

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Floyd Tillman	:	
	:	
v.	:	C-2018-3004383
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene D. Heep
Administrative Law Judge

INTRODUCTION

This Initial Decision denies and dismisses the claim of incorrect charges on a 2008 bill because it is beyond the statute of limitations and denies and dismisses the request for a payment arrangement because the Complainant is not eligible. However, Philadelphia Gas Works will be directed to recalculate the late charges within the statute of limitations and balance in accordance with the Commission decision in *SBG Management Services, Inc. / Marchwood Realty Co., L.P. v. Philadelphia Gas Works*(C-2012-2308454); *SBG Management Services, Inc. / Oak Lane Court Realty Co., L.P. v. Philadelphia Gas Works*(C-2012-2308462); *SBG Management Services, Inc. / Fern Rock Realty Co., L.P. v. Philadelphia Gas Works*(C-2012-2308465), 2018 Pa. PUC LEXIS 360 (2018) and issue a bill to the Complainant within 30 days of the final decision in this matter.

HISTORY OF THE PROCEEDING

On August 30, 2018, Floyd Tillman (Mr. Tillman or Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the

Pennsylvania Public Utility Commission (Commission). On the Complaint form, Mr. Tillman stated that he disputes charges on his bill and that he would like a payment arrangement.

On September 19, 2018, Respondent filed an Answer. In the Answer, PGW stated that the Complainant is the husband of the Customer of Record for gas service at 4944-4946 N. Broad Street, Martha Tillman, and that the Tillmans own the property, which contains mixed commercial and residential use. PGW also asserted that the Tillmans have a payment arrangement pursuant to an Order entered in the consolidated cases *Floyd Tillman v. PGW*, Docket No. F-2017-2634002 and *Floyd and Martha Tillman v. PGW*, Docket No. F-2017-2633954, and that the Complainant is not entitled to another payment arrangement. PGW also averred that the Complainant's outstanding balance is \$26,000.

A Hearing Notice was issued on September 24, 2018, setting an initial in-person hearing for November 9, 2018.

A Prehearing Order was issued on October 1, 2018, restating the date of the hearing and providing procedural information.

On November 7, 2018, PGW notified the Commission that the Complainant had requested a continuance because his witness was not available on the date scheduled. PGW reached out to the Complainant and the parties reached a mutually agreeable date. The hearing was set for November 19, 2018.

The hearing was held as rescheduled. Mr. Tillman represented himself and presented one witness, Michael Brown (Mr. Brown), and one exhibit. PGW was represented by Laureto Farinas, Esquire, who presented as a witness Jessica Glace (Ms. Glace), PGW Senior Customer Review Officer. PGW offered five exhibits.

Near the close of the hearing, the parties were advised that each could submit additional clarifying late-filed exhibits within ten days of the hearing. (Tr. 65). In a document dated December 10, 2018, the Complainant submitted a statement regarding PGW liens on the

service address and PGW calculations of fines, penalties and interest on the balance alleged due. Although this document was submitted beyond the ten-day deadline, given that the Complainant is acting *pro se*, the document will be accepted, the procedural error disregarded in accordance with 52 Pa.Code § 1.2(a)¹ and is marked Complainant 2. On December 20, 2018, PGW filed a response to the document which is marked PGW Exhibit 6.

The record closed on January 16, 2019, upon receipt of the 68-page transcript.

FINDINGS OF FACT

1. The Complainant is Mr. Floyd Tillman, a PGW customer at a mixed-use property that he owns with his wife at 4944-4946 N. Broad Street, Philadelphia, Pennsylvania (service address).

2. The Respondent is Philadelphia Gas Works.

3. The service address is a three-story building with tenants on the third and second floors and a store front boutique on the first floor, which is operated by the Complainant and his wife. (Tr. 7).

4. The service address has two heaters - one for the first floor and one for the second and third floors together. (Tr. 12).

5. The Complainant receives two PGW bills - one for the residential floors and one for the first-floor business. (Tr. 10; 12).

¹ 52 Pa.Code § 1.2(a) provides that the rules of procedure may be “liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable” and that “the . . . presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties”. *Id.*

6. The bill at issue in the instant matter is the PGW bill for the residential portion of the service address. (Tr. 12).

7. The Complainant filed a formal Complaint on December 11, 2009, Docketed at F-2009-2146728, disputing charges of \$5,208.89 on his May 2008 bill (Tillman 1).

8. Tillman 1 was dismissed with prejudice for lack of prosecution on November 18, 2010 and a Final Order was issued on January 18, 2011.

9. The Complainant filed a formal Complaint on September 26, 2014, Docket No. C 2014-2445229, again disputing the May 2008 bill. (Tillman 2).

10. By Initial Decision dated November 5, 2015, Administrative Law Judge (ALJ) Dennis J. Buckley dismissed Tillman 2 on the grounds of *res judicata*.

11. On March 8, 2016, the Commission issued an Order remanding Tillman 2 in order to allow the Complainant an opportunity to further articulate his claims. (Joint Motion of Chairman Gladys M. Brown and Commissioner John R. Coleman, Jr., Public Meeting February 11, 2016, Docket No. C-2014-2445229).

12. An Initial Decision on Remand in Tillman 2 issued by ALJ Buckley dismissed the Complaint after finding that the Complainant did not meet the burden of proof of showing that there were incorrect charges on the bill.

13. The Commission affirmed the dismissal of Tillman 2 on remand by Order dated March 16, 2017.

14. On or about September 22, 2017, the Complainant filed an informal complaint with BCS. (PGW Exhibit 1).

15. On September 22, 2017, BCS issued a decision finding that PGW did not comply with 52 Pa.Code §§ 56.1 and 56.151(2) and (4) and awarding the Complainant a six-month payment arrangement on a balance of \$27,201.30 that required the Complainant pay a budget amount of \$351 plus \$4,534 towards the arrears for a total of \$4,885.00 per month. (PGW Exhibit 6).

16. On November 6, 2017, PGW filed an appeal of the BCS decision at Docket No. F-2017-2633954, challenging the awarding of a payment arrangement to the Complainant and also averring that the company did not violate 52 Pa. Code Sections 56.1 and 56.151(2) and (4).

17. On November 8, 2017, the Complainant filed an appeal of the BCS decision at F-2017-2634002 seeking a more reasonable payment arrangement (Tillman 3).

18. The formal Complaints appealing the BCS decision were consolidated by Administrative Law Judge Benjamin Myers.

19. A Hearing Notice set an initial telephonic hearing for the BCS appeals for February 12, 2018, at 10:00 a.m.

20. On February 12, 2018, PGW was represented by counsel but the Complainant did not participate and could not be reached at the scheduled time. (*Tillman v. Philadelphia Gas Works*, Docket Numbers F-2017-2634002 and F-2017-2633954 (Initial Decision issued April 16, 2018)).

21. During the February 12, 2018, hearing, PGW: 1) petitioned to withdraw PGW's appeal and 2) moved that the Complaint be dismissed for failure to prosecute. (*Id.*).

22. On April 16, 2018, ALJ Myers issued an Initial Decision that granted PGW's petition to withdraw and dismissed the appeal (Tillman 3) of the Complainant for failure to prosecute. (*Id.*).

23. The Complainant did not file exceptions to the April 16, 2018, Initial Decision.

24. On July 12, 2018, Philadelphia Gas Works issued a bill reflecting the payment arrangement terms and required payment - a budget amount of \$351 plus \$4,534.00 towards the arrears for a total of \$4,885.00, due by August 3, 2018. (PGW Exhibit 3).

25. The Complainant did not pay by August 3, 2018, as required by the BCS payment arrangement.

26. On August 30, 2018, the Complainant filed the instant Complaint.

27. Mr. Michael Brown is a United States Department of Housing and Urban Development Certified Counselor who helps homeowners with legal and financial issues and who worked with Mr. Tillman to review his PGW bill. (Tr. 24).

28. A December 5, 2018, bill received by the Complainant listed a balance due of \$26,927.24. (Tr. 8; Complainant Exhibit).

29. Complainant's gross monthly household income is \$7,117 per month (\$2,677, plus \$1,900, plus \$690, plus \$700, plus \$500, plus \$650) or a yearly household income of \$85,404. (Tr. 19, 12-13).

30. Complainant's household income is at 330 percent the federal poverty level (\$85,404 per year/\$25,750 (poverty level for a family of 4) = 331 percent). Federal Register, Vol. 84, No. 22 at 1168 (February 1, 2019).

DISCUSSION

The Pennsylvania Public Utility Code ("Code") requires each public utility to provide the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission. . .

66 Pa.C.S. § 1501. Any offense alleged by the Complainant must be a violation of the Public Utility Code ("Code"), the Commission's regulations, or an outstanding order of the Commission.
66 Pa.C.S. § 701.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa.C.S.A. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S.A. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95 (*Poorbaugh*), *vacated on other grounds*, 666 A.2d 744 (Pa.Cmwlt. 1995). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing 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.*, 529 Pa. 654, 602 A.2d 863 (1992). 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*, 489 Pa. 109, 413 A.2d 1037 (1980).

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).

The Complainant would like a payment arrangement. He also disputes charges on his bill. In particular, the Complainant contests \$11,230.94 in late payment and interest charges as well as \$5,218.10 in usage charges from an April 9, 2008 bill.

April 9, 2008 bill of \$5,218.10

The Complainant stated during the hearing that he is disputing his April 9, 2008, bill, particularly the usage charges. (Tr. 36). The statute of limitations at 66 Pa.C.S. § 3314 provides that “no action for recovery of . . .any prosecution may be maintained unless brought within three years from the date the liability rose.” This action was filed in August of 2018, more than three years after the charges were incurred and the bill issued. Therefore, the claim regarding the 2008 bill will be dismissed.

Payment arrangement

The Responsible Utility Customer Protection Act (Chapter 14) authorizes the Commission to establish payment arrangements between a public utility, customers and applicants within the limits established. 66 Pa.C.S. § 1405(a). Chapter 14 also provides strict rules regarding whether a customer who defaults on a payment arrangement is eligible for another payment arrangement. In pertinent part, Chapter 14 provides:

§ 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.

In September of 2017, BCS issued the Complainant a Level 4 payment arrangement requiring payments of a budget amount of \$351 plus \$4,534.00 towards the arrears for a total of \$4,885.00 per month. 66 Pa.C.S. § 1405(b)(4). The Complainant states that he cannot afford monthly payments of that amount. (Tr. 21). He is seeking another payment arrangement. Philadelphia Gas Works contends that in accordance with § 1405(d), the Complainant is not eligible for another payment arrangement because he defaulted on the previous arrangement.

66 Pa.C.S. § 1405(d) states:

(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.

Change in income is defined in 66 Pa.C.S. § 1403 as follows:

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.

Section 1405(e) provides that a payment arrangement may be reinstated and extended where there is a significant change in circumstances. 66 Pa.C.S. § 1405(e) "**Significant change in circumstance**" is defined in 66 Pa.C.S. § 1403 as follows:

"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; and
- (4) Increase in the customer's number of dependents in the household.

The first determination to be made is whether the Complainant defaulted on a Commission-issued payment arrangement. BCS issued a payment arrangement to the Complainant in September of 2017. The Complainant appealed that payment arrangement by filing a Formal Complaint at Docket No. F-2017-2633954. The appeal was dismissed in April of 2018 for failure to prosecute. PGW contends that the September 2017 payment arrangement went into effect after the decision dismissing the appeal of the payment arrangement for failure to prosecute, *Tillman v Philadelphia Gas Works*, Docket Numbers F-2017-2633954 and F-2017-2634002 (Final Order entered May 31, 2018), and that the Complainant is in default.

The evidence supports finding that the Complainant defaulted on the payment arrangement issued by BCS. Mr. Tillman's appeal of the 2017 BCS payment arrangement was dismissed and Mr. Tillman did not file exceptions. Mr. Tillman has made no payments in accordance with the 2017 BCS payment arrangement.

On July 12, 2018, PGW sent the Complainant a bill according to the terms of the payment arrangement. The payment was due on August 3, 2018. The Complainant did not make that August 3, 2018, payment. The instant Complaint filed by Mr. Tillman on August 30, 2018, is seeking a different payment arrangement and is again disputing 2008 usage charges. Therefore, the Complainant defaulted on the 2017 BCS payment arrangement and the current request for a payment arrangement falls under the Chapter 14 strict provisions that apply when a customer defaults on a previous Commission-issued payment arrangement.

Consideration is first given to whether Mr. Tillman is eligible for a second payment arrangement under the change in income provisions. Mr. Tillman has a household income of about

330% of the Federal poverty level. (FOF 30). Under 66 Pa.C.S. § 1405(d) and § 1403, where a customer has an income of greater 200 % of the Federal poverty-level, in order to be eligible for another payment arrangement after a default, the customer would have to have had a decrease in income of at least 20%. Mr. Tillman presented no evidence that his income decreased more than 20% since the payment arrangement was awarded.²

The Complainant also is not eligible for reinstatement and extension of his payment arrangement under § 1405(e). That exception only applies to those with household incomes of less than 300% of the Federal poverty level and Mr. Tillman's household income is 330% of the Federal poverty level.³ The request for a payment arrangement will be denied.

Interest, Penalty and Late Payment Charges

The Complainant disputes any fines, penalties and interest associated with his current delinquency. Mr. Michael Brown, a HUD Certified Counselor who assisted Mr. Tillman, testified that he reviewed the Complainant's bills and estimates that a bit over \$11,200.00 of the bill is penalties and interest. (Tr. 25). An exhibit submitted by the Complainant states that \$11,230.94 of the \$26,741.80 is late payment charges, penalties and interest.

Any fines, penalties and interest assessed beyond the three-year statute of limitations will not be addressed. 66 Pa.C.S. § 3314. Complainant filed this complaint on August 30, 2018. Since August 30, 2015, PGW has assessed only 7 late-payment charges. Such charges were suspended during the time that the various complaints were filed by the Complainant and related proceedings. PGW waived the late-payment charge assessed on June 12, 2018. (PGW Exhibit 3, 6).

² At the time of the hearing, Mr. Tillman had monthly household income of \$7,117 per month and also testified that he had two apartments that were not currently rented, at a loss of income of \$500 per month for a one-bedroom apartment and \$650 per month for a two-bedroom apartment for a total of \$1150. With the two apartments rented at the time of the payment arrangement, Mr. Tillman would have had a monthly income of \$8,267 per month. A 20% or more decrease in income would require a decrease of at least \$1,852, more than the \$1,150 decrease with two empty apartments.

³ The Complainant also testified that he was in the process of renting out another unit, which would increase his income further. (Tr. 13.) Given that this had not yet occurred, the income was not included in the calculations here.

There is no evidence that PGW erred in usage charges to the Complainant and the Complainant presented no evidence in support of his claim contesting late payment, penalty and interest charges or the specifics of how he arrived at the figure presented.⁴

The Complainant also has presented no evidence supporting waiver of the late payment charges. (Tr. 24-26). Mr. Tillman's income is greater than 150% of the Federal poverty level and therefore he is not eligible for waiver of late-payment charges under 66 Pa.C.S.A. § 1409 .

However, the Complainant's billing statement shows that he has made partial payments towards reducing his balance for many years. (PGW Exhibit 6). Subsequent to the payment arrangement and calculation of the balance at issue, the Commission issued a decision in *SBG Management Services, Inc. / Marchwood Realty Co., L.P. v. Philadelphia Gas Works; SBG Management Services, Inc. / Oak Lane Court Realty Co., L.P. v. Philadelphia Gas Works; SBG Management Services, Inc. / Fern Rock Realty Co., L.P. v. Philadelphia Gas Works*, 2018 Pa. PUC LEXIS 360 (2018) (*SBG*). In *SBG*, PGW was directed to recalculate late-payment charges and provided the method to be used when applying partial payments for past due utility accounts.

PGW will be directed to recalculate the partial payments and late payment charges within the statute of limitations and the Complainant's balance in accordance with *SBG* and issue a bill to the Complainant within 30 days of the final order in this matter.⁵

⁴ In late-filed Exhibit Complainant 2, Mr. Tillman asks for proof of payments to PGW. First, it would be incumbent upon the Complainant to have proof of his payments. Second, PGW provided its record of payments within the statute of limitations to the Complainant in PGW Exhibit 4. Third, after receiving PGW Exhibit 4, the Complainant provided a total of challenged late-payment charges in late-filed Complainant Exhibit 2.

⁵ As *SBG* was issued after Complaint in this matter was filed, penalties are not considered and would not be appropriate.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).
3. No action for recovery may be maintained unless brought within three years from the date the liability rose. 66 Pa.C.S. § 3314.
4. The Commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established. 66 Pa.C.S. § 1405(a).
5. Chapter 14 also provides strict rules regarding whether a customer who defaults on a payment arrangement is eligible for another payment arrangement. 66 Pa.C.S. § 1405(d),(e).
6. The Complainant is not eligible for a payment arrangement or reinstatement of his prior Commission-issued payment arrangement under 66 Pa.C.S. §§ 1405(d),(e).
7. The Complainant is not eligible for waiver of late fees under 66 Pa.C.S.A. § 1409.
8. Partial payments are to be applied and late payment charges are to be calculated in accordance with *SBG Management Services, Inc. / Marchwood Realty Co., L.P. v. Philadelphia Gas Works; SBG Management Services, Inc. / Oak Lane Court Realty Co., L.P. v. Philadelphia Gas Works; SBG Management Services, Inc. / Fern Rock Realty Co., L.P. v. Philadelphia Gas Works*, 2018 Pa. PUC LEXIS 360 (2018).

ORDER

THEREFORE,

IT IS ORDERED:

1. That all late-filed exhibits are admitted into the record.
2. That the Complaint of Floyd Tillman against Philadelphia Gas Works at Docket No. C-2018-3002462 is denied, in part, and granted, in part.
3. That claims challenging the 2008 Philadelphia Gas Works bill are denied and dismissed;
4. That the request for a payment arrangement is denied and dismissed;
5. That PGW is directed to recalculate the late charges within the statute of limitations and the Complainant's balance in accordance with *SBG Management Services, Inc. / Marchwood Realty Co., L.P. v. Philadelphia Gas Works*(C-2012-2308454); *SBG Management Services, Inc. / Oak Lane Court Realty Co., L.P. v. Philadelphia Gas Works*(C-2012-2308462); *SBG Management Services, Inc. / Fern Rock Realty Co., L.P. v. Philadelphia Gas Works*(C-2012-2308465), 2018 Pa. PUC LEXIS 360 (2018) and issue a bill to the Complainant within 30 days of the final order in this matter.

Date: March 26, 2019

/s/
Darlene Heep
Administrative Law Judge