

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Edward Jones	:	
	:	
v.	:	C-2022-3034964
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Formal Complaint of Edward Jones because he failed to meet his burden of demonstrating that he is entitled to a second Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On September 6, 2022, Edward Jones (Complainant) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the box marked “other” and explained that he was challenging the terms of a PGW-issued payment agreement. As relief, the Complainant requested a “static payment amount for the agreement that is affordable” for his income level and financial obligations.

On September 26, 2022, the Respondent filed an Answer admitting that the Complainant seeks a “static” payment agreement for the service at 6647 Crowson Street, Philadelphia, PA (service address). The Respondent indicated that PGW records show that the

Complainant has had at least two broken PGW-issued payment agreements and one broken Commission-issued payment agreement. The Respondent requested that the Commission deny all relief requested in the Complaint, dismiss the Complaint, and grant any other relief in favor of PGW as deemed appropriate.

By Initial Telephonic Hearing Notice dated September 29, 2022, an initial call-in telephonic hearing was scheduled for November 29, 2022, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on October 3, 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.

By Telephonic Hearing Cancellation/Reschedule Notice dated October 5, 2022, the initial call-in telephonic hearing was rescheduled for December 1, 2022, at 10:00 a.m.

The hearing convened as scheduled on December 1, 2022. The Complainant appeared *pro se* and testified. The Respondent also appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of David Kauffman, a PGW Customer Review Officer. The Respondent submitted four exhibits, all of which were admitted into the record (PGW Exhs. 1-4).

The record consists of a 56-page transcript and four exhibits. The record closed on December 27, 2022, when the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant in this case is Edward Jones.

2. The Respondent in this proceeding is Philadelphia Gas Works.
3. The Complainant resides at 6647 Crowson Street, Philadelphia, PA (service address). Tr. 9.
4. The Complainant lives alone at the service address. Tr. 21-22.
5. On September 9, 2019, the Commission's Bureau of Consumer Services (BCS) granted the Complainant a payment arrangement on a balance that accrued at the service address. Tr. 34, 40; PGW Exhs. 2 and 3.
6. At the time of the September 9, 2019, Commission-issued payment arrangement, the Complainant's household was a one-person household with gross monthly income of \$4,000. Tr. 39; PGW Exh. 3.
7. The Commission-issued payment arrangement required the Complainant to pay a budget bill of \$133 plus \$694 towards arrears. Tr. 40; PGW Exh. 3.
8. The Complainant subsequently defaulted on this Commission-issued payment arrangement. Tr. 34, 40; PGW Exh. 2.
9. PGW subsequently granted the Complainant Company-issued payment arrangements on September 9, 2021, and April 26, 2022. Tr. 34-35; PGW Exh. 2.
10. The Company-issued payment arrangements included that the Complainant must pay a budget bill as well as a portion of his balance. Tr. 36.
11. Budget billing helps customers average out their energy usage over a 12-month period. Tr. 36-37.

12. Budget billing is reviewed every four months and a new budget bill is determined based on the previous 12-months of usage. Tr. 37.

13. The Complainant defaulted on the September 9, 2021, and April 26, 2022, Company-issued payment arrangements. Tr. 35; PGW Exh. 2.

14. The Complainant still lives alone at the service address. Tr. 21-22, 41.

15. The Complainant's gross-monthly income is currently \$5,200.00. Tr. 21, 41; PGW Exh. 4.

16. The Complainant's PGW account balance as of the date of the hearing totaled \$7,670.53. Tr. 18, 32; PGW Exh. 1.

17. Since November 2020, the Complainant has only made five payments towards his PGW gas bills. Tr. 33; PGW Exh. 1.

18. The Complainant is not currently paying his PGW gas bills. Tr. 14.

DISCUSSION

In the present case, the Complainant challenged the terms of a PGW-issued payment agreement. As relief, the Complainant requested a "static payment amount for the agreement that is affordable" for his income level and financial obligations.

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving by substantial evidence that he is entitled to the requested relief. 66 Pa.C.S. § 332(a). To satisfy this burden, the 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.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 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 that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlt. 1990); *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. Cmwlt. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlt. 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 W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlt. 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 her 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. Cmwlt. 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. Cmwlt. 2001).

By law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Co.*, 55 Pa.P.U.C. 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. Cmwlt. 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. Phila. Gas Works*, Docket No. Z-00871874, (Final Order entered Jan. 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa.P.U.C. 213 (1990).

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).

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 and the length of the payment arrangement.

Section 1405(d) of the Public Utility Code regarding payment arrangements 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) (emphasis added). "Change in income" is defined as:

A decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level.

66 Pa.C.S. § 1403 (emphasis added). Thus, the Commission may only order a subsequent payment arrangement if the Complainant demonstrates a decrease in income.

In the present case, the Complainant is not eligible for another Commission-issued payment arrangement. The record demonstrates that he has not had a change in income as

defined by the Act that would allow the Commission to issue him another payment arrangement. On the contrary, the Complainant's gross monthly income has increased from \$4,000.00 to \$5,200.00 since the Commission issued him a payment arrangement on September 9, 2019. Therefore, since the Complainant has actually experienced a significant increase in income since his previous Commission-issued payment arrangement, the Commission cannot authorize another payment arrangement for him.

Also, the Complainant is not entitled to an extension of the Commission-issued payment arrangement. Section 1405(e) of the Public Utility Code regarding payment arrangements reads in pertinent part:

(e) Extension of payment arrangements.

If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

66 Pa.C.S. § 1405(e) (emphasis added). "Significant change in circumstance" is defined as:

Any of the following criteria when verified by the public utility and 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.

Here, the Complainant did not offer any testimony demonstrating that he defaulted on the Commission-issued payment arrangement as a result of a significant change in circumstances. Consequently, the Commission may not reinstate the payment arrangement issued on September 9, 2019, and extend the remaining term.

Budget Billing

During the hearing, the Complainant explained that he disagreed with PGW's decision to place him on budget billing along with his payment agreement.

Regarding Budget Billing, Commission regulations provide the following explanation:

A gas, electric and steam heating public utility shall provide its residential customers, on a year-round rolling enrollment basis, with an *optional billing procedure* which averages estimated public utility service costs over a 10-month, 11-month or 12-month period to eliminate, to the extent possible, seasonal fluctuations in public utility bills. The public utility shall review accounts at least three times during the optional billing period. At the conclusion of the budget billing year, a resulting reconciliation amount exceeding \$100 but less than \$300 shall be, at the request of the customer, amortized over a 6-month period. Reconciliation amounts exceeding \$300 shall be amortized over at least a 12-month period at the request of the customer. Shorter amortization periods are permissible at the request of the customer.

52 Pa. Code § 56.12(8) (emphasis added).

PGW's witness explained that budget billing is established to assist a customer in paying their bills on an annual basis. Tr. 37. It enables customers to pay less during the winter months and more during the summer months to keep the bills consistent and affordable. Tr. 36-37. PGW recalculates the budget bill four times each year. PGW determines a budget bill on the previous twelve months of usage. Tr. 37.

The Commission's regulation makes it clear that budget billing is optional. The Complainant indicated that he doesn't understand budget billing and still didn't understand it after PGW's witness explained it during the hearing. However, as budget billing is optional, he has the option to tell PGW he would prefer to be billed based upon his actual usage. Moreover, the Complainant has only made five payments towards his bills in the past two years. Based on the evidentiary record, I cannot conclude that being placed on budget billing caused him to fall behind in his payments.

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. 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).
6. If a customer defaults on a payment arrangement established by the Commission under subsections 1405(a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining

term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown. 66 Pa.C.S. § 1405(e).

7. “Significant change in circumstance” is defined as: “Any of the following criteria when verified by the public utility and 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.

8. Budget Billing is an optional billing procedure which averages estimated public utility service costs over a 10-month, 11-month or 12-month period to eliminate, to the extent possible, seasonal fluctuations in public utility bills. 52 Pa. Code § 56.12(8).

9. The Complainant has failed to carry his burden of proving that he is entitled to a second or subsequent Commission-issued payment arrangement or to an extension of the previous payment arrangement. 66 Pa.C.S. §§ 1405(d), 1405(e).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Edward Jones filed in Edward Jones v. Philadelphia Gas Works, at Docket No. C-2022-3034964 is denied; and

