

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christopher Haymes	:	
	:	
v.	:	C-2022-3032787
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Formal Complaint of a gas service customer seeking a payment arrangement because a portion of the customer’s outstanding balance is comprised of customer assistance program arrears, which cannot be the subject of a Commission-issued payment arrangement, and because he failed to carry his burden of proving that he is entitled to a new or subsequent Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On June 3, 2022, Christopher Haymes (Mr. Haymes or Complainant) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Mr. Haymes placed checkmarks in the boxes indicating: “The utility is threatening to shut off my service or has already shut off my service,” and “I would like a payment agreement.”

On June 27, 2022, PGW filed an Answer to the Complaint (Answer) which admitted in part and denied in part various material allegations of the Complaint. In its Answer, PGW admitted that it provides gas service to the Complainant and that it issued a shut off notice on June 1, 2022. PGW averred that the Complainant has defaulted on two PGW-issued payment agreements and one Commission-issued payment arrangement due to lack of payment. PGW requested the Complaint be dismissed.

By Hearing Notice dated June 28, 2022, an Initial Call-In Telephonic Hearing was scheduled for August 17, 2022, and the matter was assigned to me.

On August 17, 2022, the hearing convened as scheduled. The Complainant appeared *pro se* and testified on his own behalf. The Respondent was represented by Graciela Christlieb, Esquire, and Anita Murray, Esquire, who presented the testimony of Adrian Pinkney, a Senior Customer Review Officer at PGW. During the hearing, the Respondent offered three exhibits, all of which were entered into the record without objection.

The record closed on August 31, 2022, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Christopher Haymes.
2. The Respondent is Philadelphia Gas Works, a gas utility under the jurisdiction of the Pennsylvania Public Utility Commission.
3. The Complainant receives gas service from PGW at 825 Cantrell Street, Philadelphia, PA, 19148 (Service Address). Tr. 6.
4. The Complainant resides with his wife and two adult children at the Service Address. Tr. 7, 9-10.

5. On December 6, 2016, the Complainant received a Commission-issued payment arrangement, which he defaulted on for non-payment. Tr. 28-29; PGW 2.

6. The Complainant last submitted a payment on January 24, 2020, in the amount of \$91.60. Tr. 31; PGW 1.

7. The current total household income is approximately \$2,800.00 per month, which is less than 133% of the Federal poverty level for a household size of four.¹ Tr. 15.

8. The Complainant is currently enrolled in PGW's Customer Responsibility Program (CRP) with a balance of \$2,737, of which, \$2,650 is in arrears. Tr. 27; PGW 1.

9. As of the date of the hearing, the Complainant's outstanding balance was \$5,040.38, of which, \$2,650 is CRP arrears. Tr. 24; PGW 1.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 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). A complainant can meet that burden if he presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Selling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

¹ See, Federal Register, Vol. 87, No. 14 at 3316 (Jan. 21, 2022). See also, <https://aspe.hhs.gov/sites/default/files/documents/4b515876c4674466423975826ac57583/Guidelines-2022.pdf>

The decision of the Commission must be supported by substantial evidence. 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 & W. Ry. Co. 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. 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Cntr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

By law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. W. Penn Power Co.*, 55 Pa.P.U.C. 637 (1982); *Kea v. Peoples Nat. Gas Co.*, 60 Pa.P.U.C. 215 (1985); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982). Consequently, the Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303; *Neal v. Metro. Edison Co.*, Docket No. Z-00871874 (Final Order entered Jan. 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa.P.U.C. 213 (1990).

Additionally, all customers are obligated to pay for utility service. 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-08721758 (Opinion and Order entered Apr. 8, 1988). A payment arrangement, which prevents service termination as long as the Complainant complies with it, is a privilege, not a right. *Mandell v. Duquesne Light Co.*, Docket No. C-20030234 (Opinion and Order entered Mar. 17, 2004).

In the instant matter, the Complainant requests a second Commission-issued payment arrangement. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401–1419, applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued. 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). However, the Act provides limitations that the Commission must follow including the number of payment arrangements and which account balances cannot be subject to payment arrangements. In regard to the latter limitation, the Act explicitly excludes a portion of Mr. Haymes' total outstanding balance from being the subject of a payment arrangement issued by the Commission. Specifically, Section 1405(c) of the Act prohibits the Commission from issuing payment arrangements on customer assistant program (CAP) rates:

(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). Since PGW's CRP rates are CAP rates, the portion of Mr. Haymes' outstanding balance that is comprised of CRP arrears, \$2,650, cannot be the subject of a payment arrangement approved by the Commission. *Id.*; also see, *Maxwell v. Phila. Gas Works*, Docket No. C-2017-2607397 (Opinion and Order entered Aug. 23, 2018) (recognizing that Respondent's CRP rates are CAP rates as used in 66 Pa.C.S. § 1405(c)).

In addition, the Commission cannot issue another payment arrangement on the remaining amount of non-CRP arrears of \$2,390.38. Section 1405(d) of the Responsible Utility Customer Protection Act reads in pertinent part:

(d) Number of payment arrangements.

Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

66 Pa.C.S. § 1405(d).

Here, the Complainant has already received a Commission-issued payment arrangement upon which he defaulted for non-payment. The Complainant has a poor payment history and has not made a payment since January 24, 2020. The Complainant did not present any evidence that he experienced a change in income since he received the Commission-issued payment arrangement on December 6, 2016. Therefore, pursuant to 66 Pa.C.S. § 1405(d), the Commission cannot establish a second Commission-issued payment arrangement or order PGW to issue another Company-issued payment agreement.

Based on the foregoing, I find that the Complainant has failed to carry his burden of proving that he is entitled to a second Commission-issued payment arrangement. Accordingly, the Complaint shall be denied.

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. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419, applies to this proceeding.

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

5. Customer assistance program (CAP) 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).

6. Absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a Commission order or decision. 66 Pa.C.S. § 1405(d).

7. The Complainant has failed to carry his burden of proving that he is entitled to a second Commission-issued payment arrangement. 66 Pa.C.S. §§ 1405(d).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Christopher Haymes at Christopher Haymes v. Philadelphia Gas Works, Docket No. C-2022-3032787 is denied.

2. That Docket No. C-2022-3032787 be marked closed.

Date: November 21, 2022

/s/
F. Joseph Brady
Administrative Law Judge