

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andre Williams

v.

Philadelphia Gas Works

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F-2022-3032002

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s Formal Complaint as the Complainant failed to meet his burden of proof to establish that he was eligible for a Commission issued payment arrangement. This decision also grants the Company’s request to bar the Complainant from filing any further informal or formal complaints until his current balance is resolved due to the Complainant’s abuse of the administrative process.

HISTORY OF THE PROCEEDING

On April 13, 2022, Andre Williams (Complainant or Mr. Williams) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant requests a payment arrangement.

This matter is a timely appeal of a decision issued on February 25, 2022 from the Bureau of Consumer Services (BCS) at Case No. 3819749 which dismissed Complainant's informal complaint.

On May 9, 2022¹, Respondent filed an Answer denying the material allegations of the Complaint.

By Hearing Notice dated May 11, 2022, an initial hearing was scheduled for Wednesday, June 22, 2022, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on May 25, 2022. The Prehearing Order directed the parties to comply with various procedural requirements and also explained that the complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on June 22, 2022. Complainant participated *pro se* and testified. Complainant presented one exhibit which was entered into the record. Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Adrian Pinkney, Senior Customer Review Officer. Respondent offered three exhibits which were all admitted into evidence.

The hearing resulted in a 41-page transcript. The record closed July 11, 2022, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Andre Williams who resides at 6309 Gardenia Street, Philadelphia, Pennsylvania 19144 (Service Address). Tr. 7.

¹ The Secretary's Bureau served the complaint on the Respondent on April 19, 2022.

2. The Respondent is Philadelphia Gas Works.
3. The Complainant resides at the Service Address with his 7-year-old son who is with him every other weekend. Tr. 7.
4. The Complainant is not currently employed. Tr. 8.
5. The Complainant receives unemployment benefits in the amount of \$500.00 biweekly. Tr. 8.
6. The Complainant receives \$250.00 per month in Supplemental Nutrition Assistance Program (SNAP) benefits.² Tr. 8.
7. The Complainant's gross household income of \$1,000³ per month with two household members places the household at 88 % of the Federal Poverty guidelines.⁴
8. Between April 13, 2019 and June 15, 2022, the Complainant made three payments to his account in the total amount of \$301.37. Tr. 16; PGW Exh. 1.
9. The Complainant has had three payment arrangements, including one from the Commission that was issued by the Bureau of Consumer Services at Case No. 3553838 on September 15, 2017, which was broken due to non-payment. Tr. 18-19, 22; PGW Exh. 2.
10. The Complainant's household income at the time of the BCS decision was \$402 per month. PGW Exh. 3.

² The SNAP benefits are not included in determining household income. *See* 52 Pa. Code § 62.2; *Mason v. Phila. Gas Works*, No. C-2017-2613650, (Opinion & Order entered October 4, 2018).

³ Gross monthly income calculated as follows: \$500.00 x 2 = \$1,000.00.

⁴ *Federal Register*, Vol. 87, No. 14 at 3316, January 21, 2022. *Also see* <http://aspe.hhs.gov/poverty-guidelines>.

11. Between August 18, 2017 and April 13, 2022, the Complainant filed nine informal complaints and three formal complaints with the Commission. Tr. 20-38; PGW Exh. 3.

12. The total balance on the Complainant's account is \$5,935.95. Tr. 17; PGW Exh. 1.

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, Complainant must show that the respondent public 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). 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 (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 Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 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. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*); *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*.

Request for Payment Arrangement

The Complainant requests a payment arrangement in this matter. PGW contends that the Complainant is not entitled to a payment arrangement due to his poor payment history and the fact that the Complainant defaulted on a prior Commission-issued payment arrangement.

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 Public Utility Code 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).

The Complainant resides at the Service Address with his 7-year-old son who is with him every other weekend. Tr. 7. The Complainant is not currently employed. Tr. 8. The Complainant receives unemployment benefits in the amount of \$500.00 biweekly. Tr. 8. The

Complainant receives \$250.00 per month in Supplemental Nutrition Assistance Program (SNAP) benefits, which were not included in the calculation of the Complainant's household income. Tr. 8. The Complainant's current gross household income of \$1,000⁵ per month with two household members places the household at 88% of the Federal Poverty guidelines. This would make the Complainant a Level 1 customer. *See* 66 Pa.C.S. § 1405(b)(1).

Between April 13, 2019 and June 15, 2022, the Complainant made three payments to his account. Tr. 16; PGW Exh. 1. The Complainant has had three payment arrangements, including one from the Commission that was issued by the Bureau of Consumer Services at Case No. 3553838 on September 15, 2017, which was broken due to non-payment. Tr. 18-19, 22; PGW Exh. 2. The total balance on the Complainant's account is \$5,935.95. Tr. 17; PGW Exh. 1.

The issuance of a payment agreement for the arrearage is a matter within the Commission's discretion. *Hewitt v. PECO Energy Co.*, Docket No. F- 2011-2273271 (Opinion and Order entered September 12, 2013). It is Commission policy to exercise its discretion when customers have demonstrated some evidence of a good-faith effort in paying utility bills or customers have experienced a change of circumstance outside of their control. *Crawford v. Nat'l Fuel Gas Dist. Corp.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007). Complainant's payment history and capability to keep prior payment agreements are determinative of whether the Commission exercises its authority to issue a payment agreement for the arrearage. *Id.*; *see also*, *Columbia Gas v. Byerts*, Docket No. F-2011-2247934 (Opinion and Order entered October 17, 2013); and *Dorsey v. Phila. Gas Works*, Docket No. F-2012-2313679 (Opinion and Order entered November 22, 2013). Further, the Commission is constrained to grant only one payment arrangement to the Complainant, absent a change in income. *See* 66 Pa.C.S. § 1405(d). In this matter, the Complainant's household income has increased and not decreased. The Complainant's poor payment history coupled with his broken payment arrangements weigh against granting him a second Commission-issued payment arrangement. As such, the Complainant's request for a payment arrangement must be denied.

⁵ Gross monthly income calculated as follows: \$500.00 x 2 = \$1,000.00.

PGW's Motion Regarding Abuse of Process

PGW made a Motion on the record to preclude the Complainant from filing further informal and formal complaints until the Complainant resolves his current balance. Tr. 19-20. PGW alleged that the Complainant has been abusing the administrative process to avoid termination on his account. The Complainant did not respond to the Motion.

A party can be precluded from filing additional formal or informal complaints with the Commission if there is an abuse of the administrative process. *Thomas v. Peoples Nat. Gas Co.*, Docket No. C-2009-2102194 (Opinion and Order entered June 17, 2010); *Argento's Pizza v. Phila. 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. *Id.* 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.

Between April 13, 2019 and June 15, 2022, the Complainant made three payments to his account. Tr. 16; PGW Exh. 1. The Complainant has had three payment arrangements, including one from the Commission that was issued by the Bureau of Consumer Services at Case No. 3553838 on September 15, 2017, which was broken due to non-payment. Tr. 18-19, 22; PGW Exh. 2. Between August 18, 2017 and April 13, 2022, the Complainant filed nine informal complaints and three formal complaints with the Commission to avoid termination by PGW. Tr. 20-38; PGW Exh. 3.

Based on the above, I will grant PGW's Motion. The Complainant has a poor payment history and has broken previous Company-issued and Commission-issued payment arrangements. This indicates a lack of good faith on the part of the Complainant to retire his outstanding balance. Further, PGW presented undisputed testimony and evidence that the Complainant has filed multiple informal and formal complaints to avoid termination on his

current balance. The Complainant has requested multiple payment arrangements in his informal and formal complaints and has been denied multiple times. See PGW Exh. 3. Therefore, the Complainant is precluded from filing any further informal or formal complaints on his current balance of \$5,935.95, until the arrearage on the account is satisfied.

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 Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

4. The Commission should exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of good faith effort to pay their utility bills or who have experienced a significant change of circumstances beyond their control. *Crawford v. Nat'l Fuel Gas Dist. Corp.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007).

5. Complainant's payment history and capability to keep prior payment agreements are determinative of whether the Commission exercises its authority to issue a payment agreement for the arrearage. *Crawford v. Nat'l Fuel Gas Dist. Corp.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007); see also *Columbia Gas v. Byerts*, Docket No. F-2011-2247934 (Opinion and Order entered October 17, 2013); and *Dorsey v. Phila. Gas Works*, Docket No. F-2012-2313679 (Opinion and Order entered November 22, 2013).

6. The Commission is constrained to grant only one payment arrangement to the Complainant, absent a change in income. *See* 66 Pa.C.S. § 1405(d).

7. The Complainant has not met his burden to demonstrate that he is eligible to receive another Commission-issued payment arrangement.

8. A party can be precluded from filing additional formal or informal complaints with the Commission if there is an abuse of the administrative process. *Thomas v. Peoples Nat. Gas Co.*, Docket No. C-2009-2102194 (Opinion and Order entered June 17, 2010); *Argento's Pizza v. Phila. Gas Works*, Docket No. C-2009-2138055 (Final Order entered October 1, 2010).

9. The Complainant has abused the administrative process and should be precluded from filing any further informal and formal complaints on his current balance.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Andre Williams at Andre Williams v. Philadelphia Gas Works at Docket No. F-2022-3032002 is denied;

2. That Philadelphia Gas Works' Motion to preclude further filing of informal and formal complaints, until the Complainant's, Andre Williams, current balance is resolved, is granted;

3. That Complaint, Andre Williams, is precluded from filing further formal or informal complaints with the Commission regarding the current balance on his account for gas

