

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stephen Bishop

v.

Philadelphia Gas Works

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C-2022-3035889

**INITIAL DECISION**

Before  
Michael J. Mroczka  
Special Agent

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint of a gas service customer seeking a payment arrangement because Complainant’s balance fully consists of customer assistance program arrears which cannot be a subject of a Commission-issued payment arrangement.

**HISTORY OF THE PROCEEDING**

On October 5, 2022, Stephen Bishop (Complainant or Mr. Bishop) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company or Respondent). Mr. Bishop checked the boxes on the Complaint form stating that the utility is threatening to shut off his service or has already shut off his service and requesting a Commission-issued payment arrangement.

On October 28, 2022, PGW filed its Answer to the Formal Complaint which admitted in part and denied in part various material allegations of the Complaint. In its Answer,

Respondent alleged that Complainant is enrolled in PGW's Customer Responsibility Program (CRP). PGW requested the Complaint be dismissed.

By Hearing Notice dated November 9, 2022, an Initial Call-In Telephonic Hearing was scheduled for January 9, 2023, and the matter was assigned to me.

A Prehearing Order was issued and served on November 18, 2022, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On January 9, 2023, the hearing convened as scheduled. The Complainant failed to attend the hearing.

Mr. Bishop contacted my office via email on January 27, 2023, stating that he slept in due to his medical issues and treatment and asked that the hearing be rescheduled. Along with his email request, Mr. Bishop also forwarded email communications he had with PGW and PUC Bureau of Consumer Services (BCS) in an attempt to have the hearing rescheduled shortly after the scheduled hearing on January 9, 2023. PGW and BCS had informed Mr. Bishop that he would need to contact the Office of Administrative Law Judge directly. PGW did not object to rescheduling the hearing.

On February 15, 2023, I issued an Interim Order Granting Petition to Reopen Record and Schedule Further Hearing. A Further Call-in Telephone Hearing Notice was served on the parties scheduling the hearing for April 6, 2023, at 10:00 a.m.

On April 6, 2023, the hearing convened as scheduled. The Complainant appeared *pro se*, testified on his own behalf, and offered no exhibits for the record. However, I provided Mr. Bishop ten days after the hearing to submit late-filed exhibits. Anita Murray, Esquire, appeared on behalf of PGW and presented the testimony of one witness, David Kauffman, a customer review officer for PGW. Mr. Kauffman sponsored the following two exhibits, which were admitted into the record without objection:

PGW Exhibit 1 – Statement of Account

PGW Exhibit 2 – Opening and Closing decision from BCS No. 3860182

On April 17, 2023, via email, Mr. Bishop provided as a late-filed exhibit, a screenshot of an alleged payment of \$120 to PGW on February 1, 2023. However, in the email Mr. Bishop explained that it was applied to the wrong account and after speaking with PGW, it would be applied to the correct account.

On April 25, 2023, PGW provided via email, Objections to the Late-Filed Exhibit. PGW objected to the Late-Filed Exhibit for lack of relevance and that its probative value is outweighed by unfair prejudice and confusion of the issues. Also in the Objections, PGW states that Complainant did contact them on April 17, 2023, to advise them that the payment was made on the wrong account and PGW agreed to transfer the payment to the correct account. I will rule on the Objections below.

The record closed on April 24, 2023, upon the filing of the 41-page transcript with the Commission.

#### FINDINGS OF FACT

1. The Complainant is Stephen Bishop, who resides at 35 East Tulpehocken Street, Philadelphia, Pennsylvania 19144 (Service Address). Tr. 15.
2. The Respondent is Philadelphia Gas Works, a jurisdictional public utility, which provides gas service to Complainant at the Service Address.
3. Complainant resides alone at the Service Address. Tr. 18.
4. Complainant receives social security, and his gross monthly income is \$777. Tr. 19.

5. Complainant's social security is his only income. Tr. 18,19.
6. Complainant's outstanding PGW balance at the time of the hearing was \$1,755.14. Tr. 27.
7. Complainant is on PGW's Customer Responsibility Program (CRP). Tr. 19, 29, 37.
8. Complainants outstanding PGW balance is made up entirely of CRP arrears. Tr. 29, 37.

## DISCUSSION

### Complainant's Late-Filed Exhibit

During the hearing on April 6, 2023, I provided Complainant ten days to submit any late-filed exhibits that he may wish to submit. On the evening of April 17, 2023, Mr. Bishop sent, via email, a proposed late-filed exhibit. In the email, Mr. Bishop explained that it is a payment made on February 1, 2023, of \$120 to PGW. However, also in the email, Mr. Bishop explained that it was applied to the wrong account and after speaking with PGW earlier that day, it would be applied to the correct account.

On April 18, 2023, I forwarded Mr. Bishop's email and attachment to PGW's attorney in the event Mr. Bishop failed to send it to her and to avoid *ex parte* communications. I asked attorney Murray to advise if PGW had any objections to the late-filed exhibit.

On April 25, 2023, PGW, through attorney Murray, emailed me, copying Mr. Bishop, Objections to the Mr. Bishop's late-filed exhibit.

In paragraph six of PGW Objections, PGW objects to the late-filed exhibit because Complainant failed to serve a copy on PGW preventing PGW "from viewing and

investigating such evidence, from objecting to its admissibility, and from presenting any rebuttal evidence.” However, though Mr. Bishop failed to copy Attorney Murray on the email with the proposed late-filed exhibit, I forwarded the email with the attached exhibit to attorney Murray the morning of April 18, 2023. PGW then had an opportunity to view and investigate the evidence contained within Complainant’s exhibit. Additionally, I also provided PGW time to object to the exhibit. Therefore, the objection in paragraph six is overruled.

Paragraphs seven and eight of PGW’s Objections refer to a part of the exhibit that purports to show a payment of \$150 on January 13, 2023, to an unknown account that was cut off by the screenshot. Mr. Bishop’s email explains the exhibit is meant to highlight the payment made on February 1, 2023, not the January 13 payment. It is clear that the January 13 payment was just an incidental part of the screenshot and not meant to be introduced as payment made to PGW. Since there seems there was no intention by Mr. Bishop that I take the January 13 payment into consideration in my decision, the objection in paragraphs seven and eight are overruled as moot.

In Paragraphs 9-11 of PGW’s Objections, PGW objects to the Late-Filed Exhibit for lack of relevance and that its probative value is outweighed by unfair prejudice and confusion of the issues. Also in the Objections, PGW states that Complainant did contact them on April 17, 2023, to advise them that the payment was made on the wrong account and PGW agreed to transfer the payment to the correct account. PGW’s Objections in Paragraphs 9-11 will be sustained, and Complainant’s late-filed exhibit will not be admitted for the following reasons. First, Mr. Bishop’s statement in his email that the February 1 payment was mistakenly applied to the wrong account shows that the payment had no relevance in this matter at the time of the hearing. Also, in this matter, the total amount actually in arrears has no bearing on Mr. Bishop’s eligibility for a Commission-issued payment arrangement.

#### Payment Arrangement

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.

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); *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).

Complainant requests a 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 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.

**(b) Length of payment arrangements.**—The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

- (1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.
- (2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.
- (3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.
- (4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

**(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(a)-(c). The Code also restricts the Commission from issuing a second or subsequent payment arrangement if a customer defaults on a previous Commission-issued payment arrangement absent a change in income and restricts the Commission from reinstating

and extending a previous payment arrangement absent a significant change in circumstances. 66 Pa.C.S. §§ 1405(d), (e).

If the Commission has not previously ordered a payment arrangement for a complainant, the Commission has the authority to establish a payment arrangement, pursuant to 66 Pa.C.S. § 1405(a), on a complainant's arrearages within the strict guidelines set forth in 66 Pa.C.S. § 1405(b), as stated above. Mr. Bishop's gross monthly household income of \$777 for a household size of one does not exceed 150% of the Federal poverty level.<sup>1</sup> Further, Mr. Bishop has not previously been granted a Commission-issued payment arrangement. Therefore, pursuant to the Code, Mr. Bishop would be eligible for a five-year payment arrangement under 66 Pa.C.S. § 1405(b), absent a restriction set out in the Code.

Unfortunately, the Commission does not have authority to order a payment arrangement on customer assistance program (CAP) arrearages. 66 Pa.C.S. § 1405(c). A "customer assistance program" is defined as follows:

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by Section 2202 (relating to definitions) or Section 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

66 Pa.C.S. § 1403. PGW's CRP rates are CAP rates that cannot be the subject of a payment arrangement ordered by the Commission. *See Maxwell v. Phila. Gas Works*, Docket No. C-2017-2607397 (Opinion and Order entered Aug. 23, 2018). Mr. Bishop's balance is made up entirely of CRP arrears. Tr. 29, 37. Therefore, the Commission does not have authority to establish a payment arrangement under 66 Pa.C.S. § 1405.

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<sup>1</sup> *See*, Federal poverty guidelines, 88 Fed. Reg. 3424 (Jan. 19, 2023); <https://aspe.hhs.gov/sites/default/files/documents/98087be2f7c9586ee24c35a011bc7ac8/guidelines-1983-2023.xlsx> .

Mr. Bishop is encouraged to seek any grants or assistance that may be available to him to lower any arrearage owed to PGW so that he may catch up on his CRP payments. Also, PGW is encouraged to work with Mr. Bishop the best it can while he attempts to get assistance to overcome this issue.

Accordingly, the Complainant's request for a Commission-issued payment arrangement will be denied and the Complaint will be dismissed.

#### CONCLUSIONS OF LAW

1. This Commission has jurisdiction over the parties to and subject matter of this case. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is upon 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 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. PGW's CRP rates are CAP rates that cannot be the subject of a payment arrangement ordered by the Commission. *See Maxwell v. Phila. Gas Works*, Docket No. C-2017-2607397 (Opinion and Order entered Aug. 23, 2018).

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Stephen Bishop in Stephen Bishop v. Philadelphia Gas Works at Docket No. C-2022-3035889 is dismissed.
2. That Docket No. C-2022-3035889 be marked closed.

Date: July 17, 2023

\_\_\_\_\_/s/  
Michael J. Mroczka  
Special Agent