

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Anthony Stafford	:	
	:	
v.	:	F-2019-3011348
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Alphonso Arnold, III  
Special Agent

**INTRODUCTION**

This Initial Decision grants in part and denies in part, the Complaint of a natural gas utility customer. The customer’s request to be reenrolled in the utility’s customer assistance program is denied, because the customer did not meet his burden of proving that he is eligible for reenrollment in the program. The customer’s request for a Commission-issued payment arrangement is granted because the customer has made a good faith effort in paying his gas utility bill.

**HISTORY OF THE PROCEEDING**

On July 2, 2019, Anthony Stafford (Complainant or Mr. Stafford) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW) seeking reenrollment in PGW’s customer assistance program, known as the Customer Responsibility Program (CRP), or in the alternative, to be issued a payment arrangement by the Commission.

The Complaint is a timely appeal of a determination made by the Commission's Bureau of Consumer Services (BCS) at BCS No. 3698519 wherein the BCS established a payment arrangement for Mr. Stafford.

On July 25, 2019, PGW filed an Answer. PGW admitted or denied the averments in the Complaint and requested that the Commission dismiss the Complaint.

By Hearing Notice served upon the parties on August 12, 2019, the Commission scheduled this matter for a telephonic hearing on September 26, 2019 and assigned the case to me.

A Prehearing Order, served upon the parties on August 28, 2019, addressed, inter alia, the procedures applicable to the hearing.

The September 26, 2019 hearing was held as scheduled. Mr. Stafford was present for the hearing and testified in support of his Complaint. Mr. Stafford sponsored no exhibits for the record. Attorney Laureto Farinas was present on behalf of PGW and presented the testimony of Josalynn Moore, customer review officer employed by PGW, who sponsored the following three exhibits which were admitted into the record:

- PGW Exhibit 1 – Statement of Account
- PGW Exhibit 2 – CRP and Payment Arrangements
- PGW Exhibit 3 – BCS Decision

The record<sup>1</sup> closed at the conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be granted in part and denied in part.

### FINDINGS OF FACT

1. The Complainant is Anthony Stafford.

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<sup>1</sup> The telephonic hearing was recorded over the phone by means of a tape recorder. No Court Reporter was present. 52 Pa. Code § 56.174(3).

2. The Respondent is Philadelphia Gas Works.
3. Mr. Stafford receives gas service from PGW at 2402 North 54<sup>th</sup> Street, Philadelphia, Pennsylvania (service address).
4. Mr. Stafford lives at the service address with his mother and two minor daughters.
5. Mr. Stafford receives \$1,153.60 biweekly from his employment.
6. Mr. Stafford's mother receives \$1,599.34 every month from social security benefits.
7. Mr. Stafford was issued a Company payment arrangement on September 9, 2016; he broke this payment arrangement.
8. The Customer Responsibility Program is PGW's customer assistance program for low income customers.
9. Customers on PGW's CRP receive discounted monthly rates for their gas service.
10. Eligibility for PGW's CRP is based upon a customer's household income and size.
11. Customers are eligible for the CRP if their household income and size places them at or below 150% of the Federal poverty level.
12. The information required by PGW to verify a customer's household income and size is supplied by the customer when he or she applies for the CRP.

13. Mr. Stafford was enrolled in PGW's CRP on November 18, 2017.
14. The monthly household income supplied by Mr. Stafford upon enrollment in the CRP in November 2017 was \$2,653.28 for a household of four. (PGW Exhibit 2, p. 1).
15. PGW did not perform an independent investigation into Mr. Stafford's household income when he applied for PGW's CRP in November 2017.
16. Mr. Stafford was removed from the CRP on November 16, 2018 for failure to reverify his income. (PGW Exhibit 1, p. 2, 3; PGW Exhibit 2, p. 1).
17. On April 26, 2019, Mr. Stafford applied for reenrollment in the CRP at a PGW customer service center and was denied reenrollment because his household income was over the income level required for the CRP. (PGW Exhibit 2, p. 2).
18. The monthly household income recorded for Mr. Stafford's household at the time he applied for reenrollment in the CRP on April 26, 2019 was \$4,565.70 for a household of four. (PGW Exhibit 2, p. 2).
19. On May 3, 2019, Mr. Stafford filed an Informal Complaint with the BCS at BCS No. 3698519. (PGW Exhibit 3).
20. On May 14, 2019, the Informal Complaint at BCS No. 3698519 was resolved through the BCS granting Mr. Stafford a payment arrangement. (PGW Exhibit 2, p. 6; PGW Exhibit 3).
21. The instant Complaint is a timely appeal of BCS No. 3698519.
22. As of the day of the hearing held in this matter, Mr. Stafford's unpaid account balance was \$6,132.74. (PGW Exhibit 1, p. 4).

## DISCUSSION

Section 701 of the Public Utility Code (Code) provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission. 66 Pa.C.S. § 701.

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.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the Complainant will prevail. If the utility rebuts the Complainant's evidence, the burden of going forward with the evidence shifts back to the Complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the Complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlt. 2001); see also, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlt. 1982).

Additionally, this Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. 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, 413 A.2d 1037 (Pa. 1980).

This matter concerns Mr. Stafford's request to be reenrolled in PGW's CRP, or in the alternative, to be issued a payment arrangement by the Commission. Therefore, the burden is on Mr. Stafford to show that he is eligible for reenrollment in the CRP, or in the alternative, eligible for a Commission-issued payment arrangement.

### **Customer Responsibility Program**

First, Mr. Stafford's eligibility for reenrollment in the CRP will be analyzed. Mr. Stafford was enrolled in PGW's CRP on November 18, 2017. The monthly household income that PGW recorded for Mr. Stafford's household at the time of enrollment was \$2,653.28 for a household of four. Mr. Stafford was removed from the CRP on November 16, 2018 for failure to reverify his income. When Mr. Stafford applied for reenrollment in the CRP on April 26, 2019, PGW denied his application. The monthly household income that PGW recorded for Mr. Stafford's household at the time Mr. Stafford applied for reenrollment was \$4,565.70 for a household of four. As of the date of the hearing, Mr. Stafford's monthly household income for a household of four was \$4,105.67.<sup>2</sup>

Mr. Stafford testified that his household income did not change from the time of his enrollment in the CRP to when he applied for reenrollment in the CRP. Therefore, Mr. Stafford believes that if he was eligible for the CRP in November 2017, then he should have been eligible for the CRP in April 2019.

To address Mr. Stafford's eligibility for the CRP, PGW presented the testimony of Josalynn Moore, a PGW customer review officer, and exhibits. Ms. Moore testified that PGW customers are eligible for the CRP if their household income and size places them at or below 150% of the Federal poverty level. Mr. Stafford was not eligible for reenrollment in the CRP on April 26, 2019 because his household income and size (\$4,565.70 for a household of four) placed him above 150% of the Federal poverty level.<sup>3</sup> Ms. Moore further testified that as of the day of

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<sup>2</sup>  $((365 \text{ days in a year} / 7 \text{ days in a week} / 12 \text{ months} / 2) * (\$1,153.60)) + (\$1,599.34) = \$4,105.67.$

<sup>3</sup> For 2019, 150% of the Federal poverty level for a household of four is \$3,219. Federal Register, Vol. 84, No. 22 at 1168 (February 1, 2019).

the hearing, Mr. Stafford was still ineligible for reenrollment in the CRP because the household income and size (\$4,105.67 for a household of four) that Mr. Stafford reported during the hearing placed him above 150% of the Federal poverty level.

Both parties agreed during the hearing that the difference between Mr. Stafford's household income in November 2017 and his household income in April 2019 is the fact that the income of Mr. Stafford's mother was included in the April 2019 household income calculation and was not included in the November 2017 household income calculation. Mr. Stafford's household income as of the date of the hearing also includes his mother's income. Due to the omission of Mr. Stafford's mother's income from the November 2017 household income calculation, his household income and size (\$2,653.28 for a household of four) placed him below 150% of the Federal poverty level,<sup>4</sup> and he was enrolled in the CRP.

Regarding his mother's income, Mr. Stafford testified that his mother was living in his household at the time he was enrolled in the CRP in 2017. Mr. Stafford further testified that he was always truthful when presenting his household income to PGW and that he did not omit his mother's income when he applied for enrollment in the CRP. Mr. Stafford claims that PGW's failure to include his mother's income as part of his monthly household income at the time of his enrollment in the CRP was the fault of PGW. Due to this mistake, Mr. Stafford asserts that he should be reenrolled back in the CRP.

Ms. Moore testified that PGW did not include the income of Mr. Stafford's mother in Mr. Stafford's household income calculation because Mr. Stafford did not report his mother's income when he applied for the CRP. Ms. Moore further testified that when a customer applies for the CRP, the information that PGW needs to determine the customer's income is provided by the customer, and in Mr. Stafford's instance, PGW did not perform an independent

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<sup>4</sup> In 2017, 150% of the Federal poverty level for a household of four was \$3,075. Federal Register, Vol. 82, No. 19 at 8831-8832 (January 31, 2017).

investigation to verify Mr. Stafford's household income at the time he applied for the CRP in 2017.<sup>5</sup>

The Commission's regulations, specifically 52 Pa.Code § 69.265, provide guidance on how public utilities must design their customer assistance programs. Public utilities are to include eligibility criterion for customer enrollment into their customer assistance programs, and one such eligibility criterion is that the "Household income is verified at or below 150% of the Federal poverty income guidelines." 52 Pa.Code § 69.265(4)(ii).

Regarding PGW's CRP, PGW's current gas service tariff reads in relevant part as follows:

13.1.A. Eligibility and Enrollment. A Customer is eligible for the Customer Responsibility Program if it is determined at the time of application (or recertification) that the Customer's annual household gross income is at or below 150% of the federal poverty level. The Customer shall provide all documentation necessary for PGW to determine the household income including but not limited to proof of household income, verification of family size, and character of service requested (Heating or Non-Heating).

PGW Gas Service Tariff, Second Revised Page No. 59, 13.1.A.

A public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316; Kossman v. Pa. Pub. Util. Comm'n, 694 A.2d 1147 (Pa.Cmwlth. 1997). Where a Complaint involves an existing, Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule is no longer reasonable. Brockway Glass Co. v. Pa. Pub. Util. Comm'n, 437 A.2d 1067 (Pa.Cmwlth. 1981).

PGW's CRP was designed in conformity with the Commission's regulations, has been approved by the Commission, and is binding upon PGW and Mr. Stafford. As such, PGW

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<sup>5</sup> PGW has the right to verify a Customer's income by means including but not limited to verification through governmental agency and checking credit reports. PGW Gas Service Tariff, Second Revised Page No. 59, 13.1.A.

properly denied Mr. Stafford's CRP application on April 26, 2019, as Mr. Stafford's household income was above 150% of the Federal poverty level making him ineligible for the CRP per the Commission's regulations and PGW's tariff. PGW also properly denied Mr. Stafford reenrollment into the CRP at the hearing, because Mr. Stafford's household income that he provided at the time of the hearing placed him above 150% of the Federal poverty level, which results in him currently being ineligible for the CRP. In both instances PGW properly applied its tariff as it relates to Mr. Stafford's eligibility for the CRP, and Mr. Stafford has not provided any evidence that would lead to a finding that the eligibility requirements of PGW's CRP are no longer reasonable. Mr. Stafford's primary argument regarding his belief that he should be reenrolled in the CRP is not that he meets the eligibility requirements of the CRP or that PGW's CRP is no longer reasonable, but that because PGW made a mistake in enrolling him in the CRP in 2017, that PGW should reenroll him back on the CRP.

Mr. Stafford has not proven that the failure to include his mother's income as part of his household income in 2017, thus leading to his enrollment in the CRP, was the fault of PGW. I find credible the testimony of Ms. Moore, who testified that the information required for enrollment in the CRP, including the information necessary to verify a customer's income, is supplied by the customer. PGW's tariff additionally states that, "The Customer shall provide all documentation necessary for PGW to determine the household income including but not limited to proof of household income, verification of family size, and character of service requested (Heating or Non-Heating)."<sup>6</sup> Thus, if PGW is lacking the necessary information to accurately determine a customer's household income it would be the fault of the customer and not PGW.

Alternatively, even if PGW did in fact err in enrolling Mr. Stafford in its CRP in 2017, such a mistake would not lead to a finding that Mr. Stafford should be reenrolled in the CRP. As discussed above, Mr. Stafford is not currently eligible for the CRP, and has not proven that PGW's CRP eligibility requirements are no longer reasonable. Thus, an Order through this Initial Decision directing PGW to reenroll Mr. Stafford in its CRP would be ordering PGW to violate its Commission-approved tariff. Additionally, if PGW made a mistake in enrolling Mr.

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<sup>6</sup> PGW Gas Service Tariff, Second Revised Page No. 59, 13.1.A.

Stafford in its CRP, then Mr. Stafford benefited from said mistake through receiving discounted rates for a year before his removal from the CRP. PGW's alleged mistake did not negatively impact Mr. Stafford in any way. Mr. Stafford is simply now being required to pay non-discounted gas rates just like other similarly situated PGW customers who do not qualify for the CRP.<sup>7</sup>

In conclusion, for all of the reasons above, Mr. Stafford has not met his burden of proving that he is eligible for PGW's CRP. Mr. Stafford has not shown that PGW violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company, as it relates to his eligibility for the CRP.

### **Payment Arrangement**

Second, as it has been determined that Mr. Stafford is not eligible for reenrollment in PGW's CRP, Mr. Stafford's eligibility for a Commission-issued payment arrangement will now be analyzed. 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:

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<sup>7</sup> Also, PGW reenrolling Mr. Stafford in its CRP would be granting Mr. Stafford an unreasonable advantage as to the rates he would receive in comparison to the rates other similarly situated customers would receive. See 66 Pa.C.S. § 1304.

(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 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).

Mr. Stafford was granted a payment arrangement from the BCS at BCS No. 3698519. The present Formal Complaint is a timely appeal of this BCS determination. A customer cannot be deemed in default of a timely appealed payment arrangement directed by a BCS informal decision until the Formal Complaint on appeal is ultimately adjudicated and a final Order is issued by the Commission. Kalamets v. Columbia Gas of Pa, Inc., Docket No. Z-01701441 (Opinion and Order entered October 14, 2005). Therefore, Mr. Stafford has not received his one Commission-issued payment arrangement permitted under 66 Pa.C.S. § 1405(a). The length of the payment arrangement that can be established for Mr. Stafford is

based on his gross monthly household income in relation to the Federal poverty level. 66 Pa.C.S. § 1405(b).

As of the date of the hearing, Mr. Stafford's gross monthly household income for a household of four is \$4,105.67, placing him around 200% of the Federal poverty level.<sup>8</sup> This makes Mr. Smith a level 2 customer, which is defined as a customer between 150% and 250% of the Federal poverty level. 66 Pa.C.S. § 1405(b)(2). Level 2 customers are eligible for a payment arrangement of up to three years to resolve their unpaid balance. As such, the Commission is authorized to issue Mr. Stafford a three-year payment arrangement.

In cases where the Commission is authorized by law to establish a payment arrangement between a customer 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 customers who have demonstrated some evidence of a good faith effort to pay their utility bills. The Commission has refused to award payment arrangements for those who have a poor payment history and/or inability or unwillingness to comply with payment arrangements established by the utility. Getz v. Metropolitan Edison Company, Docket No. C-2014-2459964 (Order entered May 28, 2015); Hewitt v. PECO Energy Company, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013).

The record evidence shows that Mr. Stafford has demonstrated a good faith effort to pay his gas bill. A review of the Statement of Account provided in this matter shows that Mr. Stafford has made six payments in 2019 (as of September 2019) and ten payments in 2018. (PGW Exhibit 1, p. 3, 4). Although Mr. Stafford has broken one Company-issued payment arrangement issued to him in 2016, given his strong payment history, Mr. Stafford has demonstrated a good faith effort to pay his gas bill and discretion is warranted to issue him a Commission-issued payment arrangement. Therefore, Mr. Stafford will be issued a payment arrangement through this Initial Decision.

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<sup>8</sup> Federal Register, Vol. 84, No. 22 at 1168 (February 1, 2019). Also available at <http://aspe.hhs.gov/poverty> (providing that 200% of the Federal poverty level for a household of four is \$4,292).

In conclusion, Mr. Stafford is eligible for a three-year Commission-issued payment arrangement and will be issued one 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 Complainant. 66 Pa.C.S. § 332(a).

3. A Customer is eligible for the Customer Responsibility Program if it is determined at the time of application (or recertification) that the Customer's annual household gross income is at or below 150% of the federal poverty level. The Customer shall provide all documentation necessary for PGW to determine the household income including but not limited to proof of household income, verification of family size, and character of service requested (Heating or Non-Heating). PGW Gas Service Tariff, Second Revised Page No. 59, 13.1.A.

4. A public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316; Kossman v. Pa. Pub. Util. Comm'n, 694 A.2d 1147 (Pa.Cmwlt. 1997).

5. Where a Complaint involves an existing, Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule is no longer reasonable. Brockway Glass Co. v. Pa. Pub. Util. Comm'n, 437 A.2d 1067 (Pa.Cmwlt. 1981).

6. The Complainant has not met his burden of proving that he is eligible for reenrollment in Philadelphia Gas Works' Customer Responsibility Program.

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

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

9. A customer's gross monthly household income in relation to the Federal poverty level determines the length of the payment arrangement that the Commission may issue. 66 Pa.C.S. § 1405(b).

10. 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. Getz v. Metropolitan Edison Company, Docket No. C-2014-2459964 (Order entered May 28, 2015); Hewitt v. PECO Energy Company, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013).

11. The Complainant has met his burden of proving that he is eligible for a Commission-issued payment arrangement.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Anthony Stafford against Philadelphia Gas Works at Docket No. F-2019-3011348 is granted in part and denied in part.

2. That Anthony Stafford's request to be reenrolled in Philadelphia Gas Works' Customer Responsibility Program is denied.

3. That Anthony Stafford's request for a payment arrangement is granted.

