

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Hillary Lofton	:	
	:	
v.	:	C-2019-3014906
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Kailey B. Maguire
Special Agent

INTRODUCTION

This Initial Decision dismisses the complaint of a gas service applicant against a utility because the applicant failed to sustain his burden of proof that he is eligible for a payment arrangement in order to pay off his outstanding balance and have service restored.

HISTORY OF THE PROCEEDING

On December 9, 2019, Hillary Lofton (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent). In his Complaint, Mr. Lofton requests that his service be restored and that he be given a payment arrangement in order to pay off his outstanding balance.

On December 31, 2019, PGW filed an Answer in which it admitted that, after providing proper notice, it terminated Complainant's service on April 10, 2018 for nonpayment at 1375 Pratt Street, Philadelphia, PA (service address). In the Answer PGW also avers that Mr.

Lofton has broken multiple company-issued payment arrangements due to nonpayment. PGW concluded its answer by requesting dismissal of the complaint.

On January 3, 2020, the Commission issued a hearing notice to the parties, establishing an initial telephonic hearing for February 12, 2020, at 10:00 a.m. and assigning the undersigned as presiding officer.¹ On January 8, 2020, a prehearing order was issued reminding the parties of the date and time of the hearing and addressing, *inter alia*, the procedures applicable to the hearing.

The hearing convened as scheduled on February 12, 2020, at 10:00 a.m. Mr. Lofton appeared *pro se*, testified on his own behalf, and offered no exhibits into the record. Graciela Christlieb, Esquire, appeared on behalf of Respondent and presented the testimony of one witness, Patricia Bernard, a customer review officer for PGW. Ms. Bernard sponsored the following four exhibits which were admitted into the record:

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

The record² closed following the conclusion of the hearing. For the reasons discussed below, the complaint will be denied.

FINDINGS OF FACT

1. Complainant is Hillary Lofton, who resides at 1375 Pratt Street, Philadelphia, Pennsylvania (service address).

¹ 52 Pa. Code § 56.174 provides for review by a special agent of any case in which the issue is solely the ability to pay.

² Pursuant to 52 Pa. Code § 56.174(3), the hearing was digitally recorded. No court reporter was present.

2. The Respondent is Philadelphia Gas Works, a jurisdictional public utility, which provides gas service to Complainant at the service address.

3. On June 30, 2004, Complainant established residential gas service at the service address.

4. On April 10, 2018, PGW terminated service at the service address. PGW Exhibit 4, p. 3.

5. The Complainant entered into ten payment arrangements with PGW on the following dates: January 12, 2006; July 13, 2006; August 8, 2006; May 30, 2007; September 4, 2007; March 31, 2008, July 31, 2008; February 26, 2010; April 30, 2015; and October 23, 2017; all of which were broken. PGW Exhibit 3.

6. One payment was made towards Mr. Lofton's account over the time period of the Statement of Account (February 1, 2018 – February 1, 2020), in the amount of \$48.73 on September 30, 2019. PGW Exhibit 1 and 2.

7. On December 9, 2019, Mr. Lofton filed the instant formal complaint.

8. Complainant's current gross monthly household income is \$1,733.33 per month which he receives from unemployment benefits.³

9. Complainant's current household size is one individual, himself.

10. Mr. Lofton has had a health problem for the past eight years, which has caused him to enter the hospital ten times over the past twenty-four months.

11. Mr. Lofton has exhausted all of his medical certifications.

³ \$400 per week x 52 weeks = \$20,800 per year/ 12 months = \$1,733.33 per month.

12. As of the date of the hearing, Mr. Lofton's outstanding account balance was \$5,181.26. PGW Exhibit 1.

13. PGW is seeking \$5,304.49 in order to restore Mr. Lofton's service, which includes the outstanding account balance of \$5,181.26 plus a reconnection fee of \$123.23. PGW Exhibit 4, p. 3.

DISCUSSION

The proponent of any request for relief from the Commission bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To satisfy this burden, a complainant, as the proponent of the request for relief, must show 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 presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, the Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence 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 his complaint, Mr. Lofton requests that his service be restored and that he be given a payment arrangement in order to pay his outstanding balance. Therefore, as the proponent of the request for relief, Mr. Lofton bears the burden of proof. Further, since Mr. Lofton is seeking to restore service more than thirty (30) days after service was terminated, he is an "applicant" within the definition of the Public Utility Code. *See*, 66 Pa.C.S. § 1403 (providing that an "applicant" is a person who, after thirty (30) days of termination or discontinuance of service, seeks to have service reconnected at the same location).

In order to restore service to Complainant, PGW seeks a total of \$5,304.49, which consists of Complainant's full balance of \$5,181.26, plus a reconnection fee of \$123.23. Pursuant to Section 1407 of the Public Utility Code, PGW may require full payment of the outstanding balance and a reconnection fee if the applicant has defaulted on two more payment arrangements, as in the instant case. In relevant part, this section provides:

(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 . . . applicant prior to reconnection of service if the . . . applicant has defaulted on two more payment arrangements.

* * *

66 Pa.C.S. § 1407(c)(2)(i).

Complainant does not dispute that he defaulted on ten company-issued payment arrangements. Therefore, Respondent is permitted to require that Complainant pay his full outstanding balance and a reconnection fee to have his service reconnected.

Notwithstanding the above, the Commission may establish a payment arrangement between a public utility and an applicant within the limits established by the Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418 (Act). *See*, 66 Pa.C.S. § 1405(a), which provides that, “[t]he commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers.”

Regarding the length of payment arrangements, the Act provides, in relevant part, the following:

§ 1405 Payment arrangements

(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:

* * *

(2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

* * *

66 Pa.C.S. § 1405(b)(2).

However, in cases where the Commission is authorized by law to establish a payment arrangement between a customer or applicant 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 those 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 (Opinion and Order entered December 6, 2007). In order to determine the Complainant’s eligibility for a Commission-issued payment arrangement, in addition to considering the Complainant’s household income, Complainant’s payment history with PGW must also be considered. *Crawford, supra. Also see, Dorsey v. Philadelphia Gas Works*, Docket No. F-2012-2313679 (Opinion and Order entered November 22, 2013) (*Dorsey*) wherein the Commission declined to issue a payment arrangement because of the complainant’s poor payment history and an inability to keep prior payment arrangements with PGW.⁴

The 2020 Federal Poverty Guidelines provide that a one-person household with a gross monthly household income of \$1,733.33 is between 150% and 250% of the Federal

⁴ Reconsideration denied by the Commission (Opinion and Order Feb. 19, 2014); affirmed by the Commonwealth Court of Pennsylvania, *Dorsey v. Pa. Pub. Util. Comm’n*, 2015 WL 5166793(No. 519 C.D. 2014) (Feb. 2015), *appeal den.* 125 A.3d 778 (Pa. 2015).

poverty level.⁵ Pursuant to the Act, the Complainant's household income would make him eligible for a three-year payment arrangement to extinguish his outstanding balance. 66 Pa.C.S. § 1405(b)(2).

By law, a public utility is entitled to receive payment for the service it provides, and the Complainant must pay the Respondent for the service he consumes. *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). The Respondent has the right to bill and receive payment for the utility service actually supplied. *Neal v. Philadelphia Gas Works*, Docket No. Z-00971874 (Final Order entered January 4, 2002). Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. *Bolt v. Duquesne Light Co.*, Docket No. Z-8721758 (Opinion and Order entered April 8, 1988).

The record demonstrates that over the eleven (11) year period from when service was established on June 30, 2004, to when service was terminated on April 10, 2018, the Complainant defaulted on ten company-issued payment arrangements, and his outstanding balance has accumulated to \$5,181.26. The record further demonstrates that over a 24-month period, from February 1, 2018 through February 1, 2020, the Complainant made only one payment towards his account balance totaling \$48.73.

Complainant alleges that health issues have deterred him from making full and timely payments. Outside of the provision for medical certifications, neither the Code, nor the Commission's Regulations, 52 Pa. Code § 1.1 *et seq.*, permit the Commission to consider a customer's [applicant's] health when setting an initial payment arrangement. *Dorsey, supra*.⁶ Complainant has exhausted all medical certifications under the current arrearage.

⁵ See, *Federal Register*, Vol. 85, No. 12 at 3060 (January 17, 2020). Also available at <http://aspe.hhs.gov/poverty>. (providing that for a household of one, a gross monthly income greater than \$1,595 is more than 150% of the Federal poverty level and a gross monthly income less than \$2,658 is below 250% of the Federal poverty level).

⁶ See, reconsideration denied by the Commission (Opinion and Order Feb. 19, 2014), *affirmed*, *Dorsey v. Pa. Pub. Util. Comm'n*, 2015 WL 5166793(No. 519 C.D. 2014) (Feb. 2015), *appeal den.* 125 A.3d 778 (Pa. 2015).

Based on the Complainant's poor payment history, as well as the Complainant's inability to keep the terms of ten separate company-issued payment arrangements, I am constrained to conclude that the Complainant has not demonstrated a good faith effort to pay his bills.

Accordingly, the Complainant's request for a Commission-issued payment arrangement is denied.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. As the proponent of the request for relief, Complainant bears the burden of proof by a preponderance of the evidence standard. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418, applies to this proceeding.

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

5. In cases where the Commission is authorized by law to establish a payment arrangement between an applicant and a utility, 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 (Opinion and Order entered December 6, 2007).

6. The Commission may decline to issue a payment arrangement because of a complainant's poor payment history and an inability to keep prior payment arrangements with the utility. *Dorsey v. Philadelphia Gas Works*, Docket No. F-2012-2313679 (Opinion and Order entered November 22, 2013), reconsideration denied (Opinion and Order entered Feb. 19, 2014); *affirmed*, *Dorsey v. Pa. Pub. Util. Comm'n*, 2015 WL 5166793 (No. 519 C.D. 2014) (Feb. 2015), *appeal den.* 125 A.3d 778 (Pa. 2015).

7. Complainant has failed to carry his burden of proving that he is eligible for a Commission-issued payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Hillary Lofton against Philadelphia Gas Works at Docket No. C-2019-3014906 is denied.

2. That the docket at Docket No. C-2019-3014906 be marked closed.

Date: May 11, 2020

/s/
Kailey B. Maguire
Special Agent