

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Etter	:	
	:	
v.	:	C-2019-3012464
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision dismisses the Complaint, finding that the Complainant is not eligible for a second Commission-issued payment arrangement or to reinstatement and an extension of his first Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On August 22, 2019, Michael Etter (Complainant or Mr. Etter) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW) seeking a payment arrangement.

On September 16, 2019, PGW filed an Answer to the Complaint, admitting or denying the averments in the Complaint and requesting that the Commission dismiss the Complaint.

By Hearing Notice served upon the parties on September 20, 2019, the Commission scheduled this matter for a telephonic hearing on November 13, 2019 and assigned the case to me.

A Prehearing Order, served upon the parties on October 16, 2019, addressed, inter alia, the procedures applicable to the hearing.

The November 13, 2019 hearing was held as scheduled. Mr. Etter testified in support of his Complaint. Mr. Etter sponsored no exhibits for the record. Attorney Graciela Christlieb was present on behalf of PGW and presented the testimony of Josalynn Moore, a customer review officer, who sponsored the following five exhibits which were admitted into the record:

- PGW Exhibit 1 – Statement of Account
- PGW Exhibit 2 – Payment Arrangement History
- PGW Exhibit 3 – 10 Day Shut-Off Notice
- PGW Exhibit 4 – BCS Complaints and Decision
- PGW Exhibit 5 – BCS Complaints and Decision

The record¹ closed on November 13, 2019, following the conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Michael Etter.
2. The Respondent is Philadelphia Gas Works.
3. Mr. Etter receives gas service from PGW at 5862 Brush Road, 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. Six people reside at the household at the service address, consisting of three adults and three children.

5. Currently, Mr. Etter is the only adult in his household that has income.

6. Mr. Etter's gross monthly income is \$4,416.67.²

7. On October 18, 2018, Mr. Etter filed an Informal Complaint with the Bureau of Consumer Services (BCS) at BCS No. 3661446 seeking a payment arrangement to avoid service shut off. (PGW Exhibit 4, p. 1).

8. On November 5, 2018, the BCS issued a decision at BCS No. 3661446, granting the Informal Complaint and issuing Mr. Etter a payment arrangement. (PGW Exhibit 4, p. 3).

9. The payment arrangement issued at BCS No. 3661446 was based on a gross monthly household income of \$3,833.33 for a household of six. (PGW Exhibit 4, p. 1).

10. Mr. Etter defaulted on the payment arrangement issued at BCS No. 3661446. (PGW Exhibit 2).

11. On July 19, 2019, Mr. Etter filed an Informal Complaint with the BCS at BCS No. 3719126 seeking a payment arrangement to avoid service termination. (PGW Exhibit 5, p. 1).

12. On August 6, 2019 the BCS issued a decision at BCS No. 3719126 dismissing the Informal Complaint, because Mr. Etter did not satisfy the prior Commission payment arrangement. (PGW Exhibit 5, p. 3).

² Mr. Etter testified that his gross income was \$53,000 annually. ($\$53,000 / 12 \text{ months} = \$4,416.67$ per month).

13. As of the date of the hearing, Mr. Etter had a current outstanding account balance of \$6,637.88. (PGW Exhibit 1).

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 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 the Complainant's request for a payment arrangement. Therefore, the Complainant's eligibility for a Commission-issued payment arrangement will be analyzed 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.

(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 established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

66 Pa.C.S. § 1405(d). “Change in income” is defined as the following:

§ 1403. Definitions

“Change in income.” 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.

66 Pa.C.S. § 1403.

Additionally, the Commission may reinstate and extend a defaulted upon payment arrangement under a specific set of circumstances.

§ 1405. Payment arrangements

(e) Extension of payment arrangements.--If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

66 Pa.C.S. § 1405(e). “Significant change in circumstance” is defined as the following:

§ 1403. Definitions

“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.
- (4) Increase in the customer's number of dependents in the household.

66 Pa.C.S. § 1403.

A previous Commission-issued payment arrangement was established for Mr. Etter by the BCS at BCS No. 3661446. The payment arrangement established through this BCS decision became a Commission-issued payment arrangement once Mr. Etter failed to appeal the decision through the filing a Formal Complaint.³ Mr. Etter defaulted on this Commission-issued payment arrangement. Given his default on this prior Commission-issued payment arrangement,

³ (3) *Resolution*. Commission staff resolution of informal complaints is binding upon the parties unless formal proceedings are initiated under §§ 56.171--56.174 (relating to formal complaints). 52 Pa. Code § 56.163(3).

Mr. Etter in the instant Formal Complaint is seeking a second Commission-issued payment arrangement. A second Commission-issued payment arrangement can be established for Mr. Etter only if he has experienced a change in income since the prior Commission-issued payment arrangement was issued and made final. 66 Pa.C.S. § 1405(d).

Mr. Etter testified at the hearing that his gross monthly household income is \$4,416.67 for a household of six. Mr. Etter's gross monthly household income reported at BCS No. 3661446 was \$3,833.33 for a household of six. Thus, Mr. Etter's gross monthly household income has increased following the issuance of his Commission-issued payment arrangement at BCS No. 3661446. As cited above, "change in income" is defined as having experienced a decrease in household income, not an increase in household income. 66 Pa.C.S. § 1403. Therefore, Mr. Etter has not experienced the change of income required to be granted a second Commission-issued payment arrangement.

Although the Commission cannot establish a second Commission-issued payment arrangement for Mr. Etter, the Commission-issued payment arrangement at BCS No. 3661446 may be reinstated and extended if Mr. Etter defaulted on the payment arrangement as a result of a significant change in circumstance. Mr. Etter provided no evidence at the hearing that would lead to a finding that he defaulted on his Commission-issued payment arrangement as a result of a significant change in circumstance. Therefore, Mr. Etter has not experienced a significant change in circumstance making him eligible for reinstatement and extension of his Commission-issued payment arrangement at BCS No. 3661446.

In conclusion, Mr. Etter has not met his burden of proving that he is eligible for a second Commission-issued payment arrangement, or for reinstatement and extension of his first Commission-issued payment arrangement.

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

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

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

6. 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 established by a Commission order or decision. 66 Pa.C.S. § 1405(d).

7. If a customer defaults on a Commission-issued payment arrangement as a result of a significant change in circumstance, the Commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. 66 Pa.C.S. § 1405(e).

8. The Complainant has not met his burden of proving that he is eligible for a second Commission-issued payment arrangement, or for reinstatement and extension of his first Commission-issued payment arrangement.

