

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Patricia Sanford	:	
	:	
v.	:	C-2019-3009831
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This initial decision dismisses the Complainant’s formal Complaint as she did not satisfy her burden under the Public Utility Code to demonstrate that she is eligible for a subsequent Commission-issued payment arrangement or an extension of her prior Commission payment arrangement. This initial decision also grants the Respondent’s request to bar the Complainant from filing further informal or formal complaints related to the Complainant’s current outstanding balance.

**HISTORY OF THE PROCEEDING**

On May 13, 2019, Patricia Sanford (Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against the Philadelphia Gas Works (PGW or Respondent). In the Complaint, Ms. Sanford alleged that the utility was threatening to shut off or had shut off her service and sought a payment arrangement.

On June 3, 2019, PGW filed an Answer, denying the material allegations of the Complaint. PGW also filed New Matter alleging that the Complainant has a history of filing informal complaints and abusing the system pertaining to her current outstanding balance.

On June 25, 2019, a Hearing Notice was issued for an initial in-person hearing on August 13, 2019, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on June 28, 2019, which provided the parties with the procedures for the hearing.

On August 6, 2019, PGW filed a Motion for Continuance. The Complainant did not object to the request, which was granted via an Order dated August 12, 2019.

The matter was rescheduled for Wednesday, October 9, 2019, at 10:00 a.m., via a Hearing Cancellation/Reschedule Notice dated August 15, 2019.

The hearing convened as scheduled on October 9, 2019. PGW was represented by counsel, Graciela Christlieb, Esquire. The Complainant did not appear or have counsel appear on her behalf. At the hearing, PGW presented testimony and exhibits that were in support of its allegations that the Complainant had filed multiple informal complaints and was abusing the system. The record closed on October 31, 2019 when I received the hearing transcript.

On November 25, 2019, an Emergency Petition to Reopen the Evidentiary Record and Entry of Appearance of Eric George, Esquire, were filed on behalf of the Complainant.

On December 5, 2019, PGW filed an Answer to the Emergency Petition which objected to the record being reopened.

On December 26, 2019, I issued an Order which granted the request to reopen the record and scheduled the matter for a further hearing.

On January 6, 2020, a Hearing Notice was issued indicating a further in-person hearing would be held on February 26, 2020 at 10:00 a.m.

The hearing convened as scheduled on February 26, 2020. The Complainant represented herself and testified on her own behalf. The Complainant indicated that she had not been in communication with her attorney. PGW was represented by counsel, Graciela Christlieb, Esquire. PGW presented the testimony of Tiffany Jones, Manager of the Customer Review Unit, and offered six exhibits which were entered into the record. The Complainant indicated that she would file household financial documents as a late filed exhibit. I gave the Complainant until March 6, 2020 to submit her late filed exhibit and I gave PGW until March 16, 2020 to file any written objections to the exhibit. The Complainant did not submit any late filed exhibit by the March 6, 2020 deadline.

The record closed on March 11, 2020, when I received my copy of the further hearing transcript. The transcript of both hearings totals 81 pages.

#### FINDINGS OF FACT

1. The Complainant is Patricia Sanford<sup>1</sup>, who lives at 6425 Drexel Road, Philadelphia, Pennsylvania 19151 (Service Address). Tr. 43.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant resides at the Service Address with her husband and son, age 16. Tr. 48.
4. The Complainant and her husband are both self-employed. Tr. 48.

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<sup>1</sup> The Complainant's account with PGW is under the name Patricia Alexander which is her maiden name. Tr. 53.

5. Both the Complainant and her husband have current work assignments.  
Tr. 48.
6. The Complainant's weekly gross income is zero. Tr. 49.
7. The Complainant's husband's weekly gross income is \$1,000.00. Tr. 49.
8. The Complainant's current gross household income of \$4,333.00<sup>2</sup> per month with three household members places the household at 239% of the Federal Poverty guidelines.<sup>3</sup>
9. The Complainant was granted a Commission-issued payment arrangement by the Commission's Bureau of Consumer Services' (BCS) decision at Case No. 2464388 on September 14, 2009. Tr. 64; PGW Exhs. 2 & 4.
10. The Complainant defaulted on the Commission-issued payment arrangement. Tr. 12; PGW Exh. 4.
11. The Complainant was granted a second Commission-issued payment arrangement by BCS at Case No. 3508501 on April 27, 2017, based on a change of income. Tr. 64-66; PGW Exhs. 2, 3 & 4.
12. Under the BCS Case No. 3508501, the Complainant reported an income of \$3,000.00 per month for four household members. Tr. 66-67; PGW Exhs. 2, 3 & 4.
13. The Complainant was granted a Level 1 payment arrangement of \$210.00 Budget Billing + \$332.00 Arrears = \$542.00 per month. PGW Exh. 4.

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<sup>2</sup> Monthly income is calculated as follows:  $(\$0 + \$1,000.00) \times 52 = \$52,000 / 12 = \$4,333.00$ .

<sup>3</sup> *Federal Register*, Vol. 85, No. 12, pp. 3060-3061 (January 17, 2020). See <http://aspe.hhs.gov/poverty>.

14. The Complainant defaulted the Level 1 payment arrangement. Tr. 16; PGW Exh. 4.

15. The Complainant has filed 11 informal complaints and one formal complaint with the Commission between October 2008 and May 2019. Tr. 8-9; PGW Exh. 4.

16. The Complainant has had nine Company-issued payment arrangements for the same set of arrears, between 2008 to 2017, all of which have been broken by the Complainant. Tr. 26-29; PGW Exh. 4.

17. The Complainant has had five cancelled payments between May 2013 to October 2017. Tr. 18-19; PGW Exh. 5.

18. From November 2017 through September 2019, three payments were made to the Complainant's account. Tr. 18-19; PGW Exh. 5.

19. The Complainant's current account balance is \$11,049.60. Tr. 61; PGW Exh. 1.

20. On May 2, 2019, PGW issued a ten-day shut off notice. Tr. 23; PGW Exh. 4.

### DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent public 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). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Pa. Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

#### Request for Payment Arrangement

The Complainant requests a payment arrangement for her outstanding balance. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.* (the Act or Chapter 14), applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow in handling customer complaints. Section 1405(a) of the Act reads as follows:

§ 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.

66 Pa.C.S. § 1405(a).

However, Section 1405(d) of the Public Utility Code prohibits the Commission from establishing a second or subsequent payment arrangement if the customer has defaulted on a Commission-issued payment arrangement, absent a change in income. 66 Pa.C.S. § 1405(d). Under Section 1403, a “change in income” is defined as a decrease in household income of 20% or more if the customer's household income level is greater than 200% of the Federal poverty level. 66 Pa.C.S. § 1403.

Section 1405(e) of the Public Utility Code allows for an extension by six months of a payment arrangement in default if the customer defaulted on the payment arrangement as a result of a significant change in circumstance. 66 Pa.C.S. § 1405(e). "Significant change in circumstance" is defined as any of the following circumstances which are 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.

The Complainant resides at the Service Address with her husband and minor son. Tr. 48. The Complainant and her husband are both self-employed. Tr. 48. Both the Complainant and her husband have current work assignments. Tr. 48. The Complainant's weekly gross income is \$0. Tr. 49. The Complainant's husband's weekly gross income is \$1,000.00. Tr. 49. The Complainant's current gross household income of \$4,333.00 per month with three household members places the household at 239% of the Federal Poverty guidelines. This makes the Complainant a Level 2 customer. *See* 66 Pa.C.S. § 1405(b)(2)<sup>4</sup>.

However, in this instance, The Complainant was granted a Commission-issued payment arrangement by BCS decision at Case No. 2464388 on September 14, 2009. Tr. 64; PGW Exhs. 2 & 4. The Complainant did not satisfy the Commission-issued payment arrangement. Tr. 12; PGW Exh. 4. The Complainant was granted a second Commission-issued payment arrangement by BCS at Case No. 3508501 on April 27, 2017 based on a change of income. Tr. 64-66; PGW Exhs. 2, 3 & 4. Under the BCS Case No. 3508501, the Complainant reported an income of \$3,000.00 per month for four household members. Tr. 66-67; PGW Exhs. 2, 3 & 4. The Complainant was granted a Level 1 payment arrangement of \$210.00 budget billing + \$332.00 arrears for a total of \$542.00 per month. PGW Exh. 4. The Complainant did not satisfy the Level 1 payment arrangement. Tr. 16; PGW Exh. 4.

The Complainant's gross household monthly income has increased since the previous Commission-issued payment arrangement. Thus, the Complainant does not meet the "change of income" criteria set out in Section 1403 of the Public Utility Code. The Complainant has income greater than 200% of the Federal Poverty Level at 239% of the Federal Poverty Level and has not experienced a decrease in income of 20% or more. *See* 66 Pa.C.S. § 1403.

The Complainant did not present any evidence that would meet any of the "significant change in circumstance" criteria that is enumerated in Section 1403 of the Public Utility Code. Further, the Complainant is simply seeking more favorable payment arrangement terms than the one she previously received from the Commission, but the Commission is

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<sup>4</sup> "(2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level."

constrained by the terms of the Public Utility Code. Based on all of the above, the Complainant's request for a payment arrangement must be denied and the Complaint must be dismissed in this regard. Further, the Complainant is not eligible for reinstatement of her prior Commission payment arrangement.

#### PGW's Motion to Bar Filing Further Complaints

PGW argues that Complainant is abusing the Commission's process and complaint procedures to avoid termination. The Commission has found an abuse of administrative due process in numerous other cases. In *Grossman v. Bell Telephone Company of Pennsylvania*, 67 Pa. PUC 714, 717 (1988) (*Grossman*), the Commission stated that abuse of administrative process is an exploitation of due process. The *Grossman* case involved a *pro se* litigant who abused the regulatory practice by frequently requesting continuances of hearings without showing good cause, and then not appearing for his scheduled hearings and not honoring a settlement with the utility. *Id.* Abuse of administrative process cases often involve Complainants filing consecutive pleadings, complaints and motions for continuance of hearings in order to avoid payment and termination of services. In *Jurena v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00003736 (Final Order entered December 22, 2000), the Complainant sought to enjoin Bell Atlantic-Pennsylvania, Inc. (Bell) from violating her right to privacy and from double-billing her account. Bell filed an answer to the complaint and a motion to dismiss because the matter had previously been litigated in Bell's favor. The Administrative Law Judge (ALJ) granted Bell's motion to dismiss and recommended the Commission reject future complaints filed by Complainant relating to the matters addressed in the previous proceeding to prevent the Complainant from repeatedly filing the same complaint to avoid payment and termination of services.

In *Manu v. The Bell Telephone Company of Pennsylvania*, Docket No. F-09029141 (Final Order entered May 9, 1994), the Complainants filed several formal and informal complaints regarding utility service. The ALJ in that case determined that a scheme of an apparently ongoing nature was operating from Complainants' address for the purpose of obtaining utility services without payment. A pattern existed wherein a complaint was filed,

hearing notices were mailed by certified mail and returned marked as unclaimed, and requests for continuances were made. The Commission found an abuse of process had occurred and it precluded Complainants from filing further complaints, formal or informal, until their arrearages were paid in full.

As identified above, there is ample Commission precedent to support the preclusion of a party from filing further informal or formal complaints when the party has been an abuser of the system. *See, Seidenstricker v. Metropolitan Edison Co.*, Docket No. F-2008-2019388 (Final Order entered July 28, 2009) (*Seidenstricker*). In *Seidenstricker*, the Commission precluded the filing of further complaints pertaining to the same account until the arrearage was paid in full after finding that Complainant had abused the system by using the Commission's procedures to prevent termination of service while receiving utility service and accruing a large outstanding balance. *See also, Thomas v. The Peoples Natural Gas Co.*, Docket No. C-2009-2102194 (Opinion and Order entered June 17, 2010); *Argento's Pizza v. Philadelphia Gas Works*, Docket No. C-2009-2138055 (Final Order entered October 1, 2010). The factors to be considered as put forth in the *Argento's Pizza* case include the following: 1) the number and nature of complaints; 2) the number of defaulted payments; 3) the use of tactics to avoid payments and service terminations that became due; and 4) the history of payments. Similarly, in *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Opinion and Order entered April 23, 2014), the Commission ultimately found an abuse of process and precluded the filing of future complaints until the arrearage on the account was satisfied.

Here, as was noted above, the Complainant was granted two Commission-issued payment arrangements by BCS at Case Nos. 2464388 and 3508501, both of which were not satisfied. The Complainant has also filed 11 informal complaints and one formal complaint (including the current formal Complaint) with the Commission between October 2008 and May 2019. Tr. 8-9; PGW Exh. 4. The Complainant has had nine Company-issued payment arrangements, between 2008 to 2017, all of which have been broken by the Complainant. Tr. 26-29; PGW Exh. 4. Further, the Complainant has had five cancelled payments between May 2013 to October 2017, and from November 2017 through September 2019, three payments were made

to the account, which is all related to the same set of arrears. Tr. 18-19; PGW Exh. 5. The Complainant's current account balance is \$11,049.60. Tr. 61; PGW Exh. 1.

I conclude, based on the undisputed record evidence, that the Complainant is abusing the Commission's administrative due process and procedures to avoid payment and to delay the termination of her service due to non-payment. Complainant has shown a pattern of filing numerous complaints with the Commission in order to avoid service termination, defaulting on Commission-ordered and company-issued payment arrangements, and has a very poor payment history. The Complainant has made multiple cancelled payments to PGW. The Complainant has only made three payments between November 2017 and September 2019. The Company has been unable to obtain payment for its gas service due to applicable laws requiring it to provide a stay of termination while a dispute/complaint is pending before the Commission. 52 Pa.Code § 5.63(b). As a result, Complainant's substantial account balance of \$11,049.60 has grown over the years.

Customers have an obligation to pay for utility service. Otherwise, a customer's unpaid bills are included in the utility's uncollectible expense and ultimately paid by the remaining customers. *Cf., Bolt v. Duquesne Light Co.*, 66 Pa. PUC 463 (1988), *O'Toole v. The Bell Telephone Co. of Pennsylvania*, Docket No. C-923964 (Final Order entered August 20, 1992). Payment arrangements are designed to assist low-income customers in making payments; however, there is no right to more than one Commission-ordered payment arrangement unless a change in circumstances warrants a reduction. *See*, 66 Pa.C.S. § 1405(d). Payment arrangements are contractual arrangements between the customer and company and should be honored by the customer, not used to avoid payment altogether. The record in this case highlights a disturbing trend in Complainant's use of the Commission's informal and formal complaint procedures to avoid paying her gas bills while evading the company's termination procedures.

In order to prevent the unnecessary expenditure of any additional Commission

resources, the Complainant will be prohibited from filing any further informal or formal complaints with the Commission until such time as the current outstanding balance on her PGW account is paid in full.

### CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

4. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement.

5. The Commission has the authority to establish a payment arrangement of three years for a customer if the customer is exceeding 150% of the Federal poverty level and not more than 250% of the Federal poverty level. 66 Pa.C.S. § 1405(b)(2).

6. Section 1405(d) of the Public Utility Code prohibits the Commission from establishing more than one payment arrangement unless there is a change in income. 66 Pa.C.S. § 1405(d).

7. Under Section 1403, a “change in income” is defined as a decrease in household income of 20% or more if the customer's household income level is greater than 200% of the Federal poverty level. 66 Pa.C.S. § 1403.

8. Section 1405(e) of the Public Utility Code allows for an extension by six months of a payment arrangement in default if the default was caused by a significant change in circumstance. 66 Pa.C.S. § 1405(e).

9. The Complainant has not met her burden of establishing that she is eligible for a second Commission-issued payment arrangement or reinstatement of her prior Commission-issued payment arrangement.

10. The Commission may preclude a party from filing further informal or formal complaints when the party has abused the Commission’s complaint procedures in order to avoid the termination of his or her service. *Seidenstricker v. Metropolitan Edison Co.*, Docket No. F-2008-2019388 (Final Order entered July 28, 2009); *Thomas v. The Peoples Natural Gas Co.* Docket No. C-2009-2102194 (Opinion and Order entered June 17, 2010); *Argento’s Pizza v. Philadelphia Gas Works*, Docket No. C-2009-2138055 (Final Order entered October 1, 2010).

11. The Complainant has abused the administrative due process by filing multiple similar complaints, incurring a substantial outstanding balance, and evidencing a poor payment history, in an attempt to avoid termination and payment for services.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Patricia Sanford against Philadelphia Gas Works, at Docket No. C-2019-3009831, is denied and dismissed.

2. That Patricia Sanford (a.k.a. Patricia Alexander) be, and hereby is, precluded from filing further Complaints with the Pennsylvania Public Utility Commission, whether of an informal or formal nature, regarding the arrearages on Account Number 73021413 for gas service provided by Philadelphia Gas Works, until such time as the entire outstanding account balance is paid in full, and that, further, the filing of any complaint pertaining to the arrearages which are the subject of this proceeding shall be dismissed without further proceedings.

3. That Commission staff (including but not limited to the Bureau of Consumer Services and the Secretary's Bureau) shall reject any formal or informal complaints that Patricia Sanford (a.k.a. Patricia Alexander), or any person acting on her behalf, may attempt to file with the Commission, pertaining to PGW Account No. 73021413, until the entire outstanding account balance is paid in full.

4. That the filing of any other pleading in this case, concerning the same subject matter be, and hereby is, deemed not to stay implementation of this Order.

5. That Philadelphia Gas Works shall file a notice with the Commission, with a copy to all Parties to this proceeding, at Docket Number C-2019-3009831, within seven (7) days of the date that Ms. Sanford's outstanding account balance is paid in full.

6. That the failure of Patricia Sanford (a.k.a. Patricia Alexander) to pay all arrearages on her account identified in this proceeding shall be, and hereby is, deemed to be grounds for termination of service in accordance with Chapter 56 of the Commission's Regulations.

7. That a copy of this decision shall be served on the Commission's Bureau of Consumer Services and the Secretary's Bureau.

8. That the docket at Docket No. C-2019-3009831 be closed.

Dated: June 5, 2020

\_\_\_\_\_/s/  
Marta Guhl  
Administrative Law Judge