

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jerry G. Henderson

v.

Philadelphia Gas Works

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C-2019-3012339

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision grants the Complainant's request for a Commission-issued payment arrangement because the Complainant has made a good faith effort to pay his gas utility bills.

HISTORY OF THE PROCEEDING

On August 21, 2019, Jerry G. Henderson (Complainant or Mr. Henderson) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW) seeking a payment arrangement to help restore his gas service.

On September 11, 2019, PGW filed an Answer to the Complaint, admitting that it terminated Mr. Henderson's gas service for non-payment. PGW requested that the Commission dismiss the Complaint.

By Hearing Notice served upon the parties on September 11, 2019, the Commission scheduled this matter for a telephonic hearing on October 25, 2019 and assigned the case to me as presiding officer.

A Prehearing Order, served upon the parties on October 3, 2019, addressed, inter alia, the procedures applicable to the hearing.

The October 25, 2019 hearing was held as scheduled. Mr. Henderson was present for the hearing and testified in support of his Complaint. Mr. Henderson sponsored no exhibits for the record. Attorney Laureto Farinas was present on behalf of PGW and presented the testimony of Adrian Pinkney, a customer review officer employed by PGW, who sponsored the following four exhibits which were admitted into the record:

- PGW Exhibit 1 – Contacts for Account
- PGW Exhibit 2 – Statement of Account
- PGW Exhibit 3 – Negotiated Payment Arrangements
- PGW Exhibit 4 – BCS Decision

The record¹ closed at the conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be granted.

FINDINGS OF FACT

1. The Complainant is Jerry G. Henderson.
2. The Respondent is Philadelphia Gas Works.
3. Mr. Henderson received gas service from PGW at 2231 South 70th Street Philadelphia, Pennsylvania (service address).

¹ The telephonic hearing was recorded over the phone by means of a tape recorder. No Court Reporter was present.

4. Five people live in the household at Mr. Henderson's service address, including Mr. Henderson and his wife.

5. Mr. Henderson's gross monthly income is \$2,600.

6. Mrs. Henderson's gross monthly income is \$2,400.

7. No other individuals in the Henderson household have income.

8. Mr. Henderson's gas service was terminated on April 9, 2019. (PGW Exhibit 1, p. 2).

9. On July 24, 2019, Mr. Henderson filed an Informal Complaint with the Commission's Bureau of Consumer Services (BCS) at BCS No. 3720036 seeking a payment arrangement from the Commission to help restore his gas service. (PGW Exhibit 4, p. 1).

10. On July 25, 2019, the BCS issued a decision at BCS No. 3720036 dismissing Mr. Henderson's Informal Complaint. (PGW Exhibit 4, p. 2).

11. Mr. Henderson defaulted on two Company-issued payment arrangements. (PGW Exhibit 3, p. 1).

12. Seven payments have been made towards Mr. Henderson's account over the time period of the Statement of Account (October 26, 2017 – May 2, 2019), totaling an amount of \$1,018.79. (PGW Exhibit 2).

13. As of the date of the hearing, Mr. Henderson's outstanding account balance was \$2,771.49. (PGW Exhibit 2).

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).

In this matter, Mr. Henderson is seeking a payment arrangement for an account which gas service was lawfully terminated for non-payment. PGW lawfully terminated Mr. Henderson's service on April 9, 2019 and is seeking full payment of the outstanding balance plus reconnection fees to restore service pursuant to 66 Pa.C.S. § 1407(c)(2)(i) (providing that a public utility may require full payment of any outstanding balance together with any reconnection fees 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) . Although Section 1407 of the Code dictates the terms a utility may impose on a customer or applicant seeking restoration of their service, it does not divest the Commission of its authority to order a payment arrangement for a customer or applicant whose service was lawfully terminated for non-payment. Crawford v. National Fuel Gas Distribution Corp., Docket No. C-20066348 (Order entered December 6, 2007) (Crawford); Rogito v. UGI Utilities, Inc., Docket No. F-02263457 (Order entered December 3, 2008) (Rogito). Whether Mr. Henderson met his burden of proving that he is eligible for a payment arrangement will be discussed below.

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).

Mr. Henderson has never received a Commission-issued payment arrangement. Therefore, the Commission is authorized to establish a payment arrangement between Mr. Henderson and PGW within the limits established in Chapter 14. The length of the payment arrangement that can be established for Mr. Henderson is based on his gross monthly household income in relation to the Federal poverty level. 66 Pa.C.S. § 1405(b).

Mr. Henderson testified at the hearing that his gross monthly household income is \$5,000,² for a household of five, placing him slightly below 200% of the Federal poverty level.³ This makes Mr. Henderson 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

² \$2,600 + \$2,400.

³ 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 five is \$5,028).

for a payment arrangement of up to three years to resolve their unpaid balance. As such, the Commission is authorized to issue Mr. Henderson a three-year payment arrangement.

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; Rogito. The Commission has looked 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. Rohrbach v. PGW, F-2018-3006723 (Order entered May 8, 2019).

The record evidence shows that Mr. Henderson has made a good faith effort to pay his gas bills. Mr. Henderson has not made timely payments to his gas account in full, which lead to his service being terminated in April 2019. However, a review of the Statement of Account provided in this matter shows a strong payment history consisting of seven payments made towards Mr. Henderson's account between October 2017 and May 2019, totaling an amount of \$1,018.79. Mr. Henderson's current account balance stands at \$2,771.49. Although Mr. Henderson does not have a strong compliance history with Company-issued payment arrangements, defaulting on two of them, Mr. Henderson has not yet had the opportunity to comply with a Commission-issued payment arrangement. Discretion is warranted in giving Mr. Henderson the opportunity to comply with a Commission-issued payment arrangement through this Initial Decision.

In conclusion, Mr. Henderson is eligible for a three-year Commission-issued payment arrangement and will be issued one in accordance with 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. While 66 Pa.C.S. § 1407(c) delineates the terms a utility may impose upon a customer or applicant seeking restoration of service, Section 1407(c) in no way divests the Commission of its duty to act as the final arbiter of a utility's customer's rights with respect to payment disputes. Crawford v. National Fuel Gas Distribution Corp., Docket No. C-20066348 (Order entered December 6, 2007).
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 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).
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 (Order entered December 6, 2007); Rogito v. UGI Utilities, Inc., Docket No. F-02263457 (Order entered December 3, 2008).

8. 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 Jerry G. Henderson's Complaint against Philadelphia Gas Works at Docket No. C-2019-3012339 is granted.

2. That within thirty days of the entry of a final Commission Order in this matter, Philadelphia Gas Works shall issue a bill to Jerry G. Henderson in the amount of one-thirty sixth ($1/36^{\text{th}}$) of the balance accrued on his account.

3. That upon receipt of the payment of $1/36^{\text{th}}$ of the balance accrued on Mr. Henderson's account, plus any reconnection fees that Philadelphia Gas Works may assess, Philadelphia Gas Works shall reinstate service at the service address.

4. That beginning with the first billing due date following reinstatement of service, Jerry G. Henderson shall make monthly payments consisting of his budget bill plus $1/36^{\text{th}}$ of the balance accrued on his account, continuing thereafter on the due date for the payment of each regular monthly bill, until the arrearage on his account has been paid in full.

5. That as long as Jerry G. Henderson 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.

