

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Elliott Hackney	:	
	:	
v.	:	F-2020-3019185
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This decision dismisses the formal Complaint filed by Elliott Hackney (Complainant) against Philadelphia Gas Works (PGW) in which Complainant alleged he was misbilled by PGW for approximately three months. Complainant also requested assistance with his overdue natural gas bill in the form of a Commission-directed payment arrangement but only upon terms set by the Complainant. Complainant failed to show by a preponderance of the evidence that PGW violated any provision of the Public Utility Code (Code) or the regulations of the Commission. He is not eligible for a Commission-directed payment arrangement on the terms that he is seeking. His Complaint, therefore, is dismissed.

HISTORY OF THE PROCEEDING

On February 18, 2020, Complainant filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PGW alleging that he had been misbilled by PGW. Complainant also sought to have the Commission direct a payment arrangement on terms agreeable to himself. This is a timely appeal from a determination by the

Commission's Bureau of Consumer Services (BCS) at Case No. 3702338 finding Complainant ineligible for any payment arrangement, citing 66 Pa. C.S. § 1405(c).¹

On March 31, 2020, PGW filed an Answer to the Complaint denying that it had misbilled Complainant or had violated any provision of the Code or regulation of the Commission.

By notice dated July 2, 2020, the parties were advised that a call-in telephonic hearing in this matter would take place on August 6, 2020. The hearing was rescheduled from a previous hearing date of July 9, 2020.

On August 6, 2020, a telephonic hearing was held. Complainant appeared and represented himself, and testified in support of his Complaint. PGW was represented by Laureto A. Farinas, Esquire, who presented the testimony of Jessica Glace, a Senior Account Review Officer employed by PGW, and offered three exhibits that were received into evidence: PGW Exhibit 1, a Customer Responsibility Program Agreement (CRP); PGW Exhibit 2, a list of Account Holds; and PGW Exhibit 3, a Statement of Account for Complainant's Account.

The record closed on September 18, 2020, with the filing of the transcript of the hearing. The record consists of the 44-page transcript and PGW's Exhibit Nos. 1-3.

This matter is ready for adjudication. For the reasons discussed, below, the Complaint is dismissed.

¹ Informal BCS decisions are "determinations" whereas the result of a Formal Complaint is termed a "decision." In addition, informal BCS determinations are governed primarily by Sections 3.111 to 3.113, 52 Pa. Code §§ 3.111-3.113, whereas Formal Complaints are governed by Chapter 5, 52 Pa. Code, § 5.1 *et seq.* More importantly, informal BCS determinations expressly notify the Complainant of a right to appeal by filing a Formal Complaint. If filed, the Commission provides a hearing *de novo*.

FINDINGS OF FACT

1. Complainant is Elliott Hackney whose current address is 541 East High Street, Philadelphia, Pennsylvania, and whose prior address was 7308 East Walnut Lane, Philadelphia, Pennsylvania. Tr. at 9.
2. Complainant has been a customer of PGW at both addresses. Tr. at 9.
3. Respondent is PGW, a Commission jurisdictional natural gas service company and natural gas supplier.
4. Complainant's arrearage at the time of the hearing was \$5,366.69 and was composed of both CRP and non-CRP charges; PGW's customer assistance program (CAP) is known as the Customer Responsibility Program (CRP). Tr. at 5,6
5. The underlying BCS determination found that Complainant is not eligible for a payment arrangement, citing 66 Pa. C.S. § 1405(c). PGW Answer, Exhibit A.
6. PGW maintains that the minimum acceptable payment to prevent the account from accruing additional arrearage would be a budget amount of \$72.00 per month with a monthly payment of \$72.00 for a combined monthly bill of \$144.00. Tr. at 5.
7. Complainant stated that he has had no change in circumstances since the BCS determination was issued and that he can pay only \$40.00 per month. Tr. at 5-6, 12.
8. Even if Complainant paid \$50.00 per month on the account, it would not cover his current bill and the arrears on the account; therefore, the balance would never be paid down to zero. Tr. at 32.
9. Complainant was previously enrolled in PGW's CRP from May 16, 2016 through June 12, 2018. Tr. at 25; PGW Exhibit 1.

10. Complainant has had three prior medical certifications. Tr. at 7, 27; PGW Exhibit 2.

11. Complainant is currently suspended from CRP with an arrearage of \$1,825.50. Tr. at 26; PGW Exhibit 1.

12. Complainant did not inform PGW that he was moving from the 541 East Street address in March 2018, and billing continued at that address until service was terminated for non-payment on July 23, 2018. Tr. at 27.

DISCUSSION

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa. C.S.A § 332(a). To satisfy this burden, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 PA PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 PA PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (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*, 70 A.2d 854 (Pa. 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 Transp. 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 & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Pa. Dep't. of Public Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

In this case, Complainant disagrees with the determination by the BCS that he is not eligible for a payment arrangement given the applicability of 66 Pa. C.S. § 1405(c), which states:

(c) Customer assistance programs.--Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.

66 Pa.C.S. § 1405(c).

Complainant, however, is not arguing that BCS misapplied the law. He is basing his disagreement on his assertion that he can pay only \$40.00 per month for his natural gas bill including arrearages and is demanding a payment arrangement limited to that amount.

When a Complainant has an arrearage consisting of both customer assistance program (CAP) and non-CAP arrearages, the Commission may bifurcate the arrearage and establish a payment arrangement on the non-CAP arrearage. *Hewitt v. PECO*, Docket No. F-2011-2273271 (Order entered September 12, 2013). The BCS erred in not offering a payment arrangement for the non-CRP² part of Complainant's arrearage, but the Commission cannot direct a payment arrangement on the terms that Complainant is demanding. Complainant is demanding a Commission-ordered payment arrangement in which he would pay only \$40.00 per month on an arrearage of \$5,360.69 accrued at the time of hearing. Tr. 26. Complainant insisted that he cannot pay more than \$40.00 per month, and while I understand that, such a demand (and it is a "demand" not a "request" because there is no room for variation in the former as there may be in the latter) provides no flexibility and would render a Commission-ordered payment arrangement pointless because any such arrangement would have to include payment on the arrearages and payment of Complainant's current bill. PGW's calculation of a budget billing amount alone is \$72.00 per month. Tr. at 5. Complainant was adamant that he can pay no more than \$40.00 per month. PGW contends that this is unworkable. I agree.

² As noted above, PGW's customer assistance program is known as the Customer Responsibility Program (CRP).

PGW stated that the balance on the account was \$5,366.69, including CRP arrears of \$1,825.00. According to PGW, a payment arrangement for \$5,366.00 would require a down-payment of \$1,073.00, and it would result in monthly payments of a budget amount of \$72.00 plus an additional \$72.00 towards the remaining arrears, for a combined monthly bill of \$144.00. Tr. 5,7. Even if Complainant paid \$50.00 per month on the account, it would not cover his current bill and the arrearages on the account; therefore, the balance would never be paid down to zero. Tr. at 32.

At hearing, Complainant also claimed that he had been misbilled by PGW for approximately three months after he had moved out of his prior residence at 541 East Street, Philadelphia, Pennsylvania, in March 2018. Complainant presented no evidence to support this contention. PGW's witness, Ms. Glace, testified that Complainant did not inform PGW that he was moving from the 541 East Street address in March 2018 as he claimed, and billing continued at that address until service was terminated for non-payment on July 23, 2018. Finding of Fact 12 (Tr. at 27). I find her testimony credible and her assertion that Complainant did not call PGW about a move out to be consistent with the Complainant's neglect of his PGW bill and its growing arrearages.

Based on the evidence presented, the Complainant has failed to prove by a preponderance of the evidence that PGW has acted improperly or unlawfully by violating a provision of the Code or a regulation of the Commission, or by refusing to accept Complainant's demand of a \$40.00 per month payment of a natural gas bill with an arrearage of over \$5,000. Therefore, the Complaint must be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa. C.S. § 701.
2. Pursuant to 66 Pa. C.S. § 332(a), the burden of proof in this proceeding is on the Complainant.

3. The Complainant has not met his burden of proving that he is entitled to relief. 66 Pa. C.S. § 332(a).

4. Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the Commission. 66 Pa.C.S. § 1405(c).

5. When a Complainant has an arrearage consisting of both customer assistance program (CAP) and non-CAP arrearages, the Commission may bifurcate the arrearage and establish a payment arrangement on the non-CAP arrearage. *Hewitt v. PECO*, Docket No. F-2011-2273271 (Order entered September 12, 2013).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Elliott Hackney against Philadelphia Gas Works at Docket No. F-2020-3019185 is hereby dismissed.

2. That the record at Docket No. F-2020-3019185 is marked closed.

Dated: December 14, 2020

/s/
Dennis J. Buckley
Administrative Law Judge