – Records of Medical Certifications Used
- PGW Exhibit 4 – BCS Complaint and Decision

The record<sup>2</sup> closed on February 26, 2019, following the conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be granted.

#### FINDINGS OF FACT

1. The Complainants are Brenda Rohrbach and Herb Rohrbach.
2. The Respondent is Philadelphia Gas Works.

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<sup>2</sup> The telephonic hearing was recorded over the phone by means of a tape recorder. No Court Reporter was present.

3. The Complainants received gas service from PGW at 1226 Federal Street, Philadelphia, Pennsylvania (service address).

4. Brenda Rohrbach is the customer of record for the service address account.

5. Herb Rohrbach is an authorized contact for the account and is responsible for paying the bills on the account.

6. The Complainants reside at their household with their son.

7. Mr. Rohrbach is employed full time at a rate of \$12.50 per hour. He derives no income from any other sources.

8. Ms. Rohrbach is employed full time at a rate of \$13.50 per hour. She derives no income from any other sources.

9. The Complainants' son is a 21-year old student who provides the household with no income.

10. Ms. Rohrbach was diagnosed with Parkinson's Disease approximately 2 ½ years ago and a heart condition approximately 3 ½ years ago.

11. Mr. Rohrbach has suffered from diabetes for approximately 10 years.

12. On August 6, 2018, gas service was terminated at the service address.

13. On October 22, 2018, an Informal Complaint was filed with BCS at BCS No. 3662201 seeking a payment arrangement for Ms. Rohrbach's account to aid in restoring service at the service address. (PGW Exhibit 4, p. 1).

14. On November 6, 2018, the BCS denied the payment arrangement request at BCS No. 3662201, finding that Ms. Rohrbach had not made good faith efforts to pay her utility bills. (PGW Exhibit 4, p. 3).

15. Ms. Rohrbach has defaulted on two company payment arrangements. (PGW Exhibit 2).

16. Ms. Rohrbach has received four medical holds on her account as a result of PGW accepting four medical certificates from Ms. Rohrbach. (PGW Exhibit 3, pp. 1-4).

17. Three payments have been made on Ms. Rohrbach's account from February 1, 2017 to February 19, 2019. (PGW Exhibit 1, pp. 1-3).

18. A payment of \$10,169.74 was made on April 2, 2017; a payment of \$660 was made on January 10, 2018; and a payment of \$322.58 was made on January 19, 2018. (PGW Exhibit 1, pp. 1-3).

19. As of the date of the hearing, Ms. Rohrbach had an account balance of \$7,342.73. (PGW Exhibit 1, pp. 1-3).

20. No portion of Ms. Rohrbach's account balance is made up of Customer Assistance Program arrearages.

### 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 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, 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, the Complainants filed a Complaint seeking legal relief in the form of a payment arrangement. The burden of proof is on the Complainants to show that they are entitled to the relief that they are seeking.

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/her 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).

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).

Requests for payment arrangements are governed by The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 (Chapter 14). 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.

### **§ 1405. Payment arrangements**

**(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). “Household income” is defined as the following:

### **§ 1403. Definitions**

**“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.

Generally, the Commission is permitted to establish only one payment arrangement between a customer/applicant and a utility. The Commission may only issue a second or subsequent payment arrangement under a specific set of circumstances. See 66 Pa.C.S. § 1405(d)-(e).

It must first be noted that, although the Complainants are seeking a payment arrangement for Ms. Rohrbach's gas account with PGW, Ms. Rohrbach is no longer a "customer"<sup>3</sup> of PGW but is now an "applicant"<sup>4</sup> for PGW service. Service was terminated at the service address on August 6, 2018 for nonpayment and PGW now seeks full payment of the outstanding balance in order to restore service.<sup>5</sup> Although 66 Pa.C.S. § 1407(c) dictates the terms a utility may impose on a customer or applicant seeking restoration of their service, 66 Pa.C.S. § 1407(c) does not divest the Commission of the ability to act as the final arbiter of a utility consumer's rights with respect to payment disputes. Crawford v. National Fuel Gas Distribution Corp., Docket No. C-20066348 (Order entered December 6, 2007). Section 1405(a) of the Public Utility Code gives the Commission authority to establish payment agreements between public utilities, customers, and applicants. Thus, the Commission still retains the authority to establish a payment arrangement for a customer/applicant whose service was lawfully terminated.

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<sup>3</sup> **"Customer."** A natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested. The term includes a person who, within 30 days after service termination or discontinuance of service, seeks to have service reconnected at the same location or transferred to another location within the service territory of the public utility. 66 Pa.C.S.A. § 1403.

<sup>4</sup> **"Applicant."** A natural person not currently receiving service who applies for residential service provided by a public utility or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested. The term does not include a person who, within 30 days after service termination or discontinuance of service, seeks to have service reconnected at the same location or transferred to another location within the service territory of the public utility. 66 Pa.C.S.A. § 1403.

<sup>5</sup> (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. If a customer or applicant with household income exceeding 300% of the Federal poverty level experiences a life event, the customer shall be permitted a period of not more than three months to pay the outstanding balance required for reconnection. 66 Pa.C.S. § 1407(c)(2)(i).

Ms. Rohrbach first sought a payment arrangement from the Commission through the filing of an Informal Complaint with BCS, at BCS No. 3662201. The BCS denied Ms. Rohrbach's payment arrangement request. As a result, Ms. Rohrbach has not yet received a Commission-issued payment arrangement permitted under 66 Pa.C.S. § 1405(a). I am permitted to establish a payment arrangement for Ms. Rohrbach's gas account, and as cited, the length of the payment arrangement I can establish for Ms. Rohrbach is based on her gross monthly household income in relation to the Federal poverty level. 66 Pa.C.S. § 1405(b).

Ms. Rohrbach's gross monthly household income of \$4,506.32<sup>6</sup> for a household of three places her slightly above 250% of the Federal poverty level and less than 300% of the Federal poverty level.<sup>7</sup> This makes her a level 3 customer under 66 Pa.C.S. § 1405(b)(3). Level 3 customers are eligible for a payment arrangement of up to one-year to resolve their unpaid balance. Therefore, I am permitted to establish a one-year payment arrangement for Ms. Rohrbach.

However, 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. Specifically, 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. Generally, the Commission looks towards a customer's payment history, or lack thereof, compliance history with any utility-issued payment arrangements, and account balance to determine if the customer has made a good faith effort to pay their utility bills.

As stated, three payments have been made on Ms. Rohrbach's account from the time period of February 1, 2017 to February 19, 2019. Ms. Rohrbach has failed to comply with two company-issued payment arrangements. Additionally, Ms. Rohrbach had a large account

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<sup>6</sup> (Mr. Rohrbach's salary of \$12.50 per hour \* 40 hrs \* 4.333 weeks in a month = \$2,166.50) + (Ms. Rohrbach's salary of \$13.50 per hour \* 40 hrs \* 4.333 weeks in a month = \$2,339.82) = \$4,506.32.

<sup>7</sup> Federal Register, Vol. 84, No. 22 at 1168 (February 1, 2019). Also available at <http://aspe.hhs.gov/poverty> (providing that 250% of the Federal poverty level for a household of three is \$4,444, and providing that 300% of the Federal poverty level for a household of three is \$5,333).

balance of \$7,342.73 the day of the hearing. These facts typically would not support a finding that Ms. Rohrbach has made a good faith effort to pay her utility bills. However, the substantial payment of \$10,169.74 that was made on Ms. Rohrbach's gas account on April 2, 2017 is evidence of a good faith effort to pay the PGW gas bill. The lack of consistent payments on the gas bill is attributed to the various medical expenses that the Rohrbachs have had to deal with over the last several years. The Rohrbachs have not yet had the opportunity to comply with a Commission-issued payment arrangement for Ms. Rohrbach's account, and they should be provided with that opportunity. I will exercise my discretion and establish a payment arrangement for the account balance in question.

The conclusion that Ms. Rohrbach has demonstrated a good faith effort to pay her utility bills differs from the determination made at BCS No. 3662201. This proceeding is a review from that Informal Complaint Decision at BCS No. 3662201. Review of a BCS Decision is de novo, meaning that the review is based on the evidentiary record created at the hearing. 52 Pa. Code § 56.173(a). Thus, the decision on Ms. Rohrbach's eligibility for a Commission-issued payment arrangement is based on an evaluation of the evidence provided at the evidentiary hearing, and not based on any evidence or conclusions made during the Informal Complaint proceeding.

In conclusion, the Complainants have met their burden of proof to show they are eligible for a payment arrangement for Ms. Rohrbach's account. The Complainants will be issued a payment arrangement in the ordering paragraphs below.

#### 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 Complainants. 66 Pa.C.S. § 332(a).

3. 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).

4. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419, applies to this proceeding. 66 Pa.C.S. §§ 1401-1419.

5. The Commission is authorized to establish a payment arrangement between a public utility, customers and applicants. 66 Pa.C.S. § 1405(a).

6. A customer's or applicant's gross monthly household income in relation to the Federal poverty level determines the length of the payment arrangement that can be established between them and a public utility. 66 Pa.C.S. § 1405(b).

7. 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).

8. The Complainants have met their burden of proving that Brenda Rohrbach is eligible for a Commission-issued payment arrangement.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the caption of this case is amended to read "Brenda and Herb Rohrbach v. Philadelphia Gas Works."

2. That Brenda and Herb Rohrbach's Complaint against Philadelphia Gas Works at Docket No. F-2018-3006723 is granted.

3. That Brenda and Herb Rohrbach shall make monthly payments consisting of the budget bill plus one-twelfth (1/12th) of the balance accrued on Ms. Rohrbach's account, beginning with the first billing due date following the entry of a final Commission Order in this case.

4. That upon receipt of payment of 1/12<sup>th</sup> of the balance on Ms. Rohrbach's account on the first billing due date following the entry of a final Commission Order in this case, Philadelphia Gas Works shall reinstate service at the service address.

5. That as long as Brenda and Herb Rohrbach keep the payment schedule stated in this order, Philadelphia Gas Works shall not suspend or terminate their utility service except for valid safety or emergency reasons or assess late payments or finance charges against the account.

6. That, if Brenda and Herb Rohrbach do not keep the payment schedule stated in this order, Philadelphia Gas Works is authorized to suspend or terminate their utility service in accordance with the Commission's statute and regulations.

7. That the docket at Docket No. F-2018-3006723 is marked closed.

Date: March 13, 2019

\_\_\_\_\_/s/  
Alphonso Arnold III  
Special Agent