

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Terrence K. Gray Jr.	:	
	:	
v.	:	F-2019-3013486
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision finds the Complainant eligible for a payment arrangement and as a result grants him a Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On October 10, 2019, Terrence K. Gray Jr. (Complainant or Mr. Gray) 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. Among other things, Mr. Gray alleged that he was going through a rough financial hardship.

The Complaint is a timely appeal of a decision made by the Commission's Bureau of Consumer Services (BCS) at BCS No. 3727696. The BCS decision denied Mr. Gray's Informal Complaint, finding that he was ineligible for a payment arrangement.

On October 31, 2019, PGW filed an Answer to the Complaint, admitting or denying the averments in the Complaint. Specially, PGW admitted that it terminated Mr. Gray's gas service for non-payment. PGW requested that the Commission dismiss the Complaint.

By Hearing Notice served upon the parties on November 1, 2019, the Commission scheduled this matter for a telephonic hearing on January 9, 2020 and assigned the case to me as presiding officer.

By Hearing Notice served upon the parties on November 7, 2019, the January 9, 2020 hearing was cancelled and rescheduled for November 22, 2019.¹

A Prehearing Order, served upon the parties on November 8, 2019, addressed, inter alia, the procedures applicable to the hearing.

The November 22, 2019 hearing was held as scheduled. Mr. Gray was present for the hearing and testified in support of his Complaint. Mr. Gray sponsored no exhibits for the record. Attorney Graciela Christlieb was present on behalf of PGW and presented the testimony of Jessica Glace, a senior customer review officer employed by PGW, who sponsored the following four exhibits which were admitted into the record:

- PGW Exhibit 1 – Statement of Account
- PGW Exhibit 2 – Payment Arrangement History
- PGW Exhibit 3 – Records of Customer Contacts
- PGW Exhibit 4 – BCS Complaint and Decision

The record² closed at the conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be granted.

¹ The January 9, 2020 hearing was rescheduled to November 22, 2019 at the request of Mr. Gray. PGW did not object to the request.

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

FINDINGS OF FACT

1. The Complainant is Terrence K. Gray Jr.
2. The Respondent is Philadelphia Gas Works.
3. Mr. Gray received gas service from PGW at 5027 Boudinot Street, Philadelphia, Pennsylvania (service address).
4. Mr. Gray resides with his two minor children at the residence at the service address.
5. Mr. Gray's gross monthly income from wages is \$5,500.
6. Mr. Gray derives no income from any other sources.
7. Mr. Gray's gas service was terminated on August 14, 2019.
8. On August 20, 2019, Mr. Gray filed an Informal Complaint with the BCS at BCS No. 3727696 seeking a payment arrangement to restore his gas service. (PGW Exhibit 4, p. 1).
9. On September 16, 2019, the BCS dismissed Mr. Gray's Informal Complaint, finding that Mr. Gray was not eligible for a payment arrangement and upholding PGW's requirements for restoring Mr. Gray's service. (PGW Exhibit 4, p. 3).
10. Mr. Gray defaulted on two Company-issued payment arrangements. (PGW Exhibit 2).

11. One payment was made towards Mr. Gray's account over the time period of the Statement of Account (November 1, 2017 – November 19, 2019), in the amount of \$176.75 on May 25, 2018. (PGW Exhibit 1, p. 1).

12. As of the date of the hearing, Mr. Gray's outstanding account balance was \$4,137.62. (PGW Exhibit 1).

13. PGW is seeking \$4,409.85 in order to restore Mr. Gray's service, which includes the outstanding account balance plus restoration fees and one-half of a security deposit. (PGW Exhibit 3, 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 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.Cmwlth. 2001); see also, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 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. Gray is seeking a payment arrangement for an account which gas service was terminated for non-payment. Mr. Gray did not challenge the legality of the termination of his service. PGW lawfully terminated Mr. Gray's service on August 14, 2019 and is seeking full payment of the outstanding balance plus reconnection fees and one-half of a security deposit to restore service. PGW may require payment of a customer's outstanding balance plus reconnection fees pursuant to Section 1407 of the Code, which states the following.

§ 1407. Reconnection of service

(c) Payment to restore service.--

(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

66 Pa.C.S. § 1407(c)(2)(i). See also 52 Pa.Code § 56.191 (regarding payment and timing to restore service).

PGW may require payment of a security deposit to restore service, pursuant to Sections 56.41 and 56.42 of the Commission's regulations.

§ 56.41. General rule

A public utility may require an existing customer to post a deposit to reestablish credit under the following circumstances:

(2) *Condition to the reconnection of service.* A public utility may require a deposit as a condition to reconnection of service following a termination in accordance with § 56.191.

52 Pa.Code § 56.41(2).

§ 56.42. Payment period for deposits by customers

(c) *Reconnection of service.* A customer paying a deposit for the reconnection of service under § 56.41(2) may be required to pay 50% prior to, and as a condition of, the reconnection of service with 25% billed 30 days after reconnection of service and 25% billed 60 days after the reconnection of service.

52 Pa.Code § 56.42(c).

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

Mr. Gray testified at the hearing that his gross monthly household income is \$5,500 for a household of three, placing him above 300% of the Federal poverty level.³ This makes Mr. Gray a level 4 customer, which is defined as a customer with a gross monthly household income level exceeding 300% of the Federal poverty level. 66 Pa.C.S. § 1405(b)(4). Level 4 customers are eligible for a payment arrangement of six months to resolve their unpaid balance. As such, the Commission is authorized to issue Mr. Gray a six-month 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).

Concerning Mr. Gray's good faith effort to pay his utility bills, Mr. Gray admitted that he has had financial hardships that has prevented him from paying his gas bills timely and in full. Mr. Gray has testified that over the past four years he has been dealing with a separation

³ Federal Register, Vol. 84, No. 22 at 1168 (February 1, 2019). Also available at <http://aspe.hhs.gov/poverty> (providing that 300% of the Federal poverty level for a household of three is \$5,333).

from his wife. Mr. Gray testified that things have “gotten better” recently and that he wants one last chance to comply with a Commission-issued payment arrangement.

PGW’s position is that Mr. Gray has not made a good faith effort to pay his gas bills. In support, PGW witness Ms. Glace sponsored Mr. Gray’s Statement of Account that shows that Mr. Gray has made one payment towards his account during the 24-month period of the Statement of Account (November 1, 2017 – November 19, 2019) in the amount of \$176.75. Ms. Glace also sponsored Mr. Gray’s payment arrangement history which shows that Mr. Gray has defaulted on two Company-issued payment arrangements. Ms. Glace testified that Mr. Gray’s sizable account balance of \$4,137.62 is a result of Mr. Gray making one payment towards his account in two years.

Admittedly, the record evidence does show that Mr. Gray does not have a strong payment history or strong compliance history with Company-issued payment arrangements. However, Mr. Gray has not yet had the opportunity to comply with a Commission-issued payment arrangement. PGW, as a public utility, is entitled to receive payment for the service it provides to Mr. Gray that his household consumes,⁴ but it is noteworthy that Mr. Gray is not currently consuming gas because his service is off. Awarding Mr. Gray a payment arrangement will give Mr. Gray an opportunity to comply with a Commission-issued payment arrangement to restore his service and provide an avenue for PGW to receive payment for the services it has rendered to Mr. Gray that is still unpaid.

In conclusion, Mr. Gray has met his burden of proving that he is eligible for a Commission-issued payment arrangement. Mr. Gray will be issued a six-month payment arrangement in the Ordering paragraphs below.

⁴ See 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).

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 public utility may require 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. 66 Pa.C.S. § 1407(c)(2)(i).
4. A public utility may require a deposit as a condition to reconnection of service. 52 Pa.Code § 56.41(2); 52 Pa.Code § 56.42(c).
5. 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).
6. The Responsible Utility Customer Protection Act applies to this proceeding. 66 Pa.C.S. §§ 1401-1419.
7. The Commission is authorized to establish a payment arrangement between a public utility, customers and applicants. 66 Pa.C.S. § 1405(a).
8. 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).

9. 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).

10. 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 Terrence K. Gray Jr.'s Complaint against Philadelphia Gas Works at Docket No. F-2019-3013486 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 Terrence K. Gray Jr. in the amount of one-sixth (1/6th) of the balance accrued on his account.

3. That upon receipt of payment of one-sixth (1/6th) of the balance accrued on Mr. Gray's account, plus any other fees Philadelphia Gas Works may legally access, Philadelphia Gas Works shall reinstate service at the service address.

4. That beginning with the first billing due date following reinstatement of service, Terrence K. Gray Jr. shall make monthly payments consisting of his budget bill plus

