

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William T. Perry, Jr.

v.

Philadelphia Gas Works

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C-2022-3035765

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

In this Initial Decision, the Complainant's request for a payment arrangement is denied because he failed to carry his burden of proving that he is entitled to a new Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On September 28, 2022, William T. Perry, Jr. (Complainant or Mr. Perry) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Mr. Perry alleged that he is unable to pay his utility bills to PGW and requested a more affordable payment arrangement.

On October 21, 2022, PGW filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

By Hearing Notice dated October 25, 2022, an initial call-in telephone hearing was scheduled for January 6, 2023, at 10:00 a.m. and the matter was assigned to me.

A Prehearing Order was issued on December 7, 2022, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on January 7, 2023. The Complainant appeared *pro se* and testified in support of the Complaint. Anita J. Murray, Esq. represented the Respondent, and presented the testimony of Ronda Cobb, who is a customer review officer in charge of investigating formal and informal complaints filed with the Commission against PGW. The Respondent sponsored three exhibits, which were admitted into the record.

The record in this matter closed upon receipt of the hearing transcript on January 25, 2023.

FINDINGS OF FACT

1. The Complainant is William T. Perry, Jr., who resides at 6020 Ross Street, Philadelphia, Pennsylvania 19144 (Service Address). Tr. 7.
2. The Respondent is Philadelphia Gas Works.
3. On June 24, 2019, the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3712086 established a payment arrangement on behalf of the Complainant. Tr. 25; PGW Exhibit 3.
4. In BCS Case No. 3712086, the BCS found Mr. Perry to be a level 4 income customer based on a reported household income of \$4,166.67 per month, for a household of one individual. Tr. 25; PGW Exhibit 3.

5. As a level 4 income customer, the BCS established a payment arrangement which required the Complainant to pay \$458.00 per month consisting of his regular budget bill of \$255.00 per month, plus \$203.00 per month towards the arrearages, beginning with his August 2019 bill due date. Tr. 26; PGW Exhibit 3.

6. Mr. Perry defaulted on the Commission-issued payment arrangement at BCS Case No. 3712086. PGW Exhibit 2.

7. On October 12, 2021, Mr. Perry filed a second informal complaint with BCS at BCS Case No. 3807840, seeking a new payment arrangement while reporting a household income of \$5,000 per month for a household of one individual. Tr. 26-28; PGW Exhibit 3.

8. On November 12, 2021, BCS dismissed Mr. Perry's informal complaint at BCS Case No. 3807840 upon finding that the Complainant was not eligible for a subsequent Commission-issued payment arrangement. Tr. 26-28; PGW Exhibit 3.

9. On August 11, 2022, Mr. Perry filed a third informal complaint with BCS at BCS Case No. 3856851 seeking a new payment arrangement while reporting a household income of \$73,000 per year for a household of one individual. Tr. 28-29; PGW Exhibit 3.

10. On August 15, 2022, BCS established a payment arrangement on behalf of Mr. Perry at BCS Case No. 3856851. PGW Exhibit 3.

11. The payment arrangement at BCS Case # 3856851 required the Complainant to pay \$719.00 per month, consisting of his regular budget bill of \$197.00 per month, plus \$522.00 per month towards the arrearages, beginning with his September 2022 PGW bill due date. Tr. 30; PGW Exhibit 3.

12. Mr. Perry defaulted on the latest Commission-issued payment arrangement. Tr. 24, 30; PGW Exhibit 1.

13. Mr. Perry is the sole resident at the Service Address. Tr. 15.

14. Mr. Perry receives a gross income of \$62,000 per year from his full-time employment with the City of Philadelphia. Tr. 13, 17.

15. Mr. Perry's current total household income of \$62,000 per year exceeds 400% of the Federal poverty level for a household size of one.¹

16. From June 21, 2019, to January 6, 2023, Mr. Perry made 13 partial payments to his PGW account. PGW Exhibit 1.

17. As of the date of the hearing, Mr. Perry's outstanding balance with PGW was \$3,642.17. Tr. 21; PGW Exhibit 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). A complainant can meet that burden if he presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling 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 Rev.*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 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. 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 new 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 circumstances that may result in the extension of an existing payment arrangement. In regard to the former limitation, 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 two Commission-issued payment arrangements on which he defaulted for non-payment. The latest Commission-issued payment arrangement was established by BCS on August 15, 2022, at BCS Case No. 3856851. PGW Exhibit 3.

The payment arrangement at BCS Case # 3856851 required the Complainant to pay \$719.00 per month consisting of his regular budget bill of \$197.00 per month, plus \$522.00 per month towards the arrearages, beginning with his September 2022 bill due date. Mr. Perry defaulted on this payment arrangement.

In addition, the Complainant did not present any evidence that he experienced a “change in income” since he received the Commission-issued payment arrangement on August 15, 2022. Section 1403 of the Public Utility Code defines “change in income” 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. At the hearing, Mr. Perry reported a gross household income of \$62,000 per year. This amount exceeds 400% of the Federal poverty level for a household of one. While this amount represents a decrease from the \$73,000 income that Mr. Perry reported to BCS in August of 2022, the decrease is less than 20% of the household income² and does not qualify as a “change of income” under section 1403 of the Public Utility Code.

Based on the foregoing, I find that the Complainant has failed to carry his burden of proving that he is entitled to a new Commission-issued payment arrangement.

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).

² $(\$73,000 - \$62,000) / \$73,000 = 0.1506$, or 15.06%

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. “A 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.

7. The Complainant has failed to carry his burden of proving that he is entitled to a new Commission-issued payment arrangement. 66 Pa.C.S. §§ 332(a), 1405(d).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by William T. Perry, Jr. at William T. Perry v. Philadelphia Gas Works, Docket No. C-2022-3035765 is denied.

2. That Docket No. C-2022-3035765 be marked closed.

Date: April 10, 2023

/s/
Eranda Vero
Administrative Law Judge